

Within Reach

Making LGBTI rights a reality in South East Europe by 2020

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This paper was composed by ILGA-Europe, on behalf of Sarajevo Open Centre, to inform decision-makers in both the EU and its accession countries in South East Europe about advocacy priorities regarding LGBTI issues in the coming years. The paper is based on interviews with and input from LGBTI organisations active in the region: ProLGBT (Albania), SOC and UNDP (Bosnia), CSGD (Kosovo*), Subversive Front and LGBT Support Center ('The former Yugoslav Republic of Macedonia'), Queer Montenegro (Montenegro), Labris and Gayten (Serbia), ERA – LGBTI Equal Rights Association for the Western Balkans and Turkey, Civil Rights Defenders, Trans Network Balkan and TGEU (regional).

A pivotal moment

The situation for LGBTI people is at a pivotal moment in most accession countries. Much has been achieved over the last years, mainly due to EU accession process, with key developments in anti-discrimination and hate crime legislation, respect for freedom of assembly and expression, and an increase in the number and capacity of LGBTI civil society organisations.

Yet much is left to be done to ensure the human rights of LGBTI persons in the region. This is a unique moment in time for taking the next steps. Governments in the region are keen to progress in order to join the EU, which provides an opportunity for the LGBTI movement to reach further to achieve several key aims, including effective implementation of existing legislation across urban and rural areas, promoting an enabling environment for civil society, and pushing for adoption of legal gender recognition and registered partnership for same sex couples.

This paper will set out the state of play and overarching policy aims for the region as a whole in the coming years, as well as shedding light on each country specifically.

The moment of truth: implementation of laws and Action Plans

In previous years, countries have made efforts to comply with the Copenhagen Criteria, among others by adopting legislation to ban discrimination based on sexual orientation and gender identity and to criminalise hate crime and hate speech on sexual orientation. Furthermore, in all countries a National Action Plan or strategy has either been adopted or is being considered by authorities. Adopting the necessary legislation is a crucial step on the road to genuine equality for LGBTI people, but it is only the first step.

In the coming years, the next steps must be taken; the focus must shift to full implementation of these laws and policies, so that these rights can be enjoyed by every LGBTI person in South East Europe. Criminalisation of hate crime is of little use if cases are not investigated and prosecuted. Criminalisation of hate speech does not help much if media and politicians can make homophobic statements with impunity. Anti-discrimination legislation does not serve an individual LGBTI person if schools don't take action against homo- or transphobic bullying, if employers are not punished for discrimination, and if public opinion does not change. Going forward the main priorities for the region are investing in effective implementation of LGBTI rights and policies across the region, and concerted efforts to raise awareness and acceptance for the rights of LGBTI people.

Beyond the *Acquis*

The enlargement process has been the main driving force for LGBTI rights in South East Europe. Most steps were taken because the European Commission demanded them as part of the accession efforts, and progress often immediately halted, either when countries joined (such as for example in Romania or Bulgaria) or when the accession negotiations did not advance further. 'The former Yugoslav Republic of Macedonia' is a case in point; because its accession process has remained frozen for more than ten years, the country lags far behind the rest of the region regarding human rights in general, and LGBTI rights in particular.

Rainbow Europe Index	2015	2016
Montenegro	43%	45%
Albania	42%	34%
Serbia	29%	32%
Bosnia	29%	29%
Kosovo	18%	32%
FYRO Macedonia	13%	16%

There is, however, a downside to the central role of the enlargement process in bringing about this progress. Most governments tend to only 'tick the boxes', doing no more than what is demanded by the European Commission. And since the European Commission tends to focus mainly on the *Acquis*, progress is limited to the areas within the scope of that. This means that it is difficult to take steps in other important areas such as access to health care for transgender persons, and registered partnerships for same-sex couples. The accession process is also cited publicly by some governments as the sole reason for advancing LGBTI rights, which does nothing to improve public opinion of LGBTI people and thus stands in the way of full implementation of these rights. Not the *Acquis*, but the needs of LGBT people and the full protection of their fundamental rights should be the central focus of both the European Commission and the governments in the region.

In the demands made of accession countries by the European Commission, human rights must be interpreted broader than just the *Acquis*. For instance, human-rights based legal gender recognition procedures, are a precondition for trans people's equal access to basic rights of EU citizens, such as free movement of persons, workers, goods and services. Without legal gender recognition, and thus a passport, diplomas and documents that match their gender identity, trans persons have no or limited access to these European rights. While some countries in South East Europe have procedures for name change, all require compulsory sterilisation. Albania and Serbia don't have any procedures for a change of name or gender marker in place.

Forced sterilisation is a clear breach of human rights standards that needs to be addressed in EU member states as well as in accession countries. Like in many EU member states, legal gender recognition legislation based on self-determination and in full respect of the bodily integrity of trans people is a priority for the region.

Similarly, while same-sex partnership and family rights are not part of the EU *Acquis*, a form of legal recognition for same-sex couples is a human right according to international human rights treaties. In *Oliari and Others versus Italy* in July 2015, the European Court of Human Rights (ECHR) ruled that Italy violates the human rights of same-sex couples by refusing them a 'recognised form of union'. The ECHR as well as the United Nations consider countries that do not provide any kind of legal recognition for same-sex couples to be in breach of the human right to private and family life. The right to a registered partnership is a reality in 22 out of 28 Member States, yet none of the accession countries provides any form of legal recognition.

When looking at the protection of the fundamental rights of LGBTI people in accession countries, we need to look beyond the *Acquis*, and measure progress against emerging European standards of protection of LGBTI rights. The legal recognition of partnerships, legal gender recognition as well as equal access to justice should be the yardstick for EU countries and accession countries alike.

The time is right to address these issues in South East Europe as well. In most accession countries, a debate on legal gender recognition and on same-sex partnerships has gained momentum, and draft laws are being considered by the responsible Ministries. Positive intervention by the European Commission could help these initiatives progress.

Attention to L and G, and B, and T, and I

This is also a crucial time to look behind the letters in LGBTI and create visibility for the specific needs of lesbian, gay, bisexual, transgender and intersex people. While awareness and visibility is most advanced for gay men and lesbian women, bisexual men and women, and, to a much larger extent, transgender and intersex people remain largely on the side-lines. Legislation recognising the fundamental rights of trans and intersex people and condemning discrimination based on gender identity and sex characteristics is largely still missing and when the needs of trans and intersex people are addressed, they tend to be pathologised and medicalised, which perpetuates a binary view of gender and neglects the problems with discrimination and bullying that trans and intersex people face in accessing education, the labour market, health care and other services.

It is important to recognise and promote organisations and communities on different grounds, and to specifically address their needs. Moreover, the discourse needs to start including transgender and intersex people as interlocutors, instead of only as subjects. To this end, the regional Trans Network Balkan was set up, to bring together and convey specific trans, gender variant and intersex (TIGV) expertise and support the creation of national TIGV networks in the region. In advocating for the rights of intersex persons in accession countries, intersex activists from the regions should be supported and it would be beneficial if governments and the

European Commission worked closely with organisations such as OII Europe.

Real change needs effort everywhere: from national to local level

The time has come to ensure human rights for LGBTI people in both urban and rural areas. In past years most progress in South East Europe has been made in the capital cities. In many capitals, Pride marches and other events have been possible, communities have been built, some services are available, police are increasingly trained in handling LGBT-phobic incidents, and in some places cooperation between civil society and national and local governments have been established. Outside of the capitals, the situation is often very different. There are few local organisations or communities as yet, LGBTI people are more afraid to come out and often have no place to meet, local politicians are more likely to be openly homo- and transphobic, and justice is not accessible in more rural areas. New organisations often have to close down very shortly after the start of activities due to lack of funds, or fear of stigma in the local community.

Investing in community building should be the starting point, as only after local communities have had a chance to grow and people feel a basic measure of safety about coming out, can local advocacy activities truly take shape. To implement laws and policies fully and make LGBTI rights a reality for all, legislation and policies need to be accessible in all areas, urban and rural.

From shrinking space to an enabling environment for civil society

The environment for civil society in South East Europe is far from enabling, in fact in the last few years, it has been shrinking. As NGOs have grown in capacity and become more critical of a range of issues, including a lack of implementation of legislation and action plans, governments have, in turn, become more negative towards civil society. In a number of countries in the region, NGOs are seen as adversaries instead of partners, and have even been denounced for receiving foreign funding. International donors are at times discouraged from funding civil society organisations.

An enabling environment for civil society needs to be promoted. This can be done in several ways. In some countries, civil society would benefit from a clear legal framework for the establishment and administration of NGOs, so that registration requirements and administrative obligations are transparent and cannot be used as restrictive measures. Considering that most NGOs are underfunded and tend to work with volunteers or only core staff, access to legal and administrative advice would also be helpful.

Even more pressing is the need to raise awareness and train authorities on the role that civil society plays in a functioning democracy. NGOs represent the communities and are therefore closest to the need of LGBTI people. NGOs often have started to develop strategies to support victims of discrimination and hate and have established support mechanisms and services. This specific expertise of NGOs can greatly benefit policy-making, but that is not recognised yet by most governments. That in turn means that structural funding of civil society and of services to the LGBTI community, such as happens in the majority of EU countries, is lacking, making NGOs solely dependent on international donors.

Greater understanding of the role of civil society could be assisted by clear guidelines from the EU on the engagement of civil society in the accession reforms. The accession process, and democracy as a whole, would benefit from more emphasis on the process of reform instead of just the outcome.

Real change needs efforts from everyone

To get from LGBTI rights on paper to genuinely implemented and accessible rights for all LGBTI people in South East Europe, efforts are needed from multiple stakeholders, first and foremost the national governments of respective countries. They need to display the political will and invest the time and budget to implement legislation and policies. That means focus on thorough implementation in all areas such as health care, education and the labour market in all parts of the country. To create real sustainable change, legislative advances also need to go hand-in-hand with an effort to raise social awareness and acceptance of the rights of LGBTI people.

Local authorities have up to now hardly engaged in the implementation of LGBTI rights, with some notable exceptions. The time has come for them to become active in the promotion of human rights, and the translation of national policies and action plans into local action.

Considering the importance of the accession process for countries in South East Europe, the role that the European Commission plays is vital for progress on LGBTI rights. However, there is a feeling that the European Commission prioritises stability above reform in the field of human rights. Progress on the Belgrade-Pristina negotiations or cooperation within the parliaments of Bosnia and Herzegovina, Albania and 'The former Yugoslav Republic of Macedonia' seem to be prioritised above progress on human rights. However, respect for human rights cannot be separated from stability and democracy; only genuine reform and not reform on paper will lead to a stable society for all citizens.

Within the realm of LGBTI rights, the new policy of making more concrete demands in the Country Reports as part of the Enlargement Package should be pursued more forcefully; the clearer the demands, the higher the chance of them being implemented. Furthermore, the European Commission should adopt a view of LGBTI rights beyond the *Acquis*. Merely aligning legislation does not bring a country up to the European standard of protection of LGBTI people. The human rights agenda should also be based on international agreements such as in the Council of Europe or the United Nations, and implementation should be as strong a demand as legal reform. Emerging international standards, such as at least the WPATH standards of care, should be promoted and more efforts should be made to include trans and intersex people in the debate.

The international community as a whole is also vital for LGBTI rights in the region. As most governments still do not fund civil society or services structurally, international donors are the only source of funding. Often organisations have to adapt their actions to the agenda of the donors, instead of to the needs of the LGBTI community. It should be the other way around; donors should work with organisations to identify priorities. Accessibility of international

funding for smaller organisations outside of the capitals poses another issue. Most grants are difficult to access for organisations with little capacity, and are too burdensome to administer. Some initiatives with cascade funding have taken place, whereby larger national LGBTI organisations make small grants available to local initiatives. The donor agenda should facilitate such initiatives, or make small grants available themselves.

What should be feasible by 2020 in South East Europe?

The coming three years could yield important results for LGBTI people in South East Europe. While the situation differs per country, a common trend can be discerned.

- ✓ **Further completion, development and implementation of the legal framework**
 - Adoption of legislation on swift, transparent and accessible legal gender recognition based on self-determination, and depathologisation of all trans identities.
 - Adoption of legislation enabling stigma-free access to gender affirming care based on informed consent and cost coverage.
 - Introduction of registered partnerships for same sex couples.
 - Training for prosecutors and judges as the weakest links in the judicial chain.
- ✓ **(Implementation of) National and Local Action Plans**
 - Adoption of a National Action Plan where this does not exist yet.
 - Clear division of responsibilities and tasks among institutions and ministries for implementation of National Action Plans.
 - A sufficient budget for implementation of National Action Plans.
 - Translation of National Action Plans into Local Action Plans.
 - Thorough monitoring and evaluation of implementation of National Action Plans, involving civil society organisations.
- ✓ **Fostering an enabling environment for civil society**
 - Promoting an understanding of the role of civil society in a democracy.
 - Giving civil society a clear role in the accession process.
 - Facilitating differentiation within LGBTI organisations.
 - Making small grants accessible to local organisations.

National Priorities for LGBTI rights in countries in South East Europe

Albania

Progress on LGBTI issues in Albania has been substantial in recent years. A community has been built in the capital Tirana, public awareness has increased, Pride marches have taken place safely in Tirana, and a shelter for LGBTI persons was opened by NGOs and recognised by authorities as delivering a public service. A National Action Plan (2016-2020), which includes detailed measures for training of the judicial chain, actions by government institutions and legal reforms regarding LGBTI rights, was recently adopted and a monitoring body is soon to be set up to oversee implementation. In the coming years, a full implementation of this Action Plan, the establishment of concrete services for the community, and changing negative public opinions of LGBTI people, are the priorities in the protection and promotion of LGBTI rights.

Accession

The accession process has made an important positive contribution to progress for LGBTI rights, as the government is keen to follow the requirements set by the European Commission. However, for now the progress is limited to paper, and implementation remains slow. The European Commission should shift its focus more to demanding concrete results.

The governing party needs to be more proactive about showing public support for LGBTI issues. For example, when legal reforms on inclusion of gender identity and sexual orientation were debated and the right-wing opposition took a stance against LGBTI rights, the government did not publicly defend these rights. In order to change public opinion and secure full implementation of laws and policies, authorities need to genuinely align with LGBT rights. There should also be more sustainable and regular tripartite discussion between the government, civil society and the international community and EU, regarding LGBTI rights.

Local level

Activities for the LGBTI community mainly take place in Tirana. Some outreach from the side of civil society is happening in other municipalities, but for now LGBTI rights are not properly reaching people outside of the capital. Even though in the last years many activities have taken place out of the capital, among others a project which included research and awareness raising activities, there is a lack of sustainable funding and political will for implementation of LGBTI rights outside Tirana. International donors should allow for making small grants to regional organisations, and the European Commission should demand concrete action on the promotion and protection of LGBTI rights outside the capital.

Enabling environment for civil society

With the implementation of the Action Plan commencing, it is a pivotal moment for the relationship between government and civil society. This will require coordination between a large number of actors from authorities, institutions and civil society. The government should invest all needed time, energy and finances to implement the actions envisaged.

What is needed from whom?

The full implementation of the Action Plan requires all relevant institutions and ministries to take responsibility for the activities that fall in their scope. Civil society should be closely involved, but not solely responsible for pushing for implementation. The independent monitoring group that will be established needs to arrange this division of responsibilities and a timeline for the carrying out of envisaged activities.

The government needs to include the LGBTI shelter and other necessary services in its regular budget, which has not happened yet even though the shelter was recognised as a public service, and to work with the organisations carrying out these services. Furthermore, it needs to encourage coordination and cooperation between different institutions, ministries and organisations, to implement anti-discrimination legislation.

Feasible goals for 2020

- ✓ Full implementation of the recently adopted Action Plan. By 2020, the follow-up action plan should be prepared, taking into account lessons learnt from the first one.
- ✓ Provision of structurally funded concrete services, such as the LGBTI shelter and health services.
- ✓ Focus on the education and health care systems, and the labour market in training and sensitivity building, in cooperation with different public agencies, such as social services, the ombudsperson, employment offices, schools and municipalities.
- ✓ Adoption of changes to the civil code, to make registered partnership possible.
- ✓ Further community building at local and national level.

Bosnia and Herzegovina

There is slow but sure progress on LGBTI rights in Bosnia and Herzegovina. As of recently, all parts of the country have hate crime regulations and amendments including grounds of sexual orientation, gender identity and sex characteristics incorporated in their Criminal Codes. A law on legal aid with these grounds included was also adopted. There is more cooperation between institutions, and police are being trained on LGBTI issues. Unfortunately, training for judges and prosecutors has only taken place on a voluntary basis.

In Bosnia and Herzegovina, progress on LGBTI issues is in some ways less difficult than in other countries in the region, because the focus is mainly on the division of power between the three main ethnicities in the country; Bosniaks, Serbs and Croats. As long as a topic does not touch upon that, it can progress without much difficulty. Even so, there is a large prevalence of discrimination and hate speech against LGBTI persons who have openly come out, there has been no attempt to organise a public Pride march in Bosnia and Herzegovina, partly because

very few LGBTI people would feel safe enough to attend, and other public events are organised under strong police protection. Although there is progress in the area of legislation, implementation is slow and there is still a high degree of homophobia, and LGBTI people are still scared of coming out for fear of rejection and violence.

Accession

The accession process has been helpful in securing legal reform for LGBTI rights. The ministry of Human Rights takes the annual country report very seriously and has aligned legislation with the *Acquis*. There are preparations for a National Action Plan, for which inspiration is sought in developments in neighbouring Croatia and other EU countries. Bosnia would benefit from more cooperation opportunities with Croatia, as an example of what action could be undertaken.

The accession process is, however, too narrowly focused on legal reform, hate crime and anti-discrimination, and therefore the government also exclusively seems to focus on these areas. Not enough attention is directed to other questions such as social exclusion in the areas of education or health care, the often-precarious socio-economic status of LGBTI persons, or fighting negative stereotyping of LGBTI persons.

More transparency is needed in the accession process, and time should be allowed for consultation of parliament and civil society. Too often, they are bypassed with political agreements behind closed doors.

Local level

The implementation of legislation varies across administrative regions, and while the community is building outside of Sarajevo, organisations in other parts of Bosnia and Herzegovina are as yet small. They need to be further developed in the coming years, building capacity and engaging in advocacy towards the different communities and levels of authority.

Enabling environment

The situation for civil society differs between entities in Bosnia and Herzegovina. In Republika Srpska, cooperation between authorities and NGOs is less developed, and there is more distrust towards organisations and the media. Furthermore, laws that would shrink the space for civil society and limit the rights to freedom of expression and assembly have been announced in this region. One way that LGBTI organisations deal with this is to work with Gender Centers, which are advisory bodies to the governments. LGBTI is included in the implementation plan of these Centers, and through them, some action can be undertaken that LGBTI specific organisations cannot pursue directly.

At all levels, civil society is not sufficiently included in drafting laws and policies in the area of human rights. Both the authorities and many civil society organisations don't understand the role of civil society in a democracy. They do not see each other as allies and hence don't enter into a cooperative relationship in which expertise and information is exchanged in a meaningful discussion. Those organisations that do try to engage with authorities, expressing constructive criticism on government policies, are often viewed as a threat by authorities. An affirmation

from EU level on the crucial role of civil society in democratic processes could be beneficial to tackle this perception.

Lack of funding hampers civil society, also in other areas than LGBTI, in two ways. Many organisations are small and lack the capacity and expertise for meaningful advocacy, or even to access funding. Those that are slightly bigger and do manage to apply for funding are highly dependent on international donors. They often feel the need to focus on the wishes of the donor instead of on the needs of the community or target group, and, as such, they often compete with each other for funding.

What is needed from whom?

The government should aim less to simply fulfil the wishes of the EU, and more to protecting the human rights of all its citizens. It should map the needs of LGBTI people and adopt an action plan to address them, with a clear division of tasks between levels and institutions. Increased cooperation with Croatia would be beneficial for seeing, among other measures, how their system of police training on LGBTI issues might be applied in Bosnia and Herzegovina.

The European Commission and international community should fully focus on implementation, now that most legal reform has taken place, and emphasise that also registered partnerships for same-sex couples, gender affirming care and legal gender recognition, and protection of intersex individuals from forced medical interventions are important human rights to be addressed.

Feasible goals for 2020

- ✓ Adoption of an Action Plan to ensure the fundamental rights of LGBTI people beyond the *Acquis*, and covering the whole territory, with clearly assigned responsibilities and tasks.
- ✓ Legal gender recognition based on self-determination and legislation enabling stigma-free access to gender affirming care based on informed consent and cost coverage.
- ✓ Provision of support services for intersex children and their parents.
- ✓ Criminalisation of incitement to hatred; hate crime is forbidden on sexual orientation and gender identity, but incitement to hatred only on the grounds of nationality, religion or ethnicity.
- ✓ Adoption of a law on registered partnerships for same-sex couples.
- ✓ Implementation of anti-discrimination and hate crime legislation.
- ✓ Mandatory training for prosecutors and judges.

Kosovo*

There has been much public debate on LGBTI issues in Kosovo* in recent years. Among other participants, the President was present at the Pride march and LGBTI questions have been debated in the political arena. This has had positive effects in progressing legal frameworks, but the increased visibility has also come hand in hand with increased risks for LGBTI people.

The government has been largely supportive, but has not been able to effectively implement laws and policies for LGBTI people. An advisory and coordination group on LGBTI issues was appointed by the office of the Prime Minister, with representatives of eight relevant ministries, four institutions and human rights NGOs, and an Action Plan was adopted in October 2016.

Accession

The accession process and especially the visa liberalisation process, which required anti-discrimination legislation, have been strong drivers for progress. Gender identity has been included in crucial legislation. The progress report is an important advocacy tool for LGBTI rights towards authorities, it is taken very seriously by the government and NGOs use it to initiate debate with them.

A problem, however, is that while on paper legislation and policies for LGB people are well organised, implementation is lacking, especially at local level. Also, trans and intersex rights are as yet missing from legislation as the demands for their inclusion from the EU side are not as strong.

Local level

There are some contacts of civil society with local authorities, and the different ombudsmen for the seven regions have been informed on LGBTI issues. However, more structural investment is needed for LGBTI people to be able to exercise their rights in all parts of the country.

Enabling environment for civil society

Civil society is being included in accession reforms, but much could be gained from stronger three-way contact between the European Commission, the government and civil society, and, additionally, by also engaging local authorities. Although government representatives do attend civil society activities when they are invited, such as the Pride march, they need to be more proactive in implementation of rights and policies.

What is needed from whom?

The government needs to invest in implementation of the legislation that already exists, by assigning responsibilities clearly to different ministries and institutions. Also, the judicial chain needs to be strengthened through efforts including the structural training police. Judges and prosecutors need to be trained about LGBTI rights and issues, as up until now hate crimes on grounds of sexual orientation have not been classified as such despite the existing legislation. A focal point for LGBTI cases at the prosecutor's office was appointed this year, and cooperation has started. The ombudsman needs to promote more LGBTI rights and needs to intervene and collaborate with NGOs regarding LGBTI hate crime cases.

The EU needs to focus on implementation of legislation and policies in the demands made of the government, and ask for concrete examples of progress.

Goals for 2020

- ✓ Adoption of a National Action Plan with clearly assigned responsibilities and budget (Budgeted Plan has not been adopted from Government) for 2017 and 2018, and follow-up for that after 2018.
- ✓ Adoption of a law on legal gender recognition based on self-determination - a study on this topic will be presented soon - and legislation on stigma-free access to gender affirming care based on informed consent and cost coverage.
- ✓ Building case law on hate crime, as no cases have been successfully prosecuted so far.
- ✓ Informing LGBTI people of their rights and possibilities for recourse to increase reporting.
- ✓ Creating more possibilities for LGBTI people to meet at local level, outside of the capital.

'The former Yugoslav Republic of Macedonia'

In the past years, small and slow progress had been made. Sexual orientation was included as a ground of discrimination in five laws, although the umbrella anti-discrimination law still does not include it explicitly. Gender identity and sex characteristics as grounds of discrimination, and thus trans and intersex people, are not mentioned at all in Macedonian legislation. Decisions on legal gender recognition by courts, police and other relevant state authorities are made arbitrarily, based on personal and subjective grounds, which clearly demonstrates the need to adopt a trans-inclusive human rights framework.

Hate crime and hate speech based on sexual orientation and gender identity remain legally unrecognized, and politicians and the media regularly express homophobic and transphobic views. Even though off the record a number of politicians have expressed support more LGBTI rights, it is perceived that homophobic speech wins votes from the conservative electorate. . In this context low media attention for LGBTI rights has helped to secure some political support without the fear of losing votes on all sides of the political spectrum. Some progress has been made with a few smaller political parties that are showing public support of the LGBTI rights, yet LGBTI issues remain at the bottom of the list of priorities on the political agenda.

The recent political turmoil has changed the scene in multiple ways. The tough invincible, conservative, nationalistic and patriarchal image of the government has been slowly diminishing, which has liberated the opinions and attitudes of a lot of people dependant of the

government – such as people working in public administration, in businesses contracted by the government for public procurements, and elsewhere. By and large this is a change in people's views on politics and democracy in general, having turned against the establishment, corruption and nepotism, but also allowing for more inclusive and liberal views toward sexual and gender diversity. This creates a window of opportunity for progressive reforms.

The LGBTI community was an active part of the colourful revolution following the wiretap scandal, and has gained good connections with opposition parties and other civil society organisations through the course of it. Meanwhile, the population is ready for change and reform, which leads to a liberal surge and a feeling of solidarity among a broad spectrum of organisations and parties. This could help LGBTI rights progress, and the outcome of the parliamentary elections on 11 December will show whether progress on all levels will be possible or not. Despite this, homophobia and pathologisation of LGBTI people still dominate the public opinions and perceptions.

Accession

The lack of progress in the accession process of 'The former Yugoslav Republic of Macedonia' is translating to lack of progress on LGBTI rights. The government has tended to do no more than minimally needed, and sometimes not even that. Even so, the country report does play an important role in 'The former Yugoslav Republic of Macedonia', and it matters what the European Commission demands of the government, especially if these demands are concrete. What would, however, be most helpful is if the name dispute were resolved, or separated from the enlargement process. The EU should do more to force both sides to accept a compromise solution.

Local level

The municipality of Tetovo has good practice of cooperation on LGBTI issues, and a very small number of other municipalities have shown cooperation too. But on the whole, the visibility of LGBTI persons at local level is low. LGBTI organisations are starting to focus on building local communities outside of the capital, setting up focal points in other cities, and in general strengthening the LGBTI community. Support for local organisations is vital; it will help people claim their human rights and at the same time strengthen the LGBTI movement, giving it new impetus.

A problem consists in accessing funds that are small enough for budding local activities to use. Nationally organised civil society organisations are currently trying to fill that void with possibilities to give very small grants to informal groups in cities outside of the capital, to build communities and enter into dialogue with the regional offices of the Ombudsman when they are ready to do so. Another critical issue is that LGBTI people living in smaller, rural areas tend to move either to the capital or abroad which severely harms the local communities' development. For now, as a first step, meetings are cloaked as book readings, cultural or other events that would attract the community, without overtly addressing LGBTI issues.

Enabling environment for civil society

Cooperation between civil society and authorities remains a challenge, with the exception of the Ministry for Labour and Social Policy, which has since June 2016 included LGBTI CSOs in the working group on drafting the amendments of the Anti-discrimination law. The government generally views civil society organisations as a threat and condemns those who receive funding from the international community as “foreign agents”.

A further challenge for civil society is the lack of press freedom and the consequent lack of access to regular media outlets. Media have fallen increasingly under the control of the government, and the corresponding negative attitude towards LGBTI rights.

A problem is also posed by state-sponsored civil society organisations, the GONGOs, which are consulted and funded by the government and, as such, do not criticise its policies. These are used as an excuse to not include genuine civil society organisations in political processes.

What is needed from whom?

The government needs to secure cooperation from all relevant ministries; labour and social policy, health, justice, internal affairs, the agency for sport & youth, Secretariat for European affairs, to implement LGBTI rights. Their staff need to be sensitised and instructed to implement the National Anti-Discrimination Strategy in general and for LGBTI rights specifically.

To implement human rights, an independent commission for protection against discrimination and a more vocal ombudsperson are also needed. The EU on its part needs to use harsher language in its progress report, demanding implementation of human rights and making those the corner stone of its enlargement policy.

Feasible goals for 2020

- ✓ Amendment to the anti-discrimination law, so it mentions sexual orientation, gender identity and sex characteristics explicitly.
- ✓ Implementation of the national strategy on equality and non-discrimination, adopted by the government by its transposition into a coordinated Action Plan for ministries and civil society organisations together, among others focusing on capacity building activities with national and local institutions.
- ✓ Inclusion of sexual orientation and gender identity in hate crime legislation, and proper prosecution of hate crime and speech.
- ✓ Adoption of a law on legal gender recognition based on self-determination and legislation on stigma-free access to gender affirming care based on informed consent and cost coverage
- ✓ Organisation of a Pride parade in 2018 to enhance visibility of LGBTI persons, which should be feasible especially if politicians express their support. More visibility hopefully will lead to more reporting of discrimination and hate crime, so that these may be tackled.

Montenegro

There has been rapid progress on LGBTI rights in Montenegro over the past three years. A strategy for LGBTI rights was adopted in 2013 and a Pride march has been successfully held in Podgorica for three successive years. While during the first year 2,000 police officers were deployed and they had to use tear gas against a counterdemonstration, at the most recent Pride march only 300 police officers were present, participants could walk through the presidential part of the city, and a supportive crowd of onlookers smiled and waved as the participants walked by.

Accession

Montenegro tries to be number one in LGBTI rights in the region and takes Croatia as an example. The government takes the requirements from the European Commission very seriously. This has greatly helped progress on LGBTI rights in the country. However, most activities seem to be aimed at gaining visibility towards the EU as opposed to achieving genuine change. A case in point was the Pride march in 2013, after which the government felt that the box was ticked and future parades were unnecessary. Civil society, however, successfully managed to push for annual editions of the Pride march in Podgorica in the following years.

Furthermore, while many laws have been adopted, implementation remains a challenge. For example, while amendments to the health insurance law to include gender affirming care were already adopted in 2012, the first surgery could only take place in 2015 after months of strong pressure from civil society and the international community.

Moreover, authorities tend to cite the wishes of the EU as justification for taking any steps for LGBTI rights, implying that they are only taking such steps because the EU demands them. This does little to sway the generally negative public opinion towards LGBTI people. Next steps will require more genuine commitment of the government, in cooperation with civil society, to implement the laws and strategy to raise awareness and change public opinion. A proposal for a law on legal gender recognition is currently being prepared by the Montenegro Institute for legal studies, Juventas NGO and Queer Montenegro.

Local level

Currently only in Kotor, on the coast, do local authorities exert themselves for LGBTI rights. Efforts are made by civil society to engage other local authorities in panel discussions, with the aim of creating a safe environment for LGBTI people to come out at local level, but with little progress. Public events have only been possible in the capital. In Niksic, for example, a planned Pride march was banned for the third time. Civil society organisations Queer Montenegro and Juventas are also engaging in community building activities at local level, with small grants for activities organised by local authorities and NGOs.

Additional effort needs to be put into ensuring the national strategy is implemented locally, and that public events are possible across the country.

Enabling environment for civil society

Progress remains to be made in cooperation between civil society and the government. Currently, NGOs tend to be seen as adversaries instead of partners in policy making and implementation, especially when advocating for changes that the government was not planning, or when providing constructive criticism.

For a true enabling environment, the government itself should provide funding for projects and services of civil society. It would also be helpful if civil society were consulted in accession process on a more structural basis. At the moment consultation is irregular, and, as there is no mechanism for reporting back, it is often not clear what is done with the input from civil society.

Much has been invested in the development of the community in the capital Podgorica. The time has come to differentiate within the organisations, to give more visibility to LBT women and trans people since up to now mainly gay men have been visible in the movement and the public's eye.

What is needed from whom?

The national and local authorities need to invest in genuine implementation of the LGBTI strategy, both at national and local level. This would be greatly helped if the EU continued to monitor progress and demand more concrete results on implementation.

Feasible goals for 2020

- ✓ Adoption of legislation on legal gender recognition based on self-determination and legislation enabling stigma-free access to gender affirming care based on informed consent and cost coverage.
- ✓ Adoption of a law on registered partnership that is being prepared, and start of preparation for marriage equality thereafter.
- ✓ Effective implementation of the laws and strategy, translation of the strategy into local action plans, and preparation and adoption of a new strategy to succeed the current strategy that expires in 2018.
- ✓ Provision of structural funding for essential services, such as health services aimed at HIV/AIDS prevention and detection. These were funded by international community from 2006 to 2015, but it was decided the government should be capable of funding such services itself. A budget was indeed reserved for this, but has not actually been paid because there are no implementation procedures to grant the budget.
- ✓ Effective implementation of hate crime legislation, there have been no convictions yet for hate crime or hate speech.

Serbia

There has been substantial progress on LGBTI rights in Serbia over the past years, but a lot remains to be done. There are now 14 laws in Serbia that include LGBTI. In 2013, hate crime was included in the criminal code. Since then, however, no cases have been prosecuted even though a number of hate crimes against LGBTI persons have taken place and have been reported.

In the judicial chain, police are the strongest link. There has been intensive training of police in past years, the results of which are evident. Prosecution is currently the weakest link in the chain, and cases of hate crime and discrimination are not being properly prosecuted.

Institutions such as the office of the Ombudsman, the Commission for Equality and relevant Ministries are more open to cooperation with LGBTI organisations than in the past. There is, however, no structural contact between authorities and organisations. Especially concerning the Ministries, it depends largely on the individual civil servants whether they enter into dialogue with LGBTI organisations, and this differs between Ministries.

In 2014, a strategy to combat discrimination against LGBTI people was adopted, and in 2015 a National Action Plan to implement this strategy followed. While it is a welcome development that an action plan exists, its implementation needs to be improved. There seems to be a focus on the quantity of activities, not on their quality. The plan includes, for instance, training of local institutions, but these trainings are not carried out in cooperation with NGOs with expertise on LGBTI issues, nor are they evaluated. It is therefore unclear what their effect is. Moreover, the responsibilities for the implementation of the action plan are not clearly defined, allowing institutions to point the finger at each other.

Accession

The accession process has been vital in achieving legislative change and the adoption of a national action plan. However, for the government it mostly seems a question of ticking the boxes for the European Commission. While that is effective in achieving legislative change, it is not enough to fully implement the laws and achieve genuine change for LGBTI people. There are people in the Ministries willing to do their best, but unfortunately these people are not in a position of sufficient power.

Local level

Efforts are made by LGBTI people to build LGBTI communities and by authorities to strengthen local institutions to combat discrimination outside of the capital Belgrade. These efforts are, however, hampered by a lack of funding for local initiatives. Where in 2015 there were as many as 17 initiatives for local organisations, only four or five of those now remain due to lack of funding. There is a general lack of possibilities to gain small grants needed to start a local community.

While at national level, many politicians have learnt to express themselves in a politically correct manner regarding LGBTI issues, at local level there is still open homophobia among

authorities. There is also a lack of expertise among local law enforcement on combatting hate crime and discrimination against LGBTI persons. A pilot project will be carried out in the coming years with mobile teams of police and judiciary to help local institutions address this.

Enabling environment for civil society

Instead of an enabling environment for civil society, Serbian NGOs in different areas feel their space is shrinking. This is mainly due to a lack of understanding among authorities of the function of civil society in a democracy. NGOs are not seen as allies for reform and improvement of the system. President Nicolic has said publically that 'civil society is the enemy of the state' and published the names of 500 organisations that receive funding from the US. Such statements create a negative public opinion of civil society and decrease the space for constructive criticism from NGOs.

What is needed from whom?

The government needs to view civil society as allies to create and implement policies, and enter into structural dialogue with NGOs about their area of expertise. All relevant ministries should regularly consult civil society in their policy making. With the help of civil society, they need to fully implement the Action Plan, taking responsibility for their respective parts.

The international community and the EU need to make it possible for smaller local organisations to access funding, as structural funding for civil society from the government is as yet lacking.

Goals for 2020

- ✓ Full implementation of the current National Action Plan, by defining responsibilities more clearly and introducing clear criteria and monitoring of implementation.
- ✓ Introduction of a follow-up National Action Plan after the current one expires in 2019, with cooperation with civil society and taking into account lessons learnt from the current Action Plan.
- ✓ Adoption of a law on legal gender recognition based on self-determination and legislation enabling stigma-free access to gender affirming care based on informed consent and cost coverage, as well as amendment of existing legislation related to this topic such as the Act on Gender Identity.
- ✓ Adoption of a law on same sex partnership.
- ✓ Ban of text books with discriminatory content; a survey of 27 books showed 9 with homophobic content. The government has promised action, but that has not been taken up yet.
- ✓ Action against bullying in schools, and education about LGBTI issues.



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