

BULGARIA: The Status of Lesbian, Gay, Bisexual and Transgender Rights

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Bulgaria (9th Session)

INTRODUCTION

1. This information is submitted by ILGA-Europe¹ in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Bulgaria. It was written by Aksinia Gencheva², country expert.

2. This report provides information about the situation of LGBT people in Bulgaria. References of the quoted sources are included as footnotes.

OVERVIEW

Lesbian, gay, bisexual and transgender (LGBT) people continue to face discrimination and exclusion across all social areas in Bulgaria. Discrimination on the grounds of sexual orientation is banned since 1st of January 2004 in the field of employment, social security, health care, education and housing in Bulgaria. The Act Against Discrimination³ is a single equality act transposing the EU Employment Equality Directive (2000/78/EC). The Act bans discrimination uniformly on any ground mentioned under international law or domestic legislation, explicitly including sexual orientation⁴. The Act goes beyond the provisions of the EU equality acquis as its personal and its material scopes are universal. The Act explicitly bans direct and indirect discrimination, harassment, incitement to discrimination and victimisation⁵, though the definition of victimisation requires a comparator⁶. The Act also features specific illustrative prohibitions of typical discriminatory conduct in key fields, including employment, education, membership of professional organisation, association and the provision of goods and services⁷. It is a unique piece of legislation because of the reversed “burden of proof”, where the obligation to provide sufficient evidence in support of their position relies on the convicted in exercising discrimination, rather than the victim of discrimination.

The ground “sexual orientation” is included in 7 national laws as a prohibited discrimination ground. However, transsexual and transgender persons are not protected from discrimination based on gender, gender identity or gender expression, as the Bulgarian legislation does not differentiate “sex” from “gender”. While the Act Against Discrimination explicitly includes and defines the heterosexual, bisexual and homosexual orientations⁸ as the legal norm of “sexual orientation”, transsexuality is still considered as medical condition of libido dysfunction⁹ and is treated as disease by the medical authorities.

There is little representative and reliable information about the situation of LGBT persons in Bulgaria. The national census data does not include LGBT people. There are no governmental researches and monitoring mechanisms in relation to LGBT issues. Although the Act Against Discrimination is an instrument with primarily preventive goal to provide tools and measures avoiding discrimination, so far it has only been implemented correctively to prove existing discrimination.

1 ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries; it receives financial support from the European Commission.

2 Former Executive director of the national LGBT organisation in Bulgaria BGO Gemini; currently Policy and Communication Officer at Resource center for lesbians, bisexual and transgender women Billitis

3 Bulgaria/Закон за защита от дискриминация (ЗЗД) [Law for protection against discrimination], (01.01.2004).

4 Bulgaria/ Law for protection against discrimination / Art. 4.

5 Bulgaria/ Law for protection against discrimination / Art. 4 and 5.

6 The provision contains the language “less favourable treatment”, rather than the neutral “adverse consequence or reaction” of the Directives.

7 Bulgaria/ Law for protection against discrimination / Art. 12 to 39.

8 Art. 10, Additional provisions, Act against discrimination (01.01.2004)

9 Transsexuality, (F64.0) Gender identity disorders, International Classification of Diseases (ICD), rev. 10

Domestic research is almost non-existent – it has only been provided by NGOs or occasional surveys by the Commission for protection against discrimination¹⁰, or the media. Most of the research data about LGBT issues come from international sources and are funded internationally. On the other hand there is no interest on the part of local researchers and research institutes to study LGBT issues. There is no funding allocated for LGBT research either – the government does not recognise LGBT people as a sector deserving investment in research, and private donors show no interest in the subject. So far no evidence can be found that the lack of public policies and anti-discrimination measures have been seriously questioned by influential agents (the EU for instance) on the grounds of unreliable data, irrelevancy or inconsistency.

Within the past 4 years governmental agencies and policy makers have made blank statements on numerous occasions, highlighting the existing discrimination against LGBT persons and publicly recognising the need of enforcement of the anti-discrimination legislation against LGBT people, including employment. However, there is no political, neither governmental will to combat discrimination based on sexual orientation, therefore no real actions have been taken in this account. The LGBT minority is not considered as a target group or a factor in any social or political sphere, thus there are no governmental policies and measures taken to monitor and diminish the inequality against this part of the population.

Another European Union legislation (Directive 2004/83/EC), which sets out minimum rules governing the award of refugee status, has been implemented by the Bulgarian Law on Asylum and Refugees. There are no available statistics or data on asylum or refugees seekers based on their sexual orientation or gender identity. One case has been reported to LGBT organisations of an asylum seeker basing his application for refugee status, seeking to be considered a victim of persecution 'for reasons of membership of a particular social group' for the purpose of obtaining refugee status. His application was rejected solely because the allegations made were considered to lack credibility.

According to §1(3) of the Law on Asylum and Refugees 'members of the family' are: a) the spouse or the person with whom s/he is in a proven stable and long-term relationship; and b) children under 21 years of age who are not married. Thus, the law does not recognise LGBT partners as family members for the purpose of obtaining derivative status – refugee status or a subsidiary form of protection, i.e. "humanitarian status" in Bulgarian law.

Public demonstrations, pride marches and other mass events are allowed by the national law, if they are peaceful and unarmed. The freedom of expression and assembly is guaranteed by the Bulgarian Constitution. Numerous public events organised by LGBT organisations have been allowed by the state, as well as two LGBT Pride marches (in 2008 and 2009). Recent legislation requires that marches, parades and other public events shall not pass nearby certain governmental buildings for security reasons. The local authorities have autonomy in defining which buildings shall be forbidden to cross public marches.

In 2009 the Municipality of Pazardjik adopted amendments in the Regulation for Public order in Pazardjik and the region, forbidding "the public display and expression of sexual and other orientations". Complain for indirect discrimination and incitement for discrimination against LGBT people has been raised by the Bulgarian LGBT group (LGBT Deystvie) before the Commission against discrimination.

In the health system, there is no legal recognition of the needs of LGBT patients. For instance, Assisted Reproductive Technology is legally only available for different-sex couples of a man and a woman with certified fertilisation problems. While homosexuality is not considered as medical illness according to the Medical Classification of Diseases, translated into National Classification, some medical servants still consider and treat it as such. There is legal ban for men who have sex with men to donate blood, as the hospitals refuse blood donations from homosexual persons. There are no reliable and official statistics and data, investigating the health and sexuality issues (for instance on HIV/AIDS issues) specifically relevant to LGBT persons.

RIGHT TO SECURITY OF THE PERSON

Article 20 of ICCPR

¹⁰ Sociological research of the Bulgarian Commission for protection against discrimination, performed by SCALA agency in September 2007

The level of violence and attacks against lesbian, gay and transgender persons, or those who are perceived as having a different sexual orientation or gender identity, is present and widespread in the country. The national Criminal Code does not criminalise crimes motivated by hatred against LGBT people, though it bans hate crimes based on ethnicity, religion or beliefs, race, political association.

Within the past few years Bulgarian LGBT groups and organisations have collaborated and worked in partnership with the police forces, mostly in providing the safety of public LGBT events. In 2007 the Bulgarian LGBT organisation BGO Gemini organised series of trainings for police officers. The trainings included overview of the LGBT terminology, the anti-discrimination legislation in Bulgaria, detailed review of hate crimes – legislation, definition, examples, discussion and feedback on similar cases in Bulgaria, why homophobia based crimes differ from the other crimes, how should they be reported and discussion on the role of the police and NGOs to tackle hate crimes against LGBT people. Although the police authorities have showed responsiveness and willingness to tackle hate crimes against LGBT people, there is no legal instrument or regulation to do so.

Recommendations:

We urge the Bulgarian Government to:

- Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the actual or perceived sexual orientation or gender identity of any person or group of persons
- Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished
- Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

PROTECTION AGAINST HATE SPEECH

Under the civil Law against discrimination, hate speech is governed by the concepts of harassment and incitement to discrimination. The Act against discrimination bans harassment on a number of grounds, including explicitly sexual orientation. Harassment, including harassment on sexual orientation grounds, is explicitly stated to constitute a form of discrimination¹¹. It is defined as “unwanted conduct [on grounds of sexual orientation] expressed physically, verbally or in any other manner, having the purpose or effect of violating the dignity of a person and of creating a hostile, offensive or intimidating environment”¹². Therefore, harassment under the Law against discrimination encompasses hate speech in a broad sense. In addition, hate speech is covered in certain cases by the ban on incitement to discrimination under the Law against discrimination¹³. It is defined as “the direct and deliberate encouragement, instruction, exertion of pressure or persuasion of someone to commit discrimination, where the inciting party is in a position to influence the incited one”.

Three complaints for hate speech and biased language before the Commission for protection against discrimination have been raised by LGBT groups against three Bulgarian newspapers. LGBT NGOs annual media monitoring reports show a substantial number of negative publications, using politically incorrect and harassing language against LGBT people.

Recommendations:

We urge the Bulgarian Government to:

- Adopt the explicit legal measures to ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;

¹¹ Bulgaria/Law for protection against discrimination, Art. 5 (01.01.2004).

¹² Bulgaria/ Law for protection against discrimination, Additional provision § 1.1 (01.01.2004).

¹³ Bulgaria/ Law for protection against discrimination, Art. 5 (1.01.2004).

- Ensure that the outputs of media is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that speech motivated by homophobia and transphobia does not remain unpunished.

RIGHT TO EDUCATION

(Article 13 of ICESCR)

NGOs report discrimination and bullying in school against LGBT people¹⁴. According to the data, the Bulgarian educational curriculum is strictly gender biased, representing strong heteronormative and sexist role of the man and the woman, excluding LGBT people. The research also shows that 70% of the responding homosexual pupils drop out of school or miss classes because of systematic harassment and 50% of them attempt suicide after such bullying in school. There is no evidence for follow-up or preventive measures taken by the Ministry of Education and Science, nor other governmental agencies. There is a clear evidence of discrimination and bullying against LGBT people in the educational system and it can be assumed that such homophobic environment lead to low education levels, lack of professional experience and social skills in the LGBT people, which make them vulnerable on the labour market. Additionally, there are no vocational training programmes developed by the government to tackle this issue, therefore there is no objective to raise LGBT people's competitiveness and equal opportunities on the labour market.

Recommendations:

We urge the Bulgaria Government to:

- Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;
- Take proactive and adequate measures to address homophobic and transphobic bullying and discrimination against LGBT pupils and teachers.

RIGHT TO RECOGNITION BEFORE THE LAW

In Bulgaria gender reassignment surgery is not available free of charge in public hospitals. Although transsexuality is considered as a medical condition¹⁵, the costs of the transition and surgical interventions are not covered by the state. However, there are limited cases when FTM transsexual person's surgery is covered by the state because of a potential risk of breast cancer and, therefore, medical reasoning to remove the breasts. This does not include genital surgery aiming at sexual reassignment.

Transgender persons can change their personal documents, including passport and ID cards according to the national Law for personal documents, without undergoing a gender reassignment surgery. Judicial authorisation is required to change the details of sex and name in the personal documents and records of the person. The transgender person must request a court decision, followed by expertise certificate by a commission, appointed by the court. The procedure is quite slow and extremely bureaucratic and might take more than two years.

There are no surveys, statistics or official data about the situation of the transgender, transsexual and intersex people in Bulgaria.

Recommendations:

We urge the Bulgarian Government to:

¹⁴ Research on the nature and level of discrimination based on sexual orientation, gender and ethnicity in 181 pupils between IX-XII grade in high schools in Bulgaria, performed by BGO Gemini in 2007-2008 (<http://www.bgogemini.org/bg/school/resultati.html>)

¹⁵ Transsexuality, (F64.0) Gender identity disorders, International Classification of Diseases (ICD), rev.

- a) Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of gender identity in public and private employment;
- b) Take necessary and adequate measures to make the procedure for changing the name and sex in the personal documents of a transgender/transsexual/intersex person easier and less bureaucratic;
- c) Take legislative, administrative and other provisions to allow transition therapy and gender reassignment procedures to be covered by the state and available in public hospitals.

RIGHT TO EQUALITY AND NON-DISCRIMINATION

(Article 26 of ICCPR and Article 2 of ICESCR)

The Bulgarian legal system only recognises the civil marriage between a man and a woman, as stated in the Bulgarian Constitution. The national legislation does not recognise same-sex marriage or any other form of same-sex partnership, nor does it offer legal recognition for the relation between children and co-parents in LGBT families.

This lack of legal recognition of diverse forms of families, including non-married heterosexual couples, results in discrimination in a number of areas of life. For instance same-sex partners are not recognised as next of kin and therefore denied information and participation in decisions about a partner's state of health and required care.

Although Bulgaria has transposed the European Parliament and Council Directive 2004/38/EC about the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States into a national Law, LGBT groups report that the Directive is practically not enforced by the authorities as regards the recognition of registered same-sex couples. The local authorities argue that the recognition of the union of two persons of the same sex contradicts the Bulgarian Constitution. It is to be noted that the legal definitions in the national Law on Entry, Residence and Exit of EU Citizens and Accompanying Members of Their Families does not specify the gender of the person entitled to the rights. Thus the law does not explicitly exclude LGBT family members from the right to enjoy the residence privileges of their spouses or cohabitants who are EU citizens.

Recommendations:

We urge the Bulgarian Government to:

- Ensure that the Bulgarian legislation and policies recognise the diversity of family forms;
- Take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of sexual orientation or gender identity of any of its members, including with regard to public benefits and immigration.