



BEING LGBTI IN EASTERN EUROPE: SERBIA COUNTRY REPORT

A participatory review and analysis of the legal,
institutional, policy and socio-economic environment
for lesbian, gay, bisexual, transgender and intersex
people, and civil society

SERBIA

NATIONAL LGBTI REPORT



*Empowered lives.
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This country report is part of a sub-regional project "Being LGBTI in Eastern Europe" implemented by UNDP in partnership with civil society and in cooperation with the LGBTI Equal Rights Association (ERA). In Serbia the project is being implemented with the following country partners: Association Rainbow and Civil Rights Defenders.

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List of Acronyms

AIDS	Acquired immunodeficiency syndrome
BCHR	Belgrade Centre for Human Rights
CCS	Constitutional Court of Serbia
CIPIDP	Commissioner for Information of Public Importance and Personal Data Protection
CoE	Council of Europe
CPE	Commissioner for the Protection of Equality
CSO	Civil Society Organization
CSW	Centre for Social Work
EC	European Commission
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GFATM	The Global Fund to Fight AIDS, Tuberculosis and Malaria
GSA	Gay Straight Alliance
HIV	Human Immunodeficiency Virus
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTI	Lesbian, Gay, Bisexual, Trans And Intersex People
Mol	Ministry of Interior Affairs
MSM	Men Having Sex with Men
NDI	National Democratic Institute
NGO	Non-Governmental Organization
PEP	Post Exposure Prophylaxis
PrEP	Pre-Exposure Prophylaxis
RS	Republic of Serbia
SOGI	Sexual Orientation And Gender Identity
STIs	Sexually Transmitted Infections
UN	United Nations
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Definitions of Key Terms

LGBTI

LGBTI stands for “lesbian, gay, bisexual, transgender and intersex people”. While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities.

Sexual Orientation

Sexual orientation refers to a person’s physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person’s identity. Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people (sometimes known as “straight”) are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

Gender Identity

Gender identity reflects a deeply felt and experienced sense of one’s own gender. A person’s gender identity is typically consistent with the sex assigned to them at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. In some cases, their appearance and mannerisms and other outwards characteristics may conflict with society’s expectations of gender-normative behaviour.

Transgender

Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics are perceived as gender-atypical. Transwomen identify as women but were classified as males when they were born. Transmen identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

Intersex

An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people.

Homophobia and Transphobia

Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people; transphobia denotes an irrational fear, hatred or aversion towards transgender people. Because the term homophobia is widely understood, it is often used in an all-encompassing way to refer to fear, hatred and aversion towards LGBT people in general.

About the Report

UNDP is the multilateral institution with a convening role vis-à-vis both governments and civil society across three main pillars of development (sustainable development pathways, inclusive and effective democratic governance, and resilience and effective governance). UNDP works on the ground in 170 countries and territories, working with governments and people on their own solutions to global and national development challenges to help empower lives and build resilient nations. Advancing lesbian, gay, bisexual, transgender, and intersex equality and inclusion is an integral part of UNDP's mandate for the promotion of rule of law and human rights in relation to the emphasis on "leave no-one behind" within the Sustainable Development Goals and Global Development Agenda 2030. This report has been developed as part of the project "Being LGBTI in Eastern Europe: Reducing inequalities and exclusion, and combating homophobia and transphobia experienced by LGBTI people in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia". The project considers LGBTI issues in each of the countries from a human rights and development perspective, contextualizing these against the backdrop of civil society capacity development, community mobilization and government competence. This includes but is not limited to, the right to health and well-being, within the context of development. This country report for Serbia is intended to voice lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities' concerns; identify gaps in legislation and practice; and provide recommendations to relevant stakeholders.

The report is based on a comprehensive desk review of existing reports and publications, jurisprudence, legislation and other relevant materials related to LGBTI people in Serbia. Information gathered from secondary sources has been verified and supplemented through interviews and discussion with various stakeholders. Special thanks goes to the government authorities, civil society representatives, activists, representatives of independent state bodies, health workers, and members of the judiciary who generously provided their time and expertise, and shared key information, reference materials and guidance during the production of the report.

Each chapter begins with a summary of data focusing on identified gaps, and is followed by analysis of the legislative framework and extent to which LGBTI people are able to claim their rights in practice. The report ends with conclusions and recommendations based on the report's findings.

Acknowledgments

This report was technically reviewed by UNDP and USAID as part of the "Being LGBTI in Eastern Europe" initiative. It is based on the observations of the author and a desk review of published literature. Additional information was gained from interviews with community representatives and counterparts from civil society and the state authorities. The views and opinions in this report do not necessarily reflect the views and opinions of UNDP or USAID. LGBTI community advocacy and politics is a dynamic area, and there may be recent developments that have not have been included in this report at the time of publication.

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Key Findings

Societal Attitudes

1. LGBTI people living with HIV face more discrimination than almost any other group in Serbia. Citizens in Serbia express high levels of social distance towards LGBTI people in general, and towards LGBTI people in their families. Social stigma and intolerance towards people affected by HIV is intense in all parts of society.
2. There is very little information about intersex people living in Serbia, but available limited sources indicate there is a high level of stigmatization and self-stigmatization of intersex people, particularly in rural areas.
3. The authorities have made important efforts to strengthen the position of LGBTI people in Serbia. However there is still a need for stronger political support to promote respect for the rights of LGBTI people. This is particularly true for topics perceived as being "sensitive" such as regulating registered partnerships of same-sex couples. A survey of the opinions of public office holders indicated there remains a high tolerance of discrimination against sexual minorities and prejudice towards people living with HIV within the public sector.
7. Serbia has no legal provisions or procedures for recognizing gender where this differs from the sex assigned at birth, even in cases of gender-affirming surgery. Rules of procedure on changes of name designation in terms of gender in certificates and diplomas have not been adopted. The Constitutional Court of Serbia established that denial of legal recognition of the sex change of a post-operative trans person violated the applicant's right to privacy and right to dignity. The court ordered the municipal office responsible to make the changes in the applicant's birth records. The Court made this decision applicable to any persons in a similar situation until such time as relevant legislation is adopted. Currently, it is possible to recognize a sex change within official documentation, but only after completing a sex affirmation procedure and only in certain cases. Due to the lack of a legal framework the approach among the Serbian municipalities is not systematic or standardized. A significant number of trans people who are undergoing transition or who do not want to undergo sex-change surgery are in a legal vacuum.

Legal and Institutional Framework

4. Sexual acts between consenting adult men were decriminalized in Serbia in 1994. Until 2008, the Ministry of Health considered homosexuality to be an illness. Transsexualism is still classified as a mental disorder.
5. Serbia has adopted a wide anti-discrimination legal framework, and the 2009 Anti-Discrimination Law explicitly prohibited discrimination on the grounds of sexual orientation and gender identity (SOGI). The Constitution of Serbia enshrines fundamental human rights and freedoms. Serbia is bound by almost all United Nations (UN) human rights treaties, the European Convention on Human Rights and numerous conventions of the Council of Europe. However, international organizations, state institutions for protection of human rights and NGOs reporting on human rights in Serbia flagged that in practice the protection of rights of LGBTI people is weak and inconsistent.
8. The rights of same-sex partners are not regulated. Same-sex unions are not recognized under Serbian law, and provisions of Family Law on de facto extramarital unions are not applicable to stable same-sex unions. According to the 2014 Anti-Discrimination Action Plan, there should be public debates on the draft model Act on Registered Same-Sex Partnerships and a model Act Amending the Inheritance Act beginning in the last quarter of 2017.
9. Personal security is a top priority for the LGBTI community. The 2015 National Democratic Institute (NDI) poll¹ indicated that over 70 percent of LGBTI respondents were exposed to psychological violence and harassment (a rise of 15 percent since 2014), while 23 percent reported that they were physically assaulted because of their sexual orientation or gender identity (SOGI). Even where they have been properly investigated, hate crimes have not been properly prosecuted or sanctioned. Reliable records of hate crimes are not yet available.
10. In September 2016, the Pride Parade was held peacefully in Belgrade, for the third year in a row. This followed years when the enjoyment of freedom of peaceful assembly had been denied to LGBTI people. According to the 2015 NDI survey² nearly 90 percent of respondents in Serbia stated they oppose the parade. Nevertheless, currently it seems to enjoy political and institutional support.
11. According to surveys, discriminatory attitudes and tolerance towards peer-to-peer violence based on SOGI are widespread in schools.

12. For almost a decade numerous warnings and recommendations were issued by the civil society, the Commissioner for Protection of Equality (CPE) and the Protector of Citizens about the need to remove insulting and discriminatory statements from textbooks, but to date there is no evidence that this has been done.

13. Although prohibited, hate speech remains widely spread via the media, on the Internet and in graffiti, particularly in the run up to the Pride Parades. The CPE examined a number of complaints and established violations of prohibition of hate speech against LGBT people on Internet portals, on social networks, in the media, by holders of public offices, clergy, and right-wing organizations. In 2012, the first final court judgement for hate speech against the LGBT population was adopted by the Appeal Court in Belgrade. This was followed by several other cases sanctioning hate speech in civil proceedings.

14. In April 2016, the CPE warned about inaccurate and insulting media reports attributing transmission of HIV to "homosexuals" and thereby violating the dignity and rights of gay and bisexual men.

15. LGBTI people are discriminated against in the workplace. There is very little data available on workplace discrimination. The LGBTI community in Serbia ranked the enjoyment of economic and social rights and the elimination of labour discrimination as their second highest priority for change. In 2009, the first court decision under the Antidiscrimination Law was adopted by the Novi Sad Court of Appeal. This decision related to a case of discrimination based on sexual orientation in the workplace. However, no further cases have been taken up following this decision.

16. Trans people face particular challenges in relation to labour and employment, primarily due to the difficulty of obtaining documentation that correctly shows their reassigned gender. They are mostly able to get temporary informal jobs. Some work as sex workers, which leads to further stigmatization and increases their vulnerability to violence and sexual health risks, including HIV and other sexually transmitted infections (STIs).

17. Although no official policy of the Serbian Army is publicly available, LGBTI organizations claim that a kind of "don't ask, don't tell"³ policy applies in relation to sexuality issues in practice. This also applies in the majority of civilian workplaces. In 2015, the CPE established a violation of the Antidiscrimination Law in a case of trans person who served as a major in the Serbian Armed Forces, and who faced discrimination because of her gender identity in a statement made by the Human Resources department of the General Staff and in the decision of the Ministry of Defence on the major's termination of service.

18. A survey indicated that only one out of ten LGBT people feel that medical institutions are adequately responding to their physical and mental health needs. Based on previous negative experiences, many LGBTI people fear coming out could lead to stigmatization and secondary victimization. Sometimes they are reluctant to reveal their sexual orientation even when such information is of medical relevance.

19. "Transsexualism" is classified as a mental disorder by the health system. Since 2012, in medically-indicated cases 65 percent of the medical costs of sex change have been

covered by health insurance; the rest must be co-financed by patients themselves. However, costs of lifelong hormone treatment are not covered at all by public health insurance, and trans people also face shortages of hormone products. Trans people who are undergoing gender affirming surgery, also always undergo mandatory sterilization procedures.

20. In general, there is a lack of publicly available data on intersex people. A medical team of specialist doctors works with intersex babies at the Dr Vukan Čupić Mother and Child Healthcare Institute of Serbia. However there are no psychologists or psychiatrists in this medical team or elsewhere in Serbia who specialize in intersex issues.

21. There is no official public data on how many "corrective" interventions have been performed with intersex children so far. Recently, for the first time, a medical expert has advised parents of intersex babies to delay any "corrective surgery".

22. In 2015, the Dr Milan Jovanović Batut Public Health Institute reported a sharp growth in the number of newly diagnosed people with HIV (178 new cases were registered compared to 130 in 2014). The HIV epidemic in the Republic of Serbia is becoming highly concentrated among the population of men who have sex with men (MSM) (73 percent of all reported HIV cases). Whilst the number of people living with HIV within the LGBTI population has been rapidly growing, there is no national strategy or action plan on HIV prevention. The last public strategy on HIV response expired in 2015. There is a lack of funding for programmes for HIV prevention or support for people living with HIV.

23. HIV treatment is available free of charge for all patients with medical insurance. However, people living with HIV only have access to the first generation of medical treatment. Modern therapy is only available after viral resistance to treatment has been proven, which is not in accordance with comparative commonly accepted practices. Post-exposure prophylaxis (PEP) for HIV is not available. Pre-exposure prophylaxis (PrEP) medications are also not available in Serbia.

24. The Republic of Serbia has been granting refugee status to people who have been persecuted on multiple bases including SOGI. LGBTI people from Serbia have also been seeking asylum in other countries.

25. Formally, LGBTI people have access to judicial and non-judicial remedies for discrimination, but these are often ineffective in practice. More support is needed for NGOs providing legal aid to LGBTI people and monitoring of discrimination trials. Adoption of a law that would regulate provision of free legal aid for all, including LGBTI people, is still pending.

26. Organizations working on the promotion and protection of the rights of LGBTI people are diverse, and they are perceived as an important agent of change for the position of LGBTI people in Serbia. LGBTI organizations and activists are divided on major issues, including the Pride Parade. Lack of sustainable funding is the major challenge to organizational sustainability.

Main Recommendations

- 1 Adopt legislation on gender identity and enable legal gender recognition for trans people in accordance with their preferred gender.
- 2 Adopt regulations on civil partnership and adopt or amend existing legislation to regulate the rights of same-sex partners.
- 3 Adopt a new national strategy on HIV or an Action Plan that will promote and ensure sustainable funding for programmes related to HIV prevention and support for people living with HIV, with a strong focus on key populations particularly men who have sex with men (MSM) and trans people.
- 4 Increase political commitment to promoting a culture of respect for the rights of LGBTI people in Serbia.
- 5 Conduct efficient and effective investigations of threats and assaults based on presumed or actual sexual orientation and gender identity.
- 6 Police, courts and prosecutor's offices should collate data relating to hate crimes based on SOGI.
- 7 Ensure fair and effective court proceedings in cases of discrimination and hate crimes.
- 8 Ensure that all discriminatory content about LGBTI people is eliminated from textbooks and curricula, and introduce affirmative and accurate portrayals of LGBTI people in textbooks.
- 9 Introduce and enforce obligations for employers in the public and private sectors to develop internal policies and procedures to ensure the elimination of discrimination including based on SOGI.
- 10 Raise awareness among medical professionals, human rights defenders, relevant institutions and the public on the situation and rights of intersex people.
- 11 Ensure access to healthcare without discrimination to LGBTI people and people living with HIV.
- 12 Ensure effective partnerships among and between civil society and other stakeholders such as government counterparts and the private sector.



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1. Introduction: The Position of LGBTI People in Serbia

Summary

The LGBTI population faces some of the highest levels of discrimination of all social groups in Serbia. Citizens in Serbia express high levels of social distance towards LGBTI people and towards LGBTI people within families. Almost no information is available about intersex people. Social stigma and intolerance towards people affected by HIV is intense in all parts of society.

In its 2016 Report on Serbia, the European Commission assessed that the “legal and institutional framework for the respect of fundamental rights is in place [...] but its consistent implementation across the country needs to be ensured”⁴ The need to improve the position of discriminated groups was particularly emphasized. LGBTI people, together with Roma, people with disabilities, and people living with HIV are recognized as the most vulnerable groups in Serbian society.⁵ The environment in Serbia is uncertain and sometimes hostile towards LGBTI people.⁶ There is a need for a systematic approach from public authorities and state institutions to ensure that LGBTI people are able to enjoy internationally-recognized rights and freedoms.

Conflicts in the territory of the former Yugoslavia⁷ and the ethno-nationalism that dominated political life in the 1990s during the autocratic regime of Slobodan Milosevic⁸ contributed to reestablishment of traditionalism in Serbian society. They also contributed to strengthening of traditional gender identities and roles, such as the traditional roles of men and women, as well as intolerance towards any deviations from these traditional models. Some authors have argued that homophobia can be seen as a reaction to the disruption of this socially-desired order.⁹

Same-sex acts were first briefly decriminalized in Serbia in the Autonomous Region of Vojvodina in the 1970s. During the 1994 Criminal Code reform, sex between consenting adult men was finally decriminalized in Serbia.¹⁰ Currently, the age of consent is 14 years both for homosexual and heterosexual intercourse. However, until the legislative reform of the Criminal Code in 2006, the age of consent used to be 14 for heterosexual and lesbian intercourse, while sexual intercourse between consenting males was defined as a crime if one of the parties was a minor over the age of 14.¹¹ Until 2008, the Ministry of Health considered homosexuality to be an illness,¹² and transsexuality is still classified as a mental disorder.¹³

In 1989, the Belgrade Team for Gender Dysphoria was informally established. Ever since, it has been one of the world’s leading centres for gender affirming surgery.¹⁴ This has however not led to any significant improvements in the position of trans people in Serbian society.¹⁵

“What’s been missing all this time, especially up until four or five years ago, is that state institutions and the medical industry don’t discuss the whole array of issues and problems that trans people face—the suicide rate is staggeringly high, as are homelessness, poverty, unemployment....” Milan Đurić, Gayten-LGBT¹⁶

There is very little or no information about intersex people¹⁷ living in Serbia.¹⁸ Available reports indicate widespread ignorance among representatives of institutions, including doctors and medical workers, which results in significant violations of human rights.¹⁹ According to an intersex activist, there is a high level of stigmatization and self-stigmatization, particularly in rural areas. This is probably why there are no active intersex communities in Serbia where intersex people and parents of intersex children could look for support.²⁰ There is no Serbian term for intersex, and the English term is used without proper understanding. The Serbian media equate intersex with the term “hermaphrodite” thereby strengthening the social stigma relating to being intersex.²¹

According to the earliest public opinion polls on LGBTI issues, conducted by the Belgrade Centre for Human Rights (BCHR) in the early 2000s, respondents recognized the existence of social condemnation and boycott of homosexual people in Serbia. The number of people who thought there was “social condemnation and boycott of homosexuals” rose from 29 percent in 2002 to 52 percent in 2003.²² In 2010, a Gay Straight Alliance (GSA) survey indicated that 67 percent of people considered homosexuality to be an illness.²³ Three years later, the figure had fallen to 49 percent.²⁴ A poll conducted by the Commissioner for the Protection of Equality in 2013 showed that citizens in Serbia express the greatest social distance towards LGBT people and people living with HIV, amongst all social groups.²⁵ This could be a consequence of a very low level of knowledge among the general population about LGBTI people. According to a 2015 survey by the National Democratic Institute (NDI), only seven percent of respondents gave correct answers to the question of which social groups are part of the LGBTI population.²⁶

“It’s not understandable to me. I am not saying they are bad people. I just do not understand them and I could not socialize with them. I am simply disgusted by them. Not even to have them near me.” Self-identified heterosexual respondent, NDI Survey²⁷

NDI data also showed a mismatch between public perceptions and LGBTI experiences of discrimination. Whilst the public estimated that discrimination based on SOGI occurs in 23 percent of cases, surveyed LGBTI people felt they had been discriminated against in slightly over 50 percent of situations.²⁸ In one year only, the number of respondents who said they personally interacted with LGBTI person almost doubled, from 10 percent in 2014 to 18 percent in 2015.²⁹ While this is a significant increase, the number of people interacting with LGBTI people remains low. This is particularly relevant since the study also indicated that personal contact between the non-LGBTI and LGBTI communities significantly reduces prejudice and stereotypes against them.³⁰

Attitudes towards LGBTI people as family members mirror the attitudes towards LGBTI people in the general population. The majority of young LGBTI people live in families which disapprove of their sexual orientation.³¹ LGBTI young people who come out to their families often become homeless as a result.³² Those coming from closed or more traditional communities are particularly vulnerable, such as Roma women for example.³³ It was indicated by an LGBTI activist that representatives of some national minorities have publicly declared that their communities are free of LGBTI people.³⁴ As a consequence, LGBTI people belonging to these national minorities are fearful of coming out and seek safety in invisibility in the margins of society. This causes feelings of guilt, shame, frustration, fear and sadness as well as emotional dysfunctionality³⁵ and mental health problems.³⁶ According to a public opinion survey conducted in 2010 by GSA, as many as 17 percent of parents would react violently to the fact that their child is homosexual.³⁷ CPE recorded the trend of increasing social distance towards LGBTI people within families – an increase from 62 percent in 2009 to 82 percent in 2013.³⁸ The Protector of Citizens reported in both 2014 and again in 2015 that services have not been developed to assist young LGBTI people who have been forced to leave their family homes after coming out.³⁹ The Ministry of Labour, Employment, Veteran and Social Affairs should have provided such services together with local municipalities and NGOs.⁴⁰

“...The most difficult thing for me is wanting to share my professional and personal successes with them [family] first, but it means nothing to them because I am gay ...” Self-identified LGBTI person⁴¹

Support systems for coming out, and social support programmes specifically for the LGBTI population are not offered by state-run institutions.⁴² Notwithstanding all the shortcomings of the current systems of social care, some CSO representatives argued that state systems would be best placed to provide such services, as they could offer more sustainability than the NGO sector – but only once they have been properly trained, sensitized and equipped.⁴³ The NGO Duga has provided capacity building training on working with LGBTI people and their families to 30 percent of employees of the Centres for Social Work (CSW) throughout Serbia.⁴⁴ However, CSW does not yet have any procedures on screening for identification of LGBTI people in families.⁴⁵ Local authorities are currently not financing the provision of services to LGBTI people by NGOs in the local communities. There are no guidelines determining the conditions for provision of combined services to LGBTI people in the social care and healthcare sectors, hence it is not possible to license such programmes, and no resources are allocated by local authorities for this purpose.⁴⁶

Support services are sporadically being offered by some NGOs, but their sustainability is predominantly dependent on donor funds.⁴⁷ LGBTI organizations including LABRIS, SPY and GAYTEN have recommended opening safe spaces where all services already being provided by NGOs would be offered in a single place.⁴⁸ This could also make their services more sustainable and them more visible and accessible to the community.⁴⁹ NGO EGAL is currently in the process of establishing the first drop-in centre for trans people, and for other LGBTI people in need, where various counselling and support services will be offered.⁵⁰ Gayten-LGBT has run an LGBTI SOS line and trans support group since 2006, and is currently offering free counselling and psychotherapy services to LGBTI people.⁵¹ Support systems for LGBTI victims of family violence are also inadequate, but isolated good practice examples can be found, such as the first social enterprise that employs LGBT people who are victims of family violence, founded by NGO Duga.⁵²

The European Union (EU) bodies have recognized efforts by authorities to strengthen the position of LGBTI people, particularly stressing the importance of the support that has been extended to the Belgrade Pride.⁵³ Pride Parades have taken place in Belgrade without incidents in the last three years, and although they have been heavily guarded, the police presence has been dropping.⁵⁴ Organizers of the Pride do not think that lack of political support for the event is a problem in Serbia any more.⁵⁵ In December 2010, the first openly gay politician became a member of the Main Board of the Socialist Party of Serbia (SPS), and in 2013 he was appointed as advisor to the Minister in charge of European integration.⁵⁶ In 2016, a first openly lesbian woman was appointed as a Minister in the Serbian Government.⁵⁷ Notwithstanding these improvements, the EU emphasizes that “a stronger political commitment is needed to promote a culture of respect for LGBTI people.”⁵⁸

In 2015, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) reported that “political support [to rights of LGBTI people] varied ... as discussions began on the possibility of registered partnership for same-sex couples”.⁵⁹ In 2013, a survey of attitudes of public authorities conducted by CPE⁶⁰ indicated that there is still a lack of deeper understanding of discrimination, particularly indirect discrimination. Public office holders also showed high tolerance for discrimination against sexual minorities, in part because they perceive being LGBT as an illness. Prejudice towards people living with HIV was also widespread, as was the belief that they were to be blamed for their medical status. The CPE emphasized that in order to achieve effective protection of the rights of LGBT people, the relevant actors in Serbia have to work on implementing the tasks outlined in the Action Plan for the Chapter 23 – the Chapter on judiciary and fundamental rights in the EU accession negotiations process. Among other things, this will help to improve the trust that LGBTI people have in public institutions, by eliminating the stereotypes and homophobic attitudes that still exist within these institutions.⁶¹ The CPE is providing training on anti-discrimination legislation and standards to state employees through the Government’s Human Resources Management Service.⁶²

There is no comprehensive data on the position of various religious communities⁶³ in Serbia towards LGBTI people. In 2009, traditional churches and religious communities⁶⁴ protested in an open letter to the Prime Minister against some articles in the draft Anti-Discrimination Law, including Article 21 which was drafted to prohibit discrimination on the grounds of both sexual orientation and gender identity. Gender identity was removed from the final version, but the right to express one's sexual orientation remained in the text of the Law. The Serbian Orthodox Church, the biggest religious community in Serbia, has publicly condemned homosexuality, transsexuality and Pride Parades⁶⁵ and has extended public support to politicians who seek to ban Pride Parades.⁶⁶

Finally, the media in Serbia has not devoted much attention to the discrimination and position of minority groups, and has devoted a very small percentage of media space to these topics.⁶⁷ According to a 2015 analysis of media reports on LGBTI issues by the Gay Lesbian Info Centre, there was a decrease in the proportion of negative media reports on LGBTI issues from 7.5 percent in 2012 to six percent in 2015.⁶⁸ There was a significant increase in reports on LGBTI issues on Internet portals. The media mostly reported on domestic LGBTI issues. The number of media reports about trans topics increased, but there were fewer reports focusing on lesbians.⁶⁹ Despite improvements, there were numerous concerns about the language used, and discriminatory reporting continues to be a problem. LGBTI people's organizations have provided numerous trainings to journalists on human rights and anti-discrimination in the past. These have not been offered continuously and their impact has not been monitored systematically. In 2016, the NGO Gayten produced guidelines for the media on reporting on trans issues.⁷⁰

2. Human Rights of the LGBTI People in Serbia

2.1 Legal And Policy Framework Overview

Summary

Serbia has adopted a wide anti-discriminatory legal framework. In some areas, there are legal gaps that leave the rights of LGBTI people unregulated, including the rights of same-sex partners and access to documents for trans people. And whilst relevant institutions have been increasing their efforts to improve the position of LGBTI population in Serbia, problems persist in ensuring the implementation of existing legislation.

The Republic of Serbia has a comprehensive anti-discriminatory legal framework⁷¹ that is largely in line with European standards.⁷² However, international organizations, state institutions for the protection of human rights and NGOs reporting on human rights in Serbia have highlighted problems of weak and inconsistent protection of the rights of LGBTI people in practice.⁷³

The Constitution of Serbia⁷⁴ enshrines numerous human and minority rights and freedoms⁷⁵ that should be interpreted in line with valid international human rights standards.⁷⁶ Both direct and indirect discrimination on any grounds are prohibited by the Constitution, but sexual orientation and gender identity (SOGI) are not explicitly listed as prohibited grounds for discrimination.⁷⁷ A 2012 survey of attitudes towards the Serbian Constitution⁷⁸ indicated that members of the political, social and intellectual elite pointed to poorly-regulated protection of minorities, particularly of sexual minorities, and the issue of same-sex marriage, as the main deficiencies in the human rights section of the 2006 Constitution.



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There are no legal provisions relating to intersex people specifically.⁷⁹ Legislation on gender recognition for trans people has not been adopted, and the matter remains unregulated even in cases of gender affirming surgery.⁸⁰ Rights of same-sex partners are not regulated and same-sex unions are not legally recognized in Serbia.

In 2009, the general Anti-Discrimination Law was enacted. It recognizes SOGI as prohibited grounds for discrimination.⁸¹ This law interprets sexual orientation as a private matter. No one may be called to publicly declare their sexual orientation, but everyone has the right to do so, and discriminatory treatment based on such a declaration is prohibited.⁸² While discrimination on multiple grounds is recognized as a severe form of discrimination in the Anti-Discrimination Law, there is not much data available in this area.

"As a person with disability I feel more exposed as my disability is visible. As a lesbian, I am not as exposed, because I am 'in the closet' and I am hiding my lesbian identity. Prejudice about disability exists even within the lesbian community, and the sentence: 'it's ok within four walls,' for a lesbian with a disability means additional walls." – Self-identified LGBTI person⁸³

Prohibition of discrimination based on sexual orientation was mentioned in the 2006 Labour Law,⁸⁴ but the majority of laws still include SOGI under general clauses, as 'other' grounds where discrimination is prohibited. The 2013 Strategy for the Prevention and Protection from Discrimination for the period 2013-2018, and the accompanying Action Plan adopted in 2014⁸⁵ both envisage inclusion of SOGI among the personal characteristics that should be included when creating new and amending existing laws that contain anti-discrimination provisions.⁸⁶ So far, the implementation of this recommendation has largely been lacking. For example, amendments to the Law on Police explicitly include gender identity but not sexual orientation,⁸⁷ while amendments to the Law on the Fundamentals of the Education System and the Law on Sports do not mention SOGI at all.

As an EU accession candidate country, Serbia is aspiring to align its legislation and policy with the EU. The Action Plan for Chapter 23, covering the anti-discrimination policy and fundamental rights, is an overarching document that relies on priorities and courses of action that were previously defined in the Anti-Discrimination Strategy and other strategic documents.⁸⁸ The Chapter 23 Action Plan envisages an early warning mechanism in case of delays in the implementation.⁸⁹

Serbia is bound by almost all UN human rights treaties,⁹⁰ and reports to UN bodies are being submitted regularly, although they are sometimes incomplete and not always timely.⁹¹ In 2014, the Government appointed the Council for the Monitoring of the Implementation of Recommendations of the UN Human Rights Mechanisms. In 2013 in the second cycle of the Universal Periodic Review (UPR),⁹² the UN Human Rights Council made 77 recommendations related to the human rights of LGBTI people in Serbia (out of 144 in total) that should be followed up by 2016.⁹³ UN Treaty Bodies also made recommendations that are relevant for LGBTI people. For example, in 2013 the UN Committee on the Elimination of Discrimination against Women made general recommendations that called on Serbia to ensure timely and effective implementation of its anti-discrimination laws and to take measures to raise awareness about them, as well a specific recommendation to adopt legislation on same-sex partnerships swiftly.⁹⁴

As a member of the Council of Europe,⁹⁵ Serbia is also a party to the European Convention for Human Rights⁹⁶ and the European Social Charter,⁹⁷ and has ratified numerous Council of Europe treaties.⁹⁸ CoE has issued recommendations for improving the position of LGBTI people. All member states, including Serbia, should strive to implement these without delay.⁹⁹ By the end of 2016, the European Court of Human Rights has not yet ruled in cases regarding the human rights of LGBTI people submitted against Serbia, but several such cases are pending before the Court.¹⁰⁰

In 2011, Serbia was among 85 countries which were signatories to a Joint Statement "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity".¹⁰¹ A Joint "Statement on Ending Violence and Hate Crime against LGBT People" was signed by Serbia and four neighbouring states at the 2015 IDAHO (International Day Against Homophobia, Transphobia and Biphobia) Forum.¹⁰²

2.2 State Institutions

The Parliament has hosted events related to the rights of LGBTI people, often in cooperation with civil society organizations (CSOs).¹⁰³ In a session held in September 2016, the Committee for Human and Minority Rights and Gender Equality and the Committee for European Integration invited the Parliament to adopt a Declaration against Homophobia; invited the Government to adopt a national strategy against violence which will recognize violence against LGBTI people and bullying in schools on the basis of assumed sexual orientation; and also invited the Government to work on the adoption of a law which will regulate all legal consequences of a gender change.¹⁰⁴ This would be a clear statement of Parliament's position on SOGI rights, and would influence policy making.

The Commissioner for the Protection of Equality was established by the Anti-Discrimination Act, and is charged with examining discrimination claims submitted by people claiming to have been victims of discriminatory conduct. The CPE has examined numerous cases and established discrimination of LGBTI¹⁰⁵ people and several cases of discrimination against people living with HIV. Recommendations issued by the Commissioner are legally binding but not enforceable. No multiple discrimination claims that included SOGI as grounds have been reviewed by the CPE.¹⁰⁶ The Commissioner issued numerous recommendations to state bodies, businesses, and private individuals for improving the position of LGBTI people and people living with HIV. Announcements alerting the public, as well as opinions on draft legislation and proposed amendments concerning the equality of LGBTI people have also been issued by the CPE. The CPE was nominated for the Rainbow Award.¹⁰⁷ The capacity of the office has been increased in 2016, but needs further strengthening.¹⁰⁸

The CPE is actively cooperating with various stakeholders who engage in anti-discrimination and awareness raising activities.¹⁰⁹ Currently the CPE is supporting a project implemented by the NGO IDEAS that is aimed at improving the position of LGBTI people in Serbia, including their access to the CPE.¹¹⁰

The Protector of Citizens of the Republic of Serbia¹¹¹ is an independent and autonomous public body, tasked with protecting citizens' rights, controlling the legality and regularity of the work of government and the promotion of human and minority freedoms.¹¹² Also, the Protector issues opinions and recommendations on draft legislation and strategic documents. The Protector monitors and reports on the rights of LGBTI people, issuing recommendations for the advancement of human rights to state bodies and alerting the public about human rights violations. The Gender Equality Council of the Protector of Citizens¹¹³ includes two representatives from LGBTI NGOs!¹¹⁴ The National Preventive Mechanism¹¹⁵ has been monitoring the position of trans people in the prison system and made recommendations to relevant institutions!¹¹⁶ The Protector of Citizens reviewed complaints regarding violations of rights of LGBTI people in the education system, the health system and in the sphere of culture!¹¹⁷ The Protector of Citizens was nominated for the Rainbow Award!¹¹⁸

The Ministry of the Interior (Mol) has a primary role in providing security to Serbian citizens, including the LGBTI community and its defenders, and has made significant progress in improving its work and communication with the community. In February 2014, the Mol drafted an Action Plan for the Improvement of Work and Cooperation of the Police with Representatives and Associations of People of Different Sexual Orientation,¹¹⁹ and appointed a Liaison Officer for the LGBTI Community. Since then, eight additional local officers have been selected including one openly out lesbian, with a possibility of new appointments in municipalities where such a need is recognized.¹²⁰ Some 2,000 police officers attended trainings on discrimination and working with LGBTI people, co-organized by the NGOs Labris and Duga, and a manual for police staff is currently being prepared with Labris.¹²¹ However, the need for further awareness raising remains. A 2015 opinion poll survey with Mol staff indicated that within some parts of the police force, up to 49 percent of staff still express significant social distance towards LGBTI people and 37 percent towards people living with HIV.¹²² Two Rainbow Awards¹²³ were given to the Mol: in 2013 to the Department for Organization, Prevention and Community Policing of the Police Directorate,¹²⁴ for their overall work with the LGBTI community and for establishing a very active communication and cooperation with LGBTI organizations in cases of violence and discrimination¹²⁵ and in 2015 to the first Liaison Officer, Mr. Aleksandar Stojmenović for his dedicated work.¹²⁶

The Government Office for the Protection of Human and Minority Rights provides expert support to the Government related to the protection and improvement of human and minority rights. The Office is currently implementing a project entitled "Building Tolerance and Understanding of LGBT Population in Serbian Society,"¹²⁷ and a twinning project under the Instrument for Pre-Accession Assistance (IPA 2013), "Support to the Advancement of Human Rights and Zero Tolerance of Discrimination".¹²⁸ The Office (then called Directorate) coordinated the process of drafting the Anti-Discrimination Strategy and Action Plan, and is now in charge of monitoring and reporting on the implementation of the Anti-Discrimination Strategy and Action Plan. The Office is also reporting to international human rights bodies¹²⁹

3. Protection of the Rights of LGBTI People in Serbia: Selected Topics

3.1 Security and Hate Crimes

Summary

Personal security is a top priority for the community. LGBTI people are victims of hate crimes that in most cases have not been properly prosecuted and sanctioned, even when they have been properly investigated. Reliable records of hate crimes are not yet available.

According to a 2015 Survey of the Serbian LGBT community, achieving adequate levels of personal security is their number one priority.¹³⁰ Similarly, the 2015 NDI poll¹³¹ indicated that over 70 percent of LGBTI respondents had been exposed to psychological violence and harassment (a rise of 15 percent since 2014), and 23 percent reported that they had been physically assaulted based on SOGI. Media and civil society have reported cases of violence against LGBTI people for over a decade, but there are still no reliable databases or statistics on the attacks.¹³² In 2015, a crowdsourcing portal "Da Se Zna!" was launched in an attempt to provide support to the victims and to keep track of cases of violence and discrimination in one place.¹³³

Violence motivated by perceived or actual sexual orientation and/or gender identity occurs in public and often in front of numerous witnesses. Recent incidents include the case of two brothers who were attacked and stabbed with a knife on public transport¹³⁴ and an attack on a trans person on the streets of Valjevo which was recorded by CCTV cameras.¹³⁵ LGBTI human rights defenders have been facing threats and attacks as well, mostly by neo-Nazi and ultra-right organizations and movements. In 2014, the home of Boban Stojanović, a known LGBTI activist was attacked: an explosive was thrown at his house, and graffiti of two male symbols was made on the wall.¹³⁶ The most brutal cases of violence include killings, such as the 2003 murder of Vjeran Miladinović Merlinka, a publicly known trans person and sex worker that still remains unresolved.¹³⁷

"Activism came at a high price. I have been attacked verbally and physically, my apartment has been demolished several times, seven Serbian towns have been covered with posters with my picture on them, I have been insulted...." – Boban Stojanović, LGBTI human rights defender.¹³⁸

Whilst violence that takes place in the public sphere has a higher public profile, LGBTI people are also victims of hate-based domestic violence within the family.¹³⁹ More data is needed on family violence against young LGBTI people. This includes verbal and physical abuse, eviction from family homes and forced medical treatment, and is particularly pronounced during the holiday season.¹⁴⁰ Roma lesbian women are particularly vulnerable, as they are exposed to multiple forms of discrimination and violence, including within their communities and families.¹⁴¹

The introduction of hate crimes as an aggravating circumstance for sentencing, by amendments to the Criminal Code¹⁴² in December 2012, was expected to contribute to the efficient prosecution of those suspected of violence and other crimes against LGBTI people and to facilitate harsher punishments.¹⁴³ Numerous trainings on processing hate crimes have been provided to legal professionals since then,¹⁴⁴ and professional education on the topic was also envisaged in the AP 2014 Action Plan¹⁴⁵ and the Action Plan for Chapter 23.¹⁴⁶

Almost four years later the impact of these measures is questionable, as there have been no court sentences for hate crimes,¹⁴⁷ and there is no official centralized data on the number of reported crimes motivated by homophobia and transphobia.¹⁴⁸ Since hate crimes are not a criminal offence under the Criminal Code, but an aggravating circumstance, keeping records of hate crimes would require introduction of a new methodology, as current statistics are available only for specific criminal offences.¹⁴⁹ Partial progress has been made in this regard by the Public Prosecution Office, which has adopted a Rulebook on Special Records that also includes hate crimes.¹⁵⁰ Once the authorities start keeping records of hate crimes, it must be done with special care in order to ensure protection of the sensitive personal data of the victims.¹⁵¹ Such records would be a useful tool for getting an overview of the key populations, type of crimes and perpetrators, and would further enable the creation of adequate preventive mechanisms.¹⁵²

"After the attack, due to injuries, I had to stay at home and take care of myself. My employer didn't have any understanding for this, so I lost my job. I ended up with no money, so I had to turn to my family for help, even though this was the last thing I wanted, because they never looked favourably on me being gay. Apart from shock and fear which I continued to feel long after the incident happened, I also started to feel guilty and unworthy, because my family kept telling me that it was all my fault." Z.R.¹⁵³

According to NGOs, a majority of hate crimes have never been reported to NGOs and even fewer cases are being reported to the authorities.¹⁵⁴ The reasons behind this include a lack of trust in state bodies; fear of coming out in public; fear about possible secondary victimization that might result from making a report; and also a lack of information about existing support mechanisms among the community.¹⁵⁵ Young people who are subjected to attacks often do not report violence out of fear of the possible consequences of their SOGI being revealed to their families.¹⁵⁶ There have been allegations that the authorities refused to conduct investigations in cases that did not receive considerable media coverage; their demeanour to victims was sometimes criticized as being insulting; and there have been allegations of police misconduct, including violence and deprivation of medical care.¹⁵⁷ Alleged police misconduct was more present in rural areas.¹⁵⁸

On the positive side, the MoI has been investing in efforts to train its staff¹⁵⁹ and to improve communication with the LGBTI community¹⁶⁰ and the protection of LGBTI people, particularly in Belgrade and in some larger urban areas.¹⁶¹ As a result, the police and other authorities gained more trust with the LGBTI community.¹⁶² Still, as the EC stressed in its Serbia 2016 Report, "Investigation, prosecution and penalties for hate-motivated crimes need to be stepped up."¹⁶³

Even when effective, police investigations are often not followed with indictments or judgements characterizing an offence as a hate crime. In 2015, an LGBTI activist and her friends were attacked while sitting in a coffee shop in presence of some other forty people. The attackers threw chairs, hit them, and shouted "Lesbians!" and some insults. Despite a prompt reaction by the police, the investigation produced no outcome as no witnesses were willing to testify.¹⁶⁴

Another issue raised by YUCOM¹⁶⁵ is the situation where criminal charges against a defendant have been dropped in cases of repeated physical attacks clearly motivated by the victim's perceived sexual orientation. This can happen as a result of the principle of opportunity which allows for dismissal of criminal charges for certain offences. As argued by YUCOM, in such cases, the Public Prosecution must consider the specific nature of hate crimes - where the object of protection is not only an individual but the society and in the interest of the public cannot arbitrarily decide not to prosecute.¹⁶⁶

Lack of results of police investigations and the failure to achieve eventual convictions for hate crimes increases the mistrust felt within the LGBTI community towards the law enforcement system.¹⁶⁷

On a final note, the two major strategic documents in the field – the Action Plan for Chapter 23¹⁶⁸ and the 2014 Anti-Discrimination Action Plan, both envisage addressing the public through campaigns to boost tolerance within Serbian society and to prevent hate crimes, but no such national public campaigns have been implemented so far.¹⁶⁹ LGBTI human rights defenders also emphasized the need for a campaign that should be effective, thought through, and selected with the active participation of the LGBTI community representatives.¹⁷⁰

3.2 Hate Speech

Summary

Although hate speech is prohibited by legislation, and suppression of hate speech is among the strategic anti-discrimination priorities of the Government, it remains widespread – particularly in the run up to Pride Parades.

In its Progress Reports, the EC has continuously noted that LGBTI people in Serbia are often faced with hate speech and threats.¹⁷¹ Hate speech and threats are most commonly spread via media, social networks and the Internet, and in graffiti. Hate speech is also frequent in readers' comments on websites, including extreme statements such as threats, and in reality-television programmes.¹⁷² Politicians have also been found to be in violation of legislation prohibiting hate speech, although in a recent case an MP was absolved from examination because of parliamentary immunity.¹⁷³

The Anti-Discrimination Act⁷⁴ the Criminal Code⁷⁵ Public Information Act⁷⁶ and other laws forbid hate speech. Despite some remaining weaknesses, the legal framework for the prohibition of hate speech has improved considerably.⁷⁷ Prevention and suppression of hate speech in the media are envisaged as continuous activities in the 2014 Anti-Discrimination Action Plan, aimed at preventing the spread, promotion and encouragement of hatred and intolerance.⁷⁸ However, notwithstanding all the legal prohibitions, hate speech is widespread in the media, and it is reported that the media have been relaying hate speech without distancing themselves from it.⁷⁹ In some cases, editors of daily newspapers have apologized to the LGBTI community after they had been addressed by LGBTI NGOs regarding discriminatory content in some of the published articles.⁸⁰ BCHR recommended that laws should be supplemented by greater self-regulation and self-control of the media and professionalization of editors and journalists.⁸¹

In previous years, hate speech was particularly intense in the run up to Pride Parades. In 2015, the High Technology Crime Department of the MoI found that 30 people threatened the organizers of the Parades and spread hate speech on social networks.⁸² Before and after the 2011 Pride Parade, inappropriate statements about the LGBTI community were voiced in the Belgrade City Assembly, while statements made by Jagodina mayor Dragan Marković Palma about the Pride Parade violated the anti-discriminatory legislation and amounted to hate speech.⁸³ These are just a few among numerous similar examples.

The CPE examined a number of complaints and established violations of prohibition of hate speech against LGBT people on Internet portals⁸⁴, on social networks⁸⁵, in media⁸⁶, by holders of public offices including those in senior positions and those in local authorities⁸⁷ clergy⁸⁸ and right-wing organizations.⁸⁹ The CPE appealed to MPs and other public officials to bear in mind the role they have to play in promoting equality and tolerance, and recommended that the National Assembly Chairwoman should ensure that the National Assembly Rules of Procedure and Code of Conduct of the People's Deputies be amended to ensure compliance with the non-discrimination principle and include disciplinary liability for its violations.⁹⁰



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The most high-profile case⁹¹ examined by the Commissioner was a complaint submitted by Labris against Minister Ivica Dačić, who was at the time Serbia's Prime Minister, regarding his statement in the media given just a few days before the 2013 Pride. The CPE established that his words were disturbing and humiliating and violated the dignity of people of homosexual orientation. Mr. Dačić was recommended to meet with a delegation from Labris to hear about the problems LGBTI people face on a daily basis. Similar recommendations were issued in earlier cases, but Mr. Dačić was the first person who acted on the Commissioner's recommendation and met with the Labris delegation.⁹²

In 2012, the first final court judgement for hate speech against the LGBTI population was heard by the Appeal Court in Belgrade. The court found that the daily newspaper Press discriminated against the LGBTI population by publishing readers' comments containing insults and threats to LGBTI people, which amounted to hate speech. The Court also considered that the fact that the comments were removed from the site 10 days later was insufficient, since the moderator should have barred their publication in the first place. Press was ordered to print the court's judgement without any comment or delay, and was warned not to publish similar content in the future.⁹³ This case was followed by several other cases where hate speech was punished in civil proceedings.⁹⁴



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3.3 Freedom Of Peaceful Assembly

Summary

After many years where the enjoyment of freedom of peaceful assembly was denied to LGBTI people, currently Pride Parades are receiving support from relevant institutions and political commitment. Despite this, the majority of the population still opposes the Parades.

In September 2016, the latest Pride Parade was held peacefully in Belgrade, for the third year in a row, and in what seems to be an increasingly relaxed social climate. Trans Pride was also peacefully held in 2015 and 2016. The LGBTI community in Serbia is divided in its assessment of the support provided to Pride and of the progress made with respect to enjoyment of freedom of assembly. One concern raised is that the freedom of the Parade participants is in reality rather limited since a few thousand police officers are needed to safeguard them during the event.¹⁹⁵

However, it is clear that there has been considerable progress since 2001, when the first Belgrade Pride took place. That first Pride event in June 2001 resulted in the brutal beating of participants and violence against police and bystanders. More than 40 people, including Pride participants, police and bystanders were hurt by members of right wing nationalist organizations and football supporters. Organizers criticized the police for not providing them with sufficient protection, despite having previously issued guarantees for the security of participants.¹⁹⁶

The next attempt to organize a Parade took place in 2009. The announcement of the 2009 Pride initiated intense attacks against its organizers by ultra-right wing organizations. These were not adequately prevented by relevant authorities, and intensified as the Pride day approached.¹⁹⁷ As a result, some 24 hours before the Pride was to take place, a decision to change the location of the event resulted in an effective ban.¹⁹⁸ The CCS¹⁹⁹ found that the right to the freedom of assembly enshrined in the Constitution was violated by the decision to change the location of the 2009 Pride because this kind of decision was not envisaged by the 1992 Public Assembly Act, enforced at the time.²⁰⁰

The 2010 Parade was a peaceful assembly attended by around 1,000 participants and there were no incidents at the Pride venue.²⁰¹ More than 5,000 police officers provided security to the venue.²⁰² On the same day, some 6,000 demonstrators from extremist and nationalist groups and hooligans participated in mass violence and destruction throughout Belgrade.²⁰³

From 2011-2013, Pride marches were banned in a similar manner. The police would take a decision banning the assembly just a day or two before it was scheduled to take place, without any explanation of the grounds.²⁰⁴ All Mol decisions to ban parades were challenged before the Constitutional Court of Serbia, which partly ruled in favour of the applicants.²⁰⁵ The CCS found that it was not possible for organizers to challenge the bans since they were delivered immediately before the events were scheduled, meaning that any appeal they could possibly have submitted would be decided upon much later. The Court therefore established violations of the rights to judicial protection (Art. 22. 1), to legal remedy (Art. 36.2.) and freedom of assembly (Art. 54). The Court decided there was no violation of the state's positive obligation to protect participants from violence and discrimination by third parties. Further, the Court found that the Mol did not have an explicitly discriminatory position towards the applicants based on their sexual orientation. After exhaustion of all available domestic legal remedies, cases regarding prohibitions of Pride Parades were also brought before the European Court of Human Rights in Strasbourg, where they are still pending.²⁰⁶

"It is a bit unnatural [to hold a Pride Parade] in a country where the majority of the population is not of such orientation. There is no need for assembly." Anonymous self-identified heterosexual person.²⁰⁷

While the attitudes of the LGBTI community in Serbia towards the Pride are divided, according to the 2015 NDI survey nearly 90 percent of the general population opposes the Parade.²⁰⁸ The NDI survey however indicates that opposition to the Parades reduces to less than 70 percent when the respondent knows at least one LGBTI person personally. Opposition drops even further to 55 percent if the respondent is told that Pride is to take place as a peaceful street assembly and violence is excluded as a factor. This is regardless of the respondents' broader opinion of LGBTI people.²⁰⁹ This leads to the possible conclusion that support for coming out programmes and suppression of discrimination and violence towards LGBTI people by third parties could contribute significantly to building tolerance in Serbian society.²¹⁰

3.4 Rights Of Same-Sex Partners

Summary

The rights of same-sex partners are not regulated, same-sex unions are not recognized under Serbian law and provisions of Family Law on de facto extramarital unions are not applicable to stable same-sex unions. Domestic and international stakeholders have urged the state to regulate this matter, and the Government has included regulation of same-sex partnerships and rights of same-sex partners among its development priorities.

There are no legal provisions on stable same-sex partnerships, and same-sex partners are left outside the scope of protection regarding many rights otherwise guaranteed to married and unmarried couples, such as the right to alimony, joint property, to legal inheritance, to pension survivor benefits, and other. The majority of the LGBT community in Serbia, 80 percent of the 2015 survey participants, found legalization of same-sex unions to be an important goal that LGBT organizations should advocate for.²¹¹ Overall they ranked it as third priority, after personal safety and labour rights.²¹² According to the NDI's public opinion poll, the general population in Serbia rejects the rights of LGBTI people to same-sex marriage and child adoption.²¹³ At the same time, some same-sex partnership rights are fairly accepted and this support is even stronger among those who have had personal contact with an LGBTI person. Overall, 46 percent of participants and 69 percent of those who had personal contact with someone who is LGBTI thought that LGBTI people should have the right to visit their partner in hospital or prison.²¹⁴ Focus groups with the general population demonstrated that people have no problem with LGBTI people having all those rights, and very often do not even realize that those rights are a legal consequence of being in a recognized union, and that LGBTI people do not have them because their partnerships are not recognized.²¹⁵

"For example, what if your partner is in hospital in intensive care, and visits are limited only to family members? It means you are not able to visit your partner." –Self-identified LGBTI person²¹⁶

The Constitution of Serbia defines marriage as a union based on the free consent of man and woman before the state body, and equates extramarital unions with marriage. Likewise, the Family Law²¹⁷ defines both institutions as unions of men and women, explicitly declaring a marriage between two people of the same sex as null and void.²¹⁸

Relevant provision of the Family Law defining extramarital unions as long-lasting unions of people of different sexes²¹⁹ was challenged by the BCHR before the Constitutional Court of Serbia (CCS). The motion was dismissed in 2010,²²⁰ when the CCS found that these were not discriminatory and that the concept of extramarital unions is defined indirectly, by the definition of marriage in the Constitution. Therefore the same essential elements are requisite for both marriage and extramarital unions to be recognized – notably that those people consenting to enter the union should be of different sexes.²²¹

The CCS²²² reflected on the jurisprudence of the ECtHR regarding the application of notions of private and family life to de facto stable partnerships of same-sex people, and noted that these unions can be provided with legal protection, but relied on the margin of appreciation given to states by the European Court on these matters.²²³

The ECtHR jurisprudence has evolved since, and the margin of appreciation has become narrower. The Court still emphasizes that the rights of same-sex partners do not extend to marriage, under Article 8 of the Convention or Article 12²²⁴. However, the Court has acknowledged that same-sex couples are in need of legal recognition and protection of their relationship, and has in some cases established a violation of the Convention when same-sex partners' rights to form unions have not been recognized. Most recently, in 2015 in Oliari and Others v. Italy,²²⁵ the Court found "that the Italian Government have overstepped their margin of appreciation and failed to fulfil their positive obligation to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions" (para. 185). The Court acknowledged that the margin of appreciation is available to states on matters that, like this one, may be morally or ethically sensitive. However, it noted that Oliari was not about certain specific and potentially controversial "supplementary" rights which may or may not arise from a same-sex union. This was instead a case solely concerning the general need for legal recognition and the core protection of the applicants as same-sex couples. The Court explicitly relied not just on the European consensus and developments in other parts of the world, but on the Italian context – development in the jurisprudence of Italian courts indicating the need for regulation as well as popular acceptance of same-sex couples and protection of their rights by Italian society.²²⁶ It remains to be seen whether similar progress in attitudes towards same-sex unions on the national level will need to be shown in similar cases against other Member States, like Serbia, that have not regulated stable same-sex unions.

In addition, under Serbian law there are currently no procedures for registering heterosexual partnerships either. If the state decides to introduce registration for extramarital unions, excluding same-sex partners would be contrary to the Convention.²²⁷

Currently no specific rights are explicitly guaranteed to people in de facto stable same-sex unions under Serbian legislation. The CCS, in the abovementioned decision,²²⁸ noted that there were two provisions in the Serbian legal system that could be applicable to same-sex de facto unions. The provision of the Family Law on domestic violence includes the notion of family members who were or still are in an emotional or a sexual relationship.²²⁹ Similarly, the Law on Prevention of Family Violence²³⁰ envisages application of its provisions in the event of violence towards people in marital unions, extramarital unions and partnerships, and this provision could provide protection to people in same-sex partnerships if applied without discrimination, but the draft does not explicitly mention people in same-sex relationships.

The provision of the Law on Criminal Proceedings which defines who is relieved from testifying²³¹ is applicable to people who have been in an emotional or sexual relationship, or a nonspecific long-term relationship. There is no data indicating that this has been applied to same-sex partners in practice.²³²

Some provisions could be applicable to same-sex partners, but this is left to the discretion of authorities charged with their implementation. Even if applied to same-sex partners in practice, these provisions remain discriminatory. One such extremely rare example is the Law on Execution of Criminal Sanctions²³³ which guarantees that a convicted person has the right to receive two visits per month from a spouse, a child, a parent, or some relatives, and which enables the prison principal to allow visits by other people. According to information from the prison and correctional facility "Zabela" management,²³⁴ this institution does allow visits from same-sex partners.²³⁵

Shortcomings in the current legal framework and the recommendation to regulate the rights and obligations of same-sex partners have been voiced by numerous stakeholders including the CPE,²³⁶ Protector of Citizens,²³⁷ NGOs²³⁸, and international institutions.²³⁹ This is also a specific objective of the Anti-Discrimination Strategy²⁴⁰ which is intended to be realized through drafting a model Act on Registered Same-Sex Partnerships and a model Act amending the Inheritance Act to equate marriage and civil partnerships and recognize same-sex partners' right of direct inheritance.²⁴¹ The 2014 Anti-Discrimination Action Plan envisages opening public debates on these drafts in the last quarter of 2017.²⁴²

In the draft version of the Civil Code²⁴³ that was put up for public debate by the Ministry of Justice in 2015, a footnote was added to the provision on marriage that in the course of public debate a possibility of regulating same-sex-unions by law needs to be comprehensively reviewed taking into consideration different legally relevant positions and arguments.²⁴⁴ A single provision of the draft Code – on tenancy²⁴⁵ – mentions explicitly same-sex partnerships alongside marital and extramarital unions.

Recognizing only specific rights, without regulating same-sex unions, could also be problematic for the enjoyment of rights in practice, as it would entail having to prove the existence of a union before the courts in every single case. This raises numerous potential issues related to access rights such as how time consuming would it be to have these rights recognized; which criteria the existence of such unions would be assessed against, the issue of how non-unified standards would be interpreted in practice, and others.

Civil society organizations, notably Labris and CUPS who drafted their own model law²⁴⁶ on registered same-sex partnerships, have been endeavouring to generate a public debate on the topic.

Single Status Certificate

Some same-sex couples have opted to conduct marriages in other countries where such a possibility exists; however, such unions are not legally recognized in Serbia. For this purpose, they need to obtain a single status certificate (an official statement that one is not married). Situational testing conducted by Labris showed that some officials in the Municipal Department of Vital Records in Belgrade (matične službe), refused to issue these certificates when they were made aware that the applicant was planning to use them to enable a same-sex marriage. The CPE established that this was a case of direct discrimination based on sexual orientation. A single person is entitled to such a certificate regardless of the purpose it would be used for, and regardless of whether a marriage of two people of the same sex would have any legal consequences in Serbia.²⁴⁷ As reported by BCHR in 2013, the Belgrade Department amended its practices in accordance with the recommendation.²⁴⁸ There is no data on the practice of other municipal offices throughout Serbia.

3.5 Education

Summary

Significant social distance and discriminatory attitudes towards the LGBTI population among students are widespread. Discriminatory content on sexual orientation and gender identity in textbooks needs to be eliminated in accordance with recommendations by independent state bodies and NGOs. Peer-to-peer violence, including violence based on perceived or actual sexual orientation, is a problem.

There is not much data available on how LGBTI people - students or professors alike – are treated in the educational system in Serbia. However, opinion polls indicate that discriminatory attitudes towards LGBTI people are widespread within educational institutions, both among students and teaching staff.

According to a 2014 survey on gender-based violence in schools, 32 percent of male teachers in primary and secondary schools, and 17 percent of female teachers in primary schools and 13 percent in secondary schools agree that "homosexuals" should not be schoolteachers.²⁴⁹ Similarly a qualitative study indicated a common perception that homosexual teachers who are open about their sexual orientation would not be well accepted.²⁵⁰ The Protector of Citizens has indicated that both teachers and other school staff, e.g. psychologists, are not trained to work with LGBTI pupils.²⁵¹

The Protector of Citizens recommends that a needs assessment is carried out, and a specific training is designed to build the capacity of employees in the educational system to adequately address the needs of LGBTI people.²⁵²

Among school children, discriminatory attitudes are also widespread. Almost half of school-age boys, and one quarter of girls surveyed in a 2012 study by Child Rights Centre showed negative attitudes towards people of different sexual orientation, e.g. more than a third of students who participated in the survey, were not in favour of "homosexual people performing a public function" and agreed that "Homosexuality is an illness that should be treated, forcefully if necessary."²⁵³ The largest percentage of students, 36 percent, supported negative positions about homosexual people.²⁵⁴ In terms of HIV, less than half of school children thought that their peers living with HIV have the right to attend school.²⁵⁵

Discrimination in education and professional training is forbidden by numerous laws including the Anti-Discrimination Law,²⁵⁶ Law on Higher Education,²⁵⁷ Law on Textbooks and Educational Tools,²⁵⁸ and the Law on Primary Education.²⁵⁹ However, only the Anti-Discrimination Law and Law on High Education²⁶⁰ explicitly mention sexual orientation as a forbidden grounds for discrimination. The Law on the Fundamentals of the Education System was amended, but SOGI was not explicitly listed among prohibited discrimination grounds,²⁶¹ although this was envisaged by the 2014 Anti-Discrimination Action Plan²⁶² and explicitly recommended by the Protector of Citizens.²⁶³ In 2016, the Ordinance on detailed criteria for the whereabouts of discrimination in schools was adopted, explicitly listing SOGI as prohibited discrimination grounds.²⁶⁴

As a specific objective, the Anti-Discrimination Strategy envisages ensuring the right to education is effectively enjoyed without discrimination based on SOGI, as well as the promotion of tolerance and raising awareness that LGBTI people are also to be treated equally. The Strategy emphasizes the need to support LGBTI people in the education system, both students and teaching staff.²⁶⁵

The CPE examined a case of a university professor who, while giving a lecture on the "Theory of public opinions", criticized a decision to remove homosexuality from a list of diseases, and spoke about homosexuality in the context of "sickness", "medical treatment" and "sex change". The Commissioner found that the professor created a humiliating atmosphere and insulting surroundings for LGBTI people, and thereby violated the Anti-Discrimination Law.²⁶⁶

Discriminatory Content in Textbooks

The problem of treatment of LGBTI people in school curricula and textbooks is twofold. Firstly, the topics of human rights of LGBTI people and SOGI are absent from the curricula. Secondly, school and university textbooks contain discriminatory content on LGBTI people.

For almost a decade, numerous warnings and recommendations have been issued by civil society,²⁶⁷ the Protector of Citizens²⁶⁸ and the Commissioner for Protection of Equality²⁶⁹ about the need to remove insulting and discriminatory statements from textbooks. Analysis conducted by Labris²⁷⁰ and the Public Policy Research Centre²⁷¹ found numerous examples of discriminatory definitions and explanations in textbooks used in both the civil and military education systems. Labris found that some books for high-school students for the 2013/2014 school year classified homosexuality as deviant sexual behaviour²⁷² and attributed homosexuality to hormonal imbalances.²⁷³

"[High-school students] usually make no difference between paedophilia and homosexuality." S. Miljković, high-school civic education teacher in Belgrade²⁷⁴



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An earlier analysis conducted by Labris in 2006 included textbooks for courses in medicine, psychology, sociology, law and pedagogy at Belgrade University. This showed that all but one textbook connected homosexuality with negative stereotypes, prejudice, psychiatric diagnosis or criminal behaviour. There were no examples which mentioned homosexual behaviour in a positive context amongst the books which were analysed.²⁷⁵ The Public Policy Research Centre found significant discriminatory content in Military Academy textbooks, mostly those dating from decades ago.²⁷⁶ Some positive examples have also been emphasized, such as a recently published book Management of Human Resources that includes a review of anti-discriminatory provisions in Serbian legislation.²⁷⁷

The educational authorities confirmed to Labris that discriminatory content will be removed from the 2016/2017 curriculum.²⁷⁸ There is no evidence that this has been done. The 2015 Law on Textbooks,²⁷⁹ in accordance with the recommendation by the Protector of Citizens, contains a provision that envisages that textbooks and educational materials should enable the implementation of the equality principle, and must not discriminate or encourage discrimination of a person or a group in content or shape.²⁸⁰ The Protector of Citizens recommended that the Ministry of Education introduce content addressing all important issues relating to LGBTI rights into primary and secondary school curricula, and then into textbooks.²⁸¹ In the Autonomous Province of Vojvodina in 2012, a regional pilot programme on sexual education was introduced in ten high schools. This included facts on SOGI among other information.²⁸² There is no available information indicating the impact of this initiative or wider implementation of similar programmes.

Peer-to-Peer Violence and Bullying

Violence is present in schools and residential educational institutions, and is widespread.²⁸³ In previous years the media has reported on numerous particularly brutal cases of school violence.²⁸⁴ However, there are no specific surveys conducted on peer-to-peer violence in schools based on SOGI.²⁸⁵ According to a UNICEF study conducted in 2006, a minimum of 65 percent of all students are victims of peer-to-peer violence at least once every three months.²⁸⁶ Information on the prevalence of violence among students should be examined together with evidence of widespread discriminatory attitudes and prejudice towards people based on their sexual orientation.²⁸⁷ According to a study that focused on high-school students, violence in schools is most common against LGBTI people.²⁸⁸ Some earlier data showed that 21 percent of surveyed students had verbally attacked or threatened someone they thought was gay or effeminate, and 13 percent of them stated that they actually helped to beat them up. According to the same survey some 60 percent of students agreed that violence against homosexual people was always justified.²⁸⁹

"[H]e took my hand, turned me towards him and slapped my face for several minutes in front of the whole class until the teacher reacted...he told me he would kill me for being a faggot ... he got no punishment and later continued to threaten me." Anonymous self-identified LGBTI person²⁹⁰

Numerous legal provisions on anti-discrimination in the sphere of education deal with issues of violence in schools and the responsibilities of schools and other authorities when such cases occur. The Law on the Foundations of the Educational System forbids any kind of violence, abuse and neglect by students and school staff.²⁹¹ The Law on Primary Education²⁹² and the Law on High School Education²⁹³ introduce obligations for schools to develop programmes for protection from violence, abuse, and neglect. Additionally, responses from school authorities are defined in more detail in the Rulebook on the Protocol on Actions of Institutions in Response to Violence, Abuse and Neglect.²⁹⁴ The Ministry of Education, Science and Technological Development has a Unit for the Prevention of School Violence, established in 2012.²⁹⁵ Since 2006, together with UNICEF, the Ministry has been implementing the "Schools without Violence" project in 273 schools in 90 towns.²⁹⁶ Previously, this project was not dealing with SOGI-based violence specifically.²⁹⁷

Numerous strategic documents have dealt with this issue as well. The 2014 Anti-Discrimination Action Plan envisages monitoring of the implementation of the adopted Strategies and correspondent Action Plans in relation to children²⁹⁸, namely the National Plan of Action²⁹⁹ and the National Strategy for the Prevention and Protection of Children against Violence.³⁰⁰ However, both of these documents expired in 2015, and the Government has not taken steps to initiate adoption of a new National Plan.³⁰¹ The Strategy for Youth also recognizes the problem of violence in the educational system and emphasizes development of a coordinated, multidisciplinary approach and cross-sectoral cooperation in planning and implementing services for youth victims and perpetrators of violence.³⁰² The Strategy further endorses measures to promote reporting of cases of violence in schools³⁰³ and educational programmes to prevent it and assist victims.³⁰⁴

There is data indicating that violence remains unreported because it is sometimes perceived as "normal", or for reasons such as fear, shame, or lack of trust in institutions.³⁰⁵ Collection of data on violence among youth and monitoring of the implementation of preventative activities is of crucial importance, and this is also a priority recognized by the Strategy for Youth.³⁰⁶

The UN Committee on the Rights of the Child will be considering a report by the Republic of Serbia in early 2017. One of the questions put to the state in relation to previous reports is to specify measures that have been taken to tackle violence against children in schools.³⁰⁷

"Then they started ignoring him, then a game of 'pretending he is invisible like the air' began. The worst game kids can come up with. They never reported that he was absent from class, when he is not present, they don't report it, he just does not exist for them. I ask where he is, they say, 'We don't know.'"

Anonymous self-identified heterosexual person³⁰⁸

The CPE examined a complaint submitted by a pupil who alleged that he was insulted and called names by his peers because of his sexual orientation.³⁰⁹ Even though discriminatory actions in this case were taken by students, the applicant's peers, the Commissioner established that the school was also responsible, and gave additional consideration to the fact that discriminatory acts took place on school grounds, an educational institution. The CPE noted that the applicant had previously dropped out of regular schooling, because he was bullied after revealing his homosexual orientation, and stressed that at this point the school should have introduced appropriate measures in the form of intensive and continuous activities to address the pupils' discriminatory attitude and to increase their tolerance towards the LGBTI population, as the risk of future violence was predictable. The CPE concluded that the school authorities had not acted in a timely fashion to prevent discrimination against the pupil because of his sexual orientation, and recommended that the school principal should undertake all the necessary measures without delay. These measures included ensuring that all the school staff undergo training on the prohibition of discrimination on grounds of sexual orientation or other personal features; to ensure that all the school staff are sufficiently aware of the issues involved; and to develop a spirit of tolerance, respect for diversity and non-discriminatory behaviour among the pupils through relevant programmes, workshops and training.³¹⁰

3.6 Labour Rights

Summary

The legislative framework forbidding discrimination in employment and at work is in place, but its enforcement is largely ineffective. Very little quantitative data on discrimination is available, but tackling widespread discrimination in the labour sphere is a top priority of the LGBTI community. Legal remedies are not adequate. Trans people and people living with HIV are particularly vulnerable.

LGBTI people face widespread workplace and labour-related discrimination,³¹¹ but there is very little data available on this issue.³¹² Presumably this is due to the fact that the workplace is a stressful surrounding for most LGBTI people and hence they fear being out in the workplace.³¹³ While there is no quantitative data to prove existing labour discrimination based on SOGI, there are qualitative studies that corroborate these assumptions. For example, a 2014 survey of priorities among the LGBTI community in Serbia ranked the enjoyment of economic and social rights and the elimination of labour discrimination as the second highest priority, after protection from violence.³¹⁴ Enjoyment of economic and social rights (i.e. economic independence), allows LGBTI people to be open about their SOGI, since many LGBTI people live on the margins of society after being rejected by their families.³¹⁵

According to a population survey conducted in 2010 by GSA, 56 percent of participants would not want a homosexual person as their supervisor, and 47 percent would not want a homosexual person as a co-worker.³¹⁶ No official records exist on labour discrimination based on HIV status, but there is evidence of such discrimination, in spite of reluctance of victims to report it out of fear of further stigmatization.³¹⁷ As BCHR reported in 2009, one out of three respondents in a survey conducted by the Public Health Institute thinks people infected with AIDS should be dismissed, regardless of their performance at work.³¹⁸

The Antidiscrimination Law prohibits labour discrimination in employment, and promotes equal conditions for enjoying all labour rights including promotion, professional training, and fair and satisfactory working conditions.³¹⁹ The Labour Law³²⁰ prohibits direct and indirect discrimination of employees and people seeking employment based on sex or sexual orientation.³²²

"Due to the very fact that they are not accepted, automatically they are not promoted much. If they haven't publicly declared themselves for who they are, they are promoted." Anonymous heterosexual person on promotion of LBGTI people.³²²

The CPE has recommended that companies should educate employees on discrimination, and that it should be obligatory for all public authorities and private employers to develop internal policies and procedures that will support the elimination and protection from discrimination; gender balanced human resource policies; and management of national, ethnic, linguistic and other diversities.³²³ Companies in Serbia rarely have anti-discrimination policies, and only a few are conducting human rights impact assessments.³²⁴

The first positive court decision under the 2009 Anti-discrimination Law was adopted by the Novi Sad Court of Appeal in a case where the applicant was discriminated against in the workplace by a colleague.³²⁵ However this decision was not followed by additional cases. The Court established that the applicant was a victim of severe discrimination by his colleague that lasted continuously for several months and included insults and threats, and on a few occasions, even physical violence. The Court noted that;

*"Without doubt the words 'fag' and 'faggot' are expressions which in the Serbian language have the meaning of negative, demeaning, debasing and insulting identification of gay men and that their usage represents a disturbing and demeaning act which aims to violate and represents the violation of dignity based on a personal characteristic – homosexual orientation."*³²⁶

The applicant was afforded damages for suffering mental anguish on account of violations of protection of personality and privacy rights, reputation and honour.³²⁷

"I try to work hard and my sexual orientation certainly does not affect my work results. Like everyone, I consider a good work atmosphere to be very important, but instead I had maltreatment and I was very depressed because of daily humiliation. It was very difficult but I realized that I should not suffer this because I did not do anything wrong. I came to GSA and we filed a lawsuit. I wanted the State to protect me, to show that it is interested in protecting me. I am pleased with this final verdict, because it confirmed that I did the right thing, but the first instance verdict disappointed me. After it I thought there was no justice, but I did not want to give up, I continued to fight and justice is finally here." From the statement of M.A., the applicant in the above-mentioned case.³²⁸

Labour Rights of Trans People

Trans people are generally in a very difficult position in relation to employment and labour rights,³²⁹ and this is also recognized in the Anti-discrimination Strategy. Even people who have undergone surgical procedures and obtained legal recognition, including officially-recognized changes to their sex and name, have had difficulty in obtaining diplomas reflecting their new personal data, and been put in a disadvantaged position in the labour market as a result. Research on the position of trans people has indicated a mismatch in the educational levels and jobs held by trans people in Serbia. Before obtaining new documents it is very difficult for them to find work, and they are mostly only able to get temporary jobs in the grey economy. This additionally jeopardizes their livelihood.³³⁰ Some of them are working as sex workers, which increases the stigma they face on multiple levels and makes them more vulnerable to violence and sexual health risks, including HIV.³³¹ Information on multiple discrimination is not available, except in isolated cases e.g. it was reported that Roma trans people are particularly vulnerable as they face discrimination on multiple grounds of gender identity, ethnicity and economic status.³³²

"Sometimes it would happen that [an employer] is very direct, so I was told many times that they don't want to hire me so their reputation would not be jeopardized for hiring a trans person, and sometimes I was mocked and insulted. Sometimes they say they are not interested, and this would be just fine, if their attitude had not been completely different before the girl they saw took out a personal document with a male name in it." Saša, a trans woman who is a graphic designer and who graduated amongst the top three in her class³³³

LGBTI People in the Armed Forces

There is little data available on the position of LGBTI people employed in the armed forces. The public relations office for the Ministry of Defence stated that "Sexual orientation is not an obstacle for becoming a professional soldier in the Serbian Army [...] and [...] questions about sexual orientation are not asked in any of the stages of recruitment"³³⁴ According to LGBTI organizations, a kind of "don't ask, don't tell" policy applies in practice, the same way it applies in a large number of civilian workplaces.³³⁵

In 2015, the CPE³³⁶ examined a case of trans person who served as a major in the Serbian Armed Forces, and who was discriminated against in a statement made by the human resources department of the General Staff which referred to her as a person "with a psychiatric diagnosis who could damage the reputation of the Serbian Armed Forces". The same statement was repeated in the decision of the Ministry of Defence on the major's termination of service.

The Commissioner established a violation of the Anti-discrimination Law, which forbids exposure to harassment and humiliating treatment on a discriminatory basis³³⁷ and made a recommendation to the Ministry and to the General Staff to issue a written apology to the applicant and undertake measures for reduction of transphobia, building tolerance and prevention of discrimination of transgender and transsexual employees of the Ministry of Defence and army personnel. The CPE reported that the Ministry implemented the recommendation.³³⁸

3.7 Health

Summary

Deficiencies in the healthcare system in general can be attributed to legislative shortcomings, as well as to the inadequate enforcement of the regulations and lack of financial resources. LGBTI people face discrimination in access to healthcare, and are not comfortable sharing information about their SOGI, even when this is potentially medically relevant. Only transsexuality is recognized by the health system, and is classified as a mental disorder. Whilst the number of people living with HIV within the MSM population has been rapidly growing, there is no national strategy on HIV prevention or sustainable funding of programmes for HIV prevention.

As reported by both the state and NGOs, in practice LGBTI people face discrimination in access to healthcare.³³⁹ The Constitution protects the right to healthcare and obliges the state to assist the development of health. The Healthcare Act³⁴⁰ contains provisions on anti-discrimination, without explicitly mentioning SOGI.³⁴¹ Access to health is undermined, particularly in rural areas, by insufficient funding being available for the health sector and inadequate coverage of the population by doctors and other medical staff.³⁴² Lack of access to healthcare, for the population in Serbia in general, can be attributed both to legislative deficiencies and to inadequate enforcement of the regulations.³⁴³ Under the Patient Rights Act³⁴⁴ Patient Rights Advisors³⁴⁵ (a frontline administrative body examining patients' complaints) stationed in local municipal buildings were established. By the end of 2014, such advisors had been appointed in the majority of municipalities. The Health Councils, with the participation of representatives of civic associations focusing on patient rights, were supposed to review patients' complaints and actively participate in improving healthcare in local areas. Some municipalities failed to form Councils, and the Ministry of Health extended the deadline to the beginning of 2020, thereby leaving some patients without a complaint mechanism in the event that they did not agree with the advisors' decisions.³⁴⁶

There are numerous shortcomings in the legislative framework for the protection of health-related medical data.³⁴⁷ The Commissioner for Information of Public Importance and Personal Data Protection (CIPIPDP) warned that patients' personal data is insufficiently protected in the Ministry of Health's IZIS electronic database.³⁴⁸ Under the Law on Protection of Personal Data³⁴⁹ one's sexual orientation is considered to be particularly sensitive data and, with the exception of special circumstances, can be processed only on the basis of free, written consent by the person, provided that he or she has been previously informed about the purpose and all other relevant questions in connection with the processing.³⁵⁰ The CPE established the existence of a discriminatory practice in a state-run clinic for students, where a regular systemic medical exam questionnaire included a question on a patient's sexual orientation.³⁵¹ End of processing and deletion of the collected data was ordered by the CIPIPDP.³⁵²

A 2012 SPY survey indicated that only one in ten LGBTI people feel that medical institutions are adequately responding to their physical and mental health needs. Respondents in the survey said that the protection and improvement of physical and mental health of LGBTI people within the existing medical institutions could be achieved by raising awareness among state medical service providers about the specific needs of LGBTI people.³⁵³ Currently, medical textbooks contain a limited amount of relevant information, and in some cases treat sexual orientation as a disease.³⁵⁴

Based on prior negative experiences, many LGBTI people fear coming out could lead to stigmatization and secondary victimization as a consequence of an unprotected atmosphere, where confidentiality can be jeopardized.³⁵⁵ LGBTI people are sometimes reluctant to reveal their sexual orientation even when such information is of medical relevance.³⁵⁶

"If they don't say that they are gay, then they are the same as anyone else. Nobody will refuse to treat you if you are gay, but if they know it, they will probably see you...in a way...maybe you are carrying a disease. Doctors will also probably think sorts of things about you. But they will not refuse to treat you...." Anonymous self-identified LGBTI person.³⁵⁷

Participants in a recent survey suggested that one of the most striking examples of discrimination against LGBTI people in the health system is the limitations of rights that would normally be accorded to partners in a heterosexual relationship.³⁵⁸ These include the right to visit patients, to make medical decisions on someone's behalf, and the right to health insurance. Other health issues raised by the LGBTI community representatives include discrimination against gay and bisexual men as blood donors, the difficulties for lesbian women seeking to access artificial insemination procedures and the increased health risks of using drugs as part of sexual practices (so called "chemsex").³⁵⁹

Trans People and Access to Health Services

The health system of Serbia recognizes transsexuality and classifies it as mental disorder.³⁶⁰ Despite the fact that the medical team for gender affirmation was established in Belgrade in 1989, this area remained unregulated until 2012, when the Ministry of Health formed the Republic Expert Commission for Treatment of Transgender Disorders.³⁶¹ So far, the Commission has only adopted procedures for transsexual people who want to undergo both hormone and surgical interventions as part of a gender confirmation process. The Commission also gives an expert opinion as to whether someone meets medical criteria for initiating the sex affirmation process.³⁶²

Since 2012, in medically-indicated cases, 65 percent of the medical costs of a sex change are covered by health insurance. The rest must be co-financed by patients. Financing of the lifelong hormone treatment is not regulated, and occasionally there are shortages of supplies of hormones in the market. Gayten has even reported that fake medicaments are on the market.³⁶³ Another challenge for trans people in Serbia is the lack of health services provided to people under 18, including the lack of provision of puberty-blockers, medication that could spare a young person from unwanted and stressful bodily changes during puberty and that would make certain surgical interventions unnecessary.³⁶⁴

In Serbia, for trans people undergoing gender affirming surgery, a sterilization procedure is mandatory. The CPE and Protector of Citizens recommended that this practice should be changed, so that trans people are able to make an informed decision about the procedure.³⁶⁵

Mental health professionals should not have a negative attitude towards trans people, and should not impose binary gender roles. They should assist families in being supportive to trans children and adolescents. Medical staff need to be educated about transgender issues. They should inform their clients about treatment options, and support trans people and their family members and human rights defenders as educators in their communities.³⁶⁶

People Living with HIV

"[C]urrently HIV is circulating among members of the gay population born between 1985 and 1995." Dr Dubravka Salemović, HIV specialist at Belgrade clinic³⁶⁷

In 2015, the Dr Milan Jovanović Batut Public Health Institute reported that 2,076 people are living with HIV in Serbia, and estimated that a further 1,100 are unaware of their condition. A sharp growth in the number of newly-diagnosed people was recorded that year, with an increase of 30 percent of new cases (total number 178) was registered compared with 2014.³⁶⁸ The increase is particularly noticeable in the MSM population – accounting for 73 percent of all reported newly-diagnosed HIV cases in 2015. This is a sharp increase, compared with 26 percent in 2002 and 11 percent in 1991.³⁶⁹ It appears that prevalence is rising primarily among young men, with one third of newly-diagnosed cases in 2015 affecting the 20-29 age group.³⁷⁰ According to WHO criteria, Serbia is a low-HIV-prevalence country. The epidemic is moving towards concentrated HIV prevalence among MSM (according to a surveillance report from 2013, HIV seroprevalence was higher than five percent among MSM in Belgrade and two other cities and less than two percent among IDU and CSW).³⁷¹ Officially, there are no records of trans people living with HIV in Serbia due to the fact that they are registered by the health system as MSM.³⁷²

In 2013, the National Commission for the Fight against HIV/AIDS and Tuberculosis (NCHATB)³⁷³ was established as a multi-sectoral body within the Ministry of Health. It is charged with monitoring and evaluating the national response, formulating the strategic direction for HIV and tuberculosis response and defining priority activities dealing with these infections. The Commission included representatives of LGBTI/MSM-led NGOs as regular members.³⁷⁴ However, the Commission has not been actively implementing the activities it was tasked with.³⁷⁵ The EC³⁷⁶ and NGOs warned about the lack of sustainable funding since the withdrawal of funding from the Global Fund in 2014 for organizations working with people living with HIV, and of almost all state funding for programmes related to HIV prevention and support for people living with HIV.³⁷⁷ The GF project was crucial for the development of NGO services for HIV prevention among MSM. After the closure of the project, services for MSM were discontinued or scaled down.³⁷⁸ The need to continue with funding was reaffirmed by all stakeholders. The priority areas agreed upon for the MSM population include: community-based voluntary counselling and HIV testing; outreach and mobile medical units working with key populations, including MSM; drop-in centres for key populations including MSM; and care and support programmes for people living with HIV.³⁷⁹ NGOs also identified that the National HIV Strategy for the period 2011-2015 has expired and no steps have been taken with view of adopting a new Strategy in spite of the significant increase in infections in recent years.³⁸⁰

The UN ECOSOC Committee in their 2014 Concluding Observations recommended that Serbia should address the spread of HIV/AIDS by promoting adolescent health and providing health counselling and services to the general public.³⁸¹

Serbia will be eligible to receive a further allocation from the Global Fund for the 2017-2019 period again.³⁸² Serbia received an allocation letter in December 2016 with information about the amount of available funds and eligible activities.³⁸³

HIV treatment is available free of charge for all people living with HIV who possess medical insurance. However, people living with HIV only have access to the first generation of medical treatment, with modern therapy only being available after viral resistance to treatment has been proven.³⁸⁴ First generation treatment has caused numerous side effects for some people living with HIV. These interfere with normal daily activities and hence contribute to further victimization, for example in the workplace.³⁸⁵ This practice is not in accordance with WHO treatment guidelines, or with common practices in the UK, USA and the EU, which all agree that the most efficient therapy is the only adequate treatment.³⁸⁶

Post-exposure prophylaxis (PEP) for HIV is not available because the current formulation of rules allow for prescription of medication only with an established diagnosis, and not as a preventive therapy.³⁸⁷ Pre-exposure prophylaxis (PrEP) is also not available. There are no indications that the State will support PrEP.³⁸⁸

A 2012 survey on the quality of life of people living with HIV indicated that more than quarter of survey participants have been exposed to stigma and discrimination in a health institution in the past 12 months. At the same time, more than 30 percent of medical workers discriminated against people living with HIV.³⁸⁹ There is a lack of trust in public health institutions among LGBTI people, who in most instances only choose to undergo testing in public medical institutions in cases of serious health risks.³⁹⁰ Privacy is not always assured for people receiving HIV test results, nor an adequate approach to dealing with the results, particularly in smaller towns, and this also undermines the trust in medical institutions.³⁹¹ There is no sustainable low threshold community-based testing practice, only low-level community initiatives that occur occasionally. Two main priorities in HIV treatment identified by the Serbian LGBTI community are enabling access to preventive medical treatment - PrEP, and access to home HIV tests.³⁹²

The CPE established discrimination against people living with HIV in access to health services in several cases – including a case where an applicant living with HIV was denied treatment by a state-run medical centre and redirected to another institution.³⁹³

Discrimination was also established in several cases of denial of dental services.³⁹⁴ The situation is significantly more difficult for LGBTI people living with HIV, as they face additional stereotypes and stigmatization.³⁹⁵ In April 2016, the CPE warned about inaccurate and insulting media reports attributing transmission of HIV to homosexuals, violating the dignity and rights of LGBTI people.³⁹⁶

In 2014, the CPE found discrimination when a patient's HIV-positive status was clearly marked in red letters on the front cover of their medical file.³⁹⁷ The CPE subsequently requested that the Ministry of Health should issue instructions to all institutions requiring that HIV status must not be used as label on medical files, and can only be written down in a designated column in the same style as other information on the patient's diagnosis.³⁹⁸

Intersex People³⁹⁹

In general, there is a lack of publicly available data about intersex people, including on the number of intersex children born in Serbia. Unofficial data indicated that between 6-8 intersex babies are born in Serbia every year.⁴⁰⁰ Intersex variations are still considered to be medical disorders.⁴⁰¹

Within the Dr Vukan Čupić Mother and Child Healthcare Institute of Serbia, a team of specialist doctors has been performing surgeries on intersex babies for 15 years. They are relying on the hospital's internal guidance rules, but this guidance does not cover all intersex diagnoses and there are no legislative provisions regarding medical procedures on intersex babies and children. There are no psychologists or psychiatrists in this medical team or elsewhere in Serbia who are specialized on intersex issues. Hence no support is provided to intersex children and their families. The Council of Europe (CoE) Human Rights Commissioner recommends offering interdisciplinary counselling and support, including peer support.⁴⁰² NGO Gayten has initiated the creation of a support group for intersex people.

Parents are involved in the decision-making process on medical procedures performed on intersex babies, but they are often pushed to make decisions quickly. One of the reasons is the obligation for parents to register newborn babies within 30 days, so that birth certificates and other registration papers can be issued. They are pushed to determine a baby's gender within this timeframe, and sometimes to opt for "corrective surgeries". The CoE recommends the introduction of flexible procedures in assigning and reassigning sex/gender in official documents while also providing for the possibility of not choosing a specific male or female gender marker.⁴⁰³ During the reform of the Law on the Personal Identification Number, a solution that provides a procedure for assignment of a personal number that does not include sex/gender determination should be considered.

There is no official public data on how many “corrective” interventions have been performed so far. Recently, for the first time in Serbia, parents of intersex babies have been advised by a medical expert to delay “corrective surgery”. The CoE, UN and international human rights experts have called for ending harmful medical practices on intersex children, including unnecessary surgeries, hormonal treatments and other procedures including sterilisation, without full, free, and informed consent.⁴⁰⁴

Sometimes intersex people are not aware that they have been subjected to surgery or other interventions in infancy, and often when they know about it, they are advised not to speak about their medical history to anyone. They should be provided with access to their medical records.⁴⁰⁵

Intersex people who have been subjected to surgery in early life, and whose sex was wrongly determined at the time, may be faced with gender affirmation surgery later in life. As a result, they face additional health risks, social stigma and discrimination.

3.8 Access to Documents for Trans People⁴⁰⁶

Summary

There are no legal provisions or procedures for gender recognition, even in cases of sex affirmation. The Constitutional Court of Serbia established that denial of legal recognition of sex change of a post-operative transsexual constitutes a violation of the right to privacy and dignity. Rules of Procedure on changes in the designation of the name in terms of gender in certificates and diplomas have not been adopted.

Trans people face a high degree of discrimination in all aspects of daily life and in the enjoyment of their basic human rights. In surveys, trans people identified administrative and bureaucratic procedures as the major obstacle to achievement of their rights,⁴⁰⁷ in particular the difficulty of gaining access to documents that correspond to their current gender identity.⁴⁰⁸ Serbia has no legal provision or procedures for gender recognition, even in cases of gender-affirming surgery.⁴⁰⁹

Relevant state authorities, primarily municipal offices in charge of vital records of citizens, have no legal guidance on when and how they should make changes to birth certificates – specifically to a person’s name or to their personal number, which reflects their sex at birth. Hence their practice has been diverse, and has sometimes depended on the goodwill of a particular civil servant dealing with any given case.⁴¹⁰ A systematic and standardized approach among the Serbian municipalities is needed. The CoE Committee of Ministers’ recommendation⁴¹¹ requires states to enable fast, transparent and available change to such documentation. Serbia requires sterilization,⁴¹² gender identity disorder diagnosis, very invasive gender-affirming surgery, and dissolution of a marriage before legal gender recognition can take place. All this, and especially the request for a sex affirmation procedure, contributes to a significant number of trans people who refuse to perform any surgical operation on their bodies, existing in a legal vacuum.⁴¹³ Legal gender recognition should be separated from medical procedures and should not be conditional on surgical interventions.⁴¹⁴

The Constitutional Court of Serbia⁴¹⁵ established that by denying a post-operative trans person legal recognition of their sex change, municipal offices violated the applicant’s right to privacy, enshrined in Article 8 of the ECHR,⁴¹⁶ and dignity, in Article 23 of the Constitution. The Court ordered a municipal office to make changes in an applicant’s birth records.⁴¹⁷ The CCS made this decision applicable to all people in a similar situation, hence it should make access to documentation easier for other trans people who have undergone sex affirmation, until the adoption of a relevant legal framework. The Court also asked the relevant Ministry to disseminate the decision to the relevant municipal bodies. Further, in a letter to the National Assembly, the Court warned the legislator about the lack of a legal framework that would define the possible legal consequences of gender affirmation,⁴¹⁸ such as for example the right to name and sex changes in official documents. A letter was also sent by the CCS to the Protector of Citizens, an institution entitled to initiate adoption of legislation, informing them of the need for the matter to be regulated. The Protector of Citizens together with the CPE issued ‘Recommendations for Amending Regulations of Relevance to the Legal Status of Transgender People’, also covering other important legal issues for trans people in Serbia.

The 2014 Anti-Discrimination Action Plan envisages continuous implementation of the CCS decision, and sets a deadline for the preparation and submission to the Government of a draft sex change law and with it the prerequisite of amendments for other laws⁴¹⁹ by the last quarter of 2017. The Action Plan also envisages drafting a Law on Gender Identity that would regulate the position of transsexual people in 2016.⁴²⁰ The government working group has not yet been formed, but civil society organizations have prepared two model laws that could serve as a basis for development of the future legislation. These are the 2012 Model Law on the Recognition of the Legal Effects of Sex Changes⁴²¹ prepared by CUPS with Gayten LGBT and Aire Centre; and the Law on Gender Identity⁴²² presented in 2013 by Gayten LGBT.

The process of drafting of the new legislation should be transparent and inclusive of the organizations representing trans people, and the proposed draft should guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by ensuring that the change of name and gender in official documents can be completed in a quick, transparent and accessible way.⁴²³

Diplomas and Certificates

In those rare cases where trans people manage to obtain legal recognition with identification documents and birth records in their new name and which reflect their gender change, difficulties often persist in the reissuance of school certificates and university diplomas. The CPE⁴²⁴ made a recommendation to all universities to "undertake all the necessary measures forthwith to ensure that the university colleges issue new diplomas and other public college documents to people who have changed their names after undergoing a sex change (transgender people) at their request in a rapid, transparent and accessible procedure, in compliance with national and international standards on protecting transgender people from all forms of discrimination."⁴²⁵ The CPE and the Protector of Citizens recommended that this decision should be applied by all educational institutions in Serbia.⁴²⁶ The 2014 Anti-Discrimination Action Plan also contains a measure aimed at the implementation of this decision, by creation of the Rules of Procedure on changes in the designation of the name in terms of gender in certificates and diplomas.⁴²⁷ Adoption of the Rules of Procedure was due in the first quarter of 2015, but has not yet taken place.⁴²⁸

3.9 Asylum

Summary

Current issues are related to rights of people exposed to persecution based on their sexual orientation or gender identity (SOGI) seeking protection in Serbia, and LGBTI people from Serbia seeking asylum in other countries.

UNHCR recognizes that in many parts of the world people are fleeing persecution based on their perceived or actual sexual orientation.⁴²⁹ In Serbia, two separate issues are relevant at the moment – the rights of people exposed to persecution to seek protection in Serbia, and LGBTI people from Serbia seeking asylum in other countries. Serbia, like other European countries, has been faced with a rapidly increasing influx of refugees in recent years, and the refugee crisis has been a major human rights concern.⁴³⁰ In the past, Serbia was also under pressure from the EU, because large numbers of Serbian citizens were seeking asylum in the EU.⁴³¹

Currently, the Law on Asylum⁴³² does not explicitly list SOGI in persecution grounds, but includes them under "other groups".⁴³³ The Draft Law on Asylum prepared by the MoI includes sexual orientation, gender and gender identity as grounds of persecution.⁴³⁴ BCHR recommends that the draft law should also explicitly state that asylum applications filed by LGBTI people should not be dismissed on the assumption that they will be safe unless they reveal their sexual identity in their countries of origin.⁴³⁵ In practice, MoI's Asylum Office, the first-line asylum authority in Serbia, has not been rejecting applications on this ground, and has been granting refugee status to people who have been persecuted on multiple grounds including SOGI.⁴³⁶ However, subsequent integration of these refugees has been a problem, not necessarily because of their SOGI but due to difficulties with the integration process in general.⁴³⁷ LGBTI refugees and asylum seekers can easily face multiple levels of discrimination.

On the other hand, there is an issue of LGBTI people from Serbia seeking asylum in other countries.⁴³⁸ LGBTI organizations have received a number of requests from LGBTI people living in Serbia to provide them with information on this topic.⁴³⁹ However, in general, the Republic of Serbia has been recognized as a safe country of origin.⁴⁴⁰

3.10 Access To Justice

Summary

Formally, LGBTI people have access to judicial and non-judicial remedies for discrimination and human rights violations, but these are ineffective in practice. Adoption of the Law on Free Legal Aid is still pending. More support is needed for NGOs providing legal aid to LGBTI people and monitoring of trials focusing on discrimination.

Victims of human rights violations in Serbia have access to international and national legal remedies, before judicial and non-judicial bodies. Serbia accepts numerous individual complaints procedures before UN treaty bodies⁴⁴¹ and cases against Serbia have been brought before the ECtHR since 2004.

The diverse competencies of the Constitutional Court of Serbia include the review of constitutional complaints for alleged violations of rights enshrined in the Constitution and ratified international treaties, and examining constitutionality and legality of law and other general enactments. The CCS has reviewed several cases of relevance to access to rights of LGBTI people in Serbia. In most of these cases, the CCS ruled partly in favour of applicants and has thereby contributed to some extent to the improvement of the rights of LGBTI people.

In the process of normative review the CCS examined the provisions of the Family Law on extramarital unions; however this decision has not yet enhanced the enjoyment of rights by same-sex partners. The Court also examined a few relevant constitutional appeals – those submitted by Pride organizers – and complaints of trans people who have been denied access to official documentation of their new identity. Constitutional appeals cannot be made by parties acting in the public interest; they may only be submitted by victims and their legal representatives. Contrary to the jurisprudence of the ECtHR,⁴⁴² the CSS denied access to constitutional appeal to natural people who would have participated in the 2012 Pride Parade, and only found admissible the appeal of the Belgrade Pride Parade Association, which had formally convened the assembly.⁴⁴³

After years of reforms, the Serbian judiciary is still criticized for its inefficiency, a significant backlog and a high number of final judgements pending enforcement.⁴⁴⁴ This is consequently reflected in the duration of the court proceedings.⁴⁴⁵ As a measure for expediting the duration of trials, judicial protection of the right to a fair trial has been introduced by the Law on Protection of the Right to a Trial within Reasonable Time.⁴⁴⁶ Equality before the law is enshrined in the Constitution. However, in practice this guarantee is undermined by a systemic problem of divergent case law regarding identical or nearly identical facts.⁴⁴⁷ In general, public trust in the judiciary is undermined.



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“...I think people in most cases give up on going to trial because they know it will last five, six years for a small thing, let alone something bigger. Recently there was a case in Novi Sad when they chased a boy who changed sex and in the end, I've seen it yesterday, or the day before in the newspaper, he will not sue this person. Probably he is aware it would last for too long and in the end, he would get nothing. He would only lose, and for me this is not ok regardless of the matter [...] I think that whether someone is gay does not affect the proceedings.” Anonymous self-identified LGBTI person.⁴⁴⁸

Fairness of trials is further diminished by the absence of an effective system of free legal aid. The Strategy on the Development of a Free Legal Aid System in the Republic of Serbia expired in 2013, but the Law has never been adopted.⁴⁴⁹ The latest draft Law on Free Legal Aid from November 2016 does not specifically mention LGBTI people as beneficiaries; they could benefit from the law as people in social need, victims of violence or victims of trafficking.⁴⁵⁰ YUCOM argues that this law contains provisions that would only hinder access to justice to LGBTI people, and would in some cases force outing before municipal bodies, which could be particularly problematic in smaller communities.⁴⁵¹ Chapter 23 Action Plan envisaged adoption of this law by the end of third quarter of 2015. This makes justice less available to people in a difficult financial situation, for example to trans people who can't access the labour market and may therefore remain unprotected in the perpetual cycle of discrimination.⁴⁵² In numerous cases, LGBTI people and human rights defenders have been represented by NGOs providing free legal aid or engaging in strategic litigation before domestic and international tribunals, but their capacities are rather limited as there is no sustainable donor funding for free legal aid or strategic litigation. GSA offered legal aid to LGBTI people specifically, but this organization is not operating anymore. Labris conducted numerous situational testing and initiated proceedings before the CPE. Currently, free legal aid is offered by YUCOM. BCHR provided free legal aid to LGBTI people and activists in strategic cases before the CCS and ECtHR. Trials for discrimination are generally public, but they are monitored only sporadically,⁴⁵³ and media reports on these trials are rare. There is therefore not enough transparency of trials in cases of discrimination and this is contributing to a decrease of trust in judiciary by victims of discrimination who decide not to seek protection before the courts.⁴⁵⁴ Monitoring of discrimination trials is hindered by an insufficiently developed system of case databases, which makes it very difficult to access information about ongoing cases,⁴⁵⁵ or to get reliable statistics on the number of discrimination trials.⁴⁵⁶ In 2014, Labris reported that existing legal remedies to victims of violence and discrimination are frequently inaccessible to LGBTI people, and are contributing to their further victimization and discrimination.⁴⁵⁷

Non-judicial remedies include proceedings before the CPE, Protector of Citizens and different inspection bodies. In 2015 less than five percent of complaints submitted to the CPE related to discrimination based on SOGI, which is almost double than the year before. The CPE argues that this is not an accurate reflection of the position of LGBTI people in society,⁴⁵⁸ and urges NGOs to be more active in submitting complaints.⁴⁵⁹ There is a complaint form that can be used, but its use is not mandatory, and complaints submitted in any format are admissible.⁴⁶⁰ The CPE can also engage in strategic litigation by initiating proceedings for discrimination before regular courts in cases of general interest. However, no such proceedings regarding the rights of LGBTI people have been initiated so far.⁴⁶¹

Victims of discrimination in employment or in the workplace can file an application with the Labour Inspection, CPE or regular courts. According to the Labour Law, a person who is discriminated against while seeking employment, or a person who is discriminated against in the workplace can sue an employer for damages, and if the applicant shows that discrimination was probable, the burden of proof is transferred onto the employer, who is then obliged to prove there was no discrimination.⁴⁶² Court cases related to labour rights and discrimination should be given priority in examination. In the above-discussed case, the Appeal Court decided the case on its own, without returning it for a retrial, as is commonly done, and the relative speed of the process was satisfactory.⁴⁶³ This was not true in another case of labour discrimination based on the sexual orientation of person with initials V.O.. This case started back in 2007, when the applicant was dismissed, and was finalized before the Supreme Court of Cassation seven years later.⁴⁶⁴

A further reason why victims of labour discrimination may be discouraged from reporting cases to the Labour Inspection could be due to the inadequate number of relevant authorities and the difficulties in proving discrimination.⁴⁶⁵ Further, victims are discouraged by employers' practices of further maltreatment of workers who report discrimination.⁴⁶⁶

The Press Council,⁴⁶⁷ an independent, self-regulatory body, monitors the observance of the Journalist's Code of Ethics and resolves complaints made by individuals and institutions related to media content. If the Council's Board of Appeal determines that there has been a violation of journalistic ethics, the publication in question must publish the Commission's decision. In the case of violation by medium that has not accepted the jurisdiction of the Press Council, the Commission shall impose a public reprimand. The Council has been reviewing complaints relating to the way in which LGBTI issues are reported in the media.⁴⁶⁸ This can be an efficient tool for LGBTI NGOs to address some cases of discriminatory media reporting.⁴⁶⁹

4. LGBTI Organizations in Serbia

Summary

Organizations working on the promotion and protection of LGBTI people are diverse, and they are perceived as important agents of change of the position of LGBTI people. Lack of sustainable funding is the major challenge to the sustainability of LGBTI people's organizations.

"I think that there are some [NGOs], trying to establish this tolerance and acceptance of such people. Now, how successful they are, I don't know about that." Self-identified heterosexual person.⁴⁷⁰

Serbian civil society is vibrant and active, and NGOs – particularly LGBTI organizations – are perceived as dominant agents of change.⁴⁷¹ A 2015 survey indicated that in the opinion of the LGBTI community, LGBTI organizations should prioritize efforts to eliminate violence, strive to ensure that LGBTI people are able to enjoy their social and economic rights, and prevent labour discrimination of LGBTI people. They should also offer SOS hotlines and psychological support for LGBTI people.⁴⁷²

LGBTI organizations have some differing priorities related to the enjoyment of human rights of LGBTI people, and such diversification is particularly reflected among NGOs and activists regarding the organization of the Pride Parade.⁴⁷³ A short questionnaire was distributed to NGOs working on human rights issues, NGOs working with people living with HIV and LGBTI NGOs in Serbia with the purpose of collecting data for this report.⁴⁷⁴ Some of the LGBTI organizations surveyed identified lack of consensus and/or cooperation among LGBTI organizations as a challenge to achieving advancement of rights for LGBTI people. A 2015 study on attitudes revealed that LGBT community members were disappointed with the activism, and that greater collaboration between the LGBT organizations is perceived as necessary, along with education and promotion of LGBT rights.⁴⁷⁵ According to the survey, the Serbian LGBT community has ambivalent attitudes towards LGBT organizations. On one hand, they are perceived as having an important role in "the empowerment, education and informing of LGBT people, and for a considerable number of people, they stand for a kind of safe space and acceptance". On the other hand, however, LGBT NGOs are perceived as disunited, and insufficiently transparent, accessible and visible in the media. Further, their approach to wider audiences needs to be adjusted and extended to all parts of the country.⁴⁷⁶

"...I know that they are implementing sorts of activities and I know some people appeared in the public in the name of nongovernmental organizations. Now, how much this is contributing to improving the position I don't know, but I think they are the only ones trying to do and change something. Probably to honestly change things. The others trying to create a positive change are doing it because they have an interest in doing so. Again, NGOs have an interest, but they also have deeper reasons and interest, not just of their own, but generally concerning the wider masses, so I think they are the only ones able to influence." Self-identified LGBTI person⁴⁷⁷

As an attempt to unify and thereby strengthen the demands of the LGBTI community towards stakeholders, 'LGBT Platform' was created in 2015⁴⁷⁸ The Platform provides a framework for cooperation, joint action and the definition of shared priorities. It is based on four strategic pillars:

1. Ensuring sustainable and permanent cooperation with state institutions and institutions for the protection of human rights;
2. Continuous monitoring and improvement of the work of state institutions for the protection of the rights of LGBTI⁴⁷⁹ citizens, and cooperation with relevant institutions with the goal of a multidisciplinary and comprehensive approach to finding solutions to the problems of LGBTI citizens;
3. Continuous capacity building and strengthening of the LGBTI community. Improving the visibility and participation of LGBTI citizens in social processes and decision making; and
4. Engaging with the general population in order to establish dialogue and eliminate social distance, homophobia, transphobia, and other forms of discrimination.

Currently the activities of LGBTI organizations around the Platform have been halted.⁴⁸⁰

During the survey of secondary sources, and based on the data collected directly from organizations, there are other organizations which also provide some services to LGBTI people, such as legal aid, or report on their position in society. These organizations include NGOs and think-tanks focusing on human rights in general, and some focusing on more specific topics such as security or the rights of other vulnerable groups.

"I think they are promoting the gay population. The question is who is financing NGOs and what are their interests to do so." Self-identified heterosexual person.⁴⁸¹

Most of the organizations surveyed for this report saw lack of funding as a major obstacle to the sustainability of their activities. It is particularly difficult for grassroots LGBTI NGOs to secure any funding for their activities.⁴⁸² LGBTI organizations providing services to LGBTI people are not receiving any state funding, even though this is provided for similar activities for other vulnerable groups.⁴⁸³ LGBTI organizations argue that funding should be offered for the services they could provide to the LGBTI community.⁴⁸⁴ After the withdrawal of the Global Fund in 2014, there are no sustainable sources of funding for organizations working with people living with HIV, and no sustainable funding for programmes related to HIV prevention and support for people living with HIV. As a result, some of the NGOs providing services to the LGBTI population in particular are no longer active. Other problems for the sustainability of LGBTI people's NGOs and their activities include the separation of the LGBTI movement from other human rights organizations, low visibility, lack of support for social entrepreneurship, inadequate cooperation with authorities and societal distance towards LGBTI people.

An external capacity assessment of some NGOs conducted by UNDP and ERA showed diversity in their level of development from basic and moderate to well-developed in all areas of their work. Most development has been achieved in the area of programmatic capacity. Conversely, the areas of human resource management and monitoring and evaluation are where most development is still needed. Observed obstacles included limited knowledge of the English language and project cycle management. One NGO expressed interest in long-term mentorship programmes to improve internal practices, and in developing policies and procedures for accountable and transparent management of the organization and its programmes. Evaluators recommended that organizations should "build strong partnerships with LGBTI organizations in the country, the Balkans region and internationally, with the purpose of exchanging knowledge and practices, and supporting joint actions and projects."

5. Summary of Identified Gaps and Recommendations

The LGBTI population faces higher levels of discrimination than almost any other group in Serbia. Citizens in Serbia express the greatest social distance towards LGBTI people in general and towards LGBTI people within their families. Roma LGBTI people and LGBTI people living with HIV face particularly high levels of stigmatization, and are exposed to multiple forms of discrimination. Intersex people are practically invisible.

Considerable improvements have been made in the work of state institutions regarding the protection of the rights of LGBTI people. There has been more political will to support the LGBTI community, particularly in relation to their right to freedom of assembly. Notwithstanding these improvements, there is still a need for greater political commitment to promote a culture of tolerance and respect for the human rights of LGBTI people. Current stereotypes and homophobic attitudes of representatives of institutions must be reduced in order to ensure the effective protection of human rights of LGBTI people, and thereby increase their trust in public institutions.

LGBTI organizations and activists are divided on major issues. However, the major challenge to the sustainability of their activities is a lack of sustainable funding.

5.1 Major Gaps and Recommendations in Relation to the Legal and Strategic Framework

Over the last decade, the legal framework in the Republic of Serbia for the prohibition of discrimination and protection of human rights has been significantly improved. In some areas, however, legal gaps remain.

A wide anti-discriminatory framework covers most spheres, but only some laws explicitly prohibit different treatment based on sexual orientation and/or gender identity.

The implementation of a measure in the 2014 Anti-Discrimination Action Plan envisaging drafting a Law on Gender Identity to regulate the position of trans people has not been initiated, although the draft should have been submitted to the government by the end of 2016.

There is no legal framework for same-sex partnerships and same-sex unions are not recognized under Serbian law. Further, provisions of Family Law on de facto extramarital unions are not applicable to stable same-sex unions.

Adoption of the Law on Free Legal Aid and the Gender Equality Law is still pending. There are no legal provisions for intersex people specifically.

Strategic documents in some areas, namely regarding the rights of children (the National Plan of Action and National Strategy for the Prevention and Protection of Children against Violence) and the prevention of HIV (National Strategy on HIV), as well as the Strategy on Elimination of Violence against Women and in Intimate Partner Relations have expired, and adoption of new strategies has not been initiated.

In some cases, access to rights is exacerbated by the lack or inadequate provisions of rulebooks and rules of procedure. For example, the Rules of Procedure on changes in the designation of the name in terms of gender in certificates and diplomas has not been adopted, and the rulebook on prescription of PEP and PrEP for prevention of HIV has not been amended.

In light of this, the following legal and policy recommendations are suggested:

① The Serbian Parliament should adopt a Declaration against Homophobia and Transphobia.

The Government of Serbia should:

- ② Amend existing legislation to include SOGI explicitly as grounds for discrimination, and ensure that any new legislation explicitly includes SOGI in the discriminatory grounds.
- ③ Provide intersex people with protection from discrimination on the grounds of their sexual characteristics.
- ④ Adopt a Law on Gender Identity and enable legal gender recognition to trans people in accordance with their preferred gender.
- ⑤ Adopt Rules of Procedure on changes to names and gender designation in certificates and diplomas.
- ⑥ Adopt regulations on civil partnership and adopt or amend existing legislation to regulate the rights of same-sex partners.
- ⑦ Adopt a Law on Free Legal Aid and ensure support to organizations providing free legal aid to LGBTI people.
- ⑧ Adopt a new national strategy on HIV or an Action Plan that will promote and ensure sustainable funding for programmes related to HIV prevention and support for people living with HIV, with a specific focus on key populations – particularly men who have sex with men (MSM) and trans people.
- ⑨ Adopt new National Plan of Action and National Strategy for the Prevention and Protection of Children against Violence, and include issues of discrimination and violence based on SOGI.
- ⑩ Introduce a new methodology for keeping records of criminal cases that would enable establishing a reliable database of hate crimes based on SOGI, while at the same time ensuring protection of sensitive personal data of victims.
- ⑪ Introduce a uniform methodology for keeping records of cases in courts with general jurisdiction that will enable access to information about cases of discrimination.
- ⑫ Change current regulations preventing the prescription of PEP and PrEP as preventive tools.
- ⑬ Analyse the effects of the current Anti-discrimination Strategy on LGBTI people in Serbia, and ensure timely preparation for the new Strategy for the period after 2018.

5.2 Major Gaps and Recommendations in Relation to the Implementation of Anti-Discrimination Law

The problem of inconsistent implementation of anti-discrimination legislation has been highlighted frequently. Reliable records of hate crimes and discrimination based on SOGI have never been available. LGBTI people are victims of hate crimes that have not been properly investigated, prosecuted or sanctioned. LGBTI people are also frequently exposed to hate speech and threats. They are exposed to discrimination in all areas of life including labour and access to health and social services, and faced with rejection and violence in the education system. The majority of LGBTI people and their families who need support are not able to access adequate support systems. Although LGBTI people have formal access to legal remedies, these are mostly ineffective in practice.

In light of this, the following legal and policy recommendations are suggested:

- 1 Civil society organizations need to be strengthened. Their partnership with government needs to be deepened, including through social contracting.
- 2 Public office holders should refrain from spreading hate speech and discrimination against LGBTI people and people living with HIV, and should make statements opposing any kind of violence based on SOGI.

The Government should:

Political commitment:

- 3 Demonstrate greater political commitment to promoting a culture which respects the rights of LGBTI people.
- 4 Implement recommendations by UN and Council of Europe human rights bodies relevant to the rights of LGBTI people, without delay.
- 5 Continue to ensure the freedom of expression and the freedom of assembly of LGBTI people.
- 6 Ensure effective partnerships among and between civil society and other stakeholders such as their government counterparts and the private sector.

Access to justice:

- 7 Conduct efficient and effective investigations of threats and assaults based on presumed or actual sexual orientation and gender identity.
- 8 Ensure fair and effective court proceedings in cases of discrimination and hate crimes.
- 9 Provide effective protection for the rights of LGBTI people and activists faced with threats by third parties, particularly ultra-conservative organizations and movements.
- 10 Provide training to law enforcement professionals and the judiciary on dealing with hate crimes based on SOGI.
- 11 Provide trainings to the judiciary on international anti-discrimination and human rights standards relevant for the protection of LGBTI people in Serbia.
- 12 Continue to provide trainings to sensitize MoI staff and to reduce societal distance towards LGBTI people.

Social and Economic Inclusion:

- 13 Ensure the availability of sustainable and accessible support programmes specifically targeted to the needs of LGBTI people, including support for LGBTI people who choose to come out publicly.

- 14 Sensitize the media to report more accurately on matters related to the rights and situation of LGBTI people and people living with HIV.
- 15 Ensure that certificates to marry are issued without discrimination, including to LGBTI people.
- 16 Ensure effective protection from labour discrimination against LGBTI people and people living with HIV.
- 17 Introduce an obligation for employers in the public and private sectors to develop internal policies and procedures for the elimination and protection from discrimination.
- 18 Encourage companies in the public and private sectors to conduct human rights impact assessments, particularly assessing the impact on vulnerable groups in the community and workplace including LGBTI people.
- 19 Recognize trans people as particularly vulnerable in the labour market.
- 20 Raise awareness among trade unions and the business community about the needs of LGBTI people.

Education:

- 21 Ensure that all discriminatory content about LGBTI people is eliminated from textbooks and curricula in schools.
- 22 Introduce affirmative and accurate portrayals of LGBTI people in textbooks.
- 23 Ensure that programmes for prevention of violence in the educational system specifically address discrimination based on SOGI.
- 24 Collect more relevant information about peer-to-peer violence based on SOGI, to be used to formulate adequate response measures.
- 25 Provide trainings for employees in educational institutions on international anti-discrimination and human rights standards relevant for the protection of human rights of LGBTI people, and in order to reduce prejudice towards LGBTI people.

Health:

- 26 Produce an official report on the position of intersex people in Serbia.
- 27 Raise awareness among medical professionals, human rights defenders, relevant institutions and the general public about the situation of intersex people.
- 28 Ensure access to healthcare without discrimination to LGBTI people and people living with HIV.
- 29 Ensure adequate protection of particularly sensitive personal data of LGBTI people in the healthcare system.
- 30 Sensitize state medical service providers to the specific needs of LGBTI people and introduce accurate information about LGBTI people and their specific needs in educational materials for future healthcare providers.
- 31 Enable trans people to make an informed decision and choice as to whether they should undergo a sterilization procedure.
- 32 Ensure a comprehensive national response to HIV, including sustainable funding for programmes related to HIV prevention and support for people living with HIV.
- 33 Ensure that people living with HIV are provided with the most efficient therapy from the beginning of treatment in accordance with internationally accepted standards.

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167. Intersex Fact Sheet, Free&Equal, United Nations for LGBTI Equality, available at: https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf

Endnotes

- ¹ Regional LGBTI Public Opinion Poll funded by the U.S. Agency for International Development (USAID) through NDI's Regional Election Administration and Political Process Strengthening Programme (REAPPS), and with additional support from the U.S.-based Victory Institute and Sweden's Civil Rights Defenders. The poll was conducted by Ipsos Research and is available on file with the author.
- ²*Ibid.*
- ³Don't Ask, Don't Tell (DADT), byname for the former official U.S. policy (1993–2011) regarding the service of gays, bisexuals, and lesbians in the military.
- ⁴European Commission, *Serbia 2016 Report*, Brussels, 9/11/2016, p.5, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf
- ⁵*Ibid.*
- ⁶B. Tepavčević, I. Fetoski, *Prekoputa homofobije, Analiza životnog iskustva LGBT osoba u Srbiji i preporuke za smanjenje diskriminacije*, Siguran puls mladih, Belgrade, 2014, available at: http://korak-hapi-step.eu/wp-content/uploads/2014/12/Prekoputa-homofobije_Analiza-%C5%BEivotnog-iskustva-LGBT-osoba-u-Srbiji-i-preporuke-za-smanjenje-diskriminacije.pdf
- ⁷The Republic of Serbia was part of the Socialist Federal Republic of Yugoslavia (SFRY), together with five other republics: Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, and Macedonia. SFRY was dissolved in the early 1990s. After the dissolution of SFRY, two republics – the Republic of Serbia and the Republic of Montenegro – constituted the Federal Republic of Yugoslavia (FRY) in 1992. In 2003, the federal state was replaced by the State Union of Serbia and Montenegro. This existed until a majority of citizens in Montenegro voted for independence in a referendum in 2006.
- ⁸President of Serbia 1991-1997 and President of FRY 1997-2000. The democratic change in Serbia took place in 2000 and Milosevic was subsequently extradited to the International Criminal Tribunal for the former Yugoslavia (ICTY) where he was put on trial for charges of war crimes including genocide and crimes against humanity during Yugoslav Wars of the 1990s. He died before the end of the proceedings.
- ⁹See more in *Homofobija i internalizovana homofobija u Srbiji*, Centar za kvir studije, Belgrade, 2016, p.20.
- ¹⁰Female homosexuality has never been criminalized in Serbia.
- ¹¹V. Petrović (ed.), *Human Rights in Serbia and Montenegro 2005*, Belgrade Centre for Human Rights, Belgrade, 2006, p.63.
- ¹²D. Vučković, *Annual report on the position of LGBTIQ population in Serbia for 2008*, Labris, Belgrade, 2009, p.11, available in Serbian at: <http://www.lgbti-era.org/one-stop-shop/annual-report-position-lgbt-population-serbia-2008>. The World Health Organization (WHO) removed homosexuality from the International Classification of Diseases in 1990, see: <http://www.euro.who.int/en/health-topics/communicable-diseases/hiv/aids/news/news/2011/5/stop-discrimination-against-homosexual-men-and-women>.
- ¹³J. Vidić, "Trans osobe u Srbiji – analiza položaja i predlog pravnog rešenja. Model zakona o rodnom identitetu, Gayten-LGBT", GAYTEN, Belgrade, 2015, p.10, available at: <http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20rešenja.pdf>
- ¹⁴Vidić 2015, p.10; see A. Eror "How a homophobic country became a go-to spot for gender reassignment surgery", 05/01/2016, available at: https://broadly.vice.com/en_us/article/how-a-homophobic-country-became-a-go-to-spot-for-gender-reassignment-surgery
- ¹⁵Vidić 2015, p.10.
- ¹⁶Quoted in Eror, "How a homophobic country became a go-to spot for gender reassignment surgery" note 13.
- ¹⁷"Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations", see "Intersex Fact Sheet, Free&Equal", United Nations for LGBTI Equality, available at: https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf.
- ¹⁸See <http://www.transserbia.org/interseks> and <http://www.asocijacijaduga.org.rs/podrka-interseks-osobama/>
- ¹⁹D. Vučković, "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Serbia," Danish Institute for Human Rights, p.5, para. 21, available at: http://www.coe.int/t/Commissioner/Source/LGBT/SerbiaLegal_E.pdf
- ²⁰Gayten published a call for intersex people to join a support group three years ago, but no one has responded yet.
- ²¹Interview with Kristian Randelović, Gayten-LGBT, 10/11/2016.
- ²²*Human Rights in FRY 2002*, Belgrade Centre for Human Rights, Belgrade, 2003, p.202; *Human Rights in Serbia and Montenegro 2003*, Belgrade Centre for Human Rights, Belgrade, 2004, p.327, 328.
- ²³*Prejudice Exposed, Homophobia in Serbia 2010*, Gay-Straight Alliance, Belgrade, 2010, p.8, available at: <http://www.gsa.org.rs/izvestaji/Research-Prejudices-Exposed-2010-GSA.pdf>

²⁴The Commissioner for the Protection of Equality, Izveštaj o istraživanju javnog mnenja „Odnos građana prema diskriminaciji u Srbiji“, 2013, p.6, available at: http://ravnopravnost.gov.rs/wp-content/download/izvestaj_diskriminacija_cesid_udnp_poverenik_2013_v_21_02_2014_final_sajt.pdf

²⁵Ibid., p.8-9.

²⁶See endnote 1.

²⁷*Homofobija i internalizovana homofobija u Srbiji*, p.99.

²⁸National Democratic Institute (2015), p.18.

²⁹Ibid., p.27.

³⁰Ibid., p.28.

³¹*Prekoputa homofobije*.

³²The Anti-Discrimination Strategy 2013–2018, *Official Gazette RS*, No. 107/14, p.44, unofficial translation available at: <http://www.ljudskaprava.gov.rs/sr/node/145>

³³See Vera Kurtić, Džuvljarke, Roma Lesbian Existence, ERRC, Niš, 2013.

³⁴Input from participants of the discussion of the Draft Report “Being LGBTI in Serbia” held on 28/11/2016.

³⁵*Prekoputa homofobije*, note 5.

³⁶Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, December 2016.

³⁷*Prejudice Exposed*, note 22, p.15.

³⁸Odnos građana prema diskriminaciji u Srbiji, 2013, p.34.

³⁹Protector of Citizens, *Regular Annual Report of The Protector of Citizens for 2015*, Belgrade, 2016, p.94, para. 3.12, available at: <http://zastitnik.rs/attachments/article/1431/Annual%20Report%202015.pdf>

⁴⁰Ibid., p.95.

⁴¹Quoted in, *Prekoputa homofobije*, note 5, p.15.

⁴²B. Tepačević et al. Skućimo zajednicu, Analiza stanja i primeri dobre prakse psihosocijalne i zdravstvene podrške LGBTIQ populaciji u Srbiji, Siguran puls mladih/Safe Puls of Youth-SPY, Belgrade, 2014.

The 2014 Anti-Discrimination Action Plan envisages two relevant measures: (4.1.11) trainings for social work centres employees on discrimination of LGBTI people, implementation of this measure has been delayed and should have started in September 2016, (4.6.2) organization of support groups within centres for social work in more than 30 percent of local municipalities, but nothing on the progress was reported by relevant ministries, see Second Report, On monitoring the implementation of the Action Plan for the implementation of the Strategy on Prevention and Protection against Discrimination covering the period until the end 2015, on file with the author.

⁴³Interview with a CSO representative, October 2016.

⁴⁴NGO Association DUGA (Rainbow) has accredited two educational programs for employees of the CSW. They have trained 1037 individuals from 146 CSW and have signed Memorandums of Cooperation with 84 CSW (information provided during the preparation of this report). See also <http://www.asocijacijaduga.org.rs/wp-content/uploads/2014/11/DUGA-liflet-FIN.pdf>.

⁴⁵Input from participants of the discussion of the draft report “Being LGBTI in Serbia” held on 28/11/2016.

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸Skućimo zajednicu, note 41. A drop in centre for LGBT people was previously being operated by NGOs Egal, Duga and GSA. However, this service was discontinued due to lack of funding. Interview with Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, 09/11/2016.

⁴⁹Ibid.

⁵⁰Information provided by NGO EGAL.

⁵¹Jelena Vidic, Gayten-LGBT, December 2016.

⁵²Information provided by NGO DUGA.

⁵³See e.g. *Progress Report 2015*, European Commission, Serbia 2015 Progress Report, WD(2015) 211 final, 10 November 2015, p.5; European Parliament Resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2014/2949(RSP)), para 22.

⁵⁴From 6300 police officers (official data) in 2015 to 4500 (unofficial information) in 2016. Interview with Goran Miletic, Civil Rights Defenders, 11/10/2016.

⁵⁵Ibid.

⁵⁶GSA, “Boris Milićević Appointed as Adviser of the Minister in-charge of European integration”, announcement of 12/11/2013, available at: <http://en.gsa.org.rs/2013/11/boris-milicevic-appointed-as-adviser-to-the-minister-in-charge-of-european-integration/>

⁵⁷B92, “Serbia to get first openly gay cabinet minister”, 08/08/2016, available at:

http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=08&dd=08&nav_id=98844

⁵⁸European Commission, *Serbia 2016 Report*, p.63.

⁵⁹ILGA Europe Annual Review 2016, p.146, available at: <http://ilga-europe.org/sites/default/files/2016/serbia.pdf>

⁶⁰“Odnos predstavnika organa javne vlasti prema diskriminaciji u Srbiji”, p.61, http://ravnopravnost.gov.rs/wp-content/download/izvestaj_odnos_predstavnika_javne_vlasti_prema_diskriminaciji_u_srbiji_final.pdf

⁶¹Interview with CPE representative, 4/11/2016.

⁶²Ibid.

⁶³According to the 2011 Census: Serbian Orthodox 84.6 percent, Catholic 5 percent, Muslim 3.1 percent, Protestant 1 percent, atheist 1.1 percent, other 0.8 percent, undeclared or unknown 4.5 percent.

⁶⁴Serbian Orthodox Church, Catholic Church, Muslim Community, Evangelistic Church, Christian Reformist Church, Christian Evangelistic Church and Jewish Community, see “Verske zajednice protiv predloga zakona”, 10/03/2009, available at: <http://gayecho.com/vesti.aspx?id=8302&grid=2054&page=92#.WEq2PlzmPIU>

- ⁶⁵See RTV.rs, "Osude patrijarhove izjave o Paradi ponosa," 23/09/2014, available at: http://www.rtv.rs/sr_lat/drustvo/osude-patrijarhove-izjave-o-paradi-ponosa_520832.html
- ⁶⁶See e.g. B92.net, "Uručen orden "Beli andeo" Pahomiju," 07/10/2011, available at: http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=10&dd=07&nav_category=12&nav_id=547782
- ⁶⁷See e.g. V. Petrović, D. Pokuševski (eds.), *Human Rights in Serbia 2015*, Belgrade Centre for Human Rights, Belgrade, 2016, p.21.
- ⁶⁸P. Azdejkovic, Gay Lesbian Info Center, Press Conference "LGBT population in the media: Media Monitoring and Analysis for the year 2015", available at: <http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/>
- ⁶⁹*Ibid.*
- ⁷⁰Gayten, Stilsko-jezičke preporuke za medije o izveštavanju o trans osobama, 2016, available at: <http://www.transserbia.org/images/2016/dokumenta/Preporuke%20medijima%20za%20izvestavanje%20o%20trans%20osobama.pdf>
- ⁷¹Janković, B. (ed.), *Annual Report of the Commissioner for the Protection of Equality for 2015*, Belgrade, 2016, p.25; *2015 Commissioner for Human Rights of the Council of Europe Report*, CommDH(2015)14, 8/7/2015, para. 75.
- ⁷²Provisions on the scope of exceptions from the principle of equal treatment, the definition of indirect discrimination and the obligation to ensure reasonable accommodation for employees with disabilities need to be aligned with EU standard, see European Commission *Progress Report 2015*, p.56.
- ⁷³European Commission *Progress Report 2015*, p.49; Nils Muižnieks, Commissioner for Human Rights of The Council of Europe following his visit to Serbia from 16 to 20 March 2015, CommDH(2015)14, 8/7/2015, para.125; Janković, B. (ed.), *Annual Report of the Commissioner for the Protection of Equality for 2015*, p.85; V. Petrović, and D. Pokuševski (eds.), *Human Rights in Serbia 2015*, p.323; UN Economic and Social Council (ECOSOC), *Concluding observations on the second periodic report of Serbia*, 10 July 2014, E/C.12/SRB/CO/2, para. 11, available at: <http://www.refworld.org/docid/53fdbbb64.html>; D. Vučković, *Annual report on the position of LGBTTIQ population in Serbia for 2008*, p.8, para. 34. European Parliament Intergroup on LGBT Rights press release, available at: <http://www.equineteeurope.org/Anti-discrimination-in-Serbia>
- ⁷⁴*Official Gazette RS*, 83/06.
- ⁷⁵Chapter II, Arts. 18–81.
- ⁷⁶Arts. 18, 142.
- ⁷⁷The CCS confirmed that prohibition of discrimination includes sexual orientation, see its decision in the case Už - 1918/2009, of 22 December 2011.
- ⁷⁸J. Jelinčić, D. Ilić (eds.), *Zašto je Srbiji potreban novi Ustav?*, Fabrika knjiga and Open Society Foundation in Serbia, Belgrade, 2013, p.103.
- ⁷⁹D. Vučković, *Annual report on the position of LGBTTIQ population in Serbia for 2008*, p.24, para. 148.
- ⁸⁰European Commission *Progress Report 2015*, p.57.
- ⁸¹Art.2.
- ⁸²Art.21.
- ⁸³"Intervju: Kao lezbejki teže mi je da nađem posao", Labris, 10/12/2014, available at: <http://arhiv2017.labris.org.rs/intervju-kao-lezbejki-teze-mi-je-da-nadem-posao/>
- ⁸⁴D. Dobrković (ed.), *Human Rights in Serbia 2006*, Belgrade Centre for Human Rights, Belgrade, 2007, p.109.
- ⁸⁵*Official Gazette RS* 107/2014.
- ⁸⁶See Strategy, p.45, 4.4.4. para. 3 and 4 in connection with 2014 AP 3.2.10, 4.1.3., 4.4.1, 4.4.2, 4.5.1.
- ⁸⁷*Official Gazette RS* 6/2016, Art 5.
- ⁸⁸Action Plan for Chapter 23, adopted 27/03/2016, p.3, available in English at: <http://www.mpravde.gov.rs/files/Action%20Plan%20Ch%2023%20Third%20draft%2020.04.2015..pdf>
- ⁸⁹*Ibid.*, p.10.
- ⁹⁰At the point of publication of this report, Serbia had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). Serbia was not accepting individual complaints as per the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and individual complaints under the CMW. Serbia has not yet accepted the Optional Protocol to the Convention on the Rights of the Child, as well as the inquiry procedures under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child. See the list of ratifications at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN
- ⁹¹V. Petrović (ed.), *Human Rights in Serbia 2013*, Belgrade Centre for Human Rights, Belgrade, 2014, p.27.
- ⁹²See: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMMain.aspx>
- ⁹³European Commission, *Serbia 2013 Progress Report*, SWD(2013) 412 final, 16 October 2013, p.42. available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf
- ⁹⁴UN Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the combined 2nd and 3rd periodic reports of Serbia, 30. Jul 2013, CEDAW/C/SRB/CO/2-3, available at: <http://www.refworld.org/docid/52f3883b4.html>. The new cycle will take place in 2017. The NGO Labris is preparing a shadow report.
- ⁹⁵Member since 03/04/2003.
- ⁹⁶*Official Gazette Serbia and Montenegro – International Treaties*, No. 9/2003.
- ⁹⁷*Official Gazette RS - International Treaties*, 42/09. Serbia accepted 88 out of 98 paragraphs.

- ⁹⁸See list of ratifications at:
<http://conventions.coe.int/Treaty/Commun/Listestats.asp?Po=Sam&Ma=999&Cm=17&Cl=Eng>
- ⁹⁹Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.
- ¹⁰⁰Cases regarding bans of Pride Parades Djordjević and 4 others v. Serbia, Application No. 5591/10, communicated on 25/6/2014.
- ¹⁰¹Available at: <http://www.gov.me/en/IDAHO-Montenegro-2015/about/>
- ¹⁰²GSA announcement "GSA at the Third IDAHO Forum in Montenegro of 03/06/2015, available at:
<http://en.gsa.org.rs/2015/06/gsa-at-the-third-idaho-forum-in-montenegro>.
- ¹⁰³European Commission Progress Report 2015, p.57; Republika Srbija Narodna skupština – X saziv – Izveštaj o radu radnih tela Narodne skupštine i zaposlenih u Sektoru za zakonodavstvo službe Narodne skupštine – May 2016.
- ¹⁰⁴In 'Summary minutes from the Joint session of Committee for human and minority rights and gender equality and Committee for European integrations', conclusion no. 2, 09/09/2016. On file with the author.
- ¹⁰⁵All decisions on sexual orientation available at: <http://ravnopravnost.gov.rs/misljenja-i-preporuke/misljenja-i-preporuke-u-postupku-po-prituzbama/seksualna-orientacija/>
- ¹⁰⁶Interview with CPE representative, 4/11/2016.
- ¹⁰⁷For a critique of the CPE for its sometimes lenient or inconsistent approach in recommendations in cases of discrimination based on sexual orientation, see P.Azdejković, „Poverenica za zaštitu ravnopravnosti – Prijava diskriminacije”, *Optimist*, 01/06/2016, available at: <http://www.optimist.rs/poverenica-za-zastitu-ravnopravnosti-prijava-diskriminacije/>
- ¹⁰⁸Action Plan for Chapter 23 envisages the hiring of 36 new employees. Twelve employees were hired in 2016 and new premises have been provided for the CPE office. See Action Plan for Chapter 23, measure 3.6.1.15; European Commission Serbia 2016 Report, p.62, note 2.
- ¹⁰⁹Interview with CPE representative, 4/11/2016.
- ¹¹⁰*Ibid.*
- ¹¹¹Since 2010 the Protector of Citizens has the status of a National Human Rights Institution (NHRI), see:
<http://nhri.ohchr.org/EN/Documents/Accreditation%20Status%20Chart.pdf>
- ¹¹²In cases of alleged discrimination, the Protector of Citizens is instructing applicants to submit complaints to the CPE.
- ¹¹³Interview with a representative of the Protector of Citizens 22/11/2016.
- ¹¹⁴Interview with a representative of the Protector of Citizens 22/11/2016.
- ¹¹⁵The Gender Equality Council of the Protector of Citizens provides technical and advisory support to the Protector of Citizens. Members of the Council are people with experience and knowledge in improving the status of women and LGBTI people, with special emphasis on the rights and status of Roma women, women with disabilities and women who experience domestic violence and intimate partner violence. Members of the Council highlight problems faced by particularly vulnerable social groups with the aim of improving their status. The Council meets once a month in the offices of the Protector of Citizens. See Protector of Citizens, *Regular Annual Report of The Protector of Citizens for 2015*, p.112, fn.260.
- See more about NPM in Serbia at: <http://www.npm.rs>
- ¹¹⁶See NPM announcement of 06/10/2016 at <http://www.npm.rs>
- ¹¹⁷Interview with a representative of the Protector of Citizens 22/11/2016.
- ¹¹⁸*Ibid.*
- ¹¹⁹Council of Europe, 2015 Commissioner for Human Rights of the Council of Europe Report, para. 99.
- ¹²⁰Interviews with Mr. Vladimir Stojanov, Head of the Unit for Cooperation with the LGBTI Community and Mr. Aleksandar Stojmenović, Liaison Officer for the LGBTI Community, Mol.
- ¹²¹*Ibid.*
- ¹²²Janković, B. (ed.), *Annual Report of the Commissioner for the Protection of Equality for 2015*, p.57-59.
- ¹²³The "Rainbow Award" to praise contribution to the fight against homophobia and transphobia and to improving the position of the LGBT population in Serbia was established by the NGO GSA in 2013.
- ¹²⁴Announcement by GSA, "Rainbow Award – to the Department for community policing of the Ministry of Interior", 17/05/2013, available at: <http://en.gsa.org.rs/2013/05/rainbow-award-to-the-department-for-community-policing-of-the-ministry-of-interior/>
- ¹²⁵*Ibid.*
- ¹²⁶The 'Rainbow' Prize for 2015/16 Awarded" 18/05/2015, available at: <http://socijalnoukljucivanje.gov.rs/en/the-rainbow-prize-for-201516-awarded/>; For a critique of the mechanism, particularly its accessibility to the LGBTI community see P. Azdejkovic, "Aleksandar Stojmenovic- Oficir za vezu sa LGBT zajednicom", *Optimist*, 01/06/2016, <http://www.optimist.rs/aleksandar-stojmenovic-oficir-za-vezu-sa-lgbt-zajednicom/>
- ¹²⁷Financed by Norwegian Aid, see more (in Serbian) at: <http://www.ljudskaprava.gov.rs/sr/node/196>.
- ¹²⁸For more information see: <http://www.ljudskaprava.gov.rs/sr/node/19836>.
- ¹²⁹Odluka o obrazovanju Saveta za praćenje realizacije Akcionog plana za primenu Strategije prevencije i zaštite od diskriminacije za period od 2014. do 2018. godine', 05 broj 02-8572/2015-1, 13/8/2015. So far only one report was adopted by the Council and published, covering the period until the end of the first quarter of 2015 ("Report On monitoring the implementation of the Action Plan for the implementation of the Strategy on Prevention and Protection against Discrimination for the period from 2014 to 2018 – For the fourth quarter of 2014 and the first quarter of 2015", available at: <http://www.ljudskaprava.gov.rs/sr/dokumenta/ljudska-prava/strategija>). The Government Office for Human and Minority Rights has also prepared the Second Report covering the rest of 2015, but has not published it yet. The Office kindly made the Second Report available for the production of this report. The preparation of a report for 2016 is underway.

¹³⁰M.Stojčić, D. Petrović, "Analiza kvantitativnog dela" in *Parada ponosa i LGBT populacija*, Centar za kvir studije, Belgrade, 2015, p.68.

¹³¹National Democratic Institute 2015.

¹³²D. Todorović, J. Todorović, "LGBT zajednica živi u strahu, neizvesnosti i nevidljivosti", 10/12/2014, available at: <http://arhiv2015sr.labris.org.rs/lgbt-zajednica-zivi-u-strahu-neizvesnosti-i-nevidljivosti/>; interview with Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, 09/11/2016; interview Jelena Vasiljević, 10/10/2016; Interview with Mladen Antonijević Priljeva, Centar za istraživanje i razvoj drustva IDEAS, 03/10/2016.

¹³³See more at: <https://dasezna.lgbt/>

¹³⁴The Higher Court in Novi Sad found the defendant guilty of committing criminal acts of bullying and attempted murder. The event took place before the Art. 54a of the Criminal Code on hate crimes was in force. See more in YUCOM 2013 – Annual Report, YUCOM, Belgrade, 2013, pp.19-20, available at: http://www.yucom.org.rs/upload/GI_2013_layout%20ENG%20web.pdf

¹³⁵"Nanošenje telesnih povreda trans ženi", 08/02/2014, available at: https://dasezna.lgbt/case/Labris2016_006/Nano%C5%A1enje%20telesnih%20povreda%20trans%20%C5%BEeni.html

¹³⁶YUCOM 2014 izveštaj o radu, YUCOM, Belgrade, 2014, p.25, available at: http://www.yucom.org.rs/wp-content/uploads/2015/02/GS0_YUCOM_Izvestaj_o_radu_2014.pdf

¹³⁷Interview with Goran Miletic, Civil Rights Defenders, 10/11/2016.

¹³⁸B92 Online, „Novogodišnji intervju: Boban Stojanović“, 29/12/2014, available at: http://www.b92.net/zivot/licni_prostor.php?yyyy=2014&mm=12&dd=29&nav_id=941770.

¹³⁹See e.g. YUCOM 2014, p.25.

¹⁴⁰Input from participants in the discussion of the draft report "Being LGBTI in Serbia" held on 28/11/2016.

¹⁴¹Kurtić, Džuvljarke, Roma Lesbian Existence.

¹⁴²Art. 54a, Official Gazette, No. 121/2012. See more on proposed amendments by the civil sector in YUCOM 2014, pp.26-27.

¹⁴³Petrović, *Human Rights in Serbia 2013*, p.307.

¹⁴⁴Interview with a CSO expert 10/11/2016. 2015 Commissioner for Human Rights of the Council of Europe Report, para. 76.

¹⁴⁵Measure 3.10.1.3.

¹⁴⁶See note 87, p.208.

¹⁴⁷Interview with Goran Miletic, Civil Rights Defenders, 10/11/2016.

¹⁴⁸European Commission, *Progress Report 2015*, p.57. This is also a measure envisaged under 2014 AP (3.2.2.), and the MoI reported that it was partly implemented by creation of guidelines for the development of an information system in the Law Enforcement Sector, see Second Report, note 127.

¹⁴⁹V.Petrović (ed.), *Human Rights in Serbia 2014*, Belgrade Centre for Human Rights, Belgrade, 2015, p.325.

¹⁵⁰Uputstvo Republičkog javnog tuzioca A.br.802/15 od 22.12.2015. Interview with a member of the judiciary, October 2016.

¹⁵¹YUCOM 2014, p.28.

¹⁵²*Ibid.*

¹⁵³Quoted in I.Stjelja et al., *Hate Crimes: Actions of State Authorities in Cases of Attacks against LGBT People in Serbia*, LABRIS, Belgrade, 2014, p.40.

¹⁵⁴Input from participants in the discussion about the draft report "Being LGBTI in Serbia" held on 28/11/2016.

¹⁵⁵*Ibid.*, p.37 and <https://dasezna.lgbt/aboutus.html>

¹⁵⁶Input from participants in the discussion about the draft report "Being LGBTI in Serbia" held on 28/11/2016.

¹⁵⁷See e.g. *ibid.*, p.37; YUCOM 2014, p.26; Da se zna, "Nanošenje telesnih povreda trans ženi", 2014.

¹⁵⁸Input from participants in the discussion about the draft report "Being LGBTI in Serbia" held on 28/11/2016.

¹⁵⁹Interview with Jelena Vasiljević, NGO Labris, 10/10/2016.

¹⁶⁰2015 Report by Council of Europe Commissioner for Human Rights, para. 99.

¹⁶¹See similarly in *Homofobija i internalizovana homofobija u Srbiji*, p.73. Confirmed also in interviews with Jelena Vasiljević, 10/10/2016; Goran Miletic, Civil Rights Defenders, 10/11/2016; Mladen Antonijević Priljeva, Centar za istraživanje i razvoj drustva IDEAS, 03/10/2016.

For specific cases see YUCOM 2013, p.20; YUCOM Report 2015, YUCOM, Belgrade, 2015, p.20-21, available at: <http://en.yucom.org.rs/wp-content/uploads/2016/05/YUCOM-2015-Annual-Report.pdf>

¹⁶²I.Stjelja et al., *Hate Crimes*, p.37-38, note 151. Interviews with Jelena Vasiljević, 10/10/2016; with Goran Miletic, Civil Rights Defenders, 10/11/2016; Mladen Antonijević Priljeva, Centar za istraživanje i razvoj drustva IDEAS, 03/10/2016.

¹⁶³European Commission, *Serbia 2016 Report*, p.19.

¹⁶⁴Case of D.B, YUCOM 2015, p.21.

¹⁶⁵YUCOM - Lawyers' Committee for Human Rights. Website: <http://en.yucom.org.rs/>

¹⁶⁶Case of G.M., *ibid.*, p.20-21. This case is still pending before the CCS.

¹⁶⁷Input from participants in the discussion about the draft report "Being LGBTI in Serbia" held on 28/11/2016.

¹⁶⁸p.208, measure 3.10.1.4.

¹⁶⁹A national campaign was to be an activity of the project "Building Tolerance and Understanding of LGBT Population in Serbian Society" implemented by the Office for Human and Minority rights due to administrative difficulties that caused a significant delay in the Project implementation, this campaign will be replaced with 11 smaller scale campaigns that will be designed and carried out by NGOs in the upcoming months.

- ¹⁷⁰ Interview with Predrag Azdejković, Gay lesbian Info Centre, 03/10/2016.
- ¹⁷¹ See e.g. *Progress Report 2015*, note 52, p.56; *Progress Report 2013*, p.45.
- ¹⁷² P.Azdejkovic, Gay Lesbian Info Center, Tamara Škroza, Journalist, Press Conference "LGBT population in the media: Media Monitoring and Analysis for the year 2015", available at: <http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/>
- ¹⁷³ CPE announcement of 21/09/2015, available at: <http://ravnopravnost.gov.rs/rs/saopstenje-o-obustavljanju-postupka-po-prituzbi-protiv-poslanika-martinovica/>
- ¹⁷⁴ Art. 11.
- ¹⁷⁵ Official Gazette RS Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, Art. 317.
- ¹⁷⁶ Official Gazette RS Nos. 83/2014, 58/2015 and 12/2016, Art. 75.
- ¹⁷⁷ *Human Rights in Serbia 2009*, Belgrade Centre for Human Rights, Belgrade, 2010, p.153-156.
- ¹⁷⁸ Measure 3.2.3.
- ¹⁷⁹ *Human Rights in Serbia 2009*, Belgrade Centre for Human Rights, p.324.
- ¹⁸⁰ D. Vučković, Legal Report: Serbia, p.25, para. 152-155.
- ¹⁸¹ *Human Rights in Serbia 2013*, p.94.
- ¹⁸² *Human Rights in Serbia 2015*, p.58.
- ¹⁸³ *Human Rights in Serbia 2011*, Belgrade Centre for Human Rights, Belgrade, 2012, p.264.
- ¹⁸⁴ CPE, Opinion No. 07-00-206/2016-02 of 20/06/2016.
- ¹⁸⁵ CPE, Opinion No. 07-00-734/2015-02 of 21/03/2015.
- ¹⁸⁶ CPE, Opinion No. 07-00-182/2015-02 of 10/07/2015; CPE, Opinion No. 07-00-285/2014-02 of 21/11/2014; CPE, Opinion No. 162/2010 of 27/12/2010; CPE, Opinion No. 159/2010 of 23/12/2010.
- ¹⁸⁷ CPE, Opinion No. 07-00-182/2016-02 of 27/05/2016, CPE, Opinion No. 07-00-120/2016-02 of 23/05/2016, CPE, Opinion No. 07-00-566/2013-02 of 20/12/2013.
- ¹⁸⁸ CPE, Opinion No. 171/2011 of 28/02/2011.
- ¹⁸⁹ CPE, Opinion No. 8/2011 of 14/01/2011.
- ¹⁹⁰ CPE announcement of 21/09/2015, available at: <http://ravnopravnost.gov.rs/rs/saopstenje-o-obustavljanju-postupka-po-prituzbi-protiv-poslanika-martinovica/>
- ¹⁹¹ CPE, Opinion No. 07-00-695/2013-02 of 03/03/2014.
- ¹⁹² Interview with Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, 09/11/2016.
- ¹⁹³ GSA, "Govor mržnje i sloboda govora", announcement of 16/02/2012, available at: <http://pescanik.net/govor-mrznje-i-sloboda-govora/>
- ¹⁹⁴ 2015 Report by CoE Commissioner for Human Rights, p.20.
- ¹⁹⁵ Input from participants of the discussion of the Draft Report "Being LGBTI in Serbia" held on 28/11/2016.
- ¹⁹⁶ According to Mol, 31 people were arrested on the spot for breaching the peace and obstructing a public gathering; a further 17 were identified and arrested later; requests for misdemeanour proceedings were filed with the municipal magistrate against 38 adults and ten juveniles; criminal complaints were filed against three people on the basis of reasonable suspicion that they had committed the criminal offence of obstructing an official in the performance of security affairs and the preservation or law and order (Art. 23 of the Act on Public Law and Order), See more in V. Dimitrijević (ed.) *Human Rights in Yugoslavia 2001*, Belgrade Centre for Human Rights, Belgrade, 2002, p.183-184.
- ¹⁹⁷ *Human Rights in Serbia 2009*, p.325-326.
- ¹⁹⁸ *Ibid.*, p.326, 327.
- ¹⁹⁹ Už 1918/2009, CCS Judgement of 22/12/2011.
- ²⁰⁰ The Constitutional Court of Serbia declared this law unconstitutional in April 2015, but the publication of the decision in the Official Gazette was suspended until October 2015 in order to allow Mol time to prepare a new legislative act, put up a draft for a public debate and then submit the proposal to the Parliament. This deadline was breached leaving a legal vacuum until January 2016 when the Law on Public Assembly was adopted. See more in see *Human Rights in Serbia 2015*, p.180-192.
- ²⁰¹ See more in *Human Rights in Serbia 2010*, Belgrade Centre for Human Rights, Belgrade, 2011, p.317-325.
- ²⁰² Unofficial information. Interview with Goran Miletic, Civil Rights Defenders, 10/11/2016.
- ²⁰³ They attacked the police, injuring 130 officers, as well as numerous locations throughout the city. These included the headquarters of several political parties, foreign embassies, the National Assembly building, the RTS. They also wrecked buses, parked cars, shops, and even damaged a mobile mammography van along the way. Estimated damage amounted to over one million euros. See more in *Human Rights in Serbia 2010*, p.317-325.
- ²⁰⁴ All bans list all grounds from Art. 11(1) of the Serbian Assembly Act: disruption of public traffic and damage to the health, public morals or safety of people and property. Without explanation, it is unclear whether they relied on one, more of them or all to reach the decision. *Human Rights in Serbia 2012*, Belgrade Centre for Human Rights, Belgrade, 2013, p.99.
- ²⁰⁵ For cases regarding Pride 2009 see end note 196, Pride 2011 Už 5284/2011 CCS Judgement of 18/04/2013, Pride 2013 Už-8591/2013 CCS Judgement of 21/04/2016. Case regarding Pride 2012 was rejected Už-8463/2012, CCS Decision of 09/07/2013.
- ²⁰⁶ *Milica Đorđević and others against Serbia and three other applications*, Application no. 5591/10 before ECtHR, communicated on 25/06/2016.

- ²⁰⁷ Homofobija i internalizovana homofobija, p.50.
- ²⁰⁸ This is lower than in other countries in the region, except in the fYR of Macedonia, see National Democratic Institute (2015).
- ²⁰⁹ Ibid.
- ²¹⁰ This is in line with recommendations made in Annual Reports by the Protector of Citizens that public bodies should continuously implement measures and activities to raise awareness of the importance of respect of human rights of LGBTI people.
- ²¹¹ M. Stojčić and D. Petrović (2015), *Parada Ponosa i LGBT zajednica*, p.61.
- ²¹² Ibid, p.68, 71.
- ²¹³ National Democratic Institute (2015), p.47-48.
- ²¹⁴ Ibid.
- ²¹⁵ NDI, Mashuma Petrović, Senior Program Officer, December 2016.
- ²¹⁶ Homofobija i internalizovana homofobija, p.68.
- ²¹⁷ Official Gazette, Nos. 18/2005, 72/2011, 6/2015. Unofficial English version available at: <http://minoritycentre.org/library/family-act-serbia>, last accessed 14/09/16. There are no registered extramarital unions of heterosexual couples either.
- ²¹⁸ Arts. 3, 15, 31.
- ²¹⁹ Art. 4. para. 1. of the Family Law.
- ²²⁰ Case IU-347/2005, of 22/07/2010.
- ²²¹ Ibid, p.5.
- ²²² Ibid, p.7, 8.
- ²²³ The Court relied on the then recent case of *Schalk & Kopf v Austria* (Application No. 30141/04, Judgement of 24/06/2010, para. 92, 93, 94 and 105). In this case, the ECtHR extended the protection of "family life" for the purposes of Article 8 to a relationship of a cohabiting same-sex couple living in a stable *de facto* partnership, similar to a case of a heterosexual couple in the same situation. The Court emphasized that there was not yet a majority of States providing this option to same-sex couples, hence the timing of the introduction of such legislative changes was still within a margin of appreciation of States, and no violation of the Convention was found.
- ²²⁴ See e.g. *Hämäläinen v. Finland*, Application no.37359/09, Grand Chamber Judgement of 16/07/2014.
- ²²⁵ *Oliari and Others v. Italy*, Applications nos. 18766/11 and 36030/11, Judgement of 21/20/2015.
- ²²⁶ Para. 178-184.
- ²²⁷ See the Grand Chamber judgement in *Vallianatos and Others v. Greece*, Applications nos. 29381/09 and 32684/09, of 07/11/2013.
- ²²⁸ End note 211, p.8.
- ²²⁹ Art. 98.3.5.
- ²³⁰ Prednacrt zakona o sprečavanju nasilja u porodici, available at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2675-16%20lat.pdf
- ²³¹ Art. 98.1.1. of the then applicable Criminal Proceedings Act. The provision of the currently applicable Criminal Proceedings Act Art. 94.1.1. is identical.
- ²³² Interview with Goran Miletic, Civil Rights Defenders, 10/11/2016.
- ²³³ Art. 90, *Official Gazette*, No. 55/2014.
- ²³⁴ Data is not available for other institutions.
- ²³⁵ Information provided by a legal officer from Belgrade Centre for Human Rights in charge of prison monitoring programs on 29/09/2016.
- ²³⁶ The Commissioner recommended adoption of provisions regulating same-sex unions in accordance with CoE standards, see N. Petrušić (ed.), *Annual Report of the Commissioner for the Protection of Equality for 2014*, p.17, para. 19. *Annual Report of the Commissioner for the Protection of Equality for 2015*, note 70, p.88.
- ²³⁷ See: http://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=202:2016-05-19-12-36-47&catid=2:2012-10-05-09-11-58&Itemid=7.
- ²³⁸ See e.g. *Human Rights in Serbia 2013*, p.104,
- ²³⁹ See e.g. CEDAW, Concluding Observations 2013, para. 39 (d).
- ²⁴⁰ Anti-Discrimination Strategy p.46.
- ²⁴¹ The 2014 Action Plan, Measures 4.3.2 and 4.3.3. 6.7.
- ²⁴² Ibid.
- ²⁴³ Art. 2215, available in Serbian at: <http://www.mpravde.gov.rs/files/NACRT.pdf>, last accessed 16/09/16.
- ²⁴⁴ Article 4 of the Preliminary Draft of the Civil Code (an earlier draft version) envisaged that same-sex partnerships would be governed by a separate law, see *Human Rights in Serbia 2015*, p.330.
- ²⁴⁵ Art. 2014.
- ²⁴⁶ S. Gajin (ed.), *Model zakona o registrovanim istopolnim zajednicama*, CUPS, Belgrade, 2012, available at: <http://www.chrin.org.rs/wp-content/uploads/2012/05/Model-zakona-o-registrovanim-istopolnim-zajednicama.pdf>.
- ²⁴⁷ CPE, Opinion No. 07-00-184/2013-02, of 23/08/2013.
- ²⁴⁸ *Human Rights in Serbia 2013*, p.308, n. 150.
- ²⁴⁹ Istraživanje rodno zasnovanog nasilja u školama u Srbiji, sažetak, p.3, available at: <http://sbn.rs/clientpub/uploads/Summary%20SGBV%20reserach.%20SRB.doc>.

- ²⁵⁰*Homofobija i internalizovana homofobija*, p.70.
- ²⁵¹Interview with a representative of the Protector of Citizens 22/11/2016.
- ²⁵²Interview with a representative of the Protector of Citizens 22/11/2016.
- ²⁵³I. Stevanović (ed.), *Izveštaj o ostvarivanju prava deteta iz ugla dece i mladih*, Child Rights Centre, Belgrade, 2013, p.26-27.
- ²⁵⁴Schoolchildren also expressed negative perceptions about atheists (23 percent), other nationalities (21.8 percent), HIV-positive people (19 percent), excellent students (18.8 percent), etc. *ibid.*, p.26.
- ²⁵⁵*Izveštaj o ostvarivanju prava deteta iz ugla dece i mladih*, pp. 26, 27, end note 253.
- ²⁵⁶*Official Gazette RS*, 55/2013, Art. 19.
- ²⁵⁷*Official Gazette RS* 76/2005, 100/2007, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015, 68/2015, 87/2016. Arts. 4 and 8.
- ²⁵⁸*Official Gazette RS*, No. 68/2015, Arts. 4 and 17.
- ²⁵⁹*Official Gazette RS*, No. 55/2013, Art. 9.
- ²⁶⁰Art. 8.1.:All people with secondary education, notwithstanding their race, colour of skin, gender, sexual orientation, ethnic, national or social origin, language, religion, political or other convictions, status acquired by birth, existence of a sensory or motoric disability or financial status have the right to higher education.
- ²⁶¹Art. 3.1.1. Art. 44.1.
- ²⁶²Measure 4.1.3.
- ²⁶³Mišljenje Zaštitnika građana o Nacrtu zakona o izmenama i dopunama Zakona o osnovama sistema obrazovanja i vaspitanja, of 14/05/2013, p.2, available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/2827-2013-05-14-08-16-25>
- ²⁶⁴*Official Gazette RS*, No. 22/2016.
- ²⁶⁵Specific Objective 4.4.5.4.
- ²⁶⁶CPE, Opinion No 168 of 18/01/2012.
- ²⁶⁷See Labris, Analiza diskriminacionog sadržaja srednjoškolskih udžbenika, 2014, p.7, available at: <http://www.mc.rs/upload/documents/istrazivanje/2014/2014-Analiza-diskriminacionog-sadrzaja-srednjoskolskih-udzbenika-Labris.pdf>; Centar za istraživanje javnih politika, *Mapiranje (ne)diskriminacije u sistemu vojnog školstva Republike Srbije*, 2013, available at: <http://www.publicpolicy.rs/publikacije/a23e2329b04cd4c9ff9583fb3a9de745b4a12dc9.pdf>; D.Maljković (ed.), Ka nehomofobičnoj školi - analiza dela srednjoškolskih udžbenika u vezi sa tretmanom homoseksualnosti, Gayten-LGBT Centar za promociju prava seksualnih manjina, Beograd, 2008, available at: <https://www.scribd.com/document/99191744/Ka-Nehomofobicnoj-Srednjoj-Skoli>; I. Čvorović, Istopolna orijentacija u fakultetskim udžbenicima i literature, Labris, Beograd, 2006.
- ²⁶⁸Recommendation repeated in Annual Reports for 2013, 2014, 2015.
- ²⁶⁹See e.g. CPE, Recommendation No. 649/2011, 10/06/2011, recommendation no. 8.
- ²⁷⁰Labris 2014.
- ²⁷¹Centar za istraživanje javnih politika 2013.
- ²⁷²Labris 2014. p.45.
- ²⁷³*Ibid.*, p.52.
- ²⁷⁴Radio Free Europe, „LGBT u školskom gradivu: Udžbenici i diskriminacija“, 07/04/2015, available at: <http://www.slobodnaevropa.org/a/lgbt-u-skolskom-gradivu-udzbenici-i-diskriminacija/26942458.html>
- ²⁷⁵Čvorović 2006, p.11 and 65.
- ²⁷⁶Centar za istraživanje javnih politika, 2013.
- ²⁷⁷*Ibid.*, p.31.
- ²⁷⁸ILGA Annual Review, p.147.
- ²⁷⁹*Official Gazette RS*, 68/2015
- ²⁸⁰The recommendation was made in the Opinion by the Protector of Citizens of the draft Law on Textbooks.
- ²⁸¹Protector of Citizens, *Annual Report 2012*, Belgrade, 2013, p.33, available at: <http://www.ombudsman.rs/attachments/Annual%20Report%202012.pdf>. This recommendation was reported in later annual report as well, see e.g. *Annual Report 2015*, p.97.
- ²⁸²M.Rudić, „Reproducitivno vaspitanje u školama: Ono što se mora znati“ Vreme Weekly, available at: <http://www.vreme.com/cms/view.php?id=1120466&print=yes>
- ²⁸³Even mass fights have also been reported in or near school grounds, resulting in hundreds of students being injured, see the National Youth Strategy for the Period 2015-2015, *Official Gazette RS*, No. 22/2015, p.30.
- ²⁸⁴A particularly brutal example that was widely reported in the media, is the case of a boy who committed suicide after repeated violence from a gang of students at his primary school. Although the link between bullying and the suicide has never been established by a court, a citizens' legal initiative, named after him, Aleksa's Law was reviewed by the Parliamentary Committee on the Rights of the Child in 2016 (see http://www.parlament.gov.rs/Deveta_sednica_Odbora_za_prava_deteta.28745.941.html).
- ²⁸⁵Research conducted by Labris based on compared data collected for other kinds of surveys, p.7 and 8, http://www.mc.rs/upload/documents/izvestaji/2012/Labris/Diskriminacija_i_nasilje_na_osnovu_seksualne_orijentacije_u_okviru_vrsnjackih_grupa.pdf.

- ²⁸⁶D. Popadić, D. Plut, Z. Pavlović, *Nasilje u školama Srbije, Analiza stanja od 2006. do 2013. godine*, Institut za psihologiju, UNICEF, Beograd, 2014, p.72.
- ²⁸⁷See e.g. Izveštaj o ostvarivanju prava deteta iz ugla dece i mladih, note 250; „Biti gej ipak nije sasvim ok”, Public Policy Research Centre, available at: <http://www.publicpolicy.rs/Vojna%20slu%C5%BEba%20i%20seksualna%20orientacija?lang=rs#.WBXCECTP3IU>
- ²⁸⁸Prema rezultatima projekta „Srbija, zona nenasilja“, see T. Dobrić-Brankov, *Diskriminacija i nasilje na osnovu seksualne orientacije u okviru vršnjačkih grupa (analiza i interpretacija rezultata istraživanja drugih autora o problemima nasilja i diskriminacije nad LGBT osobama u periodu aktivnog školovanja)*, LABRIS, 2012, p. 59, available at: http://www.mc.rs/upload/documents/izvestaji/2012/Labris/Diskriminacija_i_nasilje_na_osnovu_seksualne_orientacije_u_okviru_vršnjačkih_grupa.pdf.
- ²⁸⁹Results quoted in *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2nd edition, Council of Europe, 2011, p.114, available at: https://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011_en.pdf
- ²⁹⁰Quoted in *Prekoputa homofobije*, p.18.
- ²⁹¹Art. 45.
- ²⁹²Arts. 26.2.3, 27.7.7, 42.
- ²⁹³Official Gazette RS, No. 55/2013, Arts. 9.3.7; 11.1.13. and 17.
- ²⁹⁴Official Gazette RS, br. 30/2010.
- ²⁹⁵See more at: <http://www.mpn.gov.rs/grupa-za-prevenciju-nasilja>
- ²⁹⁶See more at: <http://www.sbn.rs>
- ²⁹⁷Interview with Jelena Vasiljević, NGO Labris, 10/10/2016.
- ²⁹⁸Measure 3.1.10.
- ²⁹⁹National Plan of Action for Children, adopted in 2014, available at: <http://www.minrzs.gov.rs/files/doc/porodica/strategije/Nacionalni%20plan%20akcije%20za%20decu.pdf>
- ³⁰⁰National Strategy for prevention and protection of children from violence, adopted in 2008, available at: http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678
- ³⁰¹M. Golić Ružić (ed.), *Drugi i treći alternativni periodični izveštaj o primeni Konvencije o pravima deteta u Republici Srbiji (2008-2014)*, Child Rights Centre, Belgrade, 2015, p.10.
- ³⁰²Measure 4.9.2.1.
- ³⁰³Measure 4.9.4.3.
- ³⁰⁴Measures 4.9.6.3. and 4.9.6.4.
- ³⁰⁵National Youth Strategy for the Period 2015-2015, Official Gazette RS, No. 22/2015, p.30.
- ³⁰⁶Measures under 4.9.12.
- ³⁰⁷Committee on the Rights of the Child, List of issues in relation to the second and third periodic reports of the Republic of Serbia, CRC/C/SRB/Q/2-3, of 10/06/2016, para. 5, available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SRB/INT_CRC_LIT_SRБ_24382_E.pdf
- ³⁰⁸*Homofobija i internalizovana homofobija*, p.99.
- ³⁰⁹A complaint regarding the same event was also examined by the Protector of Citizens, see more at: http://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=58:2013-08-13-12-00-13&catid=21&Itemid=26.
- ³¹⁰CPE, Opinion No. 499/2012, of 08/02/2012.
- ³¹¹See e.g. T.Greif, *Mere protiv diskriminacije u zapošljavanju i uloga nevladinih organizacija*, ŠKUC, LABRIS, Belgrade, 2014, p.7-8; *Serbia 2016 Report*, note 3, p.63.
- ³¹²*Human Rights and Business Country Guide Serbia*, Danish Institute for Human Rights, Belgrade Centre for Human Rights, 2016, p.21, available at: <http://hrbcountryguide.org/wp-content/uploads/2016/09/Country-Guide-Serbia-FINAL-English-August-2016.pdf>
- ³¹³*Homofobija i internalizovana homofobija*.
- ³¹⁴M. Stojčić and D. Petrović (2015) p.68. The majority of representatives of LGBTI organizations interviewed for this report stressed labour discrimination as priority for the community in Serbia. Similarly, results of a study conducted in 2015, which included a wider range of respondents including people who were not members of the LGB community, leads us to conclude that discrimination based on presumed sexual orientation is a common phenomenon in employment practices and in promotion.
- ³¹⁵Input from participants during the discussion of the draft report “Being LGBTI in Serbia” held on 28/11/2016.
- ³¹⁶Gay Straight Alliance, *Prejudices Exposed - Homophobia in Serbia* Public opinion research report on LGBT population, conducted by CesID, February-March 2008.
- ³¹⁷Danish Institute for Human Rights, 2016, p.24.
- ³¹⁸*Human Rights in Serbia* 2009, p.285.
- ³¹⁹Art. 16.1.
- ³²⁰Official Gazette RS. 24/2005, 61/2005, 54/2009, 32/2013 i 75/2014.
- ³²¹Art. 18.
- ³²²*Homofobija i internalizovana homofobija*.
- ³²³Danish Institute for Human Rights, 2016, p.32.
- ³²⁴For more on relevant standards and guidance for companies see *ibid.* p.33-36.
- ³²⁵Announcement by GSA: “First final verdict for severe discrimination at the workplace based on sexual orientation”, 09/01/2013, available at: <http://en.gsa.org.rs/2013/01/first-final-verdict-for-severe-discrimination-at-the-workplace-based-on-sexual-orientation/>

³²⁶*Ibid.*

³²⁷Some argued that the very fact that such a clear case of discrimination as this one – where the victim was even threatened with a gun by a co-worker – had to be retrieved by an appeal court is indicative of the difficulties of proving discrimination before the courts in Serbia.

³²⁸As quoted in the announcement by GSA of 09/01/2013.

³²⁹See e.g. "Preporuke zajedničke radne grupe Poverenika za zaštitu ravnopravnosti i Zaštitnika građana za izmene i dopune propisa od značaja za pravni položaj transpolnih osoba," p.2, available at: <http://ravnopravnost.gov.rs/rs/analiza-propisa-od-znacaja-za-pravni-polozaj-transpolnih-osoba/>

³³⁰J. Zulević, "Istraživanje problema transseksualnih osoba u sferama školstva, rada i zapošljavanja, zdravstvene zaštite i državne administracije" in S. Gajin (ed.), *Model Zakona o priznavanju pravnih posledica promene pola i utvrđivanja transeksualizma*, CUPS, Belgrade, 2012.

³³¹Public Health Institute "Dr Milan Jovanovic Batut", Department for prevention of HIV infection, sexually transmitted diseases, hepatitis and tuberculosis, Sladjana Baros, Adviser for monitoring and assessment of the national HIV response.

³³²J. Vidić, *Prekinimo čutanje!* Izveštaj monitoringa diskriminacije i zločina iz mržnje nad trans osobama, Gayten-LGBT, Centar za promociju LGBTIQ prava, Belgrade, 2015, p.20.

³³³24 sata online, "Diplomirala s prosekom 9,5, a niko neće da je zaposli - kad joj vidi ličnu kartu", 11/11/2015, available at: <http://www.24sata.rs/diplomirala-s-prosekom-9-5-a-niko-nece-da-je-zaposli-kad-joj-vidi-licnu-kartu/21194>

³³⁴Quoted in „Biti gej ipak nije sasvim ok“.

³³⁵Interview with a CSO representative, October 2016.

³³⁶Application no. 07-00-1/2015-02, decision of 03/04/2015.

³³⁷It is forbidden to expose an individual or a group of people, on the basis of his/her or their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment.

³³⁸*Annual Report of the Commissioner for the Protection of Equality for 2015*, p.153.

³³⁹Anti-discrimination Strategy, p.44; "LGBT zajednica živi u strahu, neizvesnosti i nevidljivosti".

³⁴⁰Numerous other laws and regulations deal with health matters in more details.

³⁴¹AP 2014 Measure 4.4.1.

³⁴²*Human Rights in Serbia 2015*, p.49, *Human Rights in Serbia 2014*, p.276-277.

³⁴³See e.g. *Human Rights in Serbia 2014*, *ibid.*.

³⁴⁴*Official Gazette*, No. 45/2013.

³⁴⁵The Patient Rights Protectors that used to exist in every health institution have been replaced.

³⁴⁶*Human Rights in Serbia 2014*, p.277-279.

³⁴⁷CIPIDP, "Better Protection of Data in The Field of Healthcare Necessary", 07/03/2013, available at: <http://www.poverenik.rs/en/press-releases-and-publications/1549-neophodna-bolja-zastita-licnih-podataka-u-oblasti-zdravstva.html>

³⁴⁸CIPIDP, "Ministry of Health Warned about Irregularities in Personal Data Processing in IHIS", 11/10/2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2460-upozorenje-ministarstvu-zdravlja-na-nepravilnosti-u-obradi-podataka-o-licnosti-u-okviru-qizisq.html>

³⁴⁹*Official Gazette*, Nos. 97/2008, 104/2009, 68/2012, 107/2012.

³⁵⁰CIPIDP, "State's Negligence in the Matter of Particularly Sensitive Personal Data", 27/08/2015, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2164-nebriga-drzave-za-narocito-osetljive-podatke-o-licnosti.html>

³⁵¹CPE, Opinion No. 07-00-279/2015-02, of 14/8/2015.

³⁵²CIPIDP 2015, "State's Negligence in the Matter of Particularly Sensitive Personal Data".

³⁵³Prekoputa homofobije.

³⁵⁴"LGBT zajednica živi u strahu, neizvesnosti i nevidljivosti".

³⁵⁵Prekoputa homofobije, Skućimo zajednicu, p.23.

³⁵⁶*Human Rights in Serbia 2014*, p.52.

³⁵⁷*Homofobija i internalizovana homofobija*, p.67.

³⁵⁸*Ibid.* p.68.

³⁵⁹Input from participants in the discussion of the draft report "Being LGBTI in Serbia" held on 28/11/2016.

³⁶⁰*Trans osobe u Srbiji*, p.10.

³⁶¹Republička stručna komisija za lečenje transrodnih poremećaja.

³⁶²*Trans osobe u Srbiji*, p.10.

³⁶³*Ibid.*

³⁶⁴Jelena Vidic, Gayten-LGBT, December 2016.

³⁶⁵Preporuke zajedničke radne grupe Poverenika za zaštitu ravnopravnosti i Zaštitnika građana za izmene i dopune propisa od značaja za pravni položaj transpolnih osoba.

³⁶⁶*Ibid.* p.6.

³⁶⁷"Nenad je HIV+ i prinuđen je da laže o tome", 01/12/2016, available at: <http://www.gay-serbia.com/nenad-je-hiv-i-prinudjen-je-da-laze-o-tome-8442/>

³⁶⁸Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", Narrative Progress Report on HIV/AIDS Response of Republic of Serbia in 2015, p.10-11, available at: <http://www.batut.org.rs/index.php?content=1396>

³⁶⁹*Ibid.*

³⁷⁰*Ibid.* p.11.

³⁷¹Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", Narrative Progress Report on HIV/AIDS Response of Republic of Serbia in 2014, p.20, available at:
http://www.unaids.org/sites/default/files/country/documents/SRB_narrative_report_2015.pdf

³⁷²Public Health Institute "Dr Milan Jovanovic Batut", Department for prevention of HIV infection, sexually transmitted diseases, hepatitis and tuberculosis, Sladjana Baros, Advisor for monitoring and assessment of the national HIV response.

³⁷³*Official Gazette RS*, 76/2013.

³⁷⁴Public Health Institute "Dr Milan Jovanovic Batut", Department for prevention of HIV infection, sexually transmitted diseases, hepatitis and tuberculosis, Sladjana Baros, Advisor for monitoring and assessment of the national HIV response.

³⁷⁵Interview with a CSO expert on HIV issues, 10/10/2016.

³⁷⁶*Progress Report 2015*, p.68.

³⁷⁷E.g. domestic financing of NGO services for key populations and organizations of PLHIV replaced only six percent of the budget available from the Global Fund after the Global Fund grants ended, see P.Đurić, D. Simić, C. Hamelmann, *Towards Domestic Financing of National HIV Responses, Lessons Learnt from Serbia*, UNDP, 2016, p.10.

³⁷⁸*Ibid.* p.33-34.

³⁷⁹Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", Narrative Progress Report on HIV/AIDS Response of Republic of Serbia in 2014.

³⁸⁰Institute of Public Health of Serbia "Dr Milan Jovanovic Batut", Narrative Progress Report on HIV/AIDS Response of Republic of Serbia in 2015, p.10.

³⁸¹Concluding observations (2014) E/C.12/SRB/CO/2, para. 33.

³⁸²The Global Fund, Eligibility List 2017, available at:

<http://www.theglobalfund.org/en/fundingmodel/process/eligibility/>

³⁸³Interview with a CSO expert on HIV issues, 22/11/2016.

³⁸⁴Interview with a CSO expert on HIV issues, 10/10/2016.

³⁸⁵*Ibid.*

³⁸⁶*Ibid.*

³⁸⁷*Ibid.*

³⁸⁸*Ibid.* Additional clarification: "Truvada" is on RHIF list of medication and it is registered for treatment of HIV infected, it is covered by RHIF, but this medication is not registered for prevention of HIV infection. Source: Public Health Institute "Dr Milan Jovanovic Batut", Department for Prevention of HIV Infection, Sexually Transmitted Diseases, Hepatitis and Tuberculosis, Sladjana Baros, Adviser for Monitoring and Assessment of the National HIV Response, December 2016.

³⁸⁹G. Opačić, Istraživanje znanja, stavova i ponašanja zdravstvenih radnika u oblasti HIV-a, Institut za javno zdravlje Srbije, "Dr Milan Jovanović Batut", Belgrade, 2015, p.8, available at:

<http://www.batut.org.rs/download/publikacije/HIV%20zdrastveni%20radnici%202015.pdf>

³⁹⁰Input from participants in the discussion about the draft report "Being LGBTI in Serbia" held on 28/11/2016.

³⁹¹*Ibid.*

³⁹²*Ibid.*

³⁹³CPE, Opinion No.07-00-156/2014-02, of 01/08/2014.

³⁹⁴CPE, Opinions Nos 07-00-472/2013-02, 07-00-542/2013-02, 07-00-476/2013-02 of 20/12/2013.

³⁹⁵*Prekoputa homofobije.*

³⁹⁶CPE, "Upozorenje povodom izražavanja homofobije u novinskim tekstovima" announcement of 18/04/2016, available at: <http://ravnopravnost.gov.rs/upozorenje-povodom-izrazavanja-homofobije-u-novinskim-tektovima>

³⁹⁷CPE, Opinion No.07-00-151/2014-02, of 01/08/2014.

³⁹⁸CPE, Recommendation No. 07-01-7/2015-02, of 26/01/2015.

³⁹⁹All information in this subchapter was provided in an interview with Kristian Randelović, Gayten-LGBT, 10/11/2016, unless otherwise indicated.

⁴⁰⁰J. Simić, "Dečak ili Devojčica ili Osoba?" in S. Gajin (ed.), Opšti okvir za sprovodenje prava deteta, CUPS, Belgrade, 2016, p.146. Expert estimate that between 0.05 and 1.7 percent of the global population is born with intersex traits, see Intersex Fact Sheet, Free&Equal, United Nations for LGBTI Equality, available at: https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf

⁴⁰¹There are over 40 intersex variations, but there isn't yet a commonly accepted medical classification. For the currently used classification see J.Simić in S. Gajin 2017, p.144.

⁴⁰²Human Rights and Intersex People. Issue Paper published by Council of Europe Commissioner for Human Rights the, CommDH/Issue Paper (2015)1 12 May 2015, p.9, available at:
<https://wcd.coe.int/com.intranet.IntraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2933521&SectionMode=1&DocId=2367288&Usage=2>

⁴⁰³*Ibid.*

⁴⁰⁴"End violence and harmful medical practices on intersex children and adults, UN and regional experts urge," UN Announcement of 24/10/2016, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

⁴⁰⁵Council of Europe the Commissioner for Human Rights, CommDH/Issue Paper (2015)1 12 May 2015.

⁴⁰⁶<http://ravnopravnost.gov.rs/rs/analiza-propisa-od-znacaja-za-pravni-polozaj-transpolnih-osoba/>

- ⁴⁰⁷Preporuke zajedničke radne grupe Poverenika za zaštitu ravnopravnosti i Zaštitnika građana za izmene i dopune propisa od značaja za pravni položaj transpolnih osoba.
- ⁴⁰⁸*Trans osobe u Srbiji*, p.8.
- ⁴⁰⁹*Progress Report 2015*, p.57.
- ⁴¹⁰M. Đurić, "Analiza položaja transpolnih osoba u Srbiji u vezi sa ostvarivanjem ličnih i drugih prava", 2013, p.12, available at: <http://ravnopravnost.gov.rs/rs/analiza-propisa-od-znacaja-za-pravni-polozaj-transpolnih-osoba>
- ⁴¹¹Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.
- ⁴¹²This is a request in 24 CoE states, including Serbia, Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, December 2016.
- ⁴¹³*Ibid.*
- ⁴¹⁴Jelena Vidic, Gayten-LGBT, December 2016.
- ⁴¹⁵CCS judgement in UŽ-3238/2011 of 08/03/2012.
- ⁴¹⁶The Constitution does not guarantee right to privacy as such, and the CCS applied the ECHR directly.
- ⁴¹⁷This was beyond the applicant's requests. The applicant argued that it was the omission of the legislator i.e. the Parliament to regulate the matter that caused the violation, the CCS considered this request to be inadmissible as only alleged violations by individual acts/omissions can be examined by the Court.
- ⁴¹⁸There were no legal initiatives by the Parliament. The matter has been discussed recently in a joint session of the Parliamentary Committee for Human and Minority Rights and Gender Equality and the Committee for European Integrations, where they invited relevant institutions to work on the adoption of a law which will regulate all legal consequences of gender change. In 'Summary minutes from the Joint session', conclusion no. 4.
- ⁴¹⁹Measure 3.1.14.
- ⁴²⁰Measure 3.1.6.
- ⁴²¹S. Gajin (ed.), Model zakona o priznavanju pravnih posledica promene pola i utvrđivanja transeksualizma, CUPS, Belgrade, 2012, available at: <https://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>.
- ⁴²²*Trans osobe u Srbiji*.
- ⁴²³CoE, Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, Recommendation No. 21.
- ⁴²⁴CPE, Recommendation No. 335, of 16/03/2012.
- ⁴²⁵Translation of BCHR, *Human Rights in Serbia 2012*, p.103.
- ⁴²⁶Preporuke zajedničke radne grupe Poverenika za zaštitu ravnopravnosti i Zaštitnika građana za izmene i dopune propisa od značaja za pravni položaj transpolnih osoba, Recommendation no. 4.
- ⁴²⁷Measure 4.1.4. in connection with 3.1.9.
- ⁴²⁸Interview with Jovanka Todorović, Gayten-LGBT, Gayten-LGBT, 09/11/2016.
- ⁴²⁹See UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>
- ⁴³⁰See e.g. European Parliament, The Western Balkans Frontline of the Migrant Crisis, Briefing, January 2016, available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI\(2016\)573949_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573949/EPRS_BRI(2016)573949_EN.pdf).
- ⁴³¹See e.g. B92 Online, Asylum seekers from Serbia "have zero chance in EU", 13/09/2016, available at: http://www.b92.net/eng/news/politics.php?yyyy=2016&mm=09&dd=13&nav_id=99193.
- ⁴³²*Official Gazette RS* 109/2007.
- ⁴³³Art. 2. In addition, the Law on Asylum contains an antidiscrimination clause which forbids discrimination in the asylum procedure on any grounds (Art.7).
- ⁴³⁴Art 2, also in Art. 7 on prohibition of discrimination these grounds have been added. Draft version of the Asylum Law by the Ministry of Interior of 20/05/2016, available at: http://www.mup.gov.rs/wps/wcm/connect/c107098a-07d8-4893-8af2-29f2c63cd983/2016-05-20_Nacrt+zakona+o+azilu+i+privremenoj+zastiti.doc?MOD=AJPERES&CVID=ljepiXf&CVID=ljepiXf&CVID=ljepiXf&CVID=ljepiXf&CVID=ldVbd2c&CVID=ldVbd2c&CVID=ldVbd2c&CVID=ldVbd2c, last accessed 30/09/2016.
- ⁴³⁵See L. Petrović, S. Tošković, *Asylum Act Gender Analysis, Enforcement of the Gender Equality Principle in the Asylum System in the Republic of Serbia*, Belgrade Centre for Human Rights, Belgrade, 2016, p.138.
- ⁴³⁶*Ibid.*, 151.
- ⁴³⁷Information provided on 29/09/2009, by a Legal Officer of the Belgrade Centre for Human Rights providing legal assistance to the asylum procedure in Serbia.
- ⁴³⁸Also worth noting that according to a 2006 survey by Labris, 59 percent of survey participants felt the need to emigrate from Serbia because of the disrespect they experienced towards their sexual orientation, see *Human Rights in Serbia 2006*, p.206.
- ⁴³⁹Interview with Jelena Vasiljevic, NGO Labris, 10/10/2016.
- ⁴⁴⁰For example, 1.8 percent of applications for asylum were well-founded in 2014 in the EU. This was less than from other countries in the region except FYROM, source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf.

- ⁴⁴¹ See list of ratifications at:
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN
- ⁴⁴² See *Human Rights in Serbia*, 2013, p.88.
- ⁴⁴³ CCS Decision Už-8463/2012, of 09/07/2013.
- ⁴⁴⁴ See e.g. *Human Rights in Serbia* 2015, pp.123-124.
- ⁴⁴⁵ *Ibid.* pp.124-127.
- ⁴⁴⁶ *Official Gazette*, No. 40/2015.
- ⁴⁴⁷ See *Human Rights in Serbia* 2015, pp.132-133.
- ⁴⁴⁸ *Homofobija i internalizovana homofobija*, p.72.
- ⁴⁴⁹ Current version of the Draft Law on Free Legal Aid is available at:
<http://www.mpravde.gov.rs/files/Pravna%20pomoc.docx>
- ⁴⁵⁰ K. Todorović, et al, Analitički izveštaj o nedostacima i pravnim prazninama u implementaciji postojećih politika anti-diskriminacije, prevencije nasilja, zločina i govora iz mržnje prema LGBT osobama, YUCOM, 2016, p.11. On file with the author.
- ⁴⁵¹ *Ibid.*
- ⁴⁵² The CoE Human Rights Commissioner underlined the importance of effective access to justice for vulnerable social groups, particularly those in a difficult economic situation.
- ⁴⁵³ There were several NGO projects for monitoring discrimination trials, but due to the length of the proceedings more sustainable funding for these monitoring activities is needed.
- ⁴⁵⁴ "Monitoring suđenja za diskriminaciju u Srbiji," in *Tri pogleda na borbu protiv diskriminacije*, YUCOM, Belgrade, 2015, p.9, available at: http://www.yucom.org.rs/wp-content/uploads/2015/04/Policy-paper-SRB_CG_ALB-WEB.pdf
- ⁴⁵⁵ *Ibid.* p.11.
- ⁴⁵⁶ *Human Rights in Serbia* 2015, p.323.
- ⁴⁵⁷ "LGBT zajednica živi u strahu, neizvesnosti i nevidljivosti".
- ⁴⁵⁸ *Annual Report of the Commissioner for the Protection of Equality for 2015*, p.151.
- ⁴⁵⁹ Interview with CPE representative, 4/11/2016.
- ⁴⁶⁰ *Ibid.*
- ⁴⁶¹ *Ibid.*
- ⁴⁶² Art. 23 of the Labour Law.
- ⁴⁶³ Announcement by GSA of 09/01/2013.
- ⁴⁶⁴ YUCOM 2014, p.17
- ⁴⁶⁵ Report of the Labour Inspection for 2015, p.35, available in Serbian at:
<http://www.minrzs.gov.rs/lat/aktuelno/item/5425-izvestaj-inspektorata-za-rad-za-2015-godinu>
- ⁴⁶⁶ *Ibid.*
- ⁴⁶⁷ See <http://www.savetzastampu.rs/english/>
- ⁴⁶⁸ Gordana Novaković, the Press Council, Press Conference "LGBT population in the media: Media Monitoring and Analysis for the year 2015", available at: <http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/>
- ⁴⁶⁹ Input from participants in the discussion on the draft report "Being LGBTI in Serbia" held on 28/11/2016.
- ⁴⁷⁰ *Homofobija i internalizovana homofobija u Srbiji*, p.61.
- ⁴⁷¹ *Ibid.* p.60.
- ⁴⁷² M.Stojčić and D. Petrović (2015), p.126.
- ⁴⁷³ *Ibid.*, p.149.
- ⁴⁷⁴ The questioner was sent to 28 organizations, of which 13 responded.
- ⁴⁷⁵ M.Stojčić and D. Petrović (2015), p.194.
- ⁴⁷⁶ *Ibid.*, p.144.
- ⁴⁷⁷ *Homofobija i internalizovana homofobija u Srbiji*, p.61.
- ⁴⁷⁸ Available at: <http://www.transserbia.org/resursi/biblioteka/855-lgbt-platforma-2015>. The Platform was signed by seven LGBTI organizations, and additionally by YUCOM, NDI, the Heartefact Fund and Civil Rights Defenders. See <https://inserbia.info/today/2015/04-serbia-lgbt-organizations-sign-platform-on-cooperation>.
- ⁴⁷⁹ The authors of the Platform use the term LGBTTIA2SQ - lesbian, gay, bisexual, transsexual, transgender, intersexual, asexual, 2s (two-spirited), queer and questioning.
- ⁴⁸⁰ Interview with a CSO representative, October 2016.
- ⁴⁸¹ *Homofobija i internalizovana homofobija u Srbiji*, p.61.
- ⁴⁸² Input from participants in the discussion on the draft report "Being LGBTI in Serbia" held on 28/11/2016.
- ⁴⁸³ B. Tepačević et al. Skućimo zajednicu.
- ⁴⁸⁴ Input from participants in the discussion on the draft report "Being LGBTI in Serbia" held on 28/11/2016.

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