



Equality for lesbian, gay, bisexual,  
trans and intersex people  
in Europe

## LGBTI Enlargement Review 2018

ILGA-Europe, in cooperation with ERA – LGBTI Equal Rights Association for Western Balkans and Turkey (Regional); Aleanca (Albania); Sarajevo Open Centre (Bosnia and Herzegovina); Center for Social Group Development CSGD and Center for Equality and Liberty CEL (Kosovo); Helsinki Committee for Human Rights – LGBTI Support Centre, Coalition for sexual and health rights of marginalized communities MARGINS, Subversive Front, LGBT United Tetovo (FYR Macedonia); Juventas, Queer Montenegro, Spectra, LGBT Forum Progress and LGBTIQ Social Center (Montenegro); AS Centre, Come Out, Da se zna, Gayten – LGBT, Labris, XY Spectrum, Duga and ERA (Serbia); Pink Life, SPoD and Kaos GL (Turkey).



Aleanca Kundër  
Diskriminimit LGBT



queer  
montenegro  
montenegrin LGBTIQ  
association



queer  
montenegro  
crnogorska LGBTIQ  
asocijacija



Qendra për Zhvillimin e Grupeve Shoqërore  
Center for Social Group Development



CEL



DA SE ZNA!



центар за поддршка  
gender per supporti  
support centre



GAYTEN-LGBT



SOSYAL POLİTİKALAR CİNSİYET KİMLİĞİ VE  
CİNSEL YÖNELİM ÇALIŞMALARI DERNEĞİ



socijalni centar  
social center



ASSOCIATION FOR CRITICAL APPROACH TO GENDER AND SEXUALITY



LGBT United Tetovo - Macedonia  
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# **1. Introduction**

## **Rationale**

The EU accession process has been, and continues to be, a driving force for change in the recognition of the human rights of LGBTI people throughout the region not only through the criteria that countries have to meet, but through the annual Enlargement Reports. Year on year the human rights of LGBTI people continue to feature notably in the reports, assessing progress to date and setting out recommendations for the authorities to implement in the future, as well as providing a key tool used by LGBTI organisations in the region to engage with their governments and hold them accountable for the commitments made.

In order to ensure an accurate representation of the developments relating to the human rights of LGBTI people ILGA-Europe, together with our member organisations in EU accession countries, have compiled this submissions to the Progress Reports of the European Commission.

This report reflects developments in the recognition and respect for the human rights of LGBTI people in each accession country during the period from January through December 2018. It is intended to assist the European Commission in assessing the progress made en route to EU accession in each country to date. In addition to outlining key developments and challenges on the road to LGBTI equality, the report also highlights gaps in legislation and policy for the promotion and protection of the human rights of LGBTI people, and the priorities which authorities in each country should tackle in the coming year, as identified by LGBTI activists in respective countries.

We hope that this input will be useful in the process of assessing the progress of each country to date, and in identifying key priorities in the coming year.

## **Local Context**

In the majority of the accession countries, the legal frameworks and existing policies for the promotion and protection of the human rights of LGBTI people are sound. However, these frameworks have remained largely stagnant for a number of years, with little further progress. While basic protections for the human rights of LGBTI people are in place in all but Turkey and FYR Macedonia, further development is needed across the region. In particular, provision of legal gender recognition procedures and legislation, and recognition of same-sex partnership need to be addressed. There is currently a real opportunity to create momentum for achievement of both of these changes, and the EU's voice of encouragement could be crucial in achieving this.

Access to healthcare for trans people also remains an issue, both for trans specific healthcare as well as for non-discriminatory access to general health care. Intersex people are largely invisible across the region, with only Bosnia & Herzegovina having added sex characteristics as a protected ground against discrimination. Turkey and FYR Macedonia do not have non-discrimination provisions on grounds of sexual orientation and gender identity (though a draft law is on the table in FYR Macedonia), hate speech law does not name grounds of sexual orientation and gender identity in Kosovo, FYR Macedonia or Turkey. None of the EU accession countries have policies designed to tackle hate speech in place, yet hate speech is a prevalent issue in all of them.

Moreover, the lived reality for LGBTI people remains starkly different to the protections which exist on paper. Implementation of existing legislation remains a prominent issue. While hate crime legislation naming specifically grounds of sexual orientation and gender identity exists in a majority of the accession countries, identifying the hate element in bias motivated crimes against LGBTI people remains problematic. Hate speech continues to be an issue both in the media and on social media, often coming from political players, with little to no convictions despite regular reporting by

civil society, showing that hate speech legislation, which also exists in a number of EU accession countries, is also not being applied effectively. Public attitudes, while improving in a number of countries, continue to be predominantly negative. Concrete recommendations from the EU side to tackle these issues and promote thorough and sustainable implementation can serve as a driving force for sustainable change to the lived realities of LGBTI people in the region.

### **Headings for country submissions**

Each country submission is arranged under the following headings. In cases where organisations have no updates to share, the respective heading has been left out:

- Summary of key developments
- Main action points for the coming year
- Bias motivated violence, hate speech, hate crimes
- Freedom of assembly, association and expression
- Equality and non-discrimination, including legislation and enforcement
- Legal recognition for same sex couples
- Rights and equal treatment of trans persons
- Rights and equal treatment of intersex
- Public awareness and attitudes
- A supportive and enabling environment for civil society

### **Closing remarks**

EU accession remains a key goal for the majority of the accession countries, and therefore the accession process provides an unparalleled opportunity to achieve real, sustainable change. The country submissions included in this report outline what changes are needed to ensure full and genuine protection of the human rights of LGBTI people, and we hope that many will be reflected in the Enlargement Reports to ensure continued and on-going progress for the promotion and protection of the human rights of LGBTI people in the EU accession countries.

For any further questions or concerns about the information in this report, please don't hesitate to get in touch.

Sincerely,

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## **2. Main priorities in the coming year**

For each of the accession countries, local LGBTI organisations have identified key priorities for reform in the area of human rights of LGBTI persons. If these priorities are reflected in the country reports 2018, the organisations and the European Commission can deliver a unified message to the governments of accession countries and monitor the progress made on these issues in the coming year.

### **2.1. Albania**

- Budgeting and implementation of The National Action Plan;
- Adoption of changes in the family code to recognize same-sex partnership;
- Adoption of the law on gender recognition;
- Ensuring full implementation of current legislation, including through training on preventing discrimination to groups of professionals, such as police, school teachers, doctors, journalists, prosecutors, judges.

### **2.2. Bosnia and Herzegovina**

- Inclusion of civil society organisations in the working group for same-sex partnership legislation, initiation of the work of the working group without delay, and subsequent adoption of same-sex partnership legislation;
- Adoption at all levels of the Plan for Equality of LGBTI People in Bosnia and Herzegovina (BiH);
- Ensuring full exercise of freedom of assembly of LGBTI people and organisations in BiH;
- Adoption of amendments to criminal codes in FBiH and Brčko District to ban hate speech on grounds of sexual orientation and gender identity;
- Adoption of amendments to the existing legal gender recognition procedures to allow trans people to change sex markers in their documents on the basis of self-determination.

### **2.3. Kosovo**

- Ensuring proper investigation of hate crimes against LGBTI people;
- Developing a fair, transparent legal framework for legal gender recognition, based on a process of self-determination;
- Increasing accountability and responsibility for implementation of the LGBTI National Action Plan, the National Strategy against Domestic Violence and the Action Plan of the Human Rights Parliamentary Committee;
- Ensuring thorough implementation of existing legal frameworks, including through the second LGBTI National Action plan;
- Undertaking efforts to tackle intolerance against LGBTI people.

### **2.4. FYR Macedonia**

- Adoption and implementation of the Law on Protection and Prevention against Discrimination;
- Preparation and adoption of legal gender recognition law based on self-determination;
- Inclusion of hate speech and hate crimes based on sexual orientation and gender identity in the criminal code and related legislation, as well as accompanying implementation policies and trainings for law enforcement and judiciary;
- Inclusion of LGBTI positive content in school curricula and addressing bullying based on SOGI;
- Provision of medical gender confirmation services for trans people, financially covered by the Health Insurance Fund.

## **2.5. Montenegro**

- Ensuring full implementation of current legislation, in particular relating to investigation and prosecution of hate crimes and hate speech;
- Ensuring full implementation of the life partnership for same-sex partners law due to be adopted in December 2018;
- Ensuring stable and sustainable support to the key social services for the LGBTI community, such as the LGBTIQ shelter;
- Adoption of the next National LGBTI Action Plan; ensuring its full implementation both in Podgorica and local municipalities throughout the country.

## **2.6. Serbia**

- Stronger commitment to overall improvement of position of LGBTI persons, including in representation of LGBTI issues in the new National Anti-discrimination Strategy (2019-2025);
- Adoption of law on registered partnership for same-sex couples and law on legal gender recognition;
- Ensuring full implementation of exiting legal frameworks on discrimination, hate speech and hate crime, introduction of amendments to cover sex characteristics;
- Ensuring proactive approach to prevention and protection from bullying and violence in schools based on SOGIESC and HIV status;
- Significant efforts should be taken on economic empowerment of LGBTI persons.

## **2.7. Turkey**

- Repeal of the bans on LGBTI marches in İstanbul, Ankara and other cities;
- Repeal of the blanket ban on LGBTI events in Ankara;
- Adoption of a law that prohibits discrimination on grounds of sexual orientation, gender identity and sex characteristics;
- Inclusion of sexual orientation, gender identity and sex characteristics as protected grounds within hate crime legislation, Labor Law, the law on Turkish Human Rights and Equality Body and Law on Foreigners and International Protection;
- Condemnation and prosecution of hate speech, hate crimes and discrimination of LGBTI persons including LGBTI refugees.

### 3. Country submissions

#### 3.1. ALBANIA

**Submitted by: Alliance Against Discrimination of LGBT (Aleanca)**

**Summary of key developments, including political context and trends**

- According to the World Bank report “Life on the Margins: Survey Results of the Experience of LGBTI people in Southeastern Europe<sup>1</sup>”, LGBTI people’s perception of their acceptance remains consistently low in Albania. 69% of respondents stated that they are not open about their sexual orientation, the second highest percentage in the Western Balkans. 61% said that they avoid certain locations, while 75% avoid holding hands with their same-sex partner for safety reasons. The report also showed high levels of discrimination, as well as concerning levels of harassment and violence against LGBTI individuals.
- There is a stark contrast between the legislative progress and everyday reality that LGBT people face in Albania. Even though the Anti-discrimination law was approved in 2010 and the National Strategy against discrimination on grounds of sexual orientation and gender identity (SOGI) was approved in 2016, the LGBT community continues to face discrimination when it comes to access to health care, education, justice, employment, housing. The National Action Plan lacks a budget, making implementation challenging.
- Sporadic activities like training of police officers were organized in 2018 due to the support of the Council of Europe.
- There is lack of political will to take forward the two legal initiatives that were presented to the government in 2013: changes in the family code to recognize same-sex partnership and a draft law on gender recognition.
- In 2018, with the permission of the Ministry of Education, Aleanca LGBT in cooperation with Tirana municipality organized anti-bullying activities in high schools in the district of Tirana. This was met with a strong backlash in the media and social media, containing overt hate speech, including from public officials. The Ministry of Education initially denied knowledge of the activities. Later it acknowledged that activities were sanctioned by the ministry, but only as a pilot project. Aleanca LGBT sent a public letter to the Prime Minister asking him to condemn the hate speech, however, no reaction was received. As a result the Ministry of Education decided to stop the anti-bullying activities in schools.

**Main action points for the coming year:**

- Budgeting and implementation of The National Action Plan;
- Approval of changes in the family code to recognize same-sex partnership;
- Adoption of the law on gender recognition;
- Ensuring full implementation of current legislation, including through provision discrimination prevention training to groups of professionals like, police, school teachers, doctors, journalists, prosecutors, judges.

**Bias motivated hate speech**

- During October 2017 – February 2018, Aleanca LGBT conducted 5 educational and awareness meetings with students of XI and XII grades from high schools in Tirana. Representatives of political parties held strong statements against these meetings. Former Minister of Justice Ylli Manjani reacted on March 22<sup>nd</sup> through a [Facebook post](#) saying: “Young people should learn

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<sup>1</sup> <https://www.lgbti-era.org/sites/default/files/pdfdocs/0354%20Life%20on%20the%20Margins%20Survey%20results%20of%20the%20living%20experiences%20of%20lgbti%20people%20in%20south%20eastern%20europe-ilovepdf-compressed.pdf>

what is regular and lawful (...) they need to fill their heads not their a...". "Gay Marriages, euthanasia, legalization of drugs and other dirty things like these, are being taught to young people!!! The American Embassy and Soros Foundation are the organizers of these debates with youth".

- Democratic Party MP Nard Ndoka reacted through a Facebook post on March 22, 2018: "These meetings are scandalous, precisely because of the fact that they are held in public schools where teenagers are taught about the 'educational phenomenon' of LGBT experiences that are not approved by the Ministry of Education and are not included in the textbooks".
- On March 23, Tritan Shehu a Democratic Party MP published [a reaction on his Facebook profile](#) saying that these meetings serve to promote the LGBT community and the Ministry of Education should take blocking and punitive measures against them. "This is a dangerous precedent that may lead to deviating the sexual orientation of teenagers from the norm."
- PDIU's former MP Mesila Doda also reacted through a [Facebook post](#) on March 23: "It's the moment when it's worth saying...we told you...Remember our battles in the Parliament for not opening the way to same sex marriages...Today you have them as forms of education in schools...you haven't seen anything yet..."
- On March 24, Dritan Shano, one of the National Coordinators of the Democratic Party [reacted on Facebook](#): "The new subject taught in schools 'Gay Knowledge', which is being forced in Albanian schools from LGBT people, strongly sponsored by Edi Rama's government, is an unprecedented attack and destructive act of the family and national values and a manipulation and rape through LGBT methods of the minds and spirits of children in schools of the Republic of Albania.

#### *Main action points for the coming year:*

- Legislation regulating hate speech, including on grounds of SOGI, needs to be improved.

#### **Bias motivated hate crime**

- During 2018 Aleanca has documented 45 cases of physical violence against members of the LGBT community. Only three of these cases were reported to police. None of these cases has been prosecuted by the police. In one reported case, the police officer requested the victim, a transgender woman, to withdraw the complaint, by assuring her that the officer would ensure her safety. Two weeks later she was attacked by the same perpetrator and hospitalized.
- Most community members have difficulties accessing the justice system. The only way to ensure action from the police is to go to the station accompanied by a member of Aleanca's staff.
- In the last year Aleanca has reported an increasing number of LGBTI people (especially youth) asking for help to leave Albania and seek asylum in EU countries, US and Canada due to fear of violence and discrimination based on SOGI.

#### *Main action points for the coming year:*

- Ensure full implementation of existing legislation, including by providing training on hate motivated discrimination, speech or violence against LGBTI people to law enforcement bodies in collaboration with civil society organisations.

#### **Freedom of assembly, association and expression**

- Albania held the first (P)Ride, on bicycles, in the capital on May 2012. Numerous public events have been successfully held by LGBTI organizations since then, though predominantly in Tirana. Protection and cooperation with police has been positive. Events have been attended by high-ranking government officials and supporters. In 2018 the (P)Ride was attended by around 400 people, predominantly from the local LGBTI community – the biggest number so far!

#### **Equality and non-discrimination, including legislation and enforcement**



- The Law on social housing was approved in 2018 and recognizes LGBT people among vulnerable groups that can profit from social housing programs.
- The Anti-Discrimination Law was approved in 2010 but remains poorly implemented. LGBTI community members don't report cases to authorities due to lack of trust.

*Main action points for the coming year:*

- Implementation of the Social Housing and Anti-Discrimination laws must be a priority.
- Strengthen the position of Commissioner for Protection from Discrimination and ensure that LGBTI persons are reporting cases of discrimination based on SOGI

**Prevention of HIV and Aids**

- Albania has only one ambulatory outpatient clinic for treatment of HIV, and a lack of timely provision of antiretroviral medication.
- LGBTI organisations are aware of at least 2 cases of discrimination against HIV positive health workers who were asked to leave their jobs when their status became known, showing a lack of knowledge and high levels of stigma about HIV even among health practitioners.
- Access to prophylactic PrEP and/or PEP for pre or post exposure to HIV is difficult.<sup>2</sup>

*Main action points for the coming year:*

- Ensure provision of adequate and accessible healthcare for all individuals living with and/or at risk of HIV and AIDS.

**Recognized unions for same-sex couples**

- LGBTI organizations have asked the Albanian government to amend articles 163 and 164 of the Family Code to allow for gender neutral cohabitation and to recognize the rights of same-sex couples in relation to property, inheritance and health/social insurance. The Ministry of Health and Social Protection presented the necessary draft law and amendments to the Ministry of Justice in 2013. Until now the Albanian government has failed to approve this request and take it to Parliament.

*Main action points for the coming year:*

- Adopt necessary changes to Family Code to recognize same-sex couples.

**Rights and equal treatment of Trans persons**

- Currently trans people do not enjoy the right to change their name or gender marker. There are no specific services or clinics for Trans people. There is no hormone therapy and no sex affirmation procedures available. Publicly available health services are available, but discrimination or refusal of services is a reality, unless accompanied by Aleanca staff.
- Because of bullying, trans youth often leave school very young. Consequently many end up working as sex workers. Sex work is criminalized in Albania. Thus, sex workers are in danger not only of abuse and harassment, but also arrest and imprisonment.
- Due to discrimination it is very difficult to find rental homes for trans people.
- Trans people are discriminated in the prison system, which assigns them to wards based on the gender assigned at birth.
- A draft law on gender recognition was presented to the government in 2013 but nothing has been done on the part of the government.

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<sup>2</sup> Written Contribution on the position of LGBTI persons to the 3rd Cycle of the Universal Periodic Review of Republic of Albania, submitted on 1 October 2018 by Aleanca, PINK Embassy, Pro LGBT, Streha and ERA – LGBTI Equal Rights Association, with technical support from ILGA World: <https://www.lgbti-era.org/sites/default/files/pdfdocs/Written%20Contribution%20to%20the%203rd%20Cycle%20of%20UPR%20Review%20of%20Albania.pdf>

*Main action points for the coming year:*

- Adopt legal gender recognition legislation.

### **Rights and equal treatment of Intersex persons**

- Legal provisions assert that the parents bear primary responsibility for the registration of their children, and in case this procedure fails, it falls to the state institutions to carry out this procedure. Parents who register their newborns within 60 days of birth (births inside the territory of Albania) or within 90 days (births from Albanian citizens outside Albania) receive a monetary reward. The only options for registration are male or female, not allowing for intersex status.
- A medical multidisciplinary team working with intersex babies and children does not exist. Written protocols for establishing intersex diagnosis do not exist.
- There are no provisions that specifically address the human rights of intersex people. Sex characteristics are not listed as possible grounds of discrimination. The only current legal cases concerning intersex children are about changing the sex marker in documentation.

*Main action points for the coming year:*

- Introduce legal provisions for the protection of intersex persons.

### **Public awareness and attitudes**

- Public awareness and acceptance of LGBTI persons remain low, particularly in rural areas. According to the National Democratic Institute (NDI) study conducted in 2015 more than 40% still think that homosexuality is a disease. Most LGBT people lead double lives.
- Young LGBT people face bullying in schools. During the past year there has been an increased number of LGBT young people leaving schools. Aleanca is aware of at least nine such cases.
- The Albanian government has never organized any public awareness campaign on LGBTI issues. Politicians' do not express support for LGBTI people publicly for fear of losing votes.

*Main action points for the coming year:*

- Ensure that action is taken to combat bullying of LGBTI youth in schools;
- Run an awareness campaign designed to improve societal acceptance of LGBTI people.

### **A supportive and enabling environment for civil society**

- The position of CSOs, including LGBTI CSOs, is still problematic.
- The financial sustainability of CSOs remains a challenge due to fiscal and legal frameworks.
- In 2014 Aleanca LGBT and Pro LGBT opened the first shelter for LGBTI homeless youth. This service till now has supported around 100 young LGBTI persons and is supported by international donors but still has no support from the Albanian government.

*Main action points for the coming year:*

- Efforts are needed from the state to ensure meaningful consultations with CSOs as part of an inclusive policy dialogue.

## 3.2. BOSNIA AND HERZEGOVINA

Submitted by: SARAJEVO OPEN CENTRE (SOC)

### Summary of key developments, including political context and trends

- Persecution of hate crimes and hate speech still remains insufficient.
- There was no substantial progress made in the area of harmonizing legislation dealing with freedom of assembly and association with international standards. Fragmented and inadequate law provisions still remain an issue.
- There was no significant progress in the fight against discrimination and marginalization of transgender or intersex people.
- LGBTI organisations continue to face barriers to the exercise of their freedom of assembly, most recently shown by the cancelation of a public assembly planned on March 31<sup>st</sup> for Trans\* visibility day because of obstructions by municipality and the National Theatre.<sup>3</sup>
- In October the government of the Federation of Bosnia & Herzegovina (FBiH) decided to form an inter-ministerial working group to conduct analysis of current legal regulations regarding same-sex couples in FBiH, and to draft a same-sex partnership law. This is a historic step for FBiH on the road to recognition of the rights of its citizens regardless of their sexual orientation or the gender of their partner.
- A positive opinion issued by the Government of Federation of BiH entity on the draft of Action Plan for Equality of LGBTI People in BiH 2018-2020 is a step forward in enforcement of non-discrimination.

### Main action points for the coming year:

- Include civil society organisations in the working group for same-sex partnership legislation, initiate the work of the working group without delay, and ensure adoption of same-sex partnership legislation;
- Adopt at all levels the Plan for Equality of LGBTI People in Bosnia and Herzegovina (BiH);
- Ensure full exercise of freedom of assembly of LGBTI people and organisations in BiH ;
- Amend criminal codes in FBiH and Brčko District to ban hate speech on grounds of sexual orientation and gender identity (SOGI);
- Amend the existing legal gender recognition procedures to allow trans people to change sex markers in their documents on the basis of self-determination

### Bias motivated violence, hate speech, hate crimes

In 2018 SOC documented 29 cases of criminal offences and incidents motivated by prejudice on the grounds of SOGI. Most of the cases documented fall in two categories, school bullying (7) and domestic violence (5).

Hate crime has been defined and incorporated into the Criminal Codes throughout the country. However, only the Criminal Code of Republika Srpska recognizes grounds of sexual orientation and gender identity in its provisions regulating hate speech, while the criminal codes of Federation of BiH and District Brčko only cover race, religion and ethnicity. Education of state actors, mainly police, prosecutors and judges, on implications and application of hate crime legislation is necessary to ensure implementation.

Major positive changes in this period were made in Canton Sarajevo were the Cantonal Prosecutor's Office dedicated a special prosecutor as a contact person for hate crimes on grounds of SOGI. The

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<sup>3</sup> <http://soc.ba/en/media-announcement-who-and-how-is-deciding-on-freedom-of-assembly-of-citizens-of-sarajevo/>

Judicial and Prosecutorial Training Centre and police bodies in Federation of BiH also increased their educational activities with the Federal Ministry of Internal Affairs giving positive signals towards implementing hate crime modules in official police academies next year.

*Main action points for the coming year:*

- Amend criminal codes of District Brčko and Federation of BiH to include sexual orientation, gender identity and sex characteristics as prohibited grounds of hate speech.
- Continue to work on education of police, prosecutors, judges to ensure full implementation of existing hate crime and hate speech legislation.
- Conduct institutional trainings and programs for school workers and educational institutions to prevent bullying on grounds of SOGI.

**Freedom of assembly, association and expression**

Freedom of assembly, association and expression remains a challenge for LGBTI organizations to exercise, pointing to larger systematic and legislative shortcomings that need to be addressed. In mid-march 2018 SOC tried to organize a public event for Trans\* Visibility Day but did not get a permit from the legal entities that were using or partially owning the square space (BBI Center shopping mall and National Theatre). Their explanations were that this is a high risk event and that the messages that would be expressed were inappropriate. This has created a situation where legal entities take it upon themselves to conduct risk assessments, despite this being exclusively under the authority of the Ministry of Interior of Sarajevo Canton, as per the Law on Freedom of Assembly of Sarajevo Canton. This also connects to inadequate interpretation of The Law on Temporary Use of Public Surfaces in Sarajevo Canton that is incorrectly applied to peaceful assemblies of citizens and associations of BiH which as an effect creates the situation where public assemblies depend upon the approval of institutions/other legal entities that use the public space where the assembly is supposed to occur.

*Main action points for the coming year:*

- Address discrepancies in the legal provisions regulating freedom of assembly in the Federation of BiH to ensure full access to this right for LGBTI people,

**Equality and non-discrimination, including legislation and enforcement**

Bosnia and Herzegovina's legal anti-discrimination framework is strong, however, implementation policies and proactive combatting of discrimination through state institutions is lacking. Progress in this area has been made in Federation of BiH entity, in which the government issued a positive opinion on the draft Action Plan for Equality of LGBTI People in BiH 2018-2020 proposed by the Ministry of Human Rights and Refugees BiH. The draft follows the recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity. There was no equivalent initiative in Republika Srpska entity. An anti-discrimination programme on a state level is not expected to be introduced any time soon due to political obstructions and lack of consensus among political parties from the two entities.

In 2018, five persons contacted SOC about discrimination on grounds of SOGI. Three of those were employment related cases of discrimination and mobbing. None of the victims initiated antidiscrimination procedures either through the Ombudsman, courts, police or internal procedures.

*Main action points for the coming year:*

- Adopt the Plan For Equality of LGBTI People in all territory of Bosnia and Herzegovina (either for every entity or at a state level).

**Recognized unions for same sex couples**

A major breakthrough in this area occurred in October 2018 in Federation of BiH entity. The Federal Government accepted the opinion of the Federal Ministry of Interior concerning the need for legal regulation of same-sex partnerships of citizens of BiH due to an increased number of requests for recognizing same-sex unions established abroad in the legal system of BiH. The government initiated the formation of an inter-ministerial group that would identify what legislative changes need to be made under the jurisdiction of the Federal ministry of Justice. Formation of the group is in process and it has to be commended that initial response of Government towards including civil society experts was positive. In Republika Srpska entity there was no progress made in this area.

*Main action points for the coming year:*

- Ensure inclusion of civil society organisations in the working group for same-sex partnership legislation in FBiH, initiate the work of the working group without delay, and ensure adoption of same-sex partnership legislation.

**Rights and equal treatment of trans and intersex persons**

There were no major breakthroughs this year in this field. There are no legal provisions that would enable state funded health care for the needs of trans\* people. Procedure for sex marker change in official documents is possible but complicated and requires full medical transition.

Although education of medical workers was initiated by SOC it still remains a priority and has to be initiated on institutional level and more systematically.

Intersex people are still marginalized and cause for concern is that some of the evidence gathered by SOC in recent years shows that there are cases of mistreatment by medical workers in the form of invasive procedures without informed consent by parents or intersex persons themselves.

**Public awareness and attitudes**

Public awareness and attitudes can be viewed through campaigns of political parties for the 2018 elections. Most of the presidential candidates were against same-sex partnership or Pride marches when asked. Politicians that publicly support the human rights of LGBTI people are still a minority and dispersed among the political scene. This is a reflection of public awareness and attitude that shows that there were no major changes from the last year and most aspects related to LGBTI rights are perceived by majority as negative. Increased and professional reporting of main stream media on LGBTI topics continued in 2018 and has to be commended.

### 3.3. KOSOVO

**Submitted by: Center for Social Group Development CSGD, Center for Equality and Liberty CEL**

#### **Summary of key developments, including political context and trends**

There is a strong contrast between the legislative and the actual situation for LGBTI people in Kosovo. Despite advanced legal protections, including explicit protection on grounds of sexual orientation and gender identity (SOGI) outlined in the constitution, the LGBTI movement struggles against strong social opposition rooted in patriarchal tradition. There is a general lack of rule of law, which, in addition to the reluctance of state institutions to act against social norms, hampers the practical provision of the human rights of LGBTI people as guaranteed, in theory, by existing laws.

According to the report “Life on the Margins: Survey Results of the Experience of LGBTI people in South Eastern Europe<sup>4</sup>”, LGBTI people’s perception of their acceptance in Kosovo remains the lowest in the region of Western Balkans. 74% of the respondents stated they are not open about their sexual orientation, which is the highest percentage in the Western Balkans. 73% said that they avoid certain locations for safety reasons, while 90% of the respondents stated that they avoid holding hands with their same-sex partner for the same reason (both figures also represent the highest percentage in the Western Balkans). The report also showed there are high levels of discrimination, as well as concerning levels of harassment and violence against LGBTI individuals.

The Law on Civil Status<sup>5</sup> lacks bi-laws outlining the process of gender recognition covering modification of data on public registers and documents. In January 2018, CSGD met with Ministry of Internal Affairs and initiated the amendment of the Civil Status Law which will recognize gender change for trans people in their public identification documents and public registers, as well as amending article 32, paragraph 3 of this Law which states: “When the child’s genital organs have disorders, the gender shall be established by a medical report”, thus directly violating the right to bodily integrity of intersex people.

A key aspect that still requires development is hate crime and hate speech legislation. CSGD drafted recommendations and proposals for amendments dealing with hate crime which were presented to the Working Group for Amending the Criminal Code. Subsequently, hate crime was introduced to Article 74<sup>6</sup>. The grounds of sexual orientation and gender identity were, also, included in Article 179 (Aggravated Murder), Article 187 (Assault), Article 188 (Light Bodily Injury), Article 189 (Grievous Bodily Injury) and Article 333 (Destruction or Damage to Property). The proposals were accepted by the working group and passed the first reading in the Kosovo Parliament. The amendments were approved by the Ministry of Justice, Kosovo Government, Kosovar Parliamentarian Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly, and in the first reading by the Assembly of Kosovo.

#### **Main action points for the coming year:**

- Ensure proper investigation of hate crimes against LGBTI people;

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<sup>4</sup> The report was published in September 2018 by the World Bank in partnership with IPSOS Strategic Marketing, ERA – LGBTI Equal Rights Association for the Western Balkans and Turkey and the Williams Institute at UCLA: <https://www.lgbti-era.org/sites/default/files/pdfdocs/0354%20Life%20on%20the%20Margins%20Survey%20results%20of%20the%20living%20experiences%20of%20lgbti%20people%20in%20south%20eastern%20europe-ilovepdf-compressed.pdf>

<sup>5</sup> Law No.04/L –003, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2743>.

<sup>6</sup> General rules for mitigation or aggravation of punishments

- Develop a fair, transparent legal framework for legal gender recognition, based on a process of self-determination;
- Be accountable and take responsibility for implementation of the LGBTI National Action Plan, the National Strategy against Domestic Violence and the Action Plan of the Human Rights Parliamentary Committee;
- Ensure thorough implementation of existing legal frameworks, including through the second LGBTI National Action plan;
- Undertake efforts to tackle intolerance against LGBTI people.

### **Bias motivated violence, hate speech, hate crimes**

Although hate crime on the grounds of sexual orientation and gender identity have been introduced in the amendment of the new CCRK, proper investigation and application of the law in cases of such hate crimes remain a challenge for the Kosovo Police and Prosecution.

During the Pride Week in October 2018 several cases of hate speech by political figures were recorded:

- Political Party “Fjala” held a press conference denouncing the organizing of the Pride march, and calling the government to ban such manifestation in public places. The leader of this party claimed that a workshop on self-defence organised as part of Pride Week was an indication of the fact that LGBTI persons are organizing a terror attack. The LGBTI organizations did not react with any statement regarding this press conference.
- A member of the leftist Political Party “Levizja Vetevendosje”, Donika Gashi, who is also part of the Ministry of Culture, Youth and Sport, made a statement on her Facebook profile calling LGBTI persons “sick” and “shkije” (a derogatory word used to refer to Serbs). The organizers reacted with a press release to asking for perpetrators to be called to justice.

*Main action points for the coming year:*

- Ensure proper investigation of hate crime and hate speech against LGBTI people

### **Freedom of assembly, association and expression**

Although freedom of assembly, association and expression are protected under the constitution, the LGBTI organizations have always struggled to get permission from the municipality to hold events such as International Day Against Homophobia, Transphobia and Biphobia or Pride marches. External pressure has always been needed.

The International Day Against Homophobia, Transphobia and Biphobia, was marked with an exhibition that was organized in the main square of Prishtina. In October, the second Prishtina Pride Week was organised, and passed without incident. The week featured movie screenings, two conferences, a Pride march and many other events. Institutional actors did not participate in the conference or other events, despite multiple invitations and thematic relevance.

The Pride march was organized on 10<sup>th</sup> of October and attracted a much higher number of LGBTI persons than the previous years. A few members of government institutions participated in the Pride march, including the Minister of European Integration, Ms. Dhurata Hoxha, member of the Social Democratic Party, Frasher Krasniqi, Pristina Mayor Shpend Ahmeti.

Collaboration with Kosovo Police for the Pride events was good. Pride week was again accompanied by a rise in hate speech, and threats sent to community members and organisers, all of which were reported to the police.

*Main action points for the coming year:*

- Ensure thorough implementation of existing legal frameworks surrounding freedom of assembly and expression, including for LGBTI organisations and events.

### **Equality and non-discrimination, including legislation and enforcement**

#### *Main action points for the coming year:*

- Full implementation of the existing anti-discrimination legal framework needs to be a priority.

### **Rights and equal treatment of trans and intersex persons**

In January 2018, CSGD had a meeting with the Ministry of Internal Affairs and opened conversations about amendments of the Civil Status Law to recognise gender of trans people in their public identification documents and public registers, as well as amending article 32, paragraph 3 of this Law which states: “When the child’s genital organs have disorders, the gender shall be established by a medical report”, thus directly violating the right to bodily integrity of intersex people.

On 4 April 2018, Blert Morina, filed a request to change the name and gender marker in the Civil Status Registry at the Civil Status Office of the Municipality of Gjakova. The request had two requirements: (1) to change the name from “Blerta” to Blert” and (2) to change the gender marker from “F” to “M”. On 15 May 2018, the applicant received the decision of the Commission of the Civil Status Office in Gjakova, dated 26 April 2018, which rejected the request (hereinafter: “Decision”). The Decision states that the Commission finds the reasons provided by the applicant as unfounded and that the name and gender marker does not hinder the integration of the applicant in Kosovar society, but does not address any of the rights guaranteed by the Constitution of Kosovo or the directly applicable international conventions. As a result, on 29 May 2018, a complaint against the decision of the Civil Status Office in Gjakova was filed at the second instance at the Agency for Civil Registration, which functions under the Ministry of Internal Affairs. On 25 June 2018, the applicant received the decision of the Agency for Civil Registration, which rejected the complaint of the applicant and approved the decision of the Civil Registry Office. The Agency for Civil Registration found that the Civil Registry Office made an accurate assessment when it found that the legal name of the applicant did not hinder “her” integration into society. It later stated that evidence, such as photographs, documents, etc. should have been provided. As for the request to change the legal gender, the Agency for Civil Registration stated that a medical report proving gender reassignment should have been provided.

It is important to note, that neither of the state institutions requested any additional evidence throughout the application process, although they are required by law to do so<sup>7</sup>. A lawsuit against the decision of the Agency for Civil Registration has been lodged at the Pristina Basic Court – Department for Administrative Cases. Also, there are a few particular cases in which the Constitutional Court has decided to hear cases prior to exhausting all legal remedies. Hence simultaneously to the Lawsuit, a Request for Constitutional Review was lodged at the Kosovo Constitutional Court.

#### *Main action points for the coming year:*

- Develop a fair, transparent legal framework for legal gender recognition, based on a process of self-determination, free from abusive requirements, ensuring available name change options

### **Public awareness and attitudes**

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<sup>7</sup> Article 73, Paragraph 4, Law No.05/L-031 on General Administrative Procedure



Studies<sup>8</sup> show that public awareness and acceptance of the rights of LGBTI people remains low in Kosovo.

### **A supportive and enabling environment for civil society**

Civil society has good cooperation with institutions behind closed doors. However, public support from state institutions is given only when foreign representatives are involved. Cooperation around LGBTI issues has been lacking. This year, the government of Kosovo, respectively the OGG, has failed to coordinate activities regarding the LGBTI rights in Kosovo.

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<sup>8</sup> 1. NDI Public Opinion Poll in the Balkans on LGBTI Communities, 2015, Balkans

2. Life on the Margins : Survey Results of the Experiences of LGBTI People in Southeastern Europe, 2018, Balkans

### **3.4. FYR MACEDONIA**

**Submitted by: Helsinki Committee for Human Rights – LGBTI Support Centre, Coalition for sexual and health rights of marginalized communities MARGINS, Subversive Front, LGBT United Tetovo**

#### **Summary of key developments, including political context and trends**

Much progress has been made, though several processes were stalled, largely due to the name change referendum. A new Law on Protection and Prevention against Discrimination, including grounds of sexual orientation and gender identity, was tabled and expected to be adopted by June; it is still pending. A working group for introduction of comprehensive sexuality education was established in the Bureau for development of education, and an action plan on implementation of the Istanbul convention was adopted as well, with specific provisions relating to LGBTI people.

In February 2018, the constituent session of the Inter-Party Working Group for LGBTI Rights was held in the Macedonian Parliament for the first time. The group consists of 13 members of the existing parliamentary composition of various parties, including the Social-Democrats, Liberal-Democrats, the Greens, the Democratic Union for Integration and two independent MPs. The group, which was founded last year, is actively working in collaboration with LGBTI organizations on identifying opportunities for progress. Thus far, it has already submitted amendments to the law on media for inclusion of sexual orientation and gender identity in the anti-discrimination clause.

However, legal gender recognition remains un-regulated which causes prolonged legal uncertainty for trans people. Encouragingly, the Minister for Labor and Social Policy has confirmed that work on legal solutions for legal gender recognition is next on the list after anti-discrimination legislation. Hate crime and hate speech legislation does not mention grounds of sexual orientation or gender identity (SOGI), as such, cases of bias motivated violence or speech remain largely unsolved. Additionally the police, courts and public prosecution remain ignorant and ineffective in the prosecution and resolution of such cases.

#### **Main action points for the coming year:**

- Adoption and implementation of the Law on Protection and Prevention against Discrimination.
- Preparation and adoption of legal gender recognition law based on self-determination;
- Inclusion of hate speech and hate crimes based on sexual orientation and gender identity in the criminal code and related legislation, as well as accompanying implementation policies and trainings for law enforcement and judiciary;
- Including LGBTI positive content in school curricula and addressing bullying based on SOGI;
- Provision of medical gender confirmation services for trans people, financially covered by the Health Insurance Fund.

#### **Bias motivated violence, hate speech, hate crimes**

- The Criminal Code does not explicitly regulate hate speech and hate crime on grounds of sexual orientation and gender identity, though in theory they should be covered under “other grounds”.
- The 5 acts of hate crime against the LGBTI Support Center in 2012, 2013 and 2014 have not yet been solved, despite overwhelming evidence and public promises of representatives of the ruling party.
- Hate speech in the media has decreased since the Social-Democrats came to power, but still remains a prominent issue. The Public Prosecutor’s Office have responded to only 5 of the 72 cases of SOGI-based hate speech submitted by Subversive Front in 2016 and 2017, and did not find discrimination in any of them. Prominent cases, such as the case of hate speech by TV show host Milenko Nedelkovski, or mayor-candidate Stevcho Jakimovski, have not been addressed. In the former, a criminal case has been initiated, but only in relation to Nedelkovski’s remarks about Greece, not his remarks about LGBTI people. In fact, the section for electronic criminal

and digital forensics in the Ministry of interior has not started a single criminal investigation in relation to a case of bias motivated speech on grounds of SOGI. The Commission for protection from discrimination lacks capacities and will to address hate speech, especially concerning LGBTI people<sup>9</sup>. The Council for media ethics (a media self-regulatory body) has condemned cases of hate speech based on SOGI in the media, but they cannot take any punitive action.

- After the cancellation of the “Queer Iftar” event (*see below under Freedom of assembly, association and expression*), LGBTI United Tetovo director Bekim Asani’s home address was published in social media and mobilisation for burning of his home was started. A photo of Bekim and his mother along with threats to their lives were shared multiple times in a number of social media posts. In June 2018, 11 people were identified as perpetrators of these threats and criminal charges were filed against them on the grounds of threats to the life of a member of marginalized community<sup>10</sup>.
- Data collection of hate crimes and hate speech based on SOGI is a problem. Underreporting is still a big issue, cases of hate crimes are documented by NGOs, but few are willing to report cases to the authorities due to lack of trust and fear of stigmatization<sup>11</sup>. In 2018 Coalition Margins and the LGBTI Support Center documented 19 cases of hate speech in media and social media, 16 cases of hate speech in public spaces, including hate-motivated threats and blackmail, and 23 cases of violent hate crimes, including physical violence, rape and robbery.

*Main priorities for 2019:*

- Amendment of the Criminal Code to incorporate explicitly sexual orientation and gender identity as prohibited grounds for hate speech and hate crime;
- Introducing obligatory and continuous courses on LGBTI rights in the Academy for Prosecutors and Judges, in the Faculty for Security and the Training Center for Police Officers;
- Developing a system for documenting hate speech and hate crimes including on grounds of SOGI;
- Improvement of the investigation and prosecution of hate crimes based on grounds of sexual orientation and gender identity and effective resolving of existing cases.

**Freedom of assembly, association and expression**

- LGBTI public events such as the Skopje Pride Weekend this year and the ERA<sup>12</sup> Regional Conference passed without any incidents.
- The sixth Skopje Pride Weekend was organized in June, as the most visible event which promotes queer culture. The event was the most successful so far with over 500 people attending the variety of events. For the first time the festival was awarded a grant from the Ministry of Culture.
- The first Pride march is planned for 2019.
- LGBT United Tetovo tried to organize a Queer Iftar in June, but the event had to be cancelled due to high volumes of hate speech and threats on social media. The leader of the organization, Bekim Asani, had to flee Tetovo for a while with his family due to security concerns after his home address was shared with calls of incitement to violence.

*Main priorities for 2019:*

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<sup>9</sup> Some of the Commissioners even stated that the Commission is not responsible for addressing hate speech, which is not in accordance with the law.

<sup>10</sup> The current law does not recognise grounds of sexual orientation, but does recognise grounds of belonging to a marginalised community.

<sup>11</sup> The most violent cases are not reported to the police because of distrust and stigma. The cases which LGBTIs are willing to report to institutions are usually cases of discrimination in the access to goods and services and discriminatory treatment by institutions.

<sup>12</sup> LGBTI Equal Rights Association for Western Balkans and Turkey

- Ensure public protection for LGBTI organisations exercising their right to freedom of assembly, both in Skopje and throughout the country.
- Ensure full freedom of assembly for LGBTI organisations organising the first Pride march in 2019.

### **Equality and non-discrimination, including legislation and enforcement**

- 16 cases of discrimination against LGBTI people were documented by the Coalition, the LGBTI Support Center and Subversive Front. These include discrimination in access to goods and services, healthcare, discriminatory treatment by police officers and employees in the office for management of registers of births, marriages and deaths, and discriminatory content in school books at the Medical faculty of the University in Skopje.
- The new Law on Protection and Prevention against Discrimination has not been adopted yet, and its implementation and harmonization with other laws is still uncertain. The state did not include “sex characteristics” as grounds of discrimination in the draft law and with that failed to provide legal protection from discrimination to intersex people. LGBTI organizations were included in the preparation of the law, as such, other important changes were introduced, such as *actio popularis*, for cases where discrimination has been committed against a group of people, and a new institutional framework of the Commission for protection from discrimination extending its competencies, strengthening independence of members of the Commission. As a result of these provisions, new commissioners will need to be elected following the passing of the law.
- A national coordinative body for non-discrimination was established, as a multi-sectorial body formed of representatives of institutions and NGOs, including LGBTI organizations, with the aim of harmonizing legislation with the draft-law on protection from discrimination.
- According to the findings of the World Bank led study “Life on the Margins: Experiences of LGBTI People in Southeastern Europe”<sup>13</sup>, 43% of LGBTI people in FYR Macedonia, 43% of the survey respondents, are not convinced that the people they report the incidents of discrimination to, understand the issue.

#### *Main priorities for 2019:*

- Adoption of the Law on Protection and Prevention against Discrimination, and harmonization of related laws, such as the Law on Labour Relations and the Law on Social Protection. Once adopted, comprehensive implementation trainings must take place in collaboration with civil society;
- Election of competent and independent commissioners to the Commission for protection from discrimination;
- Strengthening the capacities of the Ombudsman to protect LGBTI people from discrimination.

### **Prevention of HIV and Aids**

- With the budget for the HIV preventive program allocated by the Ministry of Health, NGOs implementing the program got enough funds for maintaining the status quo. However, an increase in the percentage of HIV infections among MSM was noted.

#### *Main priorities for 2019:*

- Allocation of more funds for further development of the HIV prevention program.
- Introduction of PrEP and PEP, which are still not available.
- Bigger budget allocation in the program for prevention, including budget for social and legal services.

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<sup>13</sup> World Bank Group. 2018. Life on the Margins: Survey Results of the Experiences of LGBTI People in Southeastern Europe. World Bank, Washington, DC. © World Bank.  
<https://openknowledge.worldbank.org/handle/10986/30607> License: CC BY 3.0 IGO.

- Continuous trainings for medical professionals aimed at addressing the stigma against people who live with HIV in the health sector and proper implementation of the law on patient's rights.

#### **Recognized unions for same sex couples**

- The legal framework in the country only covers and recognizes different sex unions, there had been no movement to change this.

#### **Rights and equal treatment of trans and intersex persons**

- Trans people, especially trans women sex workers are the most vulnerable to violence and violation of their rights. Civil society has documented 34 cases of right's violation (violent hate crime, hate speech in public spaces and discrimination) against trans people, mostly trans women.
- In a qualitative research project<sup>14</sup> conducted by Subversive Front, transgender participants expressed particular concern about employment and experiences of discrimination when applying for a job.
- Medical services for gender confirmation procedures for trans people are largely unavailable, unless visiting the doctor with a referral from a CSO.
- The Minister for Labor and Social Policy confirmed that the ministry will start to work on legal solutions for legal gender recognition. The National Action Plan on Gender Equality includes measures against discrimination on the grounds of gender identity in education. However, implementation is lacking.
- Activities for strengthening the capacities of the trans community were intensively implemented by NGOs, so an informal trans organization TransFormA was established.
- According to findings of the World Bank led study "Life on the Margins"<sup>15</sup>, only 7% and 6% of the respondents in FYR Macedonia, said that measures to promote the human rights of transgender people and intersex people respectively are common.

#### *Main priorities for 2019:*

- Legal framework for legal gender recognition based on self-determination to be adopted.
- Medical gender confirmation services financially covered by the Health Insurance found to be provided.
- Training of police officers and prosecutors about the human rights of trans people, especially trans women, and trans sex workers.

#### **Public awareness and attitudes**

- According to the findings of the World Bank led study "Life on the Margins"<sup>16</sup>, FYR Macedonia is one of the least accepting countries in Southeastern Europe for LGBTI people
- Representatives from government institutions are more openly supportive of the human rights of LGBTI people. The annual ERA conference was organized in partnership with the Ministries of Labor and Social Affairs, and Foreign Affairs, and the Inter-Party Working Group for LGBTI Rights. An LGBTI campaign on a national level in cooperation with MPs and local level campaigns in cooperation with local bodies for protection from discrimination took place in December in two cities.

<sup>14</sup> Stojanovski, K., Bondikjova, V., Mihajlov, A. (2017). Needs Assessment of LGBT Community Members in Macedonia. <http://s-front.org.mk/en/2017/12/12/procena-na-potrebite-na-lgbtlugijeto-vo-rm/>

<sup>15</sup> World Bank Group. 2018. Life on the Margins: Survey Results of the Experiences of LGBTI People in Southeastern Europe. World Bank, Washington, DC. © World Bank.

<https://openknowledge.worldbank.org/handle/10986/30607> License: CC BY 3.0 IGO.

<sup>16</sup> Ibid.

- The Agency for Audio and Audio Visual Media Services added questions concerning LGBTI people in public opinion research, the results showed that 56% are significantly bothered by scenes on TV of two men kissing, compared with 8% who answered the same in relation to a man and woman kissing<sup>17</sup>.

*Main priorities for 2019:*

- Continued and increased support from state bodies for public awareness raising activities;
- State support for, including funding, and participation in LGBTI campaigns and cultural events.

**A supportive and enabling environment for civil society**

- LGBTI organizations are active in various working groups, multi-sectorial coordination and cooperation bodies on different issues. For many of those issues the NGOs have established meaningful cooperation with some institution, such as the Ministry of Labor and Social Affairs, Ministry of Health, Agency for Audio and Audio-Visual Media Services and MPs from the LGBTI Inter-parliamentary group. However, NGOs are still facing difficulties in establishing cooperation with the Ministry of Education. The comments and suggestion<sup>18</sup> from the Coalition and civil society organisation HERA on the Comprehensive Education Strategy and the Law on high education were not accepted by the ministry.

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<sup>17</sup> Agency for audio and audio visual media services “Research of the opinion of the audience in Republic of Macedonia”, December 2017

<sup>18</sup> The amendments addressed mechanisms for prevention and protection from gender and SOGI biased violence and bullying in schools, solutions for discriminatory and homophobic text books and introduction of comprehensive sexuality education.

### 3.5. MONTENEGRO

**Submitted by: LGBT Forum Progress, LGBTIQ Social Center, Juventas, Queer Montenegro, Spectra**

#### **Summary of key developments, including political context and trends**

From a legal perspective Montenegro continues to be ahead of its neighbours and even several EU countries in terms of protections for LGBTI people, with a same-sex partnership bill on the table due to be passed before the end of the year. Furthermore, according to a World Bank study, “Life on the Margins. Experiences of LGBTI people in Southeastern Europe”, published in September, shows that the LGBTI Perception of Acceptance Index is higher in Montenegro than all other accession countries, and that, consequently, a slightly higher proportion of LGBTI people feel that they can be open or mostly open about their sexual orientation or gender identity. Furthermore, in the region LGBTI people enjoy the greatest visibility in Montenegro, where 14% of respondents said it is common for same-sex partners to hold hands in public, and 17% thought that public figures are generally open about being LGBTI.<sup>19</sup>

However, the lived reality for LGBTI people in Montenegro remains starkly different to the one painted on paper. Implementation of the existing legal framework is fragmented. While authorities show openness towards the promotion and protection of the human rights of LGBTI people, capacity and knowledge of relevant institutions remains lacking. Most notably, the National LGBT Strategy (2013-2018) is due to expire, yet a significant portion of the planned activities remain uncompleted. Hate crime and hate speech against LGBTI people continues to be a prevalent issue, despite existing legislation with protections on grounds of sexual orientation and gender identity. Legal gender recognition remains a challenge, as no legal provisions have been set out, and societal attitudes towards LGBTI people continue to be largely negative.

#### **Main action points for the coming year (identify three to five issues for the country's to do list in 2019)**

- Ensure full implementation of current legislation, in particular relating to investigation and prosecution of hate crimes and hate speech;
- Ensure full implementation of the life partnership for same-sex partners law due to be adopted in December 2018;
- Ensure stable and sustainable support to the key social services for the LGBTI community, such as the LGBTIQ shelter;
- Adopt the next National LGBTI Action Plan; ensure its full implementation both in Podgorica and local municipalities throughout the country.

#### **Bias motivated violence, hate speech, hate crimes**

- Hate crime and hate speech legislation in Montenegro covers grounds of sexual orientation and gender identity, but not sex characteristics.
- In the first ten months of 2018, LGBT Forum Progress recorded over 120 cases of hate speech, verbal abuse and discrimination on the Internet. In the same period last year, fewer cases were filed, indicating an increase in online hate speech towards the LGBTIQ community.
- In August, a charge was filed against the Metropolitan of the Serbian Orthodox Church in Montenegro, Risto (Amfilohije) Radović, for his hateful and discriminatory statement that

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<sup>19</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/30607/130420-REPLACEMENT-PUBLIC-FINAL-WEB-Life-on-the-Margins-Survey-Results-of-the-Experiences-of-LGBTI-People-in-Southeastern-Europe.pdf?sequence=1&isAllowed=y>

homosexuality is a disease which needs to be eliminated from Montenegrin society. Following this statement, LGBTI Forum Progress recorded an increase in the amount of online hate and abuse towards LGBTIQ people.

- Several LGBTIQ activists, including President of LGBT Forum Progress Bojana Jokić and others, have been targets of smear campaigns, negative press coverage and even threats by right-wing and anti-LGBTIQ oriented media.
- In September, representatives of 5 civil society organisations met with the newly elected Chief of Police, Veselin Veljović. During the meeting, Mr. Veljović stated his full support to the LGBTIQ community in Montenegro, and expressed support to re-establish a “Team of Trust” (the mandate of the previous Team of Trust expired in spring 2018) between the police and LGBTI organisations to facilitate trust-building and cooperation in the reporting and investigation of cases of homophobic and transphobic violence, discrimination and speech.

#### *Main priorities for 2019:*

- Ensure full implementation of current legislation covering hate crime and hate speech on grounds of sexual orientation and gender identity;
- Re-establish the Team of Trust to facilitate better cooperation between police and LGBTI organisations;
- Ensure ongoing training for police, judiciary and legal professionals to ensure full understanding and implementation of existing hate crime and hate speech legislation;
- Amend existing hate crime and hate speech legislation to include grounds of sex characteristics.

#### **Freedom of assembly, association and expression**

- Montenegro celebrated its 6th Pride march on 17 November in the capital city of Podgorica. Almost 400 people, predominantly from among the local community, came out to march in support of the human rights of LGBTI people – a significant number for a country with a population of only 600,000. Cooperation with police was, as in previous years, very successful. Police presence was less visible than in preceding years, far more people marched openly, and no incidents were recorded.
- In October 2018, the Constitutional Court of Montenegro published a decision in which it quashed the previous ruling of the Supreme Court in the case of the triple ban of Niksic Pride in 2015. This landmark decision rejected the reasoning given by the Government on the reasons of the ban and thus upheld the rights to freedom of assembly guaranteed by the Constitution.<sup>20</sup>

#### *Main priorities for 2019:*

- Conditions for safe and peaceful organization of public events (pride marches, cultural events, etc.) should be ensured in all municipalities in Montenegro.

#### **Equality and non-discrimination, including legislation and enforcement**

- The LGBTIQ Shelter in Podgorica, the oldest of its kind in the region, has been operating without any governmental support for almost six months, and is currently pending shutdown. Support was ensured for a short period of time from the Ministry of Human and Minority Rights, through their grants scheme. However, the amount awarded did not meet the needs of the Shelter.
- The National LGBT Strategy (2013-2018) is due to expire in December 2018. Significant sections of the Strategy remain unimplemented or only partially implemented.

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<sup>20</sup> <http://lgbtprogres.me/en/2018/10/usvojena-ustavna-zalba-zbog-zabrane-prajda-u-niksicu-2015-godine/>



- A working group for devising the next LGBTI Strategy (2019-2023) was formed by the Ministry of Human and Minority Rights (MHMR), including several civil society organisations (CSO). The process should be completed by the end of the year.
- Efforts were made over the last year to decentralise LGBTI activities from Podgorica, with a view to engaging local authorities. The Ministry of Human and Minority Rights signed memoranda of understanding with several municipalities about specific activities for combating homophobia at the local level, with varied degrees of success. No efforts were made to do the same for raising awareness about trans and intersex issues.
- Civil society organisations have been actively working with respective local authorities to ensure implementation of the memoranda of understanding, and in promoting the drafting and adoption of local LGBTI Action Plans. Currently NGOs Juventas and Queer Montenegro are working on creation of action plans in Kolašin, Mojkovac, Bijelo Polje and Kotor, within a project supported by the EU Delegation, with a view to being completed by the end of the year.
- NGO Juventas and Queer Montenegro have been closely involved in enhancing capacities of local authorities in creating local action plans on fighting homophobia and transphobia in cooperation with the Ministry of Human and Minority Rights and Council of Europe.
- The biggest concern in regards to LGBTI action plans is the lack of capacity of the Ministry of Human and Minority Rights, which makes implementation as well as monitoring and evaluation challenging.
- In 2018, LGBT Forum Progress, supported by Civil Alliance, conducted monitoring and research within the prison system in Montenegro, with a focus on LGBTIQ and STIs/HIV positive inmates. The findings showed a clear need for significant improvement of the capacities and knowledge of prison staff, better protection from sexual harassment and violence, as well as improved access to STI medication and condoms. The monitoring showed a worrying practice of placing trans individuals in cell blocks in accordance with the sex assigned at birth, rather than the gender they identify with.<sup>21</sup>

*Main priorities for 2019:*

- Complete process for adoption of the next National LGBTI Strategy together with civil society, clearly outlining plans for monitoring and evaluation; ensure full implementation of planned activities in 2019;
- Continue efforts to promote the human rights of LGBTI people outside the capital city through memoranda of understanding with local municipalities;
- Continue capacity building efforts for civil servants both at a state and local authority level, to increase knowledge and understanding about LGBTI issues, together with civil society;
- Improve the situation of LGBTIQ people in prisons.

**Recognised unions for same sex couples**

- The Law on Life Partnership between persons of the same sex has been drafted and is pending approval by the government and the parliament of Montenegro in December 2018. NGOs Juventas, Queer Montenegro and LGBT Forum Progress were part of the working group.

*Main priorities for 2019:*

- Ensure full implementation of the partnership law due to be adopted in December 2018.

**Rights and equal treatment of trans and intersex persons**

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<sup>21</sup> <http://gamn.org/wp-content/uploads/2018/07/GA-Prava-lica-lisenih-slobode-2018.pdf>

No developments have occurred in this category in 2018. Intersex community remains to be invisible and unrepresented in the LGBTIQ movement. There are no provisions for legal gender recognition. Civil society organisations have drafted a law on legal gender recognition and submitted it to the relevant authorities however, no further movement has been made on this.

*Main priorities for 2019:*

- The Strategy for the improvement of LGBTI people's quality of life should include a more comprehensive approach for addressing the needs of transgender and intersex persons in various aspects of their life;
- A law on legal gender recognition needs to be adopted.

**Public awareness and attitudes**

- According to the World Bank study "Life on the Margins", the LGBTI Perception of Acceptance Index is somewhat higher in Montenegro than in the other accession countries.<sup>22</sup>
- In April and May, LGBT Forum Progress and LGBTIQ Social Center conducted research ahead of the presidential elections in Montenegro and local elections in the capital Podgorica into the attitudes of politicians and their parties in relation to LGBTIQ people and communities. The research, the first ever of its kind, showed prevalent levels of negative and discriminatory attitudes.<sup>23</sup>
- In June, the first lesbian novel by a prominent local journalist and LGBTIQ activist, Ms. Ketí Radošević, was published.<sup>24</sup>

*Main priorities for 2019:*

- Activities designed to raise awareness and improve attitudes towards LGBTI people should be carried out.

**A supportive and enabling environment for civil society**

- Civil society is involved in working groups and consultations with the authorities. CSO representatives were involved in the creation of the new partnership law and LGBTI Strategy.

*Main priorities for 2019:*

- Continue to engage in constructive dialogue, partnership and cooperation with civil society organisations;
- Ensure access to state funding for LGBTI civil society organisations, initiatives and services.

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<sup>22</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/30607/130420-REPLACEMENT-PUBLIC-FINAL-WEB-Life-on-the-Margins-Survey-Results-of-the-Experiences-of-LGBTI-People-in-Southeastern-Europe.pdf?sequence=1&isAllowed=y>

<sup>23</sup> <http://media.lgbtprogres.me/2018/06/LGBTIQ-COMMUNITY-AND-LOCAL-ELECTIONS-PODGORICA-IN-THE-SHADOW-OF-A-RAINBOW.pdf>, <http://media.lgbtprogres.me/2018/04/MONTENEGRIN-LGBTIQ-COMMUNITY-IN-THE-EYES-OF-PRESIDENTIAL-CANDIDATES.pdf>

<sup>24</sup> The novel, called "In your own four walls" (U svoja četiri zida) tells a story about the life and love of a lesbian in Podgorica, about the reality of being a lesbian in Podgorica, about the struggle to survive, to love and accept oneself.

### **3.6. SERBIA**

**Submitted by: AS Centre, Come Out (Izadi), Da se zna, Duga, Gayten – LGBT, Labris, XY Spectrum and ERA**

#### **Summary of key developments, including political context and trends**

The situation in Serbia remains broadly the same as in previous reporting periods, with implementation of exiting legal frameworks and legal gaps as a key issue. Political will to support LGBTI human rights is still on a declarative level. Ana Brnabić, the first woman and lesbian serving as a prime minister of Serbia, does not see LGBTI issues as a key concern in Serbia. There has been no progress around adoption of a Law on registered partnership for same-sex couples or of a Law on gender identity. Implementation of the Action Plan for the National Anti-discrimination Strategy, which expires at the end of 2018, was at a very low level, with activities severely behind schedule. Levels of hate crime continue to be high. Progress in education has improved, as 6 out of 8 textbooks with discriminatory content have been changed. There is still high concern about bullying based on sexual orientation and/or gender identity in high schools. Intersex persons remain invisible in society and without any institutional and legal support. Recent data shows that LGBTI persons are in a more delicate position in terms of their overall socio-economic position and are more often exposed to discrimination and prejudice, which affects their well-being and life conditions.

#### **Main action points for the coming year:**

- Stronger commitment to overall improvement of position of LGBTI persons, including in representation of LGBTI issues in the new National Anti-discrimination Strategy (2019-2025);
- Adopt law on registered partnership for same-sex couples and Law on legal gender recognition;
- Ensure full implementation of exiting legal frameworks on discrimination, hate speech and hate crime, introduction of amendments to cover sex characteristics;
- Ensure proactive approach to prevention and protection from bullying and violence in schools based on SOGIESC and HIV status;
- Significant efforts should be taken on economic empowerment of LGBTI persons.

#### **Bias motivated violence, hate speech, hate crimes**

The situation in the field has not changed since the previous reporting period.

Although hate crime legislation in Serbia includes grounds of sexual orientation and gender identity since 1 January 2013, the adequate implementation of this legislation is still lacking. There is no systematic data gathering of hate crimes by the State, which creates serious problems and gaps in documenting and reporting of hate crime incidents. Between November 2017 and October 2018, CSO Da Se Zna recorded 34 cases of hate crime and/or discrimination, including 6 cases of physical attack, threats, economic violence and peer violence. Relevant legislation is applied incorrectly by law enforcement, who insists on 'outing' victims, even though the criminal code specifies assumed, not proven, sexual orientation. At the same time, prosecutors are also reluctant to use Article 54a of the Criminal Code in the indictments. To this day there has been only one conviction of a perpetrator using this article, and that conviction came in November 2018, almost six years after the introduction of Article 54a.

LGBTI individuals remain vulnerable to hate speech in the media and online. Hate speech is often used by politicians, public officials and public figures.

Peer violence against LGBTI children and youth is particularly worrying, as perpetrators use both in person and social media bullying leaving LGBTI individuals without a safe space.

*Priorities and actions for 2019:*

- Full implementation of hate crime legislation, including proper recording, prosecution and sentencing of hate crimes on grounds of SOGI;
- Systematic data gathering of hate crimes;
- Provision of protection and support to LGBTI children and youth facing hate speech and violence in schools and on social media.

**Freedom of assembly, association and expression**

Several large and small scale LGBTI events took place in Serbia in the reporting period with support of authorities, including Pride marches in June and September 2018. There were no major incidents; however, strong police presence is still required.

In April 2018, the first LGBTI Community Center in Serbia was opened in Novi Sad, with the financial support under the programme of European Youth Capital Novi Sad 2019, primarily targeting LGBTI youth and their families. There have been no incidents or interruptions to its functioning thus far.

*Priorities and actions for 2019*

- Ensure that LGBTI events can be organised safely and adequately outside big cities.

**Equality and non-discrimination, including legislation and enforcement**

Serbia has fifteen laws that contain anti-discrimination provisions within them; however these legislative and normative frameworks have not been adequately used. Intersex persons are still not protected by the law. Serbia does not have law on free legal aid.

The Anti-discrimination law was adopted in 2009. Its implementation remains inadequate. There is no case-law of discrimination against LGBTI persons. Lack of free legal aid prevents many LGBTI people from seeking justice. The Commissioner for the protection of equality has done very little in 2018 to publicly stand for the human rights of LGBTI people, as such, LGBTI people are reluctant to submit complaints to this office, or the Ombudsperson, preferring to instead report cases only to CSOs. LGBTI CSOs were not invited to meetings organised by this institution about harmonisation of Anti-discrimination law with the EU acquis.

During 2018, the Public Health Strategy in the Republic of Serbia (2018-2026) and the Strategy for the Prevention and Control of HIV Infection and AIDS (2018-2025), with the accompanying Action plan, were adopted. For the first time the strategy recognises trans people as a target group. MSM (men having sex with men) and trans women living with HIV/AIDS face multiple discrimination in Serbian society. Processing cases of discrimination against people living with HIV/AIDS is often inadequate, and centralised official data on discrimination is lacking. Because of the fear of stigma and discrimination, people with HIV are often isolated from social processes leading to extreme social vulnerability.

LGBTI youth still face high levels of stigma and discrimination. Sex education and civic education does not cover LGBTI topics in a non-discriminatory way. The majority of local government youth offices lack financial and professional capacities to work with LGBTI youth and youth living with HIV/AIDS.

*Priorities and actions for 2019:*

- Ensure full implementation of anti-discrimination legislation
- Include sex characteristics in the anti-discrimination legal and normative framework
- NHRIs should conduct public awareness-raising campaigns in cooperation with LGBTI CSOs to encourage LGBTI individuals to report cases of discrimination
- Ensure proper case-law of the cases of discrimination based on SOGI and HIV status
- Improve the position of LGBTI youth through implementation of existing youth policies and adoption of new programmes and policies on national and local level

### **Prevention of HIV and AIDS**

A trend of expanding HIV epidemic has been confirmed by surveillance studies among MSM in Serbia. The range of essential prevention measures and interventions by the State remains small and patchy and does not meet recommendations by the ECDC, WHO and UNAIDS. Affordable access to PrEP is currently not available. The availability of treatment and drug therapy has improved.

#### *Priorities and actions for 2019:*

- Provide adequate support to persons living with HIV/AIDS, including the latest therapy treatment, protection from discrimination and violence, psycho-social services, legal aid services, and their participation in decision-making processes
- Fully implement, including conducting relevant training, existing laws and policies for improvement of the position of persons living with HIV/AIDS, and in cooperation with civil society and individuals living with HIV/AIDS, develop new policies that will adequately improve their overall position

### **Recognised unions for same sex couples**

Activities relating to adoption of same-sex partnership legislation outlined in the National Anti-discrimination Strategy have not been implemented. As such, many areas of family life, such as children, inheritance rights, favourable tax rates, remain restricted and/or inaccessible to same-sex couples.

Serbia adopted the recommendation made by the European Court of Human Rights (ECtHR) in 2015 after the ruling on the case *Oliari and Others v. Italy*, which established a positive obligation upon member states to provide legal recognition for same-sex couples, but no actions have taken place since then.

#### *Priorities and actions for 2019:*

- Adopt same-sex partnership legislation.

### **Rights and equal treatment of trans and intersex persons**

Serbia has no law on legal gender recognition, even though activities related to the adoption of such a law have been outlined in the National Anti-discrimination Strategy. People of different gender identities in Serbia are subject to discrimination and violence, including physical violence, threats and cyber bullying. Young trans people are at risk of rejection by their families and forced to leave their homes. Poverty affects almost every trans individual in Serbia. If married, before changing legal documents, trans persons have to get divorced. Parental rights can be at least partially retained, but in line with the gender assigned at birth.

In June 2018, the Law on Amendments to the Law on Registry Books was adopted by the National Parliament for the first time regulating legal gender recognition in Serbia, but in such a way that

trans persons are required surgery and sterilization as a condition for changing documents, which is contrary to international human rights standards.<sup>25</sup>

Intersex persons are invisible socially and legally. There is no accurate information or research about their number, experiences and quality of life. There are no laws or bylaws in Serbia that mention intersex persons; anti-discrimination provisions do not recognize sex characteristics as grounds for discrimination. Administrative procedure to record name and sex of baby in local municipality is obligatory within 30 days of the birth. This procedure puts a lot of pressure on medical professionals and parents of intersex babies to choose and to make decision regarding the baby's sex.

#### *Priorities and actions for 2019*

- Adopt Law on gender recognition in line with international human rights standards
- Ensure that all the relevant bylaws, which will arise from the Law on Amendments to the Law on Registry Books, will be adopted in line with the international human rights standards
- End discriminatory practices against trans and intersex individuals and adopt measures to end pathologisation of gender identity and sex characteristics
- Include sex characteristics in the anti-discrimination legal and normative framework

#### **Public awareness and attitudes**

Media reporting of LGBTI topics has improved significantly in recent years, however, a sensationalist tone is still often adopted, and harmful stereotypes and misconceptions continue to be spread. Politicians remain reluctant to address LGBTI topics. High level of complaints to the regulatory bodies and CSOs on hate speech and discrimination based on SOGI shows that level of homophobia and transphobia still persist at a worrisome level.

#### *Priorities and actions for 2019:*

- Combat discriminatory, derogatory and sensationalistic practices in the media covering LGBTI topics
- Cooperate with civil society to deliver sensitisation training to media

#### **A supportive and enabling environment for civil society**

The level of cooperation of the State and LGBTI CSOs remains low and LGBTI persons and/or CSOs are not properly involved in consultation regarding policies and initiatives that would lead to the improvement of the position of LGBTI persons in Serbia. If existing, the participation is kept mostly on formal level and inputs and voices of LGBTI persons and CSOs are often either ignored or not recognised. The State also provides very limited financial support to civil society.

#### *Priorities and actions for 2019:*

- Ensure proper and inclusive cooperation with the State and participation of LGBTI CSOs in consultation processes
- Ensure adequate financial support to LGBTI CSOs

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<sup>25</sup> Namely, Article 45b of this Law provides that "in the register of births, the data on the change of sex shall be entered on the basis of the decision of the body referred to in Article 6, 2. and 4. of this Law, which shall be adopted on the basis of the prescribed certificate of the competent medical institution. The health institution referred to in paragraph 1 of this Article shall submit a certificate to the relevant authority referred to in Article 6, 2. and 4. of this Law within 15 days from the date of the change of sex".

### 3.7. TURKEY

**Submitted by: Pink Life, SPoD and Kaos GL Associations**

#### **Summary of key developments, including political context and trends**

- As noted in last year's Enlargement Report, "There was no progress on any of the outstanding issues identified in previous reports". Moreover, the situation for human rights, and the human rights of LGBTI people more specifically, continued to backslide.
- The Ankara Governorate introduced an indefinite ban on any LGBTI event in the province in November 2017, on grounds of state of emergency conditions. The ban continues despite the state of emergency having been lifted.<sup>26</sup> The first instance courts rejected Kaos GL and Pink Life Associations' application to halt of execution of the ban.<sup>27</sup>
- The Constitutional Court repealed "compulsory sterilization" from the Civil Code for legal gender recognition.<sup>28</sup> However, the requirement for gender reassignment surgery remains, and leads to trans persons to get sterilized anyway.<sup>29</sup>
- The Constitutional Court ruled that naming LGBTIs as "perverts" in the media constitutes "freedom of speech" and not hate speech.<sup>30</sup>
- The Constitutional Court ruled in two cases that firing a soldier<sup>31</sup> and a teacher<sup>32</sup> from their jobs on grounds of their sexual orientation is not discrimination.<sup>33</sup>
- Turkey continued to be a host country for significant number of LGBTI refugees mostly coming from Syria, Iran, Iraq and Afghanistan.
- Pride marches were banned in Istanbul, Ankara and other cities.

#### **Main action points for the coming year:**

- Repeal the bans on LGBTI marches in Istanbul, Ankara and other cities;
- Repeal the blanket ban on LGBTI events in Ankara;
- Adopt a law that prohibits discrimination on grounds of sexual orientation, gender identity and sex characteristics;
- Include sexual orientation, gender identity and sex characteristics as protected grounds within hate crime legislation, Labor Law, the law on Turkish Human Rights and Equality Body and Law on Foreigners and International Protection;
- Condemn and prosecute hate speech, hate crimes and discrimination of LGBTI persons including LGBTI refugees.

#### **Bias motivated violence, hate speech, hate crimes**

- Hate speech, as well as threats and attacks against the physical integrity of LGBTI people and organizations is widespread. There is no specific legislation to address bias motivated hate crime and hate speech in Turkey, allowing such attacks to continue with impunity.

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<sup>26</sup> <http://kaosgl.org/page.php?id=26759>

<sup>27</sup> <http://kaosgl.org/page.php?id=25137>

<sup>28</sup> <https://lgbtinewsturkey.com/2017/12/03/anadolu-turkish-court-annuls-infertility-requirement-for-gender-change/>

<sup>29</sup> <http://kaosgl.org/sayfa.php?id=25372>

<sup>30</sup> <http://kaosgl.org/sayfa.php?id=26001>

<sup>31</sup> <http://kaosgl.org/sayfa.php?id=25139>

<sup>32</sup> <https://t24.com.tr/haber/aymnin-escinsel-din-ogretmeni-kararina-iki-uyeden-karsi-oy-devletin-cinsel-yoneli-mi-yoktur,576066>

<sup>33</sup> <https://lgbtinewsturkey.com/2018/03/23/a-lesson-on-discrimination-for-the-constitutional-court/>

- On 23 May 2018, the Constitutional Court evaluated Kaos GL's application about a news item published in habervaktim.com in 2012 including hate speech against the association. The Court ruled that such expressions are not considered hate speech, but rather constitute freedom of expression. Additionally, the Court did not evaluate Kaos GL's claim relating to a violation of the prohibition of discrimination and equality principle.
- İstanbul based LGBTI organization SPoD's office was attacked.<sup>34</sup> The same organization was targeted by pro-government media before<sup>35</sup> and after<sup>36</sup> the attack, urging the government to close this and other organizations.<sup>37</sup>
- LGBTI refugees continued to be targets of hate crime and hate speech without any legal, political and procedural protection.

*Main action points for the coming year:*

- Hate crimes must be defined clearly and cover bias motivated hate crimes on grounds of sexual orientation, gender identity and sex characteristics.
- Hate speech law (Penal Code Article 216) must cover hatred with regard to sexual orientation, gender identity and sex characteristics.
- Turkish law enforcement, judiciary and migration professionals should be trained on hate crimes towards LGBTI people and the problems of LGBTI citizens and refugees. In doing so, they should cooperate with LGBTI organizations.

**Freedom of assembly, association and expression**

- The first instance courts rejected Kaos GL and Pink Life Associations' application to halt of execution of the ban on LGBTI event. Subsequently, Kaos GL has also applied to the Turkish Constitutional Court (TCC), which has rejected Kaos GL's appeal against Ankara Governorship's ban. The European Court of Human Rights has rejected Kaos GL's appeal for an injunction, but the case itself will be pursued through the court.
- Indefinite ban on LGBTI events in Ankara has remained even after the state of emergency was lifted. Ankara Governorship has declared a new ban on October 3rd 2018 and indicated the Provincial Administrative Law No.5442 and Law No.2911 on Meetings and Demonstrations as the justification. Protection of "social sensitivities and sensibilities", "public security", "general public's health and morality" and "protection of the rights of the others" have been shown as justification just as the previous ban in Ankara.
- In June, the Rectorate declared a ban on an LGBTI Pride March at the Middle East Technical University (METU). A wave of investigations has been opened against the students who attended the METU Pride March and allegedly hung rainbow flags on the buildings.
- İstanbul Governorship banned the Pride march for the fourth time in a row. Police forces attacked demonstrators gathered in different districts of İstanbul with plastic bullets and tear gas. During the day, 11 demonstrators were taken into custody, and later released.

*Main action points for the coming year:*

- We urge Ankara Governorship and other Government agencies to lift the bans on indoor and outdoor public events organized by LGBTI+ organizations.

**Equality and non-discrimination, including legislation and enforcement**

<sup>34</sup> <https://lgbtinewsturkey.com/2018/06/28/spod-lgbti-statement-after-attack-on-office/>

<sup>35</sup> <https://www.yeniakit.com.tr/haber/bu-sapkinliga-kim-dur-diyecek-401057.html>

<sup>36</sup> <http://kaosgl.org/page.php?id=26499>

<sup>37</sup> <http://kaosgl.org/sayfa.php?id=26201>



- The previous report noted that no changes have been introduced to the military disciplinary system and medical regulations, which define homosexuality as a ‘psychosexual disorder/illness’. This remains the same to this day, and has even been endorsed with a recent Constitutional Court ruling.<sup>38</sup>
- LGBTI refugees in Turkey continued to live under the risk of deportation on discriminatory grounds. There have been numerous cases<sup>39</sup> in which LGBTI refugees were sent to detention centers and faced administrative deportation decisions.<sup>40</sup>

*Main action points for the coming year:*

- Turkey should urgently adopt a law on combating discrimination in line with the European Convention on Human Rights, with regards to sexual orientation, gender identity and sex characteristics.
- The Labor Law should be amended in order to prohibit discrimination based on sexual orientation, gender identity and sex characteristics.
- LGBTI asylum seekers must be protected from deportation to unsafe countries.
- Turkish law enforcement, judiciary and migration professionals should be trained on hate crimes towards LGBTI people and the problems of LGBTI citizens and refugees. In doing so, they should cooperate with LGBTI organizations.

### **Prevention of HIV and AIDS**

Although Turkey is the country which has the fastest growing numbers of new HIV infections in the world, there is no national strategy, plan or awareness raising taking place. Stigmatization and discrimination towards people with HIV is common. There is no legal protection against discrimination, hate speech and hate crimes, and no data protection for people with HIV. Turkey does not have an overall law for patients' rights as well. Sexual health issues, including HIV, are inadequately covered by high school curricula.

*Main action points for the coming year:*

- Take steps to improve education on sexual health issues, including HIV/AIDS, in high schools.
- Urgently draft and adopt national strategy for countering new HIV infections, in collaboration with civil society organisations.

### **Rights and equal treatment of trans and intersex persons**

- The Constitutional Court repealed “compulsory sterilization” from the Civil Code for legal gender recognition. However, the requirement for gender reassignment surgery remains, and leads to trans persons to get sterilized anyway.
- Hate crimes towards transgender persons remain a serious concern.
- Intersex people are largely invisible in Turkey.

*Main action points for the coming year:*

- Introduce a strategic plan that deals with needs and problems of trans and intersex persons, particularly focusing their health rights.
- Include trans and intersex issues within the academic curricula of related professions such as medicine, social work, psychology, public administration, law, etc.

<sup>38</sup> <http://kaosgl.org/page.php?id=25150>

<sup>39</sup> <https://lgbtinewsturkey.com/2017/04/22/constitutional-court-halts-deportation-of-trans-refugees/>

<sup>40</sup> <http://kaosgl.org/page.php?id=23613>

- Condemn hate crimes against trans and intersex persons.
- Include protection on grounds of gender identity and sexual characteristics within the hate crimes, hate speech and anti-discrimination law as well as the legislation for the Turkish Human Rights and Equality Institution and the Law of Foreigners and International Protection.

### **Public awareness and attitudes**

- Public awareness and attitudes remain highly negative. Widespread hate speech, including from authorities, provides a green light for hateful attacks, verbal and physical, against LGBTI people.

#### *Main action points for the coming year:*

- Turkish Human Rights and Equality Association should carry out human rights campaigns that include LGBTI rights as human rights.
- Government leaders should publicly condemn hate crimes, hate speech and discrimination towards LGBTIs and express that LGBTI rights are human rights.

### **A supportive and enabling environment for civil society**

- Restrictions on freedom of assembly and freedom of expression, persecution of journalists, academics, human rights defenders and any voices of dissent continued in 2018.
- LGBTI organisations have next to no contact with authorities. There is no sustainable and structured dialogue mechanism for participation of LGBTI organisations with public institutions.

#### *Main action points for the coming year:*

- Establish structured dialogue between public institutions and civil society organizations on human rights and democratization issues.
- Create public funding opportunities for CSOs that work on LGBTI rights including rights of LGBTI refugees.