



**ILGA-Europe Review of the Human Rights Situation of Lesbian, Gay, Bisexual,
Trans and Intersex people in Serbia**

Contribution to the 2014 EC Progress report

Based on the submission of Labris¹

Introduction

In the progress report 2013, ILGA-Europe recalled that despite some improvements, the situation for LGBTI people in Serbia has remained difficult. The right to freedom of assembly of LGBTI people was violated as the Belgrade Pride 2013 was banned by authorities. The risk of physical attacks and threats against members of the LGBTI community also continued to be high. At the same time, (i) the Belgrade Court of Appeal confirmed that hate speech against LGBT people cannot be justified under freedom of speech; (ii) the government started working on a National Strategy against discrimination; and (iii) a discussion on the rights of trans people started.

Summary of developments since the last ILGA-Europe report

In its resolution² on Serbia adopted in January 2014, the European Parliament strongly condemned the authorities decision to ban the planned September 2013 Belgrade Pride Parade as in the previous two years, and urged authorities to respect the freedom of assembly of LGBTI people. The Parliament also called on Serbian authorities to step up efforts against violent hooligan groups threatening and attacking LGBTI people. The report further called for wider political support for LGBTI people's human rights, and for the country to implement its Anti-Discrimination Strategy.

Human rights defenders

During the period under review, LGBT human right defenders have been increasingly confronted with severe manifestations of hostility and intimidation. On 27 October, 2013 Slobodan (Boban) Stojanovic, LGBT activist, leader of Queeria Centre and member of Belgrade Pride received threats and hate speech was written in graffiti outside of his apartment. A swastika, anti-LGBT signs (two male symbols crossed out), the messages "we know where you live, we know where you sleep" as well as a picture of an LGBT activist getting beaten up was signed by organization Combat 18, a well-known pan-European neo-Nazi network with cells in each Balkan country. So far, there is no progress reported in the police investigation.

By the end of March 2014, LGBT organization Gay Straight Alliance received death threats via the organization's e-mail account. These latest threats were the most brutal of all, with explicitly threats to killing and slaughtering members and leadership of GSA.

¹ ILGA Europe is grateful to Jovanka Todoroviæ from Labris for her cooperation in preparing this submission

² European Parliament resolution of 16 January 2014 on the 2013 progress report on Serbia-P7_TA(2014)0039



GSA received two threatening messages of similar content which called on the murdering of GSA members and “cleansing” this organization from Serbia . Threats called on members of Serbian Radical Party (SRS) and extremist right-wing groups “Obraz” and “Naši” to “take knives in their hands and start slaughtering all members of Gay Straight Alliance“. Both messages ended with the words “And happy slaughtering to you“, and they were signed – one with “Mladen Obradović“, the other with “Ratko Mladić“. Earlier, at the beginning of March, GSA received the threats of similar form.

The organization Serbian National Movement SNP Naši published the list of 30 human rights activists and other prominent citizens, who are supportive toward human rights of LGBT people and human rights in general. SNP Naši named LGBT human rights defenders as “the greatest enemies and traitors of Serbia”. Furthermore, an ex-journalist and an Anti-terrorist Police Unit spokesman, Radomir Počuča, called for the murdering of activists from the organization “Women in Black,” who are recognized as one of the biggest LGBT supporters. On April 5, 2014 the protest in front of “Women in Black” headquarters was organized and there where around 30 participants calling on the state to treat LGBT NGOs as foreign agents. Ex-journalist and Anti-terrorist Unit spokesman Počuča and leader of the organization “Naši” were arrested on April 7, 2014 and currently held in custody.³

Non discrimination

Until now there has been a lack of systemic approach towards examining the effectiveness and enforcement of the provisions of anti-discrimination laws, strategies and by-laws, as well as towards analysis of what could be done in other spheres which are not directly covered by existing laws, including the lack of research and state statistics on cases of discrimination and violence based on sexual orientation and gender identity. A comprehensive anti-discrimination strategy called “Strategy for Prevention and Protection from Discrimination 2013–2018” was adopted in June 2013 and it is hoped that it can remedy this situation. During the next period, an operational guidance note to accompany the existing Action Plan is to be adopted.

³ According to organization Labris, previous cases have shown that when the court imposes an appropriate sentence, the Court of Appeal overrules such sentence .



Freedom of Assembly

Although the Pride week, which took place in September 2013, went smoothly, as well as many other gatherings were organized (such as IDAHO, Pride day, EXIT music festival and a lot of other street actions), the LGBT community is still denied the freedom of assembly when it comes to the Pride March. Sufficient political support is still lacking and a Pride Parade that was planned to be held on 28 September, 2013 in Belgrade was again banned, for the third year in a row, fourth time so far. This raises a number of concerns regarding the lack of sufficient political support for the protection of the rights of LGBTI population, the lack of implementation of the constitutionally guaranteed rights of freedom of expression and assembly, as well as the authorities' capacity to handle threats from radical groups.

Legal gender recognition

Although some positive steps have been taken in regard to the legal status and position of **transgender persons** in Serbia in the previous years,⁴ there is still a legal gap concerning the situation of transpersons and their rights. The organization Gayten-LGBT proposed a model of Law on Gender Identity in October 2013 and has been promoting and advocating its adoption. Model law on Gender Identity's aim is the protection of rights and the improvement of the position of transgender people. It was created in accordance with the recommendations of the United Nations, the Yogyakarta principles and Thomas Hammarberg, Council of Europe Commissioner for Human Rights recommendations⁵. This draft model law provides transgender identities with the protection from discrimination and a series of rights not covered by the law⁶

Family law

Serbian Family Law does not recognize same-sex unions, and explicitly states that a marriage is void if it is between two persons of the same sex. As a result, LGBT persons in a relationship are deprived of rights which normally stem from this law, namely, social and health benefits, inheritance rights, housing rights, maintenance rights, visiting rights in hospitals, etc. This makes them particularly vulnerable to social, economic and health insecurity, exclusion and poverty. This not only gravely affects LGBT persons but also their children. During the course of 2013 Labris- Lesbian Human Rights presented a draft model Law on "Registered Same-Sex Partnerships" to relevant state institutions, as well as to international and national stakeholders.

⁴ Cf decision made by the Constitutional Court of Serbia, case Už - 3238/2011, 8.03.2012. and the Recommendation By the Commissioner for Protection of Equality from 24.02.2012.)

⁵ Human Rights and Gender Identity-Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights
⁶ (the right to change name and sex sign, the right to employment, insurance, marital and family life, health care, irreversible sterilization and other).



To that end a meeting was organized in April, 2013 during which state participants expressed willingness to examine possible new legislation. A second meeting was to be scheduled to discuss which state institution could take the lead in preparing and proposing legislation to parliament. When news about these meetings were published in the media, relevant state representatives cancelled the second meeting, without proper justification, and no further meetings have been organized in so far.

Bias motivated speech

Bias motivated speech against LGBT people is still pregnant in Serbian society and some derogatory comments are still been made by high state representatives. Several LGBT and Human Rights Organizations and individuals introduced a complaint to the Commissioner for Protection of Equality against hate speech made by Prime Minister, Dačić. Dačić stated that LGBT people are “abnormal and unnatural”. Commissioner for Protection of Equality (herein “the Commissioner”) found that the comments of Ivica amounted to “harassment and humiliation”. The Commissioner recommended that the refrain from making such derogatory statements and receive a delegation of Labris LGBT organization. But no meeting has been set up so far.

Belgrade city center is covered with hate graffiti’s which have not been removed for months.

Bias motivated violence

Hate crime has been introduced in the Criminal Code since 2012 with the recognition of the motivating factors of ethnicity origin, religion, sexual orientation and gender identity as aggravating circumstance in the case of certain ‘hate’ crimes. Despite the fact that no hate crime based on sexual orientation has been recorded by the authorities to date, there is evidence to suggest that manifestations of violence against LGBTI persons have continued. An attack on two men Dj.I and B.P took place in front of the Belgrade club “Mistique” on November 10-11, 2013. In the police statement, victims pointed out that they were beaten up just because they were gay. Physical and verbal attack against S.R. from Kursumlija occurred on 23rd of October, 2013.⁷ This was the third reported attack on S.R, because of his sexual orientation. Another reported attack took place in the city of Novi Sad on 8th of September 2013. Several school pupils attacked a teacher, I.J. while he was waiting his wife and child in the park.

⁷ Office for Information of Public Importance communicated that there were reasonable suspicions that on November 10, 2013 around 2 AM in the center of Belgrade, an unidentified person has committed the crime of serious bodily harm and light bodily injury under Article 121 and 122 of the Serbian Criminal Code.



Media reported that a teacher was attacked due to his perceived same-sex sexual orientation. On 19th of June 2013 a Trans person and sex worker was found murdered in his/her apartment.

On the 8th of February 2014 a transgender person from Valjevo, Darkolina Peric, was psychically assaulted by five men after leaving a night club. The victim was verbally threatened and harassed. The victim reported to the police that it was clear that the violent attack was based on transphobia/hate. The case is still in the process of investigation.

Violent cases of assault against LGBT people are becoming more frequent and the reported ones are just the top of the iceberg. There is evidence to suggest that state authorities are unable to efficiently deal with violence and threats of violence either due to lack of capacity or due to lack of political will. Even though relatively adequate legal framework and legal remedies for victims do exist, they are not effectively implemented.⁸ Although, there have been examples of good and efficient police and judiciary work, these examples are rare⁹.

A Liaison officer for the contact with LGBT organizations, Aleksandar Stojmenovic (Department of the police, prevention and community policing; Department of Organization, development affairs) was elected at the beginning of 2014.

Media

On the 5th of November in a Serbian X Factor show broadcasted at Pink television, Serbian pop singer and X Factor judge Željko Jokimović, showed basic disrespect towards a contestant who was identified as a transgender person. Joksimović, in a direct communication with Filip Janevski Fifi (22), expressed firstly disrespect, then disbelief and loathing and in the end he discredited her as a contestant, based on her gender identity. Joksimović made the following statement: “Personally, I don’t like that... but you are a good singer. At the same time Joksimović has shown basic ignorance of the right to gender expression, thus breaking the Serbian Antidiscrimination law, In spite of the reactions and statements by non-governmental organizations and a complaint lodged to the Commissioner for Protection of Equality and to the Republic Broadcasting Agency, Joksimovic nor the production made any public apologies, but advocated on a Twitter account, the freedom of speech

⁸ Evidence demonstrates that LGBT people often do not decide to report incidents due to fear of further victimization, and if they do decide to report the incident, it has often happened that the courts either do not initiate any legal actions or delayed the completion of such cases.

⁹ Cf Report on implementation of the CoE Recommendation CM /Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity in Serbia-Labris –ILGA Europe -2013CoE



Education

In January 2014, an agreement was reached with the leaving Ministry of Education, Science and Technological Development, Tomislav Jovanovic about the necessity to remove discriminatory content on same-sex sexual orientation from teaching material. Discriminatory content is prohibited by Article 4 of Law on textbooks and other teaching. An analysis carried by Labris LGBT organization CSOs during the period 2006 to 2014 revealed that presenting same-sex sexual orientation is portrayed as a pathological disease in most of High schools and college textbooks. An agreement has been reached which foresees the removal of homophobic content from all future textbooks to be printed for September 2014.

Recommendations

Serbia needs to ensure that its laws and policies protect all human rights of LGBTI persons in accordance with the existing international legal standards applicable at the level of the United Nations and the Council of Europe and notably the recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

Serbia needs to fully integrate and ensure effective implementation of EU fundamental rights acquis and notably laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender ReCast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

At the national level, Serbia needs to:

- Adopt legislation that would regulate same-sex partnerships.
- Regulate gender reassignment processes and legal recognition, as well as legal regulation of medical aspects of the gender reassignment processes.
- Secure and protect freedom of peaceful assembly for LGBT people.
- Create a comprehensive data collection system recording acts of discrimination and violence based on sexual orientation and gender identity.



- Conduct regular research about levels of acceptance / hostility towards LGBT people.
- Monitor the effectiveness of existing laws, when it comes to sexual orientation and gender identity.
- Organize regular and large scale media campaigns to end homophobia and transphobia in the Serbian society.
- Put into place continuous trainings for educational staff at all educational levels, to pupils and students, as well as for employees of the Ministry of Education, Institute for the Advancement of Education and the National Educational Council.
- Introduce effective measures that would protect LGBT pupils and students, as well as LGBT teaching staff, from bullying, harassment and discrimination in the educational settings.
- Provide continuous trainings about sexual orientation and gender identity for employees of the Ministry for Internal Affairs, prosecutors and judges as well as for medical, mental health and social service professionals.
- Create programmes, campaigns and codes of conduct for employers and employees both in private and public sectors, in order to provide working environments free of discrimination based on sexual orientation and gender identity.