

Contents

| | |
|---|----|
| 1. Introduction | 2 |
| Background | 2 |
| Purpose of the report | 3 |
| Methodology | 3 |
| 2. Executive Summary | 4 |
| 3. Recommendation to the Serbian government | 5 |
| 4. Key findings | 6 |
| Recommendation | 6 |
| Appendix to the Recommendation CM/REC(2010)5 | 6 |
| 1. Right to life, security and protection from violence | 6 |
| a. “Hate crimes” and other hate-motivated incidents | 6 |
| b. “Hate speech” | 7 |
| 2. Freedom of association | 8 |
| 3. Freedom of expression and peaceful assembly | 9 |
| 4. Right to respect for private and family life | 10 |
| 5. Employment | 12 |
| 6. Education | 12 |
| 7. Health | 13 |
| 8. Housing | 14 |
| 9. Sports | 15 |
| 10. Right to seek asylum | 15 |
| 11. National Human Rights Structures | 16 |
| 12. Discrimination on multiple grounds | 17 |
| Glossary | 19 |
| About Labris – Lesbian Human Rights Organization | 21 |

Introduction

a. Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat" .¹

In broad terms the Recommendation does three things:

- It emphasizes the key principle, that human rights are universal and apply to all individuals, including therefore LGBT people;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT people on account of their sexual orientation or gender identity;
- It recognizes that specific action is required to ensure the full enjoyment of human rights by LGBT people, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

¹ “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”

<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>

b. Purpose of the report

The purpose of this report is to assess if any progress has been made by Serbian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not, been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation and secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation periodically. It is intended that this report will contribute to that review.

c. Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and local governance to letters from Labris listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures. Total of 151 letters was submitted, Labris received total of 84 responses.
- Information from published sources, research and documentation assembled by Labris and other non-governmental organisations and independent state institutions.
- Information gathered through research of the needs of the LGBT people in Serbia?
- Information gathered from media and internet; conferences and roundtables; in person meetings and email correspondence with relevant stakeholders.

Executive Summary

Considering that legal framework that prohibits discrimination, hate speech and violence against LGBT people, based on sexual orientation and/or gender identity, in previous years had been improved, issues that LGBT people are facing are still highly present in Serbian society and that are preventing LGBT people from leading a fulfilled everyday life. According to information obtained during creation of this report complies with the requirements of the CM/REC(2010)5 Recommendation to a very limited extent. Data is showing that in Serbia LGBT people are still living in a society in which homophobia, violence and discrimination are widespread. There is a lack of systemic approach towards examining the effectiveness and enforcement of the provisions in the valid antidiscrimination laws, strategies and by-laws, as well as towards analysis of what could be done in other spheres which are not directly covered by existing laws. Although there is evidence to suggest that sporadic initiatives exist and that things are moving forward, these initiatives are rare, small scale and inconsistent. Antidiscrimination laws, strategies and by-laws that explicitly mention sexual orientation and/or gender identity are the comprehensive but unfortunately there is a gap in adequate implementation of all legal normative. Number of violent incidents and discrimination is on the rise which is showing in CSOs reports². Even though standard legal remedies for victims of such incidents formally do exist, in practice they are often not easily and effectively accessible by LGBT persons and are characterised by further victimisation and discrimination of LGBT persons. Same-sex couples are completely invisible in Serbian legislation and other measures. Problems and situations faced by same-sex couples are ignored by the state as though same-sex couples do not exist, leaving such couples in a discriminatory position comparing to different-sex couples (both married and unmarried) in respect to social security, health insurance, pension, inheritance, parenting, etc. Even though gender reassignment is allowed, it is completely unregulated by law, making legal recognition of the change highly variable, uncertain, depending on arbitrary decisions and variable procedures by relevant officials, which often take a great deal of time and involve different kinds of humiliation and abuse. Though comprehensive Antidiscrimination Law and Labour Law forbid discrimination based on sexual orientation in employment, discrimination and harassment of LGBT people is still widespread. Education is still one of the most neglected areas by the state, when it comes to sexual orientation and gender identity. There are no efficient programmes and policies for preventing or sensitising general public on bullying. Even though homophobia and transphobia, including violence and harassment, are present in sports, no measures have been undertaken by the state to tackle this situation. Homophobic and transphobic chanting at sport events remains one of the most frequent forms and manifestations of hate speech, which always go unpunished. There are several different national human rights structures, with different roles, mandates and scopes of activities. Most of these structures are to a greater or lesser extent involved in activities aimed at improving the position of LGBT people. However, these activities are generally limited, rare and short-term.

² <https://dasezna.lgbt/>

Recommendation to the Serbian government

1. To develop better indicators and verifications for continuation of the Antidiscrimination strategy (2014-2018) and related Action Plan that would list activities aimed at improving the position of LGBT people, responsible bodies, along with adequate funds for such actions.
2. To fact-check implemented activities related to improvement of position of LGBT people from Antidiscrimination strategy (2014-2018) and related Action Plan.
3. To adopt an Action plan for implementing CM/REC(2010)5 Recommendations.
4. To adopt legislation that would regulate same-sex partnerships.
5. To adopt legislation transparent legal framework for legal gender recognition, based on a process of self-determination, free from abusive requirements (such as sterilisation, GID/medical diagnosis, or surgical/medical intervention).
6. To create a comprehensive statistical system that would include data on prevalence and nature of discrimination and violence based on sexual orientation and gender identity.
7. To conduct regular research about levels of social inclusion of LGBT people.
8. To conduct regular research about the effectiveness of existing laws, when it comes to sexual orientation and gender identity.
9. To conduct regular and large scale media campaigns to end homophobia and transphobia in the Serbian society.
10. To create a working group for the analysis of all primary, secondary school and university textbooks in order to map and eliminate discriminatory and inaccurate content in all teaching aids, and in order to include affirmative and accurate information about LGBT people.
11. To introduce continuous trainings for educational staff at all educational levels, to pupils and students, as well as for employees of the Ministry of Education, Institute for the Advancement of Education and the National Educational Council.
12. To introduce continuous trainings and other educational programs about sexual orientation and gender identity for employees of the Ministry for Internal Affairs, prosecutors and judges.
13. To introduce continuous trainings and other educational programs about sexual orientation and gender identity for medical, mental health and social service professionals.
14. To ensure equal access to artificial insemination and family planning for all women irrespective of their marital status or sexual orientation.
15. To establish safe houses for LGBT people and effective measures that would prevent homelessness of LGBT people.
16. To create programmes, campaigns and codes of conduct for employers and employees both in private and public sectors, in order to provide working environments free of discrimination based on sexual orientation and gender identity.

Key findings

1. Recommendation

The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

Even though Serbia has committed itself to promoting, respecting and enforcing rights of LGBT people, by ratifying many international agreements and documents³, and by adopting many sectoral national laws that should protect LGBT rights, these laws are not adequately implemented in practice. Beside laws Serbia has adopted National Strategies which mention LGBT people (Antidiscrimination strategy⁴, National Strategy for Gender Equality for the Period 2016-2020⁵, Youth National Strategy for the period 2015 – 2020⁶) and developed related Action Plans⁷ which are also not adequately implemented.

There is a lack of systemic approach towards examining the effectiveness and enforcement of the provisions in the valid antidiscrimination laws, strategies and by-laws, as well as towards analysis of what could be done in other spheres which are not directly covered by existing laws, including the lack of research and state statistics on cases of discrimination and violence based on sexual orientation and gender identity.

2. Appendix to the Recommendation CM/REC(2010)5

1. Right to life, security and protection from violence

a. *“Hate crimes” and other hate-motivated incidents*

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and

³ <http://www.ljudskaprava.gov.rs/sr/fascikla/ljudska-prava/me%C4%91unnarodni/konvencije>

⁴ <http://www.ljudskaprava.gov.rs/sr/node/145>

⁵ <http://www.ljudskaprava.gov.rs/sr/node/145>

⁶ Government of the Republic of Serbia, Youth National Strategy for the period 2015 – 2020 05 number: 66-1998/2015-1, in Belgrade, 27 February 2015

⁷ <http://www.ljudskaprava.gov.rs/sr/node/145>

prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

The standard basic training of police officers was implemented in period from 2015-2018 and to some extent those trainings ensured awareness about specific issues regarding homophobic or transphobic crimes or incidents, and manual for the work with LGBT people offered for police legal anti-discriminatory framework within they should work. Apart from trainings of police officers trainings for persons working in judiciary system and prison officers were also implemented during 2017-2018. These training were conducted by State representatives and were envisioned in Action Plan for Antidiscrimination strategy 2014-2018.

Although mechanisms for investigating crimes allegedly committed by law-enforcement and prison staff exist, evidence suggests that there is reason to be concerned about the effectiveness of these mechanisms, as victims usually do not decide to file a complaint due to lack of trust in police and prison structures and fear of further victimisation. Research of the needs of the LGBT people in Serbia showed that 85, 5% of the respondents do not trust the police and only 17,3% of persons had reported hate crimes.

Hate crime based on sexual orientation and gender identity is included as an aggravating circumstance in the Law on Amendments and Addendums of the Criminal Code⁸ adopted in 2012, but until today in Serbia there is no court judgment that sustained this act.

Also, the state still has not developed mechanism for collecting and analysis of data about discrimination, crimes and other incidents related to sexual orientation and gender identity.

b. "Hate speech"

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalizing such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

⁸ <https://www.legislationline.org/documents/section/criminal-codes/country/5>

Laws that penalize “hate speech” exist and are adequate (Law on Broadcasting, Law on Public Information, Penal Code and the comprehensive Antidiscrimination Law). Even though these laws exist there are obvious problems with the effectiveness of implementation of these laws, as “hate speech” is still very much present in the public discourse, including media, internet and graffiti, as well as within statements of government officials, politicians, professors and religious leaders.

Media analysis reports⁹ indicate that the number of “hate speech” examples within media reports is increasing, with the decreased number of neutral reports and representations in national media. The most concerning is fact that media report are regressing in regards to reporting on “hate speech” which is often heard from government officials in Parliament¹⁰.

Even in presence of the Prime Minister Ana Brnabic¹¹ at the Parliament preceding, during the debate on selection of the members of the Anti-Corruption Agency, several members of the Parliament had negative statement about homosexuality¹².

It is also important to note that rates of hate speech and inflammatory speech directed against LGBT people are extremely high in the periods before, during and after Pride Parades are scheduled to take place, which remains to be the most dramatic period in which public discourse is intensely and widely saturated by homophobic and transphobic hate speech, by various social actors. In April 2017 NGO Gayten-LGBT submitted a complaint against Orthodox Church leader Patriarch Irinej, after the patriarch accused gay men of spreading HIV throughout Serbia in an article in the Srpski Telegraf newspaper. The patriarch later claimed he had been misinterpreted and the equality commissioner’s investigation ended¹³.

2. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT people, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

⁹ <http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/>

¹⁰ <https://www.danas.rs/drustvo/sukob-lgbt-zajednice-i-brankice-jankovic/>

¹¹ https://en.wikipedia.org/wiki/Ana_Brnabi%C4%87

¹² https://www.youtube.com/watch?v=r_LVRsZil1k

¹³ <https://www.danas.rs/drustvo/patrijarh-irinej-nije-diskriminisao-lgbt-osobe/>

Pride Parades, as well as other LGBT gatherings, have been held without any major incidents in last four years. Beside event that were organised in Belgrade lots of activities took place in smaller cities during 2016/2017, were held without any problems.

Cooperation of LGBT organizations with state institutions has for the greater part been improved in the past couple of years and is moving in the upward trend, particularly regarding the cooperation with national human rights structures, most notably with the Commissioner for the Protection of Equality, the Provincial Ombudsman and the Gender Equality Institute of the Autonomous Province of Vojvodina. Improvement can be seen in fact that several LGBT organizations had implemented project funded by State representatives, more meetings in relation to Pride Parade have been fold and the most important is the fact that LGBT organisations are included in creation of the Antidiscrimination strategy 2014-2018 and related Action Plan.

The biggest progress has been made at local level, Local Networks for prevention and protection from violence and discrimination of LGBT people¹⁴, consisted from local institution and local CSO`s, have been created in seven cities. These Local Networks were formed within the project "The Network change for Serbia`s LGBT community" implemented by CSO Labris, with the financial support of the United States Agency for International Development during 2015-2017. Networks are made of local self-government bodies, primary and higher prosecutor's offices, police administrations, health and educational institutions, social welfare centres, citizen`s protection at the local level, civil society organizations, youth offices, Red Cross and branches of the National Employment Service. Cities that have formed networks are Subotica, Novi Sad, Pancevo, Belgrade, Kragujevac, Nis and Novi Pazar, in these cities total of twenty-two civil society organisations and sixty seven relevant local institutions are joined in prevention and protection of LGBT community.

3. Freedom of expression and peaceful assembly

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Security, especially related to exercising the right to peaceful assembly is one of the priorities in the fight for human rights of LGBT people. Politicians in Serbia still do not take a clear and uniform stance on the importance of respecting the right to public assembly of each citizen, which contributes to the

¹⁴ http://labris.org.rs/en/advocacy?tid_1=9

homophobic and transphobic atmosphere. However, Pride Parades and marking of IDAHOT and other important dates for LGBT people were held from 2014 -2018 without major incidents.

Organizers of Pride Parades still receive threats and the Department for Combating High-Tech Crime of the Ministry of the Interior of the Republic of Serbia has identified 30 persons suspected of threatening and spreading hate speech on social media. Unfortunately until today not a single person has been prosecuted for threats. Organization of the Pride Parades with heavy police protection and uncertainty as to whether the gathering will be approved at all does not constitute freedom of assembly.¹⁵ The Republic of Serbia seems to view the march as one of the obligations imposed by the European Union, while the citizens' awareness of the rights of marginalized social groups has not improved¹⁶.

4. Right to respect for private and family life

These paragraphs of Section IV of the Appendix address criminalization of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

According to various international reports (UN - Universal Periodic Review, CEDAW, Annual progress reports of the European Commission for Serbia) swift adoption of the Model Law on Same-Sex Partnerships was a recommendation issued to the Republic of Serbia from 2012 till today. Unfortunately not a lot has been changed in order to ensure recognition of the same-sex partnerships regardless of the fact that Labris and other LGBT organizations have drafted the Model¹⁷ and are working on promoting and advocating for the adoption of that law.

The Strategy for the Prevention and Protection against Discrimination and related Action Plan¹⁸ (2014-2018) has foreseen drafting a Model law which would regulate same-sex partnerships, but this activity has not been implemented at all. The fact that same-sex partners cannot exercise the right to marriage or the right to a domestic partnership leads to discrimination in a number of rights, such as: the right to alimony, joint adoption, community property, special protection against domestic violence, continuing to rent the apartment after the death of the spouse-lessee, testimonial privilege, intestate inheritance, family pensions, etc.

The state has done nothing to consider any measures that would take into account the difficulties which same-sex couples face. Lesbian couples are not included in matters relating to family planning, including

¹⁵ https://sh.wikipedia.org/wiki/Belgrade_Pride

¹⁶ <https://www.kurir.rs/vesti/politika/1567063/kritike-izvestaj-iz-brisela-negativan-ako-ne-bude-prajda>

¹⁷ <http://labris.org.rs/sr/model-zakona-o-registrovanim-istopolnim-zajednicama>

¹⁸ <http://www.ljudskaprava.gov.rs/sr/node/145>

medically assisted artificial insemination. Under current law¹⁹ lesbian women (in a relationship or not) are not allowed to adopt children or to undergo medically assisted artificial insemination, putting them in an unequal situation with other women.

Research of the needs of the LGBT community in Serbia showed that 53,9% of respondents are in stable relationships and that 37,1% persons are living together with their partners, while 34% are planning to live together. 1,3% of LGBT people who registered/married outside of Serbia had issues obtaining certificate of free marital status due to their sexual orientation/gender identity. If there was a possibility, 67,7% respondent would use opportunity to register their partnership and 56,4% would adopt a child.

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Serbia complies with the requirements of the CM/REC(2010)5 Recommendation only when it comes to costs of gender affirming services that are covered by health insurance. In every other respect, the state has generally failed to comply with the Recommendation.

The most pressing problem that has not been addressed by the state is the absence of any legislation that would regulate gender affirming procedures and legal gender recognition. Since this field is completely unregulated, legal recognition of gender reassignment, including change of documents, is usually very difficult²⁰, sometimes lasting up to a year, leaving transgender persons in a seriously vulnerable situation, that leads to discrimination, poverty, isolation, depression and sometimes suicide.

Forced sterilization is a requirement for legal gender recognition, which constitutes abuse, as well as abusive and humiliating procedures when trying to prove one's gender. Other abusive requirements include forensic examinations, observations and measurements of genitalia, as a proof of transition for example happened in courtroom in Leskovac in 2017.

In addition, the new draft version of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings²¹ introduces an extremely worrisome requirement for a person that wants to

¹⁹ https://www.paragraf.rs/propisi/zakon_o_biomedicinski_potpomognutoj_oplodnji.html

²⁰ <http://www.ljudskaprava.gov.rs/sh/press/vest/odrzana-panel-diskusija-zakon-o-rodnom-identitetu-brzo-i-jednostavno-do-prava-trans-osoba>

²¹ https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html

go through gender reassignment. This law stipulates that a court's permission is required for gender reassignment, which practically means that gender reassignment is illegal until the court decided otherwise. This brings additional problems, and clearly represents a violation of CMCE Recommendation.

5. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

According to the information and explanations Serbia only partially complies with the requirements of the CMCE Recommendation and only in the fact that the comprehensive Antidiscrimination Law²² and Labour Law²³ forbid discrimination based on sexual orientation, although legislation alone is generally not effective and adequately implemented. According to the current Labour Law, discrimination based on sexual orientation is forbidden, however, there is reason to believe that LGBT people are facing problems in the employment process and at the workplace, when their sexual orientation becomes known or is presumed, leaving them exposed to harassment, intimidation and humiliation. In addition, Serbian law does not recognize same-sex partnerships of any kind, which means that persons in same-sex relationships do not have equal rights as people in heterosexual relationships, such as the right to social security, pension and health insurance, sickness-leaves for partners, parental-leaves for children and bereavement leaves.

There are no policy measures that would promote diversity in employment and discourage discrimination, harassment and victimization, based on sexual orientation and gender identity. There are no codes of conduct, awareness raising programs or support for LGBT employees.

6. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programs for staff, and measures to promote mutual tolerance and respect in

²² https://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html

²³ https://www.paragraf.rs/propisi/zakon_o_radu.html

schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

Serbia has only two laws that are focusing on LGBT youth, Law on Higher Education²⁴ that forbids discrimination based on sexual orientation and Law on Youth²⁵ that also mentions sexual orientation and gender identity.

Various studies²⁶ have shown that educational materials (textbooks, curricula), as well as educational staff, are not gender sensitive, and promote and perpetuate traditional gender roles in all educational levels in Serbia. By extension, educational materials are containing discriminatory content²⁷ are still in use and The Ministry of Education, Science and Technological Development of the Republic of Serbia is transferring the responsibility on other State Institutions regardless to the fact that Commissioner for the Protection of Equality made the recommendation on the responsibility for the exclusion of the discriminatory content from the high school text books²⁸.

Serbia has also failed to provide information and support for LGBT pupils and students, as well as for LGBT teaching staff, and to create measures to meet the special needs of transgender students and transgender teaching staff.

7. Health

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

²⁴ https://www.paragraf.rs/propisi/zakon_o_visokom_obrazovanju.html

²⁵ https://www.paragraf.rs/propisi/zakon_o_mladima.html

²⁶ <http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima>

²⁷ labris.org.rs/sites/default/files/Analiza-diskriminatornog-sadržaja-srednjoskolskih-udžbenika.pdf

²⁸ <http://ravnopravnost.gov.rs/prituzba-zbog-diskriminatornog-sadržaja-u-udžbenicima-na-osnovu-seksualne-orijentacije-u-oblasti-obrazovanja/>

Although, Law on Health Insurance²⁹ states that the main goal is to reach the highest possible level of health protection of citizens and families, it is clear that LGBT people do not have access to the same level of health protection in many aspect as discrimination based on sexual orientation and/or gender identity is not mentioned in the law.

Serbia has failed to provide adequate trainings to health professionals as well as to include accurate and up-to-date material about sexual orientation and gender identity in medical textbooks and manuals. Majority of the textbooks have not been revised and in line with science due the fact they were published in 80s. Health professionals are therefore not prepared to effectively deal with all the various specificities that might characterize health concerns of LGBT people, whether physical or psychological.

In fear of being denied adequate health care, LGBT people often choose not to disclose their sexual orientation or gender identity, even when such disclosure would be medically relevant. In addition, some medical and mental health textbooks still regard homosexuality as an illness³⁰ and/or as some form of social deviance, although Serbian Health Society states that homosexuality is not an illness³¹.

LGBT community in Serbia had several issues with health system, first was in relation to the donation of blood, 6,3% of respondents in Labris LGBT community needs research stated they were rejected on grounds of their sexual orientation; secondly 8,6% stated they had problems during gynaecological/urological exams because doctors were discriminating them on SOGI grounds. The one of the issues that LB women are facing is that 46,4% of LB women respondents would use opportunity of artificial insemination if State would have a clear legal framework.

8. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Legislation and measures in regards to the adequate housing in Serbia are still insensitive to the problems that LGBT people face in the domain of housing. Since the Serbian legal system does not recognize same-sex couples, discrimination of those couples exist when it comes to housing. Serbia's

²⁹ https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html

³⁰ <http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima>

³¹ <http://www.autonomija.info/ministarstvo-homoseksualnost-nije-bolest.html>

legal system does not provide protection from eviction, including the right to resettlement without discrimination, based on sexual orientation and/or gender identity. LGBT youth, due to the coming out, are especially vulnerable to homelessness and State has not established social programmes or support for them.

Serbian legislation does not ensure equal rights to land, home ownership and inheritance without discrimination on grounds of sexual orientation and/or gender identity³². Due to the lack of the legal mechanisms 70,5% of research respondents have stated that they are not out to their neighbours, and only 5% have not had any issues if they were out.

9. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

Although there has been a rise in discrimination and intolerance in the area of sport³³, we would like to point out that the State has not established cooperation with civil society organizations that deal with the rights of LGBT people, in spite of being obligated to work with LGBT associations.

It is important to note that the Law on Sport³⁴ now includes provisions on improving women's sport and the position of women in sport, anti-discrimination (sexual orientation and gender identity are not specifically mentioned), protection of athletes and sanctioning offences.

Homophobic chanting at sport events is widespread, but never sanctioned³⁵. State authorities have done nothing to enter into dialogue with sport associations and fan clubs, nor has such dialogue been established with LGBT organizations, regarding sports.

10. Right to seek asylum

³² https://www.paragraf.rs/propisi/zakon_o_osnovama_svojinskopравnih_odnosa.html

³³ <http://www.publicpolicy.rs/arhiva/1394/dve-trecine-pripadnika-lgbt-populacije-izloženo-verbalnom-i-psihičkom-nasilju>

³⁴ https://www.paragraf.rs/propisi/zakon_o_sportu.html

³⁵ <http://www.butasport.rs/fudbal/delije-na-vozovcu-necemo-da-srbija-bude-zemlja-pedera-video/>

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognize a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

In the asylum granting procedure in the Republic of Serbia all discrimination on any grounds is prohibited.

The Law on Asylum and Temporary Protection³⁶, provides the principle of non-discrimination and the principle of providing special reception process and guarantees for minors, persons fully or partially deprived of legal capacity, children separated from their parents or guardians, persons with disability, the elderly, pregnant women, single parents with minor children and persons victims of torture, rape or other severe forms of psychological, physical or sexual violence.

The right to asylum or refugee status will be granted to an applicant who is outside of their country of origin or place of residence, who is in justified fear of persecution for reasons of race, religion, ethnicity, or belonging to a particular social group or political opinion, who cannot or does not want to accept protection from that country. Depending on the circumstances in the country of origin, a particular social group may refer to a group based on common characteristics of sexual orientation or gender identity as the Law on Asylum and Temporary Protection in act 26 stipulates.

In the reporting period, the Asylum Office of the Ministry of Interior granted refugee status in two cases, based on justified fears of persecution for reasons of, from the perspective of the country of origin, due to sexual orientation or gender identity.

11. National Human Rights Structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

³⁶ <https://www.paragraf.rs/propisi/zakon-o-azilu-i-privremenoj-zastiti.html>

The Republic of Serbia has independent institutions with specific mechanisms and mandates to address discrimination based on sexual orientation and/or gender identity. Those independent institutions are Commissioner for the Protection of Equality, Ombudsman, the Constitutional Court and the Commissioner for Information of Public Importance and Personal Data Protection. At the national level, there is also the Office for Human and Minority Rights, doing expert work for the government and relevant ministries, within the field of protection and improvement of human and minority rights, while also including LGBT rights. At the level of the Autonomous Province of Vojvodina, the Provincial Ombudsman (Deputy for Gender Equality) and the Gender Equality Institute have been dealing with LGBT rights. All stated institution have in some form dealt with discrimination based on sexual orientation and/or gender identity in reporting period.

The lack of raising awareness amongst the general public for addressing independent institutions in case of discrimination based on sexual orientation and/or gender identity reflects in 57,6% of LGBT people which participated in research not having trust due to the perceived lack of competency within those institutions.

12. Discrimination on multiple grounds

Section XII of the Appendix encourages member states to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity.

Serbia within its legal system does not have definition nor mentions multiple-discrimination as a form of discrimination. Only document that mentions and addresses this issue is National Strategy for Gender Equality for the Period 2016-2020³⁷. The Strategy explicitly indicates the following vulnerable groups as particularly exposed to the risk of multiple discrimination: Roma women, women over 60, young women, rural women, pregnant women, women with small children, women of different sexual orientation, women victims of domestic violence, disabled women, single mothers, members of national and ethnic minorities, unemployed and uneducated women, and the list does not end here.

This recognition of women of different sexual orientation and/or gender identity is certainly an improvement compared to non-existing legislation; however, this strategy still contains some of the deficiencies in the sense that already identified problems are not operationalized in measures contributing to elimination of multiple-discrimination.

³⁷ <http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-2016-do-2020-godine-sa-akcionim>

Research data shows that 32,4% of respondents have been discriminated on multiple grounds – 26,4% on grounds of being women, 0,7% because of the color of their skin, 4,6% based on ethnicity, 0,7% on grounds of disability.

Glossary

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

Gender reassignment treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

Hate crime towards LGBT people refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Homophobia is defined as an irrational fear of and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

Intersex people are persons who are born with chromosomic, hormonal levels or genital characteristics which do not correspond to the given standard of "male" or "female" categories as for sexual or reproductive anatomy. This word has replaced the term "hermaphrodite", which was extensively used

by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

LGBT people or **LGBT people** is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple-discrimination describes discrimination that takes place on the basis of several grounds operating separately.

NGO is the abbreviation for “non-governmental organisation”.

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

Transphobia refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

About Labris – Lesbian Human Rights Organization

Labris, one of the oldest lesbian human rights organizations in the region, is an organization that considers the right to different sexual orientation as one of the basic human rights. Labris is women, LGBT and human rights organization. Our mission is to work on the elimination of all forms of violence and discrimination against lesbians and to take part in creating a more equal society. Our vision is a society without hate, fear, with rule of law, society where sexual and gender minorities would have equal rights as majority.

Labris has three main program areas within which we are working on empowering LGBT people:

- 1) Within the Community Development program, we organize educational and psychological workshops and support groups; informal social gatherings as well as meetings with prominent lesbians from around the world. In addition, we offer a large number of books, brochures and videos about LGBT rights, identities and experiences, and particularly about “coming out”. All these activities are organized with the aim to empower LGBT people, particularly lesbians, and help them accept their identity, live more comfortably within their private and professional surroundings, and to recognize and report discrimination.
- 2) Within the Education Program, we organize different kinds of workshops in order to sensitize various relevant stakeholders. Mostly, we conduct workshops for health workers, social workers, professors, police, prosecutors, journalists and political parties, in order to make them more sensitive and aware of LGBT rights and identities, discrimination and everyday experiences of sexual and gender minorities.
- 3) Within the Advocacy Program we advocate at national and European level (using the documented evidence of discrimination) for improved legal protection and social acceptance of LGBT people. Labris took part in writing the Anti-discrimination Law and lobbied for its adoption. Labris has prepared the draft law on registered same-sex partnership and beside that Labris is actively monitoring the implementation of existing legal framework and is submitting shadow reports.