

The Universal Periodic Review

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1. Overview of the situation of LGBT persons in Serbia

Results from recent public opinion polls show that the Serbian society is still deeply homophobic. A research conducted in 2010 showed that 67% of the general public consider LGBT people to be sick.¹

Although some progress has been made, a recent research conducted in April 2012 showed that around 70% of people still think that Pride Parade is only used to promote the sexual orientation that is unacceptable.

The Serbian government does not view LGBT people as representing a social group with its own problems and needs. The desire to garner the most votes may be a factor that prevents support for LGBT people. Only three political parties in parliament have given clear support for the human rights of LGBT people.

Liberal Democratic Party (LDP) and Social democrats of Vojvodina (LSV), has minority rights in their agenda. All other, more influential parties lack any mention of human and minority rights in their platforms. The situation is further aggravated by a number of factors, among which are growth of the influence of the church and other conservative forces including homophobic rhetoric from politicians, government officials, and representatives of local governments. On July 6th 2012, we witnessed the second verdict for the discriminatory and hateful statement against the LGBT community (use of the hate speech), made by politician Nebojsa Bakarec, member of the Democratic Party of Serbia and member of the City hall Parliament.² Bakarec was found to be guilty by first instance judgment of the First Municipal Court in Belgrade for discriminatory behavior and severe form of discrimination against LGBT people by the defendant Nebojsa Bakarec, official of the Democratic Party of Serbia (DSS) and City Council member. Judge Tatjana Lemajić judgment is made on the basis of Articles 11, 12, 13 and

1 <http://gsa.org.rs/2010/07/predrasude-na-videlo-homofobija-u-srbiji-2010/>

2 <http://gsa.org.rs/2012/07/presuda-nebojsi-bakarecu-za-tesku-diskriminaciju-lgbt-populacije/>

21 of the Anti-discrimination, and also prohibited the defendant's sentence to repeat Bakarec performed discrimination, and that the plaintiff (GSA) pay court costs.

However, hope has emerged with the new partnerships founded with the Ombudsmen's office and the Commissioner for Equality. Both political institutions have made efforts to visibly support LGBT rights. This includes helping to draft new policies protecting transgendered persons.

2. Equality and protection against discrimination

The comprehensive anti-discrimination Law was adopted in April 2009, yet its implementation has been slow. Hate speech often goes unpunished, and is a constant in political campaigns.

Other human rights violations include homophobic harassment by co-workers and superiors while at work for LGBT persons. The most common violation stems from termination of employment or refusal of employment due to the actual or perceived sexual orientation or sexual identity. One gay man has reported a case to Labris. He has accused his workplace of firing him over his sexual orientation.

Several laws contain provisions that are openly and directly discriminatory towards LGBT persons. For example, if a same-sex couple wants to get documentation from a municipality to be wed outside of Serbia, the couple will not receive the document if they mention it is for a same-sex union. The Serbian legal system does not recognize same-sex partnerships of any kind.

As regards blood donation, potential donors are not asked about their sexual orientation. This is different from the past when such a question was asked. There is also no clear prohibition for gay men to be the blood donors. However, if it is discovered that a man has had anal sex, he will not be able to donate blood. Labris tried to have the question changed to ask about unprotected anal sex. So far, we received no answer. However there was a question "did you have sex with a person of the same sex" in the questionnaire in the mobile blood donation unit in the Centre of Belgrade and Labris took steps to remove that question. For transgender citizens, they are not allowed to donate blood due to the level of hormones in the blood.

Also, the fear of being outed by others is a constant threat to many LGBT individuals. Being out is dangerous in Serbian society, and blackmailing individuals over their sexual orientation is too common of an occurrence.

A recent example of discrimination comes from a local university. A trans man was denied his university diploma due to his gender identity.

3. Right to marry and to create a family

Article 31 of the Law on Family states, "A marriage is void if it entered between two persons of the same sex." (This law came into force on July 1, 2005)

Article 62 of the existing Serbian Constitution defines marriage as a union between a man and a woman. The previous Constitution did not mention gender in relation to marriage.

Same-sex couples are deprived of any form of legal recognition and, thus, deprived of any rights as a family even if they cohabit and constitute a *de facto* family. The policy, while denying same-sex couples' family rights, provides unmarried opposite-sex cohabitants with property rights. This is problematic in view of the decisions taken by the European Court of Human Rights in 2010 (*Kozak v. Poland* and *Schalk and Kopf v. Austria*). These decisions confirm that same-sex relationships have to be included

in the definition of family life, and that they can't be excluded from the enjoyment of rights recognised to different-sex unmarried couples.

Same-sex couples are not allowed to jointly adopt children. Serbian law does not recognise any parental or custodial rights and obligations for a partner in a same-sex couple in relation to the child of the other partner and prohibits second-parent adoption of the child.

The right of marriage is also denied to transgender citizens. A trans woman is currently married, but her marriage could be dissolved because the government may not recognize her as a woman.

4. Freedom of peaceful assembly

This right for LGBT persons in Serbia has been violated twice by the decision of the Ministry of Interior in 2009 and by the National Security Council in 2011. The decision was made due to the government perceiving the event as having a high risk of danger.

These cases have been brought to the European Court of Justice in Strasbourg. The police protect other gatherings; yet fail to protect those of LGBT events.

In late June 2012, a small Pride Parade occurred in Belgrade's city centre. This event was one of the first LGBT events to not see any type of violence, and not even a slur was thrown at the 40 or so participants. The police ensured protection for the group. However, the relative peace that the parade saw may have been due to the fact that it was such a small event, and it was not heavily publicized.

5. Right of asylum

The Law of Serbia "On refugees and persons that require additional and temporary protection" recognises the admissibility of applicants that request asylum on the grounds of membership of a social group, which theoretically implies LGBT people. However, in the practice LGBT people **persecuted on the basis of their sexual orientation and gender identity** would see their applications rejected. There is no legal regulation of this question and Serbian government should provide an explicit legal guarantee of the right to asylum.

For Transgender persons attempting to seek asylum, things can be even more challenging. There is massive confusion on how to proceed in the asylum process.

6. Transgender rights

There is no law regarding the change of personal documentation (name, personal ID number).

Following the sex reassignment surgery, persons can change their personal documentation (name and personal ID number). However, this depends on the clerks, and if they are willing to do so. All municipalities in Belgrade are allowing this change to occur. Clerks usually do the change and blame it on a glitch in the system. A larger problem exists in the municipalities outside of Belgrade in the north and south. In southern Serbia, many times individuals who have undergone sex reassignment surgery must go to court to have the personal documentation changed. In these situations, some individuals must undergo a medical examination to "prove" the surgery. This is an absolute infringement on personal rights.

Serbian names and personal ID numbers are very gender specific and it is very difficult to go through the transition using the official name. Many people opt to change their names to a gender-neutral one during transition and we now have a large number of people using one of a very few names available.

It is against the law for a female to have a male name and vice versa.

Currently, there is a new model law being drafted to secure new protections for the transgender community.

Nevertheless, the meetings, negotiations and a continuous advocacy, supported by relevant experts (medical specialists, primarily) and representatives of international and national organizations/institutions (European Council primarily), the reports (Coalition against Discrimination) which were included/taken into account for the European Commission and Council Reports, awarded essays and interviews by lawyer Slavoljupka Pavlovic and others, strong cooperation with TransGender Europe and other relevant international organizations, media and advocacy activities within Coalition Against Discrimination (with its credibility considering that the Coalition was the creator of the Anti-discrimination Law) led to a historical milestone. On 20 July 2011, the Serbian Parliament adopted new amendments to the Law on Health Care, and one of them refers to trans people, enabling sex reassignment procedures to be covered by the health insurance. New amendments to the Law came into effect on 1st January 2012. However, organizations are still in the process of negotiation/dialogue with the state representatives on how precisely this new law amendment will be implemented (the amendment is very vague and the Ministry failed to provide relevant institutions with clear instructions on executing this law). The same organizations have also requested the Commissioner for Protection of Equality to assist us in this process. The questions to be discussed are the following:

- Which procedures will be covered (including to what percentage in terms of finances)?
- The standardization of the sex change procedure
- In which medical facilities in Serbia sex reassignment procedures will be performed?
- Which medical doctors (with licenses or not) will be qualified for these procedures?
- How many patients (transsexuals) per year, qualifications/grounds for applying, setting priorities?

Recently, in response to the continuous efforts mentioned previously, for the first time in history, four institutional bodies were formed to deal with the rights of trans people:

- The office of the Ombudsman of the Republic of Serbia formed a new **committee**. Milan Djuric, and Slavoljupka Pavlovic are representatives of Gayten-LGBT in Gender Equality Advisory Board with special emphasis on trans issues.
- The Commissioner for Protection of Equality and the Office of the Republic Ombudsman of the Republic of Serbia formed a joined work group to work on issues relating to transsexual persons. Two of our members, Milan Djuric and Slavoljupka Pavlovic, have been invited to join this work group. Our members have proposed to examine all municipalities in Serbia in regards to sex change and changing personal documentation and also to produce a set of instructions in this regard until the law will be adopted.
- The Ministry of Health created a special national expert "Committee for the treatment of transgender dysphoria in Serbia"
- The National Fund for Health Insurance created a special national expert "Committee for the treatment of transgender dysphoria in Serbia"
- The Constitutional Court of Serbia made a decision (07.03.2012) in favor of a transsexual person who sued the Municipality for rejecting to change data on his birth certificate after sex

reassignment procedure. This is the first decision of this kind made by the Constitutional Court and therefore it is historic and precedent.

- With our strong support, the Commissioner for Protection of Equality issued a statement and a recommendation to the Law Faculty of Belgrade (24.02.2012), which rejected to change a graduate certificate of a client who had changed sex. The Commissioner ordered reconsidering and fulfilling the request made by a trans person. This is another first decision of this kind made by the Commissioner for Protection of Equality and therefore it is historic and precedent.

These are exceptional and historical changes in Serbia, especially considering the very small team who directly worked on implementing these changes, with the support from the Coalition Against Discrimination and other organizations and individuals.

Lawyer Slavoljupka Pavlovic, together with consultants from the Center for Advanced Legal Studies and AIRE Centre (coalitional partners with Gayten-LGBT), has finalized a comparative analysis of international and national legislation and good practices in regards to trans people and their rights.

Both analyses are very important for further creation of new legislative/law models and for further advocacy activities, including education of institutional representatives.