



REPORT

on implementation of the 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 in Serbia

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Table of contents

I Executive summary	4
II Recommendations to the Serbian government for priority actions towards implementation of the CM CE Recommendation	6
III Introduction	7
IV Findings	9
A. Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)5	
B. Appendix to Recommendation CM/Rec(2010)5	10
i. Right to life, security and protection from violence	10
a. <i>“Hate crimes” and other hate-motivated incidents</i>	10
b. <i>“Hate speech”</i>	10
ii. Freedom of association	11
iii. Freedoms expression and peaceful assembly	12
iv. Respect for private and family life (excluding specific transgender issues)	12
v. Respect for private and family life and access to health care – specific transgender issues	13
vi. Employment	14
vii. Education	14
viii. Health	15
ix. Housing	16
x. Sports	16
xi. Right to seek asylum	17
xii. National human rights structures	17
Appendix I 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	19
Appendix II Glossary	27
Appendix III Compliance Documentation Report	30
Recommendation CM/Rec(2010)5	30
Appendix to Recommendation CM/Rec(2010)5	36
I. Right to life, security and protection from violence	36
A. <i>“Hate crimes” and other hate-motivated incidents</i>	36
B. <i>“Hate speech”</i>	40
II. Freedom of association	44
III. Freedom of expression and peaceful assembly	48
IV. Right to respect for private and family life	53
V. Employment	61
VI. Education	64
VII. Health	66

VIII. Housing	71
IX. Sports	72
X. Right to seek asylum	74
XI. National human rights structures	76
About Labris	79
About Gayten – LGBT	81

I Executive summary

Much evidence suggests that LGBT people in Serbia are living in a society in which homophobia, violence and discrimination are widespread. In such circumstances LGBT people are living in fear, anxiety and invisibility, both within the private and public spheres, making them by far one of the most marginalized social groups in Serbia.

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.

State statistics on cases of discrimination and violence based on sexual orientation and gender identity do not exist, meaning that nongovernmental reports are the only source of such information. In addition, surveys and research done by state authorities is non-existent, and done mostly by nongovernmental organizations.

Laws that explicitly mention sexual orientation and/or gender identity are the comprehensive Antidiscrimination Law, Labour Law, Law on Higher Education, Law on Public Information, Law on Broadcasting, Law on Youth, Amendments and Addendums to the Law on Health Insurance Social Security Law and Law on Amendments and Addendums of the Criminal Code. However, these laws are not adequately implemented.

Drafting of the comprehensive Antidiscrimination strategy is currently under way and is being developed in close cooperation with LGBT organizations, experts and relevant national human rights institutions, with the aim to look closely at the specific needs of LGBT people.

Number of violent incidents and discrimination is on the rise. Even though standard legal remedies for victims of such incidents formally do exist, in practice such remedies and procedures are often not easily and effectively accessible by LGBT persons and are characterised by further victimisation and discrimination of LGBT persons.

Hate crime is recognized by Serbian legislation within the recently adopted Law on Amendments and Addendums of the Criminal Code. While hate speech is forbidden by several existing laws, it is still widespread as evidenced by numerous unsanctioned instances of hate speech found in media and statements made by public figures, most notably politicians.

Freedom of assembly is guaranteed by Serbian legislation. However, this right has been continuously violated in the past decade. With the exception of the Pride Parade in 2010 which was allowed, Pride Parades in 2009, 2011 and 2012 were banned by state authorities, on grounds of high security risks, which the Constitutional Court has deemed to be unconstitutional. This remains as one of the most blatant instances of rights violation against LGBT persons made by the state.

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 compared 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.

The new draft version of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings according to which a transgender person needs a court's permission to undergo gender reassignment is an alarming step backwards, and if adopted would bring additional problems to already difficult, lengthy and painful procedures.

Single LGBT people are treated in a discriminatory manner and are denied adoption and access to medically assisted artificial insemination.

Even though comprehensive Antidiscrimination Law and Labour Law forbid discrimination based on sexual orientation in employment, discrimination and harassment of LGBT people is still widespread. The situation is particularly difficult for transgender people, as there are no state measures to protect them, coupled with extremely inefficient processes of legal recognition and change of documents, which can last up to a year, during which time the person cannot find employment and is at high risk of poverty and homelessness.

Education is 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 struggling against bullying. There are no training and awareness raising programs for educational staff in primary, secondary and higher education conducted or initiated by state authorities. Discriminatory content from textbooks has not been eliminated nor has new content about sexual orientation and gender identity been introduced.

LGBT people do not have access to the same level of health protection. There are no trainings for health professionals, and relevant materials about sexual orientation and gender identity have been included in medical text books and manuals to a very limited extent. Some medical textbooks still regard homosexuality as an illness.

Neither laws nor by-laws, policies and other measures pay attention to sexual orientation in sports, sport events and venues. 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 remain to be one of the most frequent forms and manifestations of hate speech, which always go unpunished.

Sexual orientation and gender identity are not explicitly mentioned in the Law on Asylum, however the category “belonging to certain social group” could cover sexual orientation and gender identity. It was not possible to obtain information if anyone has ever wanted to seek asylum due to discrimination based on sexual orientation or gender identity.

There are several human rights structures in Serbia (both dependant and independent), with different roles, mandates and scopes of activities, and territorial coverage. 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, although there is evidence to suggest that some structures tend to stand out in their positive efforts to protect and promote LGBT rights, while others tend to avoid dealing with “unpopular” LGBT issues.

II. Recommendations to the Serbian government for priority actions towards implementation of the CM CE Recommendation

1. To draft a comprehensive Antidiscrimination strategy that would include interests of LGBT people, along with an 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 adopt an Action plan for implementing CMCE Recommendation.
3. To adopt legislation that would regulate same-sex partnerships.
4. To adopt legislation that would regulate gender reassignment processes and legal recognition, as well as legal regulation of medical aspects of the gender reassignment processes.
5. To amend draft Law on Amendments and Addendums of the Law on Extrajudicial Proceedings in such a way to exclude the requirement of a court's permission to undergo gender reassignment.
6. To assure freedom of peaceful assembly for LGBT people.
7. 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.
8. To conduct regular research about levels of acceptance / hostility towards LGBT people.
9. To conduct regular research about the effectiveness of existing laws, when it comes to sexual orientation and gender identity.
10. To conduct regular and large scale media campaigns to end homophobia and transphobia in the Serbian society.
11. 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 persons.
12. 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.
13. To introduce effective measures that would protect LGBT pupils and students, as well as LGBT teaching staff, from bullying, harassment and discrimination in the educational settings.
14. 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.
15. To introduce continuous trainings and other educational programs about sexual orientation and gender identity for medical, mental health and social service professionals.
16. To end mandatory sterilization of transgender people.

17. To establish safe houses for LGBT people and effective measures that would prevent homelessness of LGBT people.
18. 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.

III – Introduction

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 emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, 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.

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>

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.

The purpose of this report

The purpose of this report is to assess what progress has been made by the [your country] 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 in March 2013. It is intended that this report will contribute to that review.

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.

This checklist, and the data which [the name of your organisation] has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix xx to this report, entitled "the Compliance Documentation Report".

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

- Responses from individual ministries to letters from Labris listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Serbia commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe".
- Research and documentation assembled by Labris and other non-governmental organisations.
- Information from media and internet
- Information gathered at conferences and roundtables
- Information gathered from in-person meetings, telephone conversations and email correspondence with relevant actors

IV Findings

The 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 documents, and by adopting many sectoral national laws that should protect LGBT rights, these laws are not adequately implemented in practice. Laws that explicitly mention sexual orientation and/or gender identity are the comprehensive Antidiscrimination Law, Labour Law, Law on Higher Education, Law on Public Information, Law on Broadcasting, Law on Youth, Amendments and Addendums to the Law on Health Insurance Social Security Law and Law on Amendments and Addendums of the Criminal Code.

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. However, drafting of the comprehensive Antidiscrimination strategy is currently under way and is being developed in close cooperation with LGBT organizations, experts and relevant national human rights institutions, with the aim to look closely at the specific needs of LGBT people.

There is evidence to suggest that state authorities are unable to efficiently deal with violence and threats of violence either due to lack of capacity or due to lack of political will. Even though relatively adequate legal framework and legal remedies for victims do exist, they are not effectively implemented. Evidence demonstrates that LGBT people often do not decide to report incidents due to fear of further victimisation, and if they do decide to go ahead and report the incident, it often happens that the courts either do not initiate any legal actions or have delayed the completion of such cases. Although, there have been examples of good and efficient police and judiciary work, these examples are rare.

Serbia has just recently started promoting and implementing the CMCE Recommendation, prompted by agreeing to participate in the Council of Europe's LGBT project, along with Albania, Italy, Montenegro, Latvia and Poland. This includes the dissemination of the CMCE Recommendation to relevant actors. This is a significant positive signal that Serbia is willing to take implementing the CMCE Recommendation seriously, as CMCE Recommendation constitutes the main framework for the LGBT project, which, among other activities, also involves development and implementation of the Action Plan.

Appendix to Recommendation CM/Rec(2010)5

i. 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 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.

According to available information presented in the section "Hate crimes and other hate motivated incidents" section of the Compliance Documentation Report, Serbia complies with the requirements of the CMCE Recommendation to a very limited extent.

The standard basic training of police officers does not ensure awareness about specific issues regarding homophobic or transphobic crimes or incidents, but there is some information that suggests that specialization trainings that take into account sexual orientation and gender identity do take place. As opposed to trainings of police officers, there is no evidence to suggest that trainings of judiciary and prison officers exist.

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.

Hate crime based on sexual orientation and gender identity has been included as an aggravating circumstance in the newly adopted Law on Amendments and Addendums of the Criminal Code.

Also, the state does nothing whatsoever to gather and analyse 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 penalising 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.

Legislation that incriminates "hate speech" exists, and it can be said that the legal framework is adequate in this respect. Laws that penalise "hate speech" are 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 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. Even though “hate speech” remains as one of the greatest problems for the LGBT community, there is some evidence to suggest that the problems in this field are slowly improving as evidenced by a slowly increasing number of court rulings penalizing “hate speech” committed by media and politicians.

In addition, media analysis reports indicate that the number of “hate speech” examples within media reports is decreasing, with the increased number of neutral reports and representations. However, there are still reasons for serious concerns as online media and television shows still generally tend to allow readers’ and viewers’ comments which are homophobic and transphobic, which practically negates the neutral aspect of those media reports and representations and further perpetuates homophobia and transphobia, which is already widespread.

It is also important to note that rates of hate speech and inflammatory speech directed against LGBT population 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.

ii. 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 persons, 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.

According to available information presented in the section "Freedom of association" of the Compliance Documentation Report, Serbia complies with the requirements of the CMCE Recommendation to a significant extent, although some problems are still present.

As opposed to previous years, the most important positive steps have been achieved in effective police protection of LGBT human rights organizations and events organized by LGBT human rights organizations. In this respect, police protection is well organized, swift and thorough. This was also evident in 2010 when several thousand police officers have efficiently been able to protect Pride Parade participants (which was not the case in 2001 when many LGBT people, majority of which have been LGBT human rights defenders, were severely injured). However, since effectiveness of protection from hostility and aggression does not only depend on police, but on other relevant governmental institutions, we can say that in 2009, 2011 and 2012 the state has failed to provide such security, as evidenced by banning Pride Parades on the grounds of overwhelming security risks.

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. However, there have also been clear negative examples of relevant state institutions avoiding to deal with LGBT issues and disregarding LGBT organizations and failing to consult them in matters that pertain to LGBT interests. The most recent, and most worrisome example is excluding LGBT organizations from drafting the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings what resulted in gross degradation of transgender persons' rights to gender reassignment procedures, by making obtaining a court's permission to change sex a part of the procedure, what would practically make gender reassignment illegal, until the court decides otherwise.

The Commissioner for the Protection of Equality reacted timely and firmly against the draft of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings and has issued its negative opinion (495/2012; 5.11. 2012.). This is the only institution that has reacted against this draft law, and represents one of many good practice examples of this institution. On the other hand, the Ombudsman has refused to react in this case, and represents one of the examples showing avoidance and unwillingness of this institution to deal with "unpopular" LGBT issues.

iii Freedom of expression and peaceful assembly

Section III 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.

As evidenced by information and explanations presented in the section "Freedom of expression and peaceful assembly" of the Compliance Documentation Report, Serbia does not comply with the requirements of the CMCE Recommendation and examples of gross violation of rights were manifested when it comes to freedom of peaceful assembly.

Even though the Constitution of the Republic of Serbia guarantees the freedom of peaceful assembly, Pride Parades were banned by state authorities in 2009, 2011 and 2012, on the grounds of overwhelming security risks. The freedom of assembly under the Constitution may be restricted by law only if it is necessary due to protection of public health, morals, the rights of others, or the security of the Republic of Serbia. It is clear that the state has enough capacity to deal with violence and threats of violence by extremist groups, but was unwilling to do so, and therefore failed to provide adequate protection for Pride Parade participants and infringed upon LGBT people's right to freedom of assembly. Even though the Constitutional Court ruled that such an act of the state was unconstitutional in 2009, the state still decided to ignore the Constitution and the Constitutional Court's ruling again in 2011 and 2012.

iv. Respect for private and family life (excluding specific transgender issues) (Section IV, paras 18, 19, and 23 – 27 of the Appendix)

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

As evidenced by information and explanations presented in the section "Respect for private and family life" of the Compliance Documentation Report, Serbia only partially complies with the requirements of the CMCE Recommendation and only in domain of criminalisation and collection of personal data. When it comes to the rights of couples and parenting, the state has completely ignored the requirements of the Recommendation and principles of non-discrimination.

Currently Serbian legislation does not recognize same-sex unions. As a result, LGBT persons in a relationship are deprived of crucial rights which normally stem from this law, namely, social and health benefits, inheritance rights, housing rights, maintenance rights, visiting rights in hospitals, etc. The state did nothing to consider any measures that would take into account the difficulties which same-sex couples face.

This not only gravely affects LGBT people but also their children. There is reason to believe that decisions about guardianship over a child are not made in a non-discriminatory manner regarding sexual orientation and gender identity. Officials are able to dismiss a person if that person is „socially dysfunctional“ without a clear definition and criteria of what constitutes social dysfunction, and therefore this leaves a lot of room for biased interpretation based on prejudice and homophobia/transphobia. Indeed, LGBT people often decide to hide their sexual orientation or gender identity from officials, as well as from friends and family, in fear that they might lose their children.

In addition, adoption is denied to LGBT people, and artificial insemination is denied to LBT women.

v. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36))

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.

As evidenced by information and explanations presented in the sections "Respect for private and family life" and "Health" of the Compliance Documentation Report that deal with specific transgender issues, Serbia complies with the requirements of the CMCE Recommendation only when it comes to costs of gender reassignment 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 reassignment procedures and legal recognition. Since this field is completely unregulated, legal recognition of gender reassignment, including change of documents, is usually very difficult, sometimes lasting up to a year, leaving transgender persons in a seriously vulnerable situation, that leads to discrimination, poverty, isolation, depression and sometimes suicide.

There is still forced sterilization when going through gender reassignment processes which constitutes abuse, as well as abusive and humiliating procedures when trying to prove one's gender, including forensic examinations, observations and measurements of genitalia.

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

vi. 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.

As evidenced by information and explanations presented in the section "Employment" of the Compliance Documentation Report, Serbia only partially complies with the requirements of the CMCE Recommendation and only in the fact that the comprehensive Antidiscrimination Law and Labour Law forbid discrimination based on sexual orientation, although legislation alone is generally not effective and adequately implemented. However, a good sign that some steps towards effective law implementation is the first final court verdict for severe discrimination at the workplace based on sexual orientation, based on Antidiscrimination Law, in October, 2012.

However, when it comes to other measures, Serbia fails to comply with the Recommendation in almost every respect. There are no policy measures that would promote diversity in employment and discourage discrimination, harassment and victimisation, based on sexual orientation and gender identity. There are no codes of conduct, awareness raising programmes or support for LGBT employees. Due to this, employees are usually afraid and very rarely decide to disclose his/her sexual orientation or gender identity. It is especially hard for transgender persons because their gender identity and processes of gender reassignment sometimes cannot be hidden. In addition, due to various obstacles in finding and keeping adequate employment, transgender persons often end up in the sex-work field. Serbia has no measures to protect transgender persons in this respect.

vii. 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 programmes for staff, and measures to promote mutual tolerance and respect in 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.

As evidenced by information and explanations presented in the section "Education" of the Compliance Documentation Report, Serbia almost completely fails to comply with the requirements of the CMCE Recommendation, except in having Law on Higher Education that forbids discrimination based on sexual orientation and Law on Youth that also mentions sexual orientation and gender identity.

However, there is no Law on Children, which makes efforts to fight widespread bullying in schools very difficult, although there are by-laws that could provide protection against bullying, but these are not implemented properly as they are not mandatory.

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.

In addition, Serbia fails to comply with Recommendation, when it comes to providing trainings to educational staff at all levels of education that would focus on sexual orientation and gender identity. Also, Serbia has not eliminated discriminatory content from textbooks nor has it introduced new content that would promote tolerance and respect towards LGBT people, or that would represent LGBT issues factually (except for a limited number of medical and mental health textbooks that now do not state that homosexuality is an illness).

viii. Health - other than transgender specific health issues² (Section VII of the Appendix paragraphs 33, 34,)

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

As evidenced by information and explanations presented in the section "Health" of the Compliance Documentation Report, Serbia almost completely fails to comply with the Recommendation.

²See Section v above

Although, Law on Health Insurance states that the main goal is to reach the highest possible level of health preservation of citizens and families, it is clear that LGBT people do not have access to the same level of health protection in many respects.

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. 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 illness and/or as some form of social deviance, although Serbian Health Society states that homosexuality is not an illness.

There is also evidence to suggest that some health professionals still regard homosexuality as an illness and try to cure it. This is especially the case in smaller settlements.

In addition, LGBT patients are not able to identify their partners as next of kin.

ix. 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.

As evidenced by information and explanations presented in the section "Housing" of the Compliance Documentation Report, Serbia's legislation and measures are insensitive to the problems that LGBT people face in the domain of housing.

Since the Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples, discrimination of same-sex couples exist when it comes to housing. Housing Act does not recognise LGBT human rights. In addition, Serbian legal system does not provide protection from eviction, including the right to resettlement without discrimination, on the basis of sexual orientation or gender identity.

Serbian legislation does not ensure equal rights to land, home ownership and inheritance without discrimination on grounds of sexual orientation and/or gender identity

Even though LGBT people are especially vulnerable to homelessness, there have been no social and support programmes established to address this, nor have the relevant state bodies dealing with homelessness been provided with trainings.

x. 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.

As evidenced by information and explanations presented in the section "Sports" of the Compliance Documentation Report, Serbia's legislation and measures do not comply with the Recommendation. The sports sector is completely blind to any initiatives that would tackle discrimination, violence and homophobia/transphobia in sports and at sport venues.

In the Law on Sports, sexual orientation and gender identity are not mentioned.

Although discrimination, violence and homophobia/transphobia is very much present in sports, and especially homophobic and transphobic hate speech, there have been no measures to counteract this, nor have there been any campaigns connected to the problems transgender people face in sports.

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

xi. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise 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.

As evidenced by information and explanations presented in the section "Right to seek asylum" of the Compliance Documentation Report, Serbia's legislation and measures do not comply with Recommendation.

Law on Asylum does not explicitly mention sexual orientation or gender identity as a forbidden ground of discrimination. However, the Law does stipulate that it is forbidden to expel a person against her/his will somewhere where her/his rights can be violated on the basis of belonging to certain social group, which could include sexual orientation or gender identity.

The number of asylum seekers is small so there are no data that anyone ever expressed intention to seek asylum because of violation of human rights based on sexual orientation or gender identity.

xii. 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.

As evidenced by information, examples and explanations presented in the section "National human rights structures" of the Compliance Documentation Report, Serbia only partially complies with the Recommendation.

There are several state institutions for human rights that to a greater or lesser extent deal with LGBT rights in Serbia. The only independent institution that is clearly mandated to deal with sexual orientation and gender identity is the Commissioner for the Protection of Equality. Other independent institutions that should incorporate LGBT rights on the national level are also the Ombudsman, the Constitutional Court and the Commissioner for Information of Public Importance and Personal Data Protection. On 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. On 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. Therefore, even though not all human rights institutions are clearly mandated to deal with sexual orientation they still incorporate LGBT issues to some degree.

These institutions are able to make recommendations on legislation and policies and raise awareness, and some are able to examine individual complaints and participate in court proceedings.

Even though, institutional activities regarding LGBT rights could generally be regarded as inconsistent, unsystematic and short term, there are significant differences between these human rights institutions. It is important to note that abundant evidence suggests that activities of the Commissioner for the Protection of Equality, the Provincial Ombudsman of the Autonomous Province of Vojvodina and the Gender Equality Institute of the Autonomous Province of Vojvodina can be considered as genuinely, systematically and continuously directed towards the improvement of the position of the LGBT population. In addition, the Constitutional Court has also had an important role with two important rulings in favour of LGBT rights. On the other hand, evidence suggests that the national Ombudsman has not always been eager to be more firmly involved in the protection and promotion of LGBT rights, and much improvement is needed in this respect.

In addition, it should be ensured that independent institutions cannot use their independence and discretion as a means to avoid the "unpopular" topics related to human rights abuses and

discrimination based on sexual orientation and gender identity. Further effective measures are needed regarding the way the mandate of national structures is used to protect the rights of LGBT people.

Evidence also suggests that it is not uncommon that independent institutions and other human rights structures come under attack and are subjected to different kinds of political, institutional and media pressures, making their work more difficult. Also, some human rights institutions are seriously understaffed and are lacking in material resources.

**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**

*(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as “the Convention”) and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights (“hereinafter referred to as “the Court”) and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.
7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the

abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against

different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-

discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to

prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly 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.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged 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; national human rights structures should have a broad mandate to enable them to tackle such issues.

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 persons 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 chromosomal, 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 persons** 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.

Monitoring Implementation of the 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

Documentation Compliance Report

Recommendations for member states:

1. **examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**
 - i. *Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

As will be explained throughout subsequent parts of this document, Serbia for the greater part has a relatively adequate legal framework for combating discrimination based on sexual orientation and to some extent for combating discrimination based on gender identity, but there is still the problem of implementation.

In general, there is a lack of examining the effectiveness and implementation of the provisions in existing antidiscrimination laws, strategies, policies and by-laws in a coherent and systematic manner, 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 generally rare, small scale and inconsistent, and therefore much improvement is needed. However, there are significant differences among different institutions, particularly when it comes to human rights structures, as evidenced by analysis, examples and explanations throughout this report.

It is important to note that the Directorate for Human and Minority Rights of the Ministry of Human and Minority Rights, Public Administration and Local Self-Government³ has announced the beginning of drafting up the National Antidiscrimination Strategy, in April 2012, and this process is well under way. Several thematic working groups have been established, one of which is dedicated especially for advancing the position of LGBT people in the Serbian society. The Directorate has also issued a public invitation for non-governmental organizations to be included in the working groups.⁴ Therefore, drafting of the Strategy, based on careful analysis of existing problems, legislation, measures and available data and especially its effective implementation, are of great importance for the systematisation of existing problems, for assessing priorities and for a quality improvement of human rights as a whole.

³ This Ministry nor the Directorate do not exist anymore, as of August, 2012. Instead, there is now an Office for Human and Minority Rights.

⁴ Correspondance with the Directorate for Human and Minority Rights, 15.05. 2012

Even though, drafting of the comprehensive National Antidiscrimination Strategy is a good step forward, it should be noted that there are more than a hundred strategies that have been adopted in Serbia, which are not widely known and disseminated, and which are not implemented efficiently under the common excuse that these strategies are not binding. Even though these strategies should, at the very least, be binding for the government which has adopted them, evidence shows that this is not the case. There is serious concern that the National Antidiscrimination Strategy could also end up being just another strategy, among many, that is not being implemented.

In addition, in April 2012 the Commissioner for the Protection of Equality has initiated the establishment of a working group with the aim to analyse the legal status of transgender persons, as well as to analyse legislation that affect transgender persons. The national Ombudsman also joined the initiative. Experts that were included in this working group are Zorica Mršević, Slavoljupka Pavlović, Milan Đurić and Predrag Šarčević. The Recommendations of the Joint Working Group of the Commissioner for the Protection of Equality and the Ombudsman, have been drafted, but have not yet been made public.

One of the most significant problems is also the non-existence of state statistics on cases of discrimination and violence based on sexual orientation and gender identity, meaning that nongovernmental reports are the only source of such information. In addition, surveys and research done by state authorities are almost non-existent, and done mostly by nongovernmental organizations.

ii. Are processes in place to ensure that the discrimination thus identified is redressed?

In different areas of LGBT rights there were both advances and setbacks, which can be explained through the non-existence of a systemic approach and undefined strategic priorities by the state and its institutions. Even though the state made some advances in the field of creating recommendations concerning LGBT rights, the problem of implementing those recommendations and the existing laws is still evident. There are not enough concrete measures for improving the status of the LGBT population, reducing violence and discrimination and increasing tolerance.

However, apart from the drafting of the National Antidiscrimination Strategy, which was already mentioned, there are other initiatives worth mentioning that suggest that the process is moving forward, although slowly and not always to its full extent.

Example of this is a Working Group that was formed by the Commissioner for Protection of Equality with the aim to compile and present a set of Recommendations to the Ministry of Education and Science of the Republic of Serbia, the National Education Council, and the Centre for Improving the Quality of Pedagogy and Education, for removing discriminatory content from teaching materials and practices and for promoting tolerance, respecting diversity and human rights. Recommendations have been drafted and presented to the relevant institutions in June, 2011.⁵ However, nothing has been done so far by the relevant authorities to implement these Recommendations. In addition, several other important

⁵ <http://www.ravnopravnost.gov.rs/lat/preporukeOrganimaJavneVlasti.php?idKat=24> (Rec. No. 649/2011, 10.06.2011)

recommendations have been issued by the Commissioner for Protection of Equality regarding transgender rights, which will be presented in greater detail in subsequent chapters.

Another example is a Working Group for Determining the Priorities for Safety of People and Property in Belgrade, formed after Pride Parade 2010 by the Assembly of the City of Belgrade, which created recommendations for the measures that are necessary for improving the quality of security in Belgrade, which were adopted by the Assembly of Belgrade, and which also include recommendations for creating a strategy in this area and for setting up a City Security Council (July 2011).⁶ Here too, to the best of our knowledge, recommended measures have not been implemented nor has the strategy in this area been created.

On the level of the Autonomous Province of Vojvodina, Provincial Ombudsman and Gender Equality Institute have had several initiatives recently, when it comes to discrimination based on sexual orientation and gender equality. Regional Ombudsman decided to examine how all 45 Municipalities in the AP Vojvodina act when issuing marital status certificate needed for entering into marriage with a person of the same sex abroad. Since there are no clear normative definitions and instructions for these kinds of situations, the research showed that local self-government make arbitrary and discriminatory decisions, usually deciding not to issue the certificate. Therefore the Ombudsman issued instructions to all local self-governments not to discriminate based on sexual orientation in this manner. Similar study is planned regarding procedures of changing documents of transgender persons by the local self-governments in AP Vojvodina.⁷ In addition, the Provincial Gender Equality Institute has created several educational and research programs that deal specifically with LGBT issues.⁸

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

In 2009, Serbia has adopted the comprehensive Antidiscrimination Law⁹, which explicitly lists sexual orientation and gender identity as forbidden grounds for discrimination. In the years prior to 2009, several other specific (sectoral) laws have been adopted, including Labour Law¹⁰, Law on Higher Education¹¹, Law on Public Information¹² and Law on Broadcasting¹³, all of which prohibit discrimination based on sexual orientation. In 2011 two new laws were adopted that are significant for the LGBT population. The first is the Law on

⁶ Freedom is not given, freedom is taken – 2011 *Report on the State of Human Rights of LGBT Persons in Serbia*, Gay Straight Alliance, Belgrade, 2012

⁷ Correspondance with the Provincial Ombudsman, 15.04. 2012.

⁸ Correspondance with the Provincial Gender Equality Institute, 10.03. 2012.

⁹ *S. glasnik* RS, 22/09.

¹⁰ *S. glasnik* RS, 26/05.

¹¹ *S. glasnik* RS, 11/05.

¹² *S. glasnik* RS, 51/03.

¹³ *S. glasnik* RS, 43/02.

Youth¹⁴ which contains antidiscrimination clauses regarding sexual orientation and gender identity, and the second is Amendments and Addendums to the Law on Health Insurance, which allow state-financed gender reassignment. In addition, in December 2012, Law on Amendments and Addendums of the Criminal Code that includes hate crime based on sexual orientation and gender identity as an aggravating circumstance has been adopted.

- ii. *Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

As was already stated, the drafting of the comprehensive National Antidiscrimination Strategy is currently under way. Therefore, at this moment there are no comprehensive strategy nor long-term education and awareness raising programmes.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

- i. *Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*
- ii. *Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*
- iii. *Are the remedies effective, proportionate and dissuasive?*
- iv. *Do the remedies include, where appropriate, adequate reparation for victims?*

Regular legal remedies do exist, but they are not effective. According to a study by the Public Policy Research Centre called “Vulnerable Groups and Security Sector Reform (SSR) in Serbia: LGBT Case Study”¹⁵ presented in December 2011, LGBT people still have little confidence in the work of judiciary and security institutions and are unwilling to report cases of violence and discrimination to the relevant institutions. The members of the LGBT population do not have access to efficient and adequate judicial protection.¹⁶ Non-governmental reports demonstrate that, in most of the cases, the courts had either not initiated any legal actions or have delayed the processes for a long time¹⁷; many of the judges have

¹⁴ *S. glasnik* RS, 67/11.

¹⁵ <http://publicpolicy.rs/wp-content/uploads/2011/12/LGBT-populacija-i-reforma-sektorabezbednosti.pdf>

¹⁶ LGBT and Security Sector Reform, 2012, Belgrade

¹⁷ Freedom is not Given, Freedom is Taken – 2011 *Report on the State of Human Rights of LGBT Persons in Serbia*, Gay Straight Alliance, Belgrade, 2012; Annual Report on the Position of the LGBTIQ Population in Serbia, Labris, 2011

not been sensitised to rule on cases regarding LGBT persons.¹⁸ The state authorities' actions have not contributed to the prevention of discriminatory conduct or encouraged the victims to turn to them for help.

Numerous evidence suggests that state authorities are unable to efficiently suppress violence and threats of violence, either due to lack of capacity or lack of political will. For example, offices of the Novi Sad Lesbian Organization were violently attacked more than 10 times in 2011, and nobody was prosecuted even though the police had the attackers caught on tape, by the video surveillance system.¹⁹ Also, police usually does not react when threats are made, only when these threats are realized, which is often too late, as evidenced by numerous statements by victims which were presented to Labris.

In addition to standard legal remedies, LGBT persons have an opportunity to file a complaint if they have been victims of discrimination, to the Commissioner for Protection of Equality, which was established according to the Antidiscrimination Law. This independent regulatory mechanism for the protection of equality acts strictly in regards to citizens' complaints and human rights organizations' complaints and cannot initiate independent proceedings.²⁰ Commissioner for Equality's institution, though independent, in practice does not have the opportunity for stronger cooperation with institutions such as the police and public prosecutor while gathering information necessary for acting on the complaints as well as for initiating court proceedings where discrimination is confirmed in every case.²¹ However, recommendations given by the Commissioner for Protection of Equality when discrimination based on sexual orientation and gender identity has been established are often not respected by those that have committed discrimination, and therefore remain ineffective. Also, LGBT persons can file a complaint to the Ombudsman (national, provincial or local) when they have been victims of wrongdoing by state institutions.

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

- i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*
- ii. Have the Recommendation and its appendix been translated?*
- iii. Have they been disseminated:*
 - within the lesbian, gay, bisexual and transgender communities?*
 - throughout public administration?*

¹⁸ LGBT Population in Serbia, 2011, Belgrade

¹⁹Communication with NLO, May 2012. It is important to note that NLO offices are located within the cultural center CK13, which has also come under attack, due to its support for LGBT rights, as evidenced by the content of verbal and written threats.

²⁰ Rules of Procedure of the Commissioner for Protection against Discrimination, Article 25 – The Official Gazette RS, 34/2011

²¹ Annual Report on the Position of the LGBTIQ Population in Serbia, Labris, 2011

- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

The Recommendation, including its appendix has not been translated by Serbian authorities. However, the translation made by the Council of Europe has been distributed. In correspondence with the Directorate for Human and Minority Rights we have learned that the Directorate is familiar with the Recommendation, and is currently implementing project activities with the Council of Europe, in this regard.²²

Therefore, Serbia has just recently started promoting and implementing the CMCE Recommendation, prompted by agreeing to participate in the Council of Europe's LGBT project, along with Albania, Italy, Montenegro, Latvia and Poland.²³ This includes the dissemination of the CMCE Recommendation to relevant actors. This is a significant positive signal that Serbia is willing to take implementing the CMCE Recommendation seriously, as CMCE Recommendation constitutes the main framework for the LGBT project, which, among other activities, also involves development and implementation of the Action Plan.

²² Correspondance with the Directorate for Human and Minority Rights, 15.05. 2012

²³ http://www.coe.int/t/dg4/lgbt/project/description_EN.asp?

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents²⁴

1. **Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**
 - i. *Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

The standard basic training of police officers does not ensure awareness about specific issues regarding homophobic or transphobic crimes or incidents. Even though topics such as tolerance, human rights, diversity and gender equality are included to a limited extent, sexual orientation and gender identity are not particularly covered. However, it has recently come to our attention that regular specialization trainings include sexual orientation and gender identity, while main challenges for police in this respect are raising awareness among police officers and difficulties in designing training programs.²⁵ We did not have access to the contents of the training programmes, its duration, number of police officers that attend these trainings and how often are they organized, so it is not possible to say at this point if these training programmes are adequate and effective.

In addition, some sporadic and short term training sessions were executed by non-governmental organizations, although these instances are extremely rare. In 2012 non-governmental organization Labris has made great effort to propose training programs to police officials, but was unable to do so, and was ultimately rejected. After sending an official letter to the Ministry of Internal Affairs with the proposal of organizing specific training sessions with police officers regarding sexual orientation and gender identity, Labris has never received an official answer. However, Labris has managed to get in touch with two police officials who are in charge with these issues, and has had numerous telephone conversations with them in which these officials continuously hesitated and delayed their decision, and this process has lasted for several months with a negative outcome.

²⁴ See Glossary (Appendix II) or Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents
<https://wcd.coe.int/ViewDoc.jsp?id=1570957&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

²⁵ Golub Gačević, Ministry of Internal Affairs, Fighting discrimination based on sexual orientation and gender identity (seminar organized by the Office for Human and Minority Rights within the LGBT project of the Council of Europe), 13.12.2012, Palata Srbije, Belgrade.

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

There are measures one could take if law-enforcement staff committed crimes or incidents. One can file a complaint to the Department for Internal Control. Experience of some nongovernmental organizations suggests that there has been an improvement in this regard, as Department of Internal Control appears to be open and cooperative, with adequate procedures. At the moment there are several cases being processed. However, there is still concern that these machineries are not effective enough, as majority of victims are still reluctant to file a complaint due to mistrust in police structure. In addition, anecdotal evidence that Labris has come across in its work also suggests that when one wishes to file a complaint, he or she sometimes gets discouraged by police representatives, and even threatened.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

- i. *Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*
- ii. *Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

In December 2012, Law on Amendments and Addendums of the Criminal Code that includes hate crime based on sexual orientation and gender identity as an aggravating circumstance has been adopted. After intense lobbying initiatives coming from non-governmental organizations, most notably Gay-Straight Alliance and Committee of Lawyers for Human Rights, and after initial rejection, Ministry of Justice and Public Administration has recently agreed to include hate crime as an aggravating circumstance in the Law on Amendments and Addendums of the Criminal Code.²⁶ Article 54a was inserted and worded as follows:

“Specific circumstances for assessing the punishment
for a criminal offense motivated by hate

Article 54a

When the commission of a criminal offense is motivated by hate based on race or religion, national or ethnic origin, sex, sexual orientation, or gender identity of other person,

²⁶ <http://www.mpravde.gov.rs/cr/news/vesti/radna-verzija-zakona-o-izmenama-i-dopunama-krivcnog-zakonika-dostupna-je-za-komentare-gradjana.html>

the court shall deem such conduct to constitute aggravating circumstances, unless it is herein laid down as the element of a criminal offense.”

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?²⁷*

As has been noted above, Law on Amendments and Addendums of the Criminal Code that includes hate crime based on sexual orientation and gender identity as an aggravating circumstance has just been adopted in December 2012. The definition of “hate crimes” is simple and comprehensible; however it has not yet been disseminated to the general public.

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*
- iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

The same as in the section above (A.1.i.) applies, when it comes to police. When it comes to the judiciary these programmes, procedures or codes of conduct do not exist, to the best of our knowledge. No information was provided by the judiciary on this.

- iv. Are units within the police tasked specifically with investigating crimes and incidents linked to (a) sexual orientation and (b) gender identity?*

No such police units exist, to the best of our knowledge. No information was provided by the police on this matter, upon our request.

- v. Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

No such police liaison officers formally exist, to the best of our knowledge. No information was provided by the police on this matter, upon our request. However, Labris has established

²⁷ e.g. through police websites or leaflets distributed in the community.

good cooperation with several police units and departments, as well as with individual police officials, that are continuously involved in dealing with LGBT issues.

- vi. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

Yes, there is a system that allows anonymous complaints. Any kind of anonymous complaint is a subject of police proceedings.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons

- i. *Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*
- ii. *Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*
- iii. *Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*
- iv. *In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

An answer from relevant authorities was not received. All available resources suggest that prison measures, codes of conduct, trainings and procedures do not pay special attention to LGBT people.

Labris' experience in conducting workshops about sexual orientation and LGBT rights in the prison suggests that LGBT prisoners are facing difficult circumstances in state prisons, and that the situation is quite unsatisfactory. The level of understanding and interest in issues of different sexual orientation and gender identity was low. Anecdotal evidence suggests that LGBT people face violence and threats of violence on regular basis, as well as sexual abuse. These incidents mostly go unreported and not investigated.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of

sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

- i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*
- ii. Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*
- iii. Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

There is no research into the nature and causes of hostile and negative attitudes to LGBT people, nor surveys about social acceptance/hostility towards LGBT people, which are carried out by state institutions. Several researches and surveys have been conducted by non-governmental organizations. On the level of the Autonomous Province of Vojvodina, Provincial Ombudsman, Gender Equality Institute and Labris, will initiate a research about the position of LGBT people in higher education institutions, as well as about attitudes towards LGBT people, in 2013²⁸.

Also, an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to sexual orientation and gender identity does not exist. There is no state statistics on cases of violence that would be kept not only according to the type of crime but also according to motive.

B. “Hate speech”²⁹

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

- i. Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

Legislative measures penalising hate speech on the grounds of sexual orientation exist. Media laws (Law on Broadcasting and Law on Public Information) recognise the right to freedom from discrimination on the basis of sexual orientation, and actually forbid hate speech based on sexual orientation. The Criminal Code does not recognise hate speech as a criminal act.

²⁸ Correspondance with the Provincial Gender Equality Institute, 10.03. 2012.

²⁹ See Glossary (Appendix II) or Explanatory Memorandum for definition of “hate speech”.

In August 2009, the Penal Code was amended and new provisions were introduced to include hate speech based on a number of listed personal properties, which do not explicitly include sexual orientation and gender identity, however this could be covered with in the open-ended formulation that forbids hate speech based on “other personal properties”, as well. In addition, hate speech is explicitly forbidden by the comprehensive Antidiscrimination Law.

- ii. *Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- *a culture of respect, tolerance and diversity, and*
 - *to avoid negative and stereotyped representations of LGBT people?*

According to the Labris’ research “LGBT Population in the Printed Media in Serbia in 2011” although the neutral contextualization of LGBT themes is the most popular in media discourse, the LGBT population is still exposed to hate speech. The terminology used is often offensive and discriminatory and television and print media, contrary to the Broadcasting Law, broadcast hate speech directed at persons who have a different sexual orientation than heterosexual. Despite the Public Information Law, which prohibits disclosure of information that incites violence, hatred, and discrimination based on sexual orientation, discriminatory language and hate speech are still present in the media space in Serbia.

Even though, there is evidence that suggests that media reports are becoming more neutral, there are still reasons for serious concerns as online media and television shows still generally tend to allow readers’ and viewers’ comments which are homophobic and transphobic, which practically negates the neutral aspect of those media reports and representations and further perpetuates homophobia and transphobia, which is already widespread.

Different media have different codes of conducts, recommendations and guidelines that they use. They are almost always encouraged to promote a culture of tolerance and diversity, and to avoid negative and stereotyped representations of LGBT people by LGBT organizations.

- iii. *Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

Legislation on hate speech that was mentioned above covers hate speech on the internet, as well. Some media operating on the internet have non-discriminatory policies but it is not uncommon to find a lot of homophobic, transphobic hate speech on the internet.

However, there were several court rulings regarding hate speech on the internet. For example, in the first ever court ruling on hate speech against LGBT people, the First-Instance Court decided that the daily newspaper “Press” has committed an act of hate speech against LGBT people, by allowing hate speech readers’ comments on its internet news portal (June 2011).

In addition, there are several cases on threats and hate speech via internet and social media that have been initiated by the public prosecutor in Belgrade, which are in currently in process in front of the Belgrade Higher Court. Two of these cases have been finalized (29 February 2012 and 16 January 2013), and the offenders have been sentenced to two years of probation.

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic materials, threats and insults?*

To the best of our knowledge, internet service providers have not been encouraged to take measures to prevent dissemination of homophobic and transphobic materials, threats and insults.

- v. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

This is one of the largest problems when it comes to hate speech. It is not uncommon for leading public officials and church officials to express hate speech. Public condemnation of hate speech against LGBT people are rare, and are voiced mostly by independent bodies for the protection of equality, most notably by the Commissioner for Protection of Equality.

The absence of sanctions and the relativism of hate speech and violence in public discourse provide factual conditions for the expansion of the atmosphere of intolerance and attacks on members of the LGBT population. Absence of reaction of the institutional, social or media criticism represents encouragement to all those who daily use hate speech and justify violence against members of various minority groups.

In addition, it is worth noting that inflammatory speech, as a special kind of hate speech, is widespread in the Serbian public discourse. This is particularly important as this kind of speech usually comes in times of social tension (before, during and after Pride Parades, during election campaigns, etc.), and because it comes from prominent public figures such as political and religious leaders, teachers, cultural workers, leaders of popular media programs, popular public figures from various social fields, etc. Under these circumstances inflammatory speech is a particularly dangerous form of hate speech, as it has the potential to trigger and justify violence, to increase public intolerance and discrimination and to undermine efforts made by institutions and organizations in trying to create a more tolerant society.

Also, it is important to mention that graffiti, as a type of hate speech, directed towards LGBT people are also widespread across Serbia. These graffiti often exist on the walls of prominent streets for a long time, and a lot of people pass by these hate speech graffiti on a daily basis. Not only are these hate speech graffiti located on residential and other privately owned buildings, they are also sometimes located on state and other publicly owned buildings. There have been several initiatives to remove these graffiti, but an example of the city of Novi Sad (second largest city in Serbia) is particularly worth mentioning, as it represents a positive initiative of two human rights institutions, on the one hand, and also represents an example of other state institutions failing to act accordingly.

Provincial Ombudsman and the Provincial Gender Equality Institute have conducted a campaign of mapping hate speech graffiti in Novi Sad, on the occasion of the International Day Against Homophobia and Transphobia, in May 2011. This campaign was organized in order to draw attention to the worrying spread of graffiti that call for violence, lynching and discrimination on various grounds, but mostly on the grounds of sexual orientation. In Novi Sad, 224 hate speech graffiti have been mapped and photographed, out of which more than

half (56%) were hate speech graffiti against LGBT people, calling for lynching of LGBT people and even death (examples: “Death for gays”, “Gays to Concentration Camps”, “Kill the Faggot!”, “Only a dead faggot is a good faggot”, “Gays get out of Serbia!”, etc.). Most of these graffiti occurred in 2009 and 2010, in the period that Pride Parades were scheduled to take place, and have therefore freely promote hatred, intolerance and discrimination towards LGBT people for years (most of these graffiti are still there).

After the campaign, the Provincial Ombudsman has sent the mapped data to relevant city authorities in charge of the protection of public space, with the recommendation to remove hate speech graffiti from public and private buildings. However, to this date, most of these graffiti are still in place, and many new have appeared.³⁰

Unfortunately, except for rare exceptions, not only do leading public officials generally fail to publicly disavow incidents of hate speech or inflammatory speech and/or propose measure to fight it, they are often either the creators of such discourse or are reluctant to take a clear stand against hate speech, as will be evident in the examples that follow.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

No such activities have been conducted.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

There have been numerous instances when public authorities and institutions expressed statements that legitimize hatred or discrimination based on sexual orientation and gender identity.

For example, after the First Basic Court in Belgrade issued the first-instance verdict against a leading politician Dragan Marković Palma (whose party is within the ruling coalition) for severe forms of discrimination against LGBT people and forbade him to repeat the discrimination performed, he made a statement to all the media that he is: „Proud of the punishment if his acts had contributed to the cancellation of the Shame Parade“. In 2012 this court ruling was rejected by the Court of Appeals, and ordered a retrial.

In addition, one more statement among many in this respect was the one made by the Belgrade Mayor, Dragan Đilas, in which he states: “People who have same-sex preferences should keep their preferences within the four walls of their home, without provoking those

³⁰ Correspondance with the Provincial Ombudsman and the Gender Equality Institute, May 2012.

nationalist and extremist men who don't approve of this and for whom this is disgusting, and who threaten to deface Belgrade as a European city and give it a bad image"³¹.

Also, Nebojša Bakarec, a member of the Democratic Party of Serbia and a member of the Assembly of the City of Belgrade has stated: "Just because something is not healthy, does not mean that it is a disease. Also, the fact that something is not officially recognized as a disease, does not mean that it is a reflection of mental health and it does not mean that it is not a disorder. Homosexuality is a mental disorder. Homosexuality is certainly not normal, not healthy....And to be very clear, I do not call on you to be indifferent towards the announced shame parade, scheduled for the Second of October. No, there is no place for indifference when someone sadistically imposes his views of life, in this case, their disturbed sexual orientation".³²

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities

i. Has guidance been issued to public officials and state representatives in this respect?

No such guidance has been issued.

ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

There are examples of public officials and other state representatives promoting tolerance for LGBT people, but these statements usually only come from representatives of equality bodies and individual politicians and parties which are usually small and not in power, and therefore not very influential. Commissioner for the Protection of Equality has been the most active in this respect, as evidenced by several opinions and recommendations that were issued by now, as well as by public statements and other initiatives.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

³¹ Danas, 05.08.2009.

³² Vidovdan, 16 September, 2011

http://www.vidovdan.org/index.php?option=com_content&view=article&id=18284:drugi-oktobar-2001-godine&catid=39:drustvo&Itemid=66

- i. *Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*
- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*
- iii. *Are there examples of measures taken to:*
 - *ensure that LGBT organisations can operate freely,*
 - *defend their interests when necessary,*
 - *facilitate and encourage their work?*
- iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

There are no problems when it comes to registration and freedom of operation. LGBT non-governmental organizations can be registered without discrimination. The level of cooperation of LGBT non-governmental organizations with state institutions, namely with equality bodies is satisfactory, when it comes to encouragement and support of mutual activities. Number of examples that illustrate this is slowly increasing, as institutions are becoming more and more open.

For example, LGBT organizations have recently been invited to participate in the working group for LGBT rights which is part of the process of drafting the National Antidiscrimination Strategy. Also, LGBT organizations have been invited to participate in the drafting of the comprehensive Antidiscrimination Law. There are also other examples of close cooperation with state institutions, when it comes to issues which are explicitly and obviously linked with LGBT people.

However there are also some worrying examples. Recently it has come to our attention that a new draft version of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings degrades transgender rights to a great extent by introducing a new gender reassignment procedure which would require a court's permission to change sex, and if adopted would practically make gender reassignment illegal, and would bring additional problems to already difficult, lengthy and painful procedures. When drafting this law nongovernmental organisations dealing with sexual orientation and gender identity were never consulted or notified.

The Commissioner for the Protection of Equality reacted timely and firmly against the draft of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings and has issued its negative opinion (495/2012; 5.11. 2012.). This is the only institution that has reacted against this draft law, and represents one of many good practice examples of this institution. On the other hand, the Ombudsman has refused to react in this case, and this represents one of the examples showing avoidance and reluctance of this institution to deal with “unpopular” LGBT issues.

Even though there is evidence to suggest that some progress has been made in cooperation with state institutions, there is still a lack of cooperation when it comes to spheres where

LGBT interest are not so obvious. In other words, processes of horizontal mainstreaming of LGBT rights into all relevant spheres of public and private life are not taking place.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

- i. Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*
- ii. Has such funding been made available to LGBT organisations?*

Funding is formally accessible to LGBT organizations; however such funding has rarely been allocated for LGBT organizations, although there is evidence to suggest that some improvement is taking place. For example, in June 2012, Labris, along with several other partner LGBT organizations has been given a grant by the Directorate for Human and Minority Rights, to implement activities within the project called “Month of LGBT Rights”.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities

- i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*
- ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

Generally there are no major interferences in the work of LGBT organizations. However, in February 2009, LGBT organization Gay Straight Alliance booked the Media Centre for 26 February 2009 in order to talk about the annual report about LGBT rights in Serbia, and they were prevented to do so, because the management of Sava Congress Centre did not want LGBT people there. After a negative public reaction to this event, relevant authorities apologised. The charge was brought by the Gay Straight Alliance against Sava Congress Centre, and this case is still not closed. Even though, this was a negative example of state interfering with the work of LGBT organizations, this unfortunate event and the media attention it got, along with the protest that happened the very same day during the premiere screening of the film “Milk”, mark a milestone when it comes to articulating LGBT issues in the public discourse in Serbia, which was almost non-existent in the previous period.

In addition, when it comes to providing effective protection from hostility and aggression for LGBT human rights organisations, the greatest progress has been made in the way police

reacts to violence and threats of violence against LGBT human rights defenders, including effectively securing premises of organizations and different kinds of LGBT events. This is especially the case in the period when Pride Parades are scheduled to take place. For example, in this period, premises of Labris were monitored at all times, along with homes of prominent Labris activists.

- iii. *Are LGBT human rights organisations able to work with*
 - *national human rights institutions and ombudsmen,*
 - *the media,*
 - *other human rights organisations?*

- iv. *Are they able to take part in training sessions, international conferences and other human rights activities?*

Even though there is much to be improved, cooperation with human rights institutions is continuously improving. However, there are notable differences among human rights institutions in this respect. While the Commissioner for Protection of Equality, the Provincial Ombudsman and the Gender Equality Institute remain very open for cooperation with LGBT organizations, in many ways, other human rights institutions are not always eager to deal with LGBT issues, particularly when it comes to supporting Pride Parades and other “unpopular” LGBT concerns.

Generally, LGBT organizations have been able to establish very good relations with the media and other human rights organizations. Also, LGBT organizations have been able to participate in international conferences and other human rights activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons

- i. *Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

See above (section II 9.)

- ii. *Have there been such consultations regarding the implementation of this Recommendation?*

Significant consultations regarding the implementation of this Recommendation did not take place. However, as Serbia has just recently started promoting and implementing the CMCE Recommendation, within the Council of Europe’s LGBT project, discussions about cooperation have just begun. On the occasion of the conference that announced the launching of CoE project activities in Serbia (13.12.2012), we have witnessed promising signals coming from the Office of Human and Minority Rights, that they will be willing to work with LGBT organizations regarding monitoring and implementation of Recommendation.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

- i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*
 - *activities that support the human rights of LGBT persons*
 - *publication of material*
 - *media coverage*
 - *organisation of/participation in conferences*
 - *dissemination/access to information on safe sexual practices?*
- ii. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*
- iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

Freedom of expression is guaranteed by the Constitution of the Republic of Serbia. Article 46 says that “The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner”. Also, the comprehensive Antidiscrimination Law regulates the general prohibition of discrimination and states that “Everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden.”

In line with this legislation freedom to receive and transmit information and ideas about sexual orientation and gender identity is generally respected. There are no major interferences in the work of LGBT organizations (see also section 11. *iii*). Still, much more progress can be made when it comes to allowing LGBT organizations access to implement activities within certain public sectors, such as the police, judiciary and institutions of education.

When it comes to freedom of expression, there was a worrisome development in October 2012, when the state almost banned an art exhibition “Ecce Homo” which was a part of the series of events within the Pride Week program, preceding the Pride Parade (which was banned). As the exhibition was exploring the relationship of Christian religion and non-heteronormative sexualities, while portraying Jesus and the stories from the New Testament in a new way, Serbian Orthodox Church, along with the political party “Dveri”, called on to the state to ban the exhibition. Various state officials, including the Prime Minister Ivica Dačić (at the same time he is also the Minister for Internal Affairs), said that the exhibition is inappropriate and that it should not take place, and it was not certain until the very last moment whether the exhibition will be banned or not. The state decided not to ban the

exhibition, and the venue of the exhibition was surrounded and protected by 2000 police officers, but it did decide, on that very same day, that the Pride Parade will be banned.³³

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

i. Have the authorities ensured freedom of peaceful assembly for LGBT people?

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?

ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?

iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?

The Constitution of the Republic of Serbia states that the freedom of peaceful assembly is guaranteed. The freedom of assembly can only be denied due to protection of public health, moral, the rights of others, or state security. Apart from the Constitution, and the Anti-discrimination Law, the most important law is the Public Gathering Law.

Pride Parades have been banned in 2009, 2011 and 2012. In 2009 the grounds for banning the Parade were security threats, as evidenced by the official decision that was delivered to the Pride organizers. However, in 2011 and 2012 Pride Parade organizers never got an explanation about the grounds for the banning of the Parade. The explanation part always has

³³ <http://www.novosti.rs/vesti/naslovna/aktuelno.290.html:399631-Zabranjena-quotParada-ponosaquot-otvorena-kontroverzna-izlozba>

to be a formal part of the Decision by the police, however these explanations were never given and therefore access to legal remedies were reduced, and a complaint could only be filed to the Constitutional Court and the European Court of Human Rights. Grounds for banning the parades in 2011 and 2012 were only presented in the media.

Actually the decision included the following: The public gathering and the public gathering in motion convened by the association “Belgrade Pride Parade, scheduled for October 2, 2011 with the beginning at 11 o’clock in the city park Manjež is banned. In the procedures following the report it was established that reasons from Article 11, Paragraph 1 of the Public Gatherings Law of the citizens of the Republic of Serbia were possible to implement- i.e. that the gathering may obstruct public transport, endanger health, public morale or security of people and property³⁴.

- ii. *Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*
- iii. *If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

It was only possible to challenge the restrictions in the Constitutional Court and in the European Court of Human Rights. The complaint was filed in 2009, 2011 and 2012. In December 2012, the Constitutional Court has ruled that the decision by the police in 2009 was unconstitutional. In 2011 and 2012 the state decided to ignore the Constitution again, as well as the ruling of the Constitutional Court regarding 2009.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons

- i. *If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
 - a. *Has there been encouragement to public authorities to condemn such interferences?*
 - b. *Have public authorities actually condemned such interferences?*
- ii. *Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*
- iii. *Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

³⁴ The official decision of the Ministry of Internal Affairs / Police Directorate/ Police Administration of the City of Belgrade / Police Station Savski Venac / Number 212-613/11/30.09.2011.

Intimidation of the Pride Parade organizers was in the previous years an accompanying factor of the very organizational process of Pride Parades. “The president of the Independent Police Union Momčilo Vidojević addressed the public via the daily newspaper Večernje novosti with the acknowledgement that unidentified persons prepared to set fire to the city by using automobile tires which were purchased before the scheduled Parade, calling that action “Belgrade in Flames”³⁵. Večernje novosti in the same article said that parallel gatherings are planned on the same day when the Pride Parade was scheduled. On regular meetings with the Ministry of Internal Affairs it was confirmed that parallel gatherings are being prepared which were reported to the Ministry, but that the fact they will take place will not interfere with the Pride Parade. Also, as the daily newspaper Alo!³⁶ later reported, it was speculated that the participants of the Parade will be attacked with swarms of bees. However, the Ministry of Internal Affairs of the Republic of Serbia had not come out with a statement which would have denied such allegations. To the contrary, the Ministry of Internal Affairs as well as the official statements of the Minister of Internal Affairs said that all possible measures will be taken to protect the participants of the Pride Parade. The same assurances were given by the Ministry of Internal Affairs’ representatives until the very last meeting with the Organizational Board of the Pride Parade with the request that the organizers do not pay attention to “speculations from the media”. Only a day after the organizers received these assurances from the Ministry’s representatives, the Pride Parade 2011 was banned by the decision of the Council for National Security because of the of general security reasons³⁷ Similar turn of events happened in 2012.

After these developments not a single call came from the Ministers and politicians to invite the Pride Parade’s organizers to discuss what could be done in the future in order to prevent this from happening in the future.

As opposed to 2009, 2011 and 2012, in October 2010 Pride Parade was held. It was organized under a huge police protection. The participants were forced to pass through police checkpoints in order to access the area in which the Parade was to be held, which was cleared of passersby and cars. There was around a 100m of clear space between the participants and the police cordons, and the participants could not see what was going on behind the security cordons. At the event, many representatives of international institutions held speeches, as did the Minister for Human and Minority Rights and an activist of Queer Belgrade and Labris, Majda Puača. The media reported a small amount of information from the event itself, as the media attention (and not just that of the domestic media) was focused only at the images of violence. The media failed to covered the fact that Mr. Ciplic’s speech was not well received by the local activists. None of LGBT activists were mentioned in the media during the Parade and the riots in the city.

Behind the police cordons, around 6.000 hooligans destroyed the city and attacked police officers. After the Pride Parade, 249 people were arrested, of which 195 adults and 54 minors; 131 person were detained, 160 people were injured (most of the injured were

³⁵ Večernje novosti, 27.09.2011: <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:346808-Policija-Akcija-Beograd-u-plamenu-tokom-Parade-ponosa>

³⁶ Alo! 07.10.2011: http://www.alo.rs/vesti/42356/Rojevima_pcela_na_gejeve_i_policiju

³⁷ Are We Equal - Cases of Violence and Discrimination against LGBTIQ Persons in 2011, Labris, Belgrade, 2012.

policemen). Immediately following the Pride Parade, several politicians (the Minister of the Police, the Mayor of Belgrade) expressed their concern over what happened and demanded that the LGBT community refrains from organizing similar events in the future (the Mayor of Belgrade), or to organize such events far from the city centre (the Minister of the Police). Given that the response of the Pride Parade organizers to such statements was issued with a significant delay, the politicians seized the opportunity to support the attitude of the majority of the public and accuse the organizers of the Pride Parade for everything that happened, as well as to emphasize that this violence had nothing to do with the LGBT community, but that it was an attack on the State, a statement mainly rooted in the fact that several buildings housing the political parties in Belgrade were also targeted.

Even after the Parade was held, there was a noticeable amount of hate speech coming from the politicians, among which the events from the City Assembly in November 2010 should be singled out. The Coalition Against Discrimination had issued a statement on that occasion and called for cessation of the session of the Assembly during which the members of the Radical Party of Serbia (Radikalna stranka Srbije) and the Democratic Party of Serbia (Demokratska stranka Srbije, DSS) openly insulted the LGBTIQ population, and a member of DSS, Nebojša Bakarec, described homosexuality as an “illness, perversion, deviance and aberration, and a social problem which caused a confrontation between the representatives of a healthy, heterosexual Serbia.” It is important to stress that none of the officials reacted to the statement issued by the KPD, nor to the hate speech and calls for a lynching of the LGBTIQ community heard in the Belgrade Assembly. Additionally, the media had not published the statement issued by the KPD.

Selected statements of politicians after the decision on the 2011 Pride Parade ban³⁸:

“If the Pride Parade is held in an enclosed space, the situation will certainly be completely different. It is impossible to follow everybody who is preparing violence and it is impossible to control and the state leaders and will once again tell them that there is a high security risk associated with this assembly”, Ivica Dačić, Minister of Internal Affairs.

“In order to protect all citizens, and in accordance with the authorities’ security assessment, the State has to ban or delay high-risk events. In that way citizens are protected, members of the LGBT population, and the consequences of violence and possible loss of human lives are prevented.” – Boris Tadić, the President of Serbia.

“We have finally showed that we respect traditional values and not something that is not recognized by the Serbian Orthodox Church or the Catholic Church, or the Muslim religion, or normal people.” - Dragan Marković, the mayor of the city of Jagodina.

“What else has to happen in order to understand that fascism is coming in a big way into our everyday lives and it is only a matter of days when thugs and murderers will start knocking on doors of everyone who opposes them?” – Nenad Čanak, the president of LSV (Social Democratic League of Vojvodina)

³⁸ As cited in Annual Report on the Position of the LGBTIQ Population in Serbia, Labris, 2011

„It is not true that the State has capitulated and that the hooligans are stronger than the State - that is complete nonsense. The State has done the only thing it could do and what every other normal country would do, to prevent all gatherings that could lead to endangering of lives and material goods.“ Milan Marković, Minister of Human and Minorities Rights

In addition, it is particularly worth mentioning the lack of reaction of the national Ombudsman regarding the banning of the Pride Parade in 2012. Instead of taking a strong public position against violations of the human rights of LGBT persons and promoting respect on issues related to sexual orientation and gender identity, the Serbian Ombudsman did not issue any official statement regarding the 2012 banning of the Pride Parade. However, in some media comments he rather cynically wished “better luck to all in the next year’s organization of the Parade” (as if the Parade were the matter of a lottery)³⁹, and his comment on the attack on the web site of the Queeria centre, one of Belgrade’s LGBT rights groups, was his condemnation of “all sorts of extremisms”⁴⁰, thus putting extremists and LGBT activists in the same register.

In contrast, the Commissioner for Protection of Equality and the Provincial Gender Equality Institute have issued official statements supporting the Pride Parade, in a firm and straightforward manner, without any reservations.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?

Same-sex sexual acts were decriminalized in 1994. There are no differences in the age of consent (16 years old).

ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding
(a) sexual orientation or
(b) gender identity?

There are no such wordings.

³⁹ M. D. *Verske vođe koriste boga da bi pretile manjinskim grupama*, Danas, 6.10. 2012: 1. <http://web.arhiv.rs/develop/stanjepress.nsf/ea935cf1fd511137c125784d0067fe6c/c12578d9004890d1c1257a8e0067f4a7?OpenDocument>

⁴⁰ N.J., *Homofobe proglasite za pijanice i rasiste*, Informer, 6. October, 2012.: 4
<<http://web.arhiv.rs/develop/stanjepress.nsf/ea935cf1fd511137c125784d0067fe6c/c12578d9004890d1c1257a8e0067a086?OpenDocument>

iii. If so, what steps are the authorities taking to remedy this situation?

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?

ii. What steps have the authorities taken to ensure that existing records are destroyed?

iii. Have these steps been effective?

Is there any evidence of:

- *the continued existence of such records*
- *the continuing collection of such data?*

Information on this has not been obtained from relevant authorities. Records and experience of Labris (and other organizations) suggest that the confidentiality of information about sexual orientation and/or gender identity is often not respected. This has been a particular problem in smaller settlements, and cases of family, friends or co-workers finding out about one's sexual orientation or gender identity have been recorded. This has usually happened with law enforcement authorities, as well as within medical institutions.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements

i. Has a review of such prior requirements been conducted?

ii. Are there still requirements which might be considered disproportionate or even abusive⁴¹, such as:

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

So far, no review has been conducted. However, the Commissioner for Protection of Equality has recently established a working group together with the Ombudsman, for the analysis of

⁴¹ The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007)17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

legislation that affect transgender persons. Within the analysis attention will be paid to examine prior requirements for legal recognition of gender reassignment. The findings of the working group should soon be published and promoted.

Unfortunately, there are still requirements which might be considered abusive and disproportionate. Transgender persons in Serbia, always have to remove their reproductive organs under the pretext that there is the possibility of developing cancer, although there is no serious evidence to support this. This means that transgender persons who want to surgically change gender have no choice and basically have to undergo forced sterilization, which is contrary to all medical and ethical standards.

Non-governmental organization Gayten LGBT is currently negotiating with the authorities in regards to the procedures required for the legal recognition of gender reassignment. So far, all the stated requirements are obligatory, but now Gayten LGBT is proposing a new model so that a person does not have to undergo irreversible sterilisation and other procedures, and to decide about the whole process according to their needs.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates

- i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*
- ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*
- iii. Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
 - diplomas,*
 - certificates of employment, and*
 - insurance or banking documents?*
- iv. If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

According to available published information and experience in working with transgender persons, it is more than obvious that there is a great deal of insensitivity and lack of knowledge by state institutions when it comes to working with transgender people. In addition, in the positive legal acts of the Republic of Serbia, the status, rights and obligations of transgender people are almost totally unregulated. In other words, there is a huge legal gap in this domain, meaning that there are no legal procedures to regulate the process of the legal

recognition of the gender reassignment, and this applies to both official documents and documents by non-state actors.⁴²

In practice, this means that it is possible to undergo gender reassignment procedure based on the “diagnosis”⁴³ of gender dysphoria confirmed by a psychiatrist and to change the name, along with documents, but procedures are not regulated, transparent, clear and straightforward, with long delays and uncertain outcomes, due to arbitrary decisions by relevant state bodies.

Research made by organization Gayten LGBT entitled „Examining the transgender problem in the spheres of education, work and employment, health system and state administration“ which is the first research of this kind in Serbia⁴⁴, came to an interesting observation that people who underwent surgery before the year 2000 had fewer problems with the change of official documents than those that went through the process in recent years. Specifically, since there were no laws or regulations, the certificate issued by surgeons stating that gender reassignment surgery has taken place was enough to officially change all documents (birth certificate, identity card, passport, driving license, diploma from schools and colleges), leaving no records that a change has taken place. This enabled people to officially enter into marriage, as many have done.

Today procedures of changing documents are very different and they may last up to a year. People in the Province of Vojvodina and in Belgrade face fewer problems than people in the south of Serbia. Based on research and records of the Gayten LGBT it can be observed that relevant state bodies established certain practices for themselves on their own, which were different in different regions and in different state bodies. Due to this, employees of the state authorities find themselves in the gap between legitimate and reasonable demands to change documents of people that have changed sex and have proper medical documentation to prove it, on one hand, and the lack of legal norms that regulate these issues, on the other hand, putting them in a situation in which they have no regulation to base their decision on, which consequently makes them indecisive, concerned and afraid of making a mistake that could lead to a law suit. This is why, at the end, the final decision depends on personal sensibility and humanity of the deciding officer. Due to this, we can witness an absurd situation that almost every city or municipality in Serbia has developed their own way of working.

Some of the examples of various difficulties faced by transgender persons are⁴⁵:

- When approached by a transgender woman who wanted to change her documents the municipality officials requested that she has to be examined by forensic doctors and other experts in order to determine whether the change has really taken place. During the exam they observed and measured her genitals and breasts, although she had all the necessary medical documents and even though this is not a standard procedure.
- After a transgender person went to the police station in one city in order to file a request for the change of the ID card, the information about the change spread throughout the city, and the person had to leave the country.

⁴² <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

⁴³ As we do not think that transgender persons are ill and in need of a diagnosis, we use the word diagnosis in parenthesis

⁴⁴ <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

⁴⁵ <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

- Although a transgender woman has been able to change all the other documents, the officials did not want to issue her a work permit with the new name, which has left her without work and money.
- One transgender person had to wait for as long as nine months to change documents, during which he had no personal documents and was unable to get a job.
- One person did not file a request to change documents because the new documents would make the marriage annulled (and neither that person nor her partner wanted that). In addition, they had a child together, and they feared that they might lose parental rights.

In order to try and make the legal position of transgender persons more favourable, nongovernmental organization Gayten LGBT has recently created a law proposal that would regulate this area. It is currently being promoted and distributed to relevant state and non-state actors, which would be followed by intense lobbying campaign. So far, national human rights structures have been open to discussing these issues and have expressed their willingness to engage in promoting legal regulation of this sphere.⁴⁶

When it comes to changing documents of transgender people, there were several decisions by Serbian institutions in 2012, chronologically:

1. Opinion and recommendation of the Commissioner for Protection of Equality represents an important position on the rejections to alter personal information on the university diplomas, saying that such rejections are indirect discrimination, which is prohibited under Article 7 of the Anti-discrimination Law. In the case No. 297/2011 of 24.02.2012. the Commissioner issued an opinion that the Faculty of Law of the University of Belgrade has committed an act of indirect discrimination based on sex, by rejecting the request of M. Đ. to make a correction of the name in the Diploma, according to the new name after gender reassignment from male to female, which occurred after graduation. The Commissioner has also issued a recommendation to the Faculty of Law in Belgrade to take without delay all necessary measures to ensure that the M. Đ. and others who, after graduation changed their name, at their request, issue new certificates and other documents, respecting the national and international standards in the field of protection of transgender people from all forms of discrimination. The Commissioner has concluded in its opinion that the equal treatment of people who have changed their name due to gender reassignment and people who have changed the name for other reasons is not allowed, because although the Faculty Law had reasonable and lawful goals, the means for achieving them were neither appropriate nor necessary, i.e. there was no proportion between actions taken and results, and in this case the Faculty of Law committed an act of indirect discrimination.

2. The Constitutional Court of the Republic of Serbia in Decision number 3238/2011 of 8 March 2012, has taken a position that the authorities listed under Article 6 of the Law on Registers have a mandate to decide about requests for changing data about gender. The decision stated that the municipal administration of the municipality in question should decide within 30 days of receipt of the Constitutional Court's decision, about the request to change the data about gender in the civil register.

⁴⁶ <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

3. Commissioner for Protection of Equality has issued a recommendation to all universities in Serbia (101/2012: 16 March 2102) to take all necessary measures, without delay, to issue new certificates and other documents at the request of transgender persons who have changed their sex after graduation, which would refer to their new name, in a quick, transparent and accessible manner, respecting the national and international standards in the domain of protection of transgender persons from all forms of discrimination.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

If a transgender person after the transition process manages to get his or her new gender legally recognized and manages to change all necessary documents, it is possible to marry a person of the opposite sex. Constitution of the Republic of Serbia and relevant laws recognize marriage as a union between a man and a woman. In addition, this also raises the question of parenting, because children cannot legally have two mothers or two fathers, so transgender persons almost automatically lose their parenting rights.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?

National legislation does not confer rights and obligations on unmarried couples. Unmarried couples are not provided with rights and obligations in the fields of social and health insurance, pension and inheritance.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?

Same-sex partnerships are not recognized by Serbian legislation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The authorities have not considered this. Not only did the authorities not consider means and measures to address the practical problems for same-sex communities in Serbia, they have made it difficult for LGBT people from Serbia to get married to same-sex partners abroad, as evidenced by the following:

Regarding discrimination in administrative procedures of issuing a marital status certificate, a girl addressed Labris in March 2011, asking for help and counsel due to lack of possibility to get the certificate from the municipality where she is listed in the Birth Register. She needed the certificate in order to be able to enter into a same-sex marriage in a European Union country – more precisely, Spain. It is important to say that for the purpose of issuing a Certificate of Free Marital Status it is necessary to file a request where you need to state the purpose of issuing the certificate, Birth Register certificate, citizenship certificate, residence certificate, and also photocopies of personal ID card and passport of one's future marriage partner. When the municipality's clerk had discovered that the certificate is needed for entering into a same-sex marriage, she said that it is not possible to issue that certificate⁴⁷.

In July 2011, a gay man V.P addressed the Regional Ombudsman of the Autonomous Province of Vojvodina with the same problem. Like in the previous case, V.P. asked for help and advice regarding acquiring a marital status certificate in Šid Municipality, which he need for entering into marriage with a person of same sex abroad. The Municipality's clerks rejected his request with the explanation that in accordance to the relevant Family Law they cannot issue the certificate. The Regional Ombudsman reacted appropriately concerning this case: he questioned the action of Šid Municipality, determined certain irregularities and inconsistencies and asked the relevant Ministry for an opinion. Seeing that there are no clear normative definitions and instructions for this kind of situations, and that local self government make arbitrary decisions that are often discriminatory, the Regional Ombudsman decided to examine how all 45 Municipalities in the AP Vojvodina act in these situations. First results showed that local self-governments act differently concerning these requests and that it is necessary to harmonize procedures in order to act in an equal and non-discriminatory manner in all municipalities. After analysing gathered data, the Regional Ombudsman intends to issue instructions to all local self-governments.

That this problem of documentation is not an isolated case is evident in the statement of Gay-Lesbian Info Centre (GLIC): "Serbia does not allow its citizens to enter into marriage with persons of the same sex even outside the country's borders because in those cases it refuses to

⁴⁷ Are We Equal - Cases of Violence and Discrimination against LGBTIQ Persons in 2011, Labris, Belgrade, 2012.

issue a Certificate of Free Marital Status.”⁴⁸ The Gay-Lesbian Info Centre was addressed by a gay man, a citizen of Serbia with current residence in Austria, who wants to register a same-sex marriage union with an Austrian citizen. The statement further states: “When officers see that the case is about two persons of the same sex, in accordance with the Family Law that request is denied and therefore it is not possible for the petitioner to enter into marriage outside of the country’s borders. We consider that with this practice a certificates stops being a certificate and it starts to be a permit, that is, an approval!”⁴⁹

This raises a question: in what way will the lesbians, gay men and bisexuals in Serbia get the possibility to enter into marriage in any country if they are facing this kind of barrier in their own country which they are forced to leave? Considering that earlier cases of this type of discrimination had not been officially noted, it is supposed that the members of the non-heterosexual minority were forced to state false reasons for issuing of the certificate in order to avoid inconveniences and by that they have violated the law themselves.

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*
- ii. In practice, are such decisions taken on a non-discriminatory basis?*

Legislation is completely insensitive in this regards, and based on anecdotal evidence, it would be safe to assume that such decisions are often biased and arbitrary. Therefore, parents usually do not disclose their sexual orientation or gender identity due to fear that they might lose guardianship of a child.

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

- i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*
- ii. In practice, are such decisions taken on a non-discriminatory basis?*

⁴⁸ Public statement - GLIC; December 14.2011 - <http://gayecho.com/glic/?p=424>

⁴⁹ Ibid.

Family Law states that adoption is allowed to partners in marriage. Therefore, same-sex partners are not able to adopt children. However, a single parent is allowed to adopt only under special circumstances and it must be approved by Ministry of Labour and Social Policy. In practice, single parent adoptions are rarely granted and are at the discretion of the Ministry to evaluate the circumstances. We did not receive answers about this from the relevant ministries. Although, there is no explicit evidence that discrimination against LGBT people takes place in this respect, there is a very big chance that those decisions would be biased, as Serbian law does not recognize same-sex couples and families in any way.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

- i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*
- ii. In practice, is such access granted on a non-discriminatory basis?*

In 2010 Serbian Parliament has adopted a Law on assisted reproductive treatment. According to this Law the right to this treatment is granted only to partners in marriage and, under special circumstances this is also allowed to single mothers but it must be approved by the Ministry of Labour, Employment, and Social Affairs and the Ministry of Health. Therefore, in practice such procedures for single women are rare and are at the discretion of the Ministries to evaluate the circumstances. We did not receive answers about the criteria based on which they are making these decisions from the relevant ministries. Although, there is no explicit evidence that discrimination against lesbian, bisexual or transgender women takes place in this respect, there is a very big chance that those decisions would be biased, as Serbian law does not recognize same-sex couples and families in any way.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

- i. Does legislation⁵⁰ exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

⁵⁰ Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 - right to work -- http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a ... particular sexual orientation at a particular disadvantage compared with other persons ...".

Both the comprehensive Antidiscrimination Law and the Labour Law forbid discrimination based on sexual orientation in the field of employment.

ii. Does it cover:

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

Yes, it does.

iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

Such measures have not been promoted.

iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?

There are no such laws and formal regulations and practices. However, NGO reports show that discrimination in the workplace, and especially within certain professions which are highly gendered, is widespread, although rarely reported and investigated.

However, recent final court verdict for severe discrimination at the workplace based on sexual orientation, a first of this kind based on Antidiscrimination Law in regards to discrimination that is based on sexual orientation. The case was led by a litigation team of the LGBT organization Gay-Straight Alliance (GSA):

“M.A. came to GSA in March 2011 and described the case where his colleague Dario K. insulted and threatened him, even with physical violence, for a longer period of time. This behaviour by Dario K. began after he took M.A.’s cell phone without M.A.’s knowledge and read his private messages, through which he learned about M.A.’s homosexual orientation. After that Dario K. started threatening and insulting M.A., telling him among other things: “You big faggot, you disgust me”, “You are disgusting, you should be put on a stake” and “You should all be put to death”, and then he threatened to “kill him if anything came from the court or the police”. M.A. also claimed that Dario K. was physically violent towards him

on a few occasions. Due to such behaviour on the part of his colleague, M.A. was forced on several occasions to seek medical assistance.

The Court of Appeals decided in this case that the accused Dario K. acted discriminatorily towards the prosecutor M.A. because of his homosexual orientation and because he repeated this act during a six-month period thereby committing the severe discrimination. The verdict is based on Articles 12, 13 and 21 of the Anti-Discrimination Law, and the Court of Appeal also states the violation of Articles 21, 23 and 25 of the Serbian Constitution which forbid discrimination on any basis and guarantees the right to human dignity and mental integrity.

In the explanation of the final verdict, among other things, the Court of Appeal states that it is “without doubt that words ‘fag’ and ‘faggot’ are expressions which in Serbian language have the meaning of negative, demeaning, debasing and insulting identification of a male person with homosexual orientation“ 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“. From the fact that after learning about his sexual orientation the accused frequently insulted M.A., on several occasions and during a longer period of time, the Court of Appeal judged that such behaviour represents repeated and prolonged discrimination, i.e. the severe discrimination.”⁵¹

v. Specifically in relation to the armed forces:

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

No such measures or codes of conduct have been provided.

vi. Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?

Transgender people are not explicitly mentioned in employment legislation, although gender identity could be covered by the category of “other personal characteristic”.

Numerous evidence suggests that transgender persons are especially vulnerable to discrimination in the sphere of employment. Due to the fact that they cannot easily and quickly change documents, and due to the fact that gender identity cannot be easily hidden, especially during hormonal therapies, transgender persons often lose their jobs, cannot find any employment or cannot find jobs which would be compatible with their levels of education and competence. In such instances, employers do not state that the gender identity was a reason that person lost his/her job or could not get a job, but usually make up another reasons. In addition, if transgender persons are employed they are often faced with humiliation, ridicule and harassment by their co-workers at their workplace.⁵² In addition, due to these circumstances transgender persons often end up doing sex-work.

⁵¹ <http://en.gsa.org.rs/2013/01/first-final-verdict-for-severe-discrimination-at-the-workplace-based-on-sexual-orientation/>

⁵² <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

vii. Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?

No, such programmes have not been developed.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

i. Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?

Such measures have not been taken.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

i. Have

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

There is still no law on children's rights, however there is a protocol and a rule book for the protection of minors, with very good measures, although not mentioning sexual orientation or gender identity. According to this protocol, schools have an obligation to suppress bullying. Schools should form anti-bullying teams and inform relevant state bodies when acts of bullying occur. NGO records show that acts of bullying against LGBT people often go unreported and covered up. Since this is just a by-law, schools often avoid implementing necessary measures, because they do not have to. Evidence shows that the Ministry of Education does not have a firm stand on bullying, which is why the by-law is not adequately implemented.

ii. Do initial and in-service training programmes for teachers and other educational staff address the need for them to

- a. treat their LGBT pupils and students with respect*

- b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

To the best of our knowledge such in-service training programmes do not exist. A limited number of trainings organized by nongovernmental organizations have taken place.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

To the best of our knowledge such campaigns have never initiated such school campaigns and cultural events.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

- i. *Is information on*
a. *sexual orientation*
b. *gender identity*
provided in school curricula and sex and health education classes?
- ii. *Is it provided in a respectful and objective manner?*
- iii. *Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*
- iv. *Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

None of the school curricula in Serbia comprise information on the rights of sexual minorities. Furthermore, high school textbooks are filled with explicitly discriminatory examples, and in some instances still define homosexuality as a disease.

Various studies have shown that educational materials (textbooks, curricula), as well as educational staff, are not sensitive to sexual orientation and gender identity and promote and

perpetuate traditional gender heteronormative roles in all educational levels in Serbia.⁵³ Educational materials do not contain information about non-heteronormative sexualities nor does the educational staff transfer this information to students due to lack of knowledge and sensitivity. This enforces intolerance towards LGBT people which is often based on the fact that they do not conform to predefined notions sexual and gender identities. As a result, LGBT people are at high risk of physical violence, hate crimes, sexual assaults and harassment, both within and outside educational settings.

In Serbia, 21% of students surveyed admitted they had verbally attacked or threatened someone they thought was gay or “feminised”, while 13% said they had actually helped beat them up. Some 60% of the respondents held that violence against homosexual persons was always justified. According to a research conducted by the Helsinki Committee for Human Rights entitled “Attitudes and value orientations of high school students in Serbia”, there is a need for an intervention in the education system regarding the education about LGBT people and increasing tolerance of LGBT people. The results of this research are very troubling, both in the short-term and in the long-term. Over 70 % of high school students in Serbia have homophobic attitudes, 41 % thinks that LGBT people are sick, and 22 % thinks these people deserve a beating.

In July 2011, the Working Group formed by the Commissioner for Protection of Equality compiled and presented a set of Recommendations based on existing research, to the Ministry of Education and Science of the Republic of Serbia, the National Education Council and the Centre for Improving the Quality of Pedagogy and Education, for removing discriminatory content from teaching materials and practices and for promoting tolerance, respecting diversity and human rights.⁵⁴ However, none of the recommendations have been implemented so far.

In addition, Provincial Gender Equality Institute, Provincial Ombudsman, Labris and Gayten LGBT have recently announced a joint research project to take place in 2013 which would focus on sexism, homophobia and transphobia at different universities in Serbia, which suggests that some encouraging steps forward are taking place.

VII. Health

- 33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses**

⁵³ “Towards non/homophobic secondary school”, Gayten-LGBT, Belgrade, 2008; “Gender Equality in Teaching Plans and Programs in Primary Education”, Gender Equality Institute, Novi Sad, 2010; „Recommendations for modifications of teaching plans and programmes and teaching materials in accordance with principles of education for human rights and an inclusive society“, Commissioner for Equality, Belgrade, 2011.

⁵⁴ Recommendation of the Commissioner for Protection of Equality to the Ministry of Education and Science of the Republic of Serbia, the National Assembly, the National Education Council and the Education Improvement Bureau on the elimination of discriminatory content from teaching material and practices and the promotion of tolerance, respect for diversity and human rights, of 10 June 2011, available in Serbian at: <http://www.ravnopravnost.gov.rs/lat/preporuke-OrganimaJavneVlasti.php?idKat=24>.

and materials, and when monitoring and evaluating the quality of health-care services

- i. *Do*
 - a. *the design of national health plans,*
 - b. *health surveys,*
 - c. *suicide prevention programmes,*
 - d. *medical training programmes,*
 - e. *training courses and materials*
 - f. *the monitoring and quality assessment of health-care services*
take into account specific needs in relation to (a) sexual orientation and (b) gender identity?
- ii. *Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*
- iii. *Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*
- iv. *Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*
- v. *Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

Provision of Article 2 Paragraph 1 of the Law on Health Insurance stipulates that health care is an organized and comprehensive activity of a society with the main goal to reach the highest possible level of health preservation of citizens and families. Paragraph 2 of the same article stipulates that health care includes implementation of measures for the preservation and improvement of public health, prevention and early detection of diseases, injuries and other health problems in a timely and efficient treatment and rehabilitation. From the cited provisions it can be concluded that the legislature opted for a very high standard of health security, guaranteed by many international documents, including the International Convention on Economic, Social and Cultural Rights.

However, various NGO reports continuously show that LGBT persons are faced with significant degrees of inequality and discrimination when exercising their rights to high standards of health care. Repeated accounts⁵⁵ demonstrate that healthcare providers are not sensitive to issues regarding non-heteronormative sexualities and they lack adequate knowledge to provide LGBT persons with complete medical care, both when it comes to

⁵⁵ During the past several years Labris has documented numerous accounts of discrimination and harassment against lesbian women in the healthcare sector.

physical conditions and when dealing with psychological problems that LGBT people might face. Due to this, LGBT people are not comfortable disclosing details pertaining to their sexuality which could be relevant for proper medical treatment, in fear that they could be laughed at, harassed or denied medical services. As a result, LGBT people are often not being provided with equal access to full and professional medical care.

In addition, since same-sex relationships between women are not recognized as families according to Serbian law, LGBT couples are not included in matters relating to family planning, sexual and reproductive programmes, including medically assisted artificial insemination. Under current laws lesbian women (in a relationship or not) are not allowed to undergo medically assisted artificial insemination, putting them in an unequal situation with other women that are married. This is not only a discriminatory situation towards lesbian women, but to all women who are not married, making it discrimination based on a personal characteristic (marital status).

To the best of our knowledge training programmes for medical professionals regarding sexual orientation and gender identity are rare and usually conducted by NGOs. Research and data obtained from conducting training seminars for health professionals by Labris and Gayten LGBT point out that the overwhelming percentage of both male and female health professionals find that their regular medical training did not provide them with enough information about sexual orientation and gender identity.

Health professionals and social workers are not usually encouraged by state authorities to create an environment that is reassuring and open to young LGBT persons, nor are they conducting information campaigns. These encouragement efforts are always coming from non-governmental organizations. However, experience of some LGBT NGOs shows that there has been a promising progress when it comes to increasing capacities and awareness of social workers and health professionals dealing with HIV/AIDS issues, about sexual orientation and gender identity, mainly through close cooperation with LGBT NGOs.

Patients in hospital are not allowed to identify same-sex partners as next of kin because legislation in this domain only recognizes family members (and sometimes only close family members), as defined by Family Law, and even though problems in this respect are not often reported because procedures in most medical facilities in Serbia are implemented rather loosely and arbitrarily regarding visiting rights and receiving medical information about the patient, instances in which these rights have been denied to same-sex partners have been reported in the past, as evidenced by Labris documentation.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

i. Has homosexuality been removed from the national classification of diseases?

In 2008 non-governmental organizations Labris and Gayten received an official letter from the Serbian Health Society stating that homosexuality is not a disease.

ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

According to our researches of high school and university curricula/ textbooks, homosexuality is still mentioned in a negative context in several medical textbooks.⁵⁶

iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

Although homosexuality is not officially considered as a disease in Serbia and that consequently medical professionals are not allowed to treat same-sex oriented people with the aim to cure their homosexuality nor are they allowed to do such things by force, there is still quite a number of LGBT people who have reported experiences of coming in contact with medical professionals (mostly psychiatrists) who tried to convince them that homosexuality is a disease and that it needs urgent treatment. This is especially the case in smaller settlements.

In addition, as was stated earlier, there are still mandatory requirements towards transgender persons which might be considered abusive and disproportionate. Transgender persons in Serbia, always have to remove their reproductive organs under the pretext that there is the possibility of developing cancer, although there is no serious evidence to support this. This means that transgender persons who want to surgically change gender have no choice and basically have to undergo forced sterilization, which is contrary to all medical and ethical standards.⁵⁷

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?

ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

⁵⁶ “Towards non/homophobic secondary school”, Gayten-LGBT, Belgrade, 2008; “Gender Equality in Teaching Plans and Programs in Primary Education”, Gender Equality Institute, Novi Sad, 2010; „Recommendations for modifications of teaching plans and programmes and teaching materials in accordance with principles of education for human rights and an inclusive society“, Commissioner for Equality, Belgrade, 2011.

⁵⁷ <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

Gender reassignment procedures have been performed in Serbia since 1989. So far the entire process of sex reassignment has been mostly confined to the private health sector and completely unregulated by legislation, creating circumstances in which transgender persons were often subjected to different kinds of abuse.

In Serbia, transsexualism is defined as a mental illness. This is creating numerous difficulties for transgender people including stigmatization, transphobia, violence and threats of violence, discrimination, feelings of low self-worth and suicide.

Access to adequate health care, as guaranteed by health legislation in Serbia, is extremely difficult for transgender people. Gayten LGBT research, documentation and experience demonstrates that experts which are specialized to help and support transgender people are lacking, especially in the field of endocrinology, within which there is only one expert trained to provide adequate hormonal treatment for transgender people. Similarly, there is an extremely low number of psychiatrists with adequate expertise to engage in working with transgender people. When it comes to surgery, the situation is somewhat better, as these kinds of surgical procedures have been continuously done in Serbia for many years, and Serbia's surgical team is considered to be one of the best in the world, although more surgical experts are needed.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

- i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

- ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

Important step forward in health care and the status of transgender people is the adoption of the Amendments and Addendums of the Health Insurance Law, allowing the gender reassignment costs to be covered by the state. The law states that at least 65% of the price will be covered by health insurance, if gender reassignment is done for medical reasons. However, it is not clear what constitutes medical reasons, how is it defined, and who will be able to use these funds from the mandatory medical insurance, which is not unlimited. This law came into effect in January 2012..⁵⁸

⁵⁸ ⁵⁸ <http://www.transserbia.org/images/stories/dokumenta/model-zakona-o-trans-rodnim-osobama.pdf>

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

- i. Does legislation prohibit discrimination in such areas as:
 - the sale or rent of housing;
 - the provision of loans for purchase of housing;
 - the recognition of the rights of a tenant's partner;
 - evictionson the grounds of (a) sexual orientation and (b) gender identity?*
- ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*
- iii. Is information available to landlords and tenants aimed at preventing such discrimination?*
- iv. Are adequate and effective legal or other remedies available to victims of such discrimination?*
- v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

“Since the Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples, discrimination of same-sex couples exist when it comes to housing. The Constitution of the Republic of Serbia defines right to property:

Right to property: Article 58

“Peaceful tenure of a person’s own property and other property rights acquired by the law shall be guaranteed. Right of property may be revoked or restricted only in public interest established by the law and with compensation which cannot be less than market value. The law may restrict the manner of using the property. Seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law.”

In the terms of housing it is important to mention that the Housing Act also does not recognise LGBT human rights at all. According to Housing Act⁴⁰ in the case of occupancy right holder’s death, members of a household, who lived with the lessee in the same apartment, continue to use the apartment, with the lease agreement concluded by the third party. Also, if in the apartment, in the case of death of the lessee, there are no members of a household renters, new lease agreement concludes a person who has ceased to be a member of a household, lessee, or person that was a member of a household, the previous

tenant - if person continued living in the same apartment. Under the tenant household member of the family home, according to this law, can be considered to be: spouse, child (born in wedlock or out of wedlock, adopted or step child), parents, renters and his spouse. 111. Serbian legal system does not provide protection from eviction, including the right to resettlement without discrimination, on the basis of sexual orientation or gender identity. Moreover Serbian legislation does not ensure equal rights to land, home ownership and inheritance without discrimination on grounds of sexual orientation and/or gender identity.”⁵⁹

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

- i. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

There have been no such programmes.

At the start-up seminar organized by the Council of Europe and the Office for Human and Minority Rights multiple participants pointed out to an increased risk of homelessness of LGBT people who are rejected by their families, in a situation when rates of unemployment are extremely high.⁶⁰

- ii. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

No, relevant agencies have not been provided with training and awareness-raising programmes.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective

⁵⁹ Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Legal Report –Serbia, The Danish Institute for Human Rights, Council of Europe

⁶⁰ Fighting discrimination based on sexual orientation and gender identity (seminar organized by the Office for Human and Minority Rights within the LGBT project of the Council of Europe), 13.12.2012, Palata Srbije, Belgrade.

measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events

- i. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

To the best of our knowledge no such measures have been taken.

- ii. *By encouraging, for example:*

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

To the best of our knowledge no such encouragements have happened.

- iii. *Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

In the Law on Sports, sexual orientation and gender identity are not mentioned.

- iv. *In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,⁶¹ the European Sports Charter⁶²*
- *and ECRI's General Policy Recommendation No.12⁶³ been implemented in respect of (a) sexual orientation and (b) gender identity?*

Although discrimination, violence and homophobia/transphobia is very much present in sport, and especially homophobic and transphobic hate speech, there have been no measures

⁶¹ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders").

⁶² [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackCol orInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackCol orInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.I (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

⁶³ http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf. Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

to counteract this, nor have there been any campaigns connected to the problems transgender people face in sports.

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

- v. *Have specific appropriate measures been taken to:*
- *put an end to the exclusion of transgender persons from sports activity or competitions,*
 - *remove the obstacles encountered by them in participating in sport (dressing room access),*
 - *recognise their preferred gender?*

No measures have been taken.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

- i. *Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities,*
 - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

No such steps have been taken.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

- i. *Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*
- ii. *Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*
- iii. *Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

43. Member states should ensure particularly 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.

- i. What procedures are in place to ensure compliance with this obligation?*
- ii. Are there documented cases where asylum seekers have been returned to such a country?*

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

- i. What measures have been taken to comply with this requirement?*
- ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

Law on Asylum was adopted two years ago and this law does not explicitly mention sexual orientation or gender identity as a forbidden grounds of discrimination. However, according to this Act it is forbidden to expel a person against her/his will somewhere where her/his rights can be violated on the basis of race, sex, language, religion, nationality, belonging to certain social group or political attitudes.

We can say that, in Serbian legal system, sexual orientation or gender identity is not specifically recognised as a ground for obtaining asylum and/or subsidiary protection, although in theory it could be assumed within “belonging to certain social group”.

The Asylum Protection Centre is the organisation that was founded in last quarter of the year 2007 and the number of asylum seekers is small so there are no data that anyone ever expressed intention to seek asylum because of violation of human rights based on sexual orientation or gender identity. Here, it should be mentioned that Serbia is State Party to the 1951 Convention Relating to the Status of Refugees.⁶⁴

⁶⁴ Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Legal Report –Serbia, The Danish Institute for Human Rights, Council of Europe

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?

ii. In practice do they

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public,*
- *examine individual complaints,*
- *participate in court proceedings,*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*

in relation to (a) sexual orientation or (b) gender identity?

There are several state institutions for human rights that to a greater or lesser extent deal with LGBT rights in Serbia. The only independent institution that is clearly mandated to deal with sexual orientation and gender identity is the Commissioner for the Protection of Equality. Other independent institutions that should incorporate LGBT rights on the national level are also the Ombudsman, the Constitutional Court and the Commissioner for Information of Public Importance and Personal Data Protection. On 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. On 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. Therefore, even though not all human rights institutions are clearly mandated to deal with sexual orientation they still incorporate LGBT issues to some degree.

These institutions are able to make recommendations on legislation and policies and raise awareness, and some are able to examine individual complaints and participate in court proceedings.

Even though, institutional activities regarding LGBT rights could generally be regarded as inconsistent, unsystematic and short term, there are significant differences between these human rights institutions. It is important to note that abundant evidence (some of which has been presented throughout this report) suggests that activities of the Commissioner for the Protection of Equality, the Provincial Ombudsman of the Autonomous Province of Vojvodina and the Gender Equality Institute of the Autonomous Province of Vojvodina can be considered as genuinely, systematically and continuously directed towards the improvement of the position of the LGBT population. In addition, the Constitutional Court has also had an important role with two important rulings in favour of LGBT rights. On the other hand,

evidence suggests that the national Ombudsman has not always been eager to be more firmly involved in the protection and promotion of LGBT rights, and much improvement is needed in this respect.

In addition, it should be ensured that independent institutions cannot use their independence and discretion as a means to avoid the "unpopular" topics related to human rights abuses and discrimination based on sexual orientation and gender identity. Further effective measures are needed regarding the way the mandate of national structures is used to protect the rights of LGBT people.

Evidence also suggests that it is not uncommon that independent institutions and other human rights structures come under attack and are subjected to different kinds of political, institutional and media pressures, making their work more difficult. Also, some human rights institutions are seriously understaffed and are lacking in material resources.

An alarming recent example illustrates the kind of pressure the Commissioner for the Protection of Equality, Nevena Petrušić, is subjected to, which can even be characterized as lynching. After the start-up seminar of the Council of Europe and the Office for Human and Minority Rights (13 December 2012)⁶⁵ during which the Commissioner has presented strong support for measures against LGBT discrimination, especially in the field of education, she has been exposed to a lynching media campaign in the daily paper "Kurir" that lasted for several days (24 to 27 December 2012). A series of false accusations about the alleged inappropriate use of state funds and arrogant behavior have been presented to the public.⁶⁶ The Commissioner has denied all this, but was unable to get it published in any kind of newspaper, not even in "Kurir" which should be made possible according to the Law on Public Information. What at first seemed like a revenge from a disgruntled associate that failed at his attempt to blackmail the Commissioner, it later became clear in the new series of media reports and events (11 to 14 January) that this is not the whole story. In January, a petition signed by 140 persons (most of which are known to the public for their nationalistic, right-wing views and actions) which was initiated several months before, has been sent to the Parliament of the Republic of Serbia, demanding that Nevena Petrušić be dismissed from her duties as the Commissioner. As stated, one of the main reasons for this attack is the Commissioner's unreserved efforts to protect and promote LGBT rights. The Commissioner's cooperation with Labris was particularly singled out as problematic by those that signed the petition.⁶⁷

XII. Discrimination on multiple grounds

46. Member states are encouraged 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; national human rights structures should have a broad mandate to enable them to tackle such issues.

⁶⁵Fighting discrimination based on sexual orientation and gender identity (seminar organized by the Office for Human and Minority Rights within the LGBT project of the Council of Europe), 13.12.2012, Palata Srbije, Belgrade

⁶⁶ <http://www.kurir-info.rs/nevena-petrusic-puni-novcanik-sa-325072-dinara-clanak-578835>
<http://www.kurir-info.rs/bez-milosti-nevena-petrusic-sutnula-romkinju-sa-posla-clanak-582611>

⁶⁷ <http://www.standard.rs/peticija-za-smenu-nevene-petrusic.html>

i. Do legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of:

- a. sexual orientation?*
- b. gender identity?*

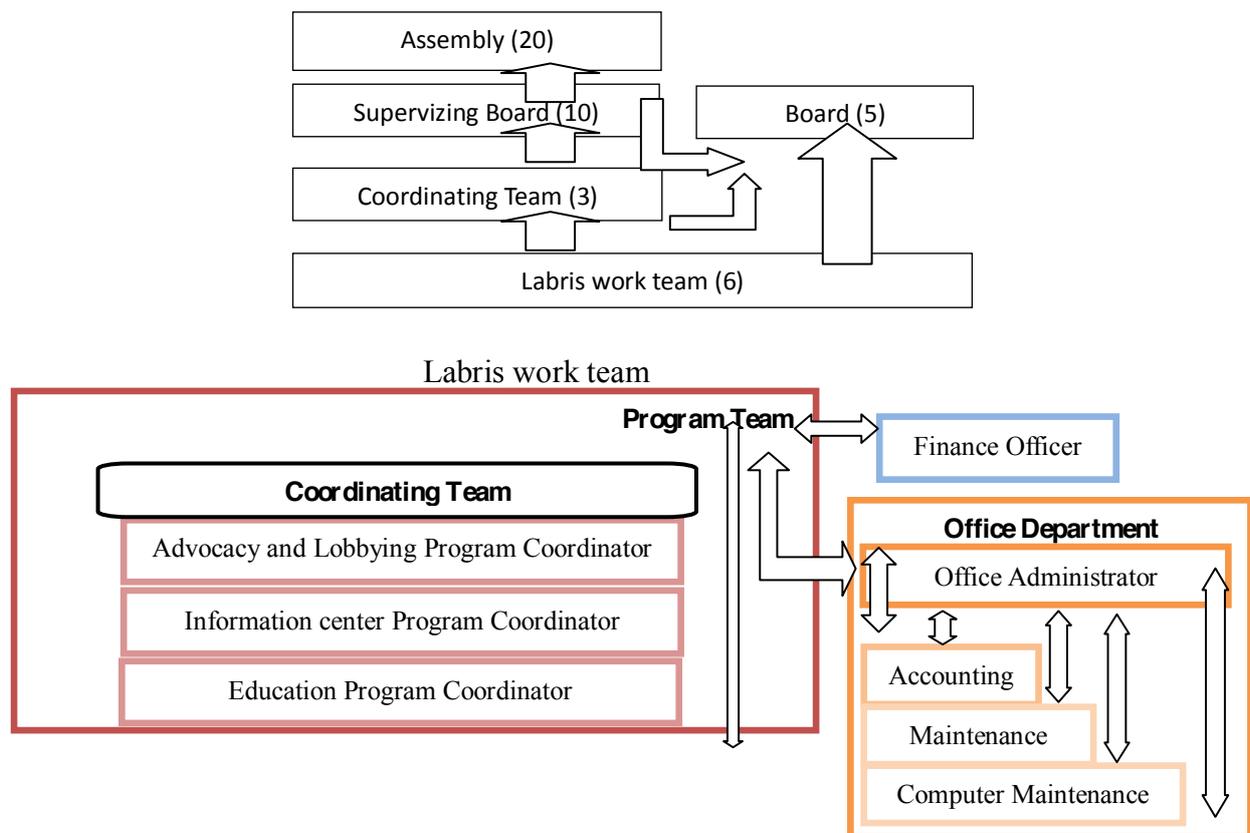
ii. Does the mandate of national human rights structures enable them to tackle such discrimination on multiple grounds?

Provisions in legislation protect against multiple discrimination, and human rights structures have a formal capacity and mandate to tackle such discrimination.

About Labris – organization for lesbian human rights

Labris, one of the oldest lesbian human rights organizations in the region (founded in Belgrade in 1995) is an organization that considers the right to different sexual orientation as one of the basic human rights. Our mission is to work on the elimination of all forms of violence and discrimination against lesbians and all women in general and to establish 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. Our values are tolerance, solidarity, nondiscrimination, equality and dignity for all minorities.

This is how Labris is organized (+ 16 resident volunteers):



Labris has three main program areas within which we are working on empowering LGBTI people.

1) Within *The Information Center*, we organize educational and psychological workshops and support groups; we organize 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 LGBTI rights, identities and experiences, and particularly about “coming out”. All these activities are organized with the aim to empower LGBTI 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, students, journalists, ombudspersons, in order to make them more sensitive and aware about LGBTI rights and identities, discrimination and everyday experiences of sexual and gender minorities.

3) Within *The Lobbying and Advocacy Program* we advocate at national and European level (using the documented evidence of discrimination) for improved legal protection and social acceptance of LGBTI people. Labris took part in writing the Anti-discrimination Law and lobby for its adoption. Labris has prepared the draft law on registered partnership – that will be introduced to MPs next year. We put the Amendment to the Criminal code (article 60) that discriminates against LGBTI people and we are currently lobbying for hate crime to be introduced to the existing Criminal code. Labris is actively monitoring the process of formulating amendments for Law on Freedom of Assembly. You can find more information on main activities and achievements of Labris in the attachment to this application. (Annex 4)

Since its foundation, Labris has conducted more than 40 projects.

Vision: Labris aims for a society of diversity with all equal rights, in which all the persons regardless of their sexual orientation, identity and other diversiveness would live with dignity and complete protection and affirmation of their human rights.

Labris is accomplishing its vision through several parallel and interrelated courses of action:

1. Strengthening LBT population to carry its identity with pride and competently oppose the right violations and advocate for respect of their rights through:

- a) Program of legal and psychosocial (professional) support to the members of LBT population
- b) Program of peer support to the members of LGBT population
- c) Program of support to the families and friends of LBT population.

2. Reducing homophobia by raising awareness and informing young people, women and the general public on LGBT Human Rights through:

- a) Organizing public actions and media campaigns to reduce homophobia
- b) Cooperation with the media in informing the public on the most important legal regulatives for improvement of the position of LBT population
- c) Creating and realization of education program for high-school students on LBT population rights.

3. Promotion of legislation relevant to the life of LGBT population and strengthening the influence on decision makers and authority representatives through:

- a) Lobbying government and non-government organizations to support the bill on same-sex partnership and other changes/additions to the law
- b) Monitoring of the work of institutions and proposing mechanisms for improved application of existing laws relevant to the life of LGBT.

4. Sensibilization and education of institutions and authority representatives on applying of existing rights of LGBT population through:

- a) Printing and distribution of guide-books, collections of good practice guides and guidelines with instructions for work with LGBT population
- b) Accreditation and implementation of professional specialisation programs for the employees in health, social care and education institutions and completing the program of professional specialization of employees in health, social care and education institutions
- c) Training program for employees in media, police, prosecution and judiciary

About Gayten-LGBT

Gayten-LGBT was founded in Belgrade, Yugoslavia, in 2001. It originated from Arcadia – Gay and Lesbian Lobby, founded in 1990. Afterwards, Gayten-LGBT activists participated in the long-term project Campaign against Homophobia (1994-2000), led by Dejan Nebrigić, Felipe de Souza awardee.

Gayten-LGBT was the first all-inclusive organization, which also included bisexual and trans people (intersex, queer and heterosexual also), their rights, needs, problems, existence and culture. Gayten-LGBT founding values were that LGBTIQ people and heterosexual supporters need to work together with full respect and recognition of specifics and differences of every group and individual. Also, one very important category for Gayten's work is gender identity and expression, and not only sexual orientation, as well as other (age, race, ethnicity, health status etc.) and its work is based on queer and post-feminist principles.

Gayten-LGBT has received 3 international awards for its work: European Pride Award 2001 and Grizzly Bear Award 2001 (together with Labris for organizing the first and only public celebration of the LGBT Pride Day in 2001) and two Gayten's activists received Heimdahl Award (2002) for the first queer radio show "Gayming", Radio 202, RTS.

Vision of Gayten-LGBT is the full integration, affirmation and respect of LGBTIQ human rights, culture and existence within the society.

Mission of Gayten-LGBT is contribution to the creation and implementation of legislation, institutional operation and creation of overall societal environment directed toward removal of all forms of violence and discrimination toward LGBTIQ persons.

The main goals:

1. Promotion and development of the LGBT population
2. Support and affirmation of LGBT identity/identities sensitization and education of professionals, institutions and public on LGBT rights
3. Work on visibility of LGBT individuals, integration in society and promotion of LGBT rights
4. Lobbying at social, academic, cultural and artistic institutions for involvement and advocating for elimination of discrimination of LGBT persons
5. Participation in creating legal regulation and social climate directed to abolishing all forms

of violence and discrimination of LGBT persons.

6. Involvement in creating and expanding the group network of organizations which work on LGBT rights promotion, both national and abroad.

Structure:

- Legal department
- Psycho-social department (researches, theory, workshops, SOS phone-line)
- Data base, archive, information center and library
- Educational, cultural and artistic department
- Publishing
- Logistic and organizational department

Activities and strategies:

- Lobbying of social, scientific, cultural institutions and media.
- Conducting researches on LGBT issues.
- Data base, archive and library.
- Organizing lecturing, training programs, workshops and LGBT phone line.
- Organizing and conducting education on LGBT issues
- Support Network for LGBT throughout the country
- Networking with local and international LGBT organizations
- Special programs for LGBT with special needs (disabled and with HIV)
- Legal proposals
- Organizing campaigns, seminars, courses, conferences, speaker's platforms
- LGBT art, creativity and various cultural activities.
- Publishing (newsletters, books, leaflets) and Internet presentations