

ILGA-Europe's Feedback on The European Commission's 2011 Progress Reports¹

Brussels, 17 October 2011

On 12 October 2011, the European Commission issued its annual Enlargement Strategy and Progress Reports on EU accession and pre-accession countries. The 2011 Enlargement Package includes Progress Reports on Albania, Bosnia and Herzegovina, Croatia, the FYR of Macedonia, Montenegro, Kosovo², Turkey and Iceland. In addition, the Commission published its Opinion on Serbia's application for membership of the EU which contains a more detailed Analytical Report on the progress made by Serbia towards European integration.

The reports can be found here: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2011_en.htm

ILGA-Europe is generally satisfied with the way most reports cover the human rights issues of LGBT people. The European Commission rightly criticises the governments of Turkey and FYR of Macedonia for omitting sexual orientation ground from the list of protected grounds in their national anti-discrimination legislation and reiterates that those laws do not comply with the EU *acquis*. It further recommends that all Western Balkan countries who enacted comprehensive anti-discrimination laws take measures to raise public awareness on the scope of those legislations and on the remedies they provide. The Commission complements Montenegro and Serbia on the progress made

¹ The feedback covers the reports on the Western Balkans and Turkey

² Under UNSCR 1244/1999

in the field of anti-discrimination policies but at the same time it highlights that more should be done to address discrimination cases in both countries. The Commission also mentions about the continuous discrimination, intimidation and violence faced by LGBT people in all Western Balkans countries and in Turkey.

However, we regret to note that the Analytical Report on Serbia does not contain sufficient references to the discrimination and violence faced by LGBT people. Furthermore, the Commission did not recognise in the report that the banning of Belgrade Pride 2011 was a clear failure of the government of Serbia to guarantee the constitutional right of LGBT people to freedom of assembly. ILGA-Europe believes that the banning of the Pride due to threats of violence from extremist groups is a grave setback for the cause of democracy, human rights and the rule of law in Serbia. We therefore respectfully request from the Directorate General Enlargement of the European Commission and from the EU delegation in Serbia to raise in next year's report and in their ongoing political dialogue with Serbia the problem of discrimination and hate crimes against LGBT people and to call on Serbian authorities to take all necessary measures to safeguard the right for freedom of assembly for LGBT people. ILGA-Europe also encourages the European Commission to continue monitoring and including assessment of respect of the human rights of LGBT people in its annual Progress Reports as well as asserting that fundamental rights are for all and should be protected in reference to LGBT people.

ILGA-Europe's contributions to Progress Reports

In May 2011 ILGA-Europe participated in the European Commission's consultation on Progress Reports and made 8 written submissions on the human rights situation of LGBT people in the Western Balkans and Turkey. At the same time, ILGA-Europe organised a study visit for 9 LGBT human rights defenders from Albania, Bosnia and Herzegovina, Croatia, the FYR of Macedonia, Montenegro and Turkey and facilitated their participation in the consultations giving them an opportunity to raise directly the concerns of their communities with relevant Commission officials.

In addition, ILGA-Europe supported local LGBT organisations in building the necessary capacities and resources to document the human rights violations of LGBT people and use that documentation for advocacy in national and international level.

The inclusion of human rights concerns of LGBT people in Progress Reports is therefore to a large extent a result of documentation and active advocacy work by ILGA-Europe and its member, partner organisations. ILGA-Europe together with its partners and allies will continue documentation and advocacy to ensure that the human rights issues of LGBT people are covered in the future progress reports and are incorporated in partnership agreements with the countries.

Country by Country Review

The Commission states that amongst the candidate countries limited progress has been made by Croatia and by FYR of Macedonia and no progress by Turkey in the fields of fundamental rights and anti-discrimination policies, particularly in reference to LGBT people.

While **Croatia** has begun implementing the anti-discrimination law enacted in 2009, the Commission notes that the public awareness on the scope of the legislation and on the remedies it provides has not increased significantly and only a small number of discrimination cases have been reported few of which have reached the courts. At the same time, the Commission recommends that the judges are trained in this area particularly as regards cases concerning LGBT people. It further states that LGBT people face threats and attacks - as shown in the example of the Pride march in Split - with limited follow up by the Croatian authorities. The Commission emphasises that *'more needs to be done to address homophobic and xenophobic sentiments in the society'*.

In **FYR of Macedonia** discrimination on the ground of sexual orientation is still omitted in the anti-discrimination law adopted in April 2010. The Commission reiterates in this year's report that because of that omission the law does not comply fully with the EU *acquis*. Moreover, it points to the fact that LGBT people continue to be subjected to discrimination and that school textbooks treat homosexuality as a disease. Together

with alignment of the anti-discrimination legislation with the EU *acquis* the Commission recommends the government of FYR of Macedonia to take measures to raise awareness on tolerance and respect for diversity.

The Commission criticises the government of **Turkey** for removing all references to sexual orientation ground from the draft anti-discrimination law earlier this year and for not supporting the EU sponsored amendment to the UN resolution calling on states to decriminalise homosexuality. At the same time it highlights that LGBT people continue to suffer discrimination, intimidation and violent crimes. The Commission also spells out that some laws, namely the Criminal Code and the law on Misdemeanour are often used to discriminate against LGBT people, particularly transgender persons. Moreover, courts continue to apply the principle of 'unjust provocation' in favour of perpetrators of transphobic crimes. The Commission also highlights the court cases brought by police against transgender human rights defenders in response to their allegations of police brutality and arbitrary arrests. The report on Turkey also notes that negative stereotyping by political figures and media against LGBT people continues. It referred to participation of high level government officials in a conference organised by the Foundation of Journalists and Writers during which homosexuality was declared as a social ill threatening Turkish society. The practice of exempting GBT people from the service in armed forces on the ground of their 'psychosexual illness' and the requirement of the 'proof for such diagnosis' was also criticised by the Commission.

Amongst the potential candidate countries Montenegro and Serbia were assessed to have made the most progress in the field of anti-discrimination policies. The Commission complements **Montenegro** for a number of actions taken in this field, in particular, the adoption of the law on Ombudsperson to broaden its responsibility over discrimination cases, establishment of a Council-chaired by the Prime Minister - for the protection against discrimination, appointment of an advisor on human rights in the office of the Prime Minister, organisation of a conference and trainings for law enforcement agencies and civil servants. However, the Commission also takes note of continuous threats of violence, violence and discrimination against LGBT people and homophobic statements by some political figures. It further highlights that the anti-discrimination law is not yet effectively implemented and cases of discrimination against

LGBT people did not receive appropriate attention by public authorities. The Commission considers the involvement of the Ministry of Human and Minority Rights in protecting the rights of LGBT people insufficient.

According to the Commission's assessment **Serbia** has made significant progress in economic and political conditions for EU membership-including in the field of human rights and non-discrimination and recommended that Serbia is awarded a candidate status of EU membership. The Commission mentioned in its Analytical Report on Serbia that the legal, institutional and policy framework regarding anti-discrimination is largely in place. However, the report also notes that the mechanisms for prevention, monitoring and protection of discrimination cases are not sufficiently developed. While acknowledging that a Commissioner for the Protection of Equality has been appointed and some awareness raising activities have been carried out, the Commission also highlights that the most vulnerable groups, including LGBT people, continue to face discrimination, violence, hate speech and physical attacks. Regretfully, the European Commission did not recognise the banning of Belgrade Pride 2011 as a failure of Serbian government to safeguard the right to freedom of assembly for LGBT people.

Albania was assessed to have made limited progress in implementing the anti-discrimination legislation. Although the office of the Commissioner for Protection from Discrimination has been established and some awareness raising actions have been carried out, the Commission considers that the awareness of the provisions of the law remains low, in particular amongst professional groups. The Commission notes that LGBT community in Albania became more visible but that visibility has not led to substantial improvements in the situation of LGBT people as they continue to suffer discrimination and violence. The Commission recognises that transgender people are particularly targeted for violent attacks. It also highlights that homophobia is widespread in Albania including among public service professionals.

No progress has been noted in **Bosnia and Herzegovina** in relation to anti-discrimination policies and protection of citizens' fundamental rights. The report refers to widespread discrimination and violence against LGBT people. The Commission also expresses concern about existing hate speech and intolerance towards LGBT persons including by media and politicians.

The Commission criticises **Kosovo*** for failing to enforce the anti-discrimination legislation. While the law provides for high level of protection for LGBT people, the Commission emphasises that there is little knowledge amongst law enforcement authorities and no political commitment to address discrimination and violence against LGBT people. It therefore urges the government Kosovo* to do more to ensure the proper implementation of the anti-discrimination law.

* Under UNSCR 1244/1999