

# Annual LGBTI Enlargement Review 2016

## ILGA-Europe and ERA

In cooperation with:

Aleanca LGBT and ProLGBT (Albania), Sarajevo Open Centre (Bosnia and Herzegovina), the Centre for Social Group Development (Kosovo), Subversive Front and LGBTUnited (Macedonia), Juventas and Queer Montenegro (Montenegro), Labris, Gayten-LGBT and Da Se Zna (Serbia) and Kaos GL, SPoD and Pembe Hayat (Turkey)

June 2016



# **Annual LGBTI Enlargement Review 2016**

## **ILGA-Europe and ERA**

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1 ERA – LGBTI Equal Rights Association for the Western Balkans and Turkey recognises all countries, where its members are present, by their constitutional names. It does so without prejudice to any of the on-going or future discussions about definition and status taking place at the national, regional and international levels and those definitions shall be reviewed based on the will and agreement of its members. ILGA Europe uses country names, where its members are present, as they are internationally recognised. For this report, the decision was taken to follow the practice of ERA.

# 1. Introduction

As in previous years, DG Neighbourhood and Enlargement Negotiations of the European Commission invited civil society organisations to send written contributions to feed into the 2016 Enlargement Package. This report combines the contributions made by ILGA-Europe and ERA member organisations in the seven candidate and potential candidate countries.

## **ILGA-Europe and ERA together**

For this year's report, ILGA-Europe closely cooperated with ERA, the LGBTI Equal Rights Association for the Western Balkans and Turkey. Both organisations are therefore publishing this report together. ERA was founded in September 2015 and serves as a regional umbrella organisation for leading LGBTI organisations in the accession countries. The organisations that have contributed their experience and assessments of the situation for LGBTI persons in their countries for this report are Aleanca LGBT and ProLGBT (Albania), Sarajevo Open Centre (Bosnia and Herzegovina), the Centre for Social Group Development (Kosovo), Subversive Front and LGBTUnited (Macedonia), Juventas and Queer Montenegro (Montenegro), Labris, Gayten-LGBT and Da Se Zna (Serbia) and Kaos GL, SPoD and Pembe Hayat (Turkey). A first draft of this report was sent to the European Commission in May 2016. This is an updated report drafted in early June 2016, taking into account among others the adoption of an LGBT Action Plan in Albania. A second update will be sent before 1 September 2016, relaying information on any relevant developments in the summer.

## **New approach: key priorities**

This report reflects developments on LGBTI people's rights in the region since September 2015, as well as highlights the key priorities that LGBTI organisations have identified for the coming year. This will hopefully assist the European Commission in providing clear guidance to the countries on addressing reforms regarding the protection of human rights of LGBTI persons. In turn, LGBTI organisations in the region will be able to use this guidance for greater scrutiny of the reform process.

The member organisations were also asked to specifically report on any developments regarding the concrete measures that were asked of the different countries in the Enlargement Package 2015 in the area of LGBTI rights, thus providing a clearer link between guidance from the European Commission and reporting by LGBTI organisations.

## **Legal recognition for same-sex couples**

Increasingly, it is recognised that a form of legal recognition, providing same-sex couples with comparable legal certainty to heterosexual couples, is a human right. Multiple international bodies 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 United Nations, in the form of the Committee on the Elimination of Discrimination against Women, urged Serbia to introduce a legal recognition of same sex-partnership in 2013. In May 2015, the UN High Commissioner for Human Rights published a report on 'Discrimination and violence against individuals based on their sexual orientation and gender identity', in which it was stated that: "*States should also provide legal recognition and protection to same-sex couples and protect the rights of their children, without discrimination*".

In a more recent report on 'Protection of the family' published in January 2016, the UN High Commissioner for Human Rights, states: "*The Committee on Economic, Social and Cultural Rights has called upon States to provide legal recognition of same-sex couples*". This same Committee has recommended to recognise same-sex partnerships in their Concluding Observations on Italy and Mongolia in 2015, and Slovenia in 2014.

Legal recognition of same-sex partnerships is also increasingly considered a human right under the European Convention of Human Rights (ECHR). In *Oliari and Others versus Italy* in July 2015, the European Court of Human Rights built on previous rulings, and ruled that Italy violates the human rights of same-sex couples by refusing them a 'recognised form of union'.

Furthermore, a European standard is emerging in this respect. Of the 28 EU Member States, 22 have a form of registered partnership for same-sex couples. Only six countries; Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia, do not provide any possibility for same-sex couples to legally register their union.

While 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. Since accession countries are expected to not only adopt and implement the *acquis*, but also to respect and implement the international human rights treaties they are party to, among which the ECHR and the UN human rights treaties, introducing a legal recognition of same-sex couples should be included in the reforms discussed with countries within the accession process. Governments of accession countries should be urged to introduce legal recognition for same-sex couples, and in some cases should be actively discouraged from taking any measures that would undermine this human right.

In multiple accession countries, a debate on the topic has started, such as in Albania, Serbia, Kosovo and Montenegro. In these countries, discussion with authorities on legal recognition of unions within the accession process could give a positive impetus to guaranteeing the right of same-sex couples to private and family life. In Macedonia and Turkey, authorities should in first instance be urged to refrain from taking measures that would undermine future attempts to introduce a form of

legally recognised union or marriage for same-sex couples. This topic is therefore included as a separate heading in this Annual LGBTI Enlargement Review report.

### **Public awareness and attitudes**

Information on public awareness and attitudes was already part of most country submissions in previous years, and is mentioned by the European Commission in its country reports. The importance of improving public attitudes and the culture of respect towards LGBTI persons among the general public is highlighted more clearly in this year's report by introducing a separate heading. There is now substantial data on public perception of LGBTI persons in all countries of the region, among others resulting from a survey published in October 2015 by the National Democratic Institute. This data proves that public attitudes towards LGBTI persons are largely negative, giving cause for greater state involvement in changing public attitudes and systematic research of public opinion. A follow-up of this survey is planned for 2017, which will show any developments in public awareness and opinion.

### **Civil society**

A final change to the report compared to previous years is that civil society has been added as a separate heading, since creating a more supportive and enabling environment for civil society was described by the European Commission as one of the key overall priorities in the 2015 Enlargement Package. Organisations have reported on any (lack of) progress, or even regress, in this area concerning LGBTI civil society.

### **Headings for country submissions**

This leads to the following list of headings for the country submissions:

- Summary of key developments, including political context and trends
- 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 and intersex persons
- Public awareness and attitudes
- A supportive and enabling environment for civil society

In the next section, the main priorities identified by LGBTI organisations for their countries in the coming year are listed. After that, the reports for each individual country follow.

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

For each of the six countries, local LGBTI organisations have identified three to five key priorities for reform in the area of human rights of LGBTI persons. If these priorities are reflected in the country reports 2016, 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 between September 2016 and September 2017.

### **Albania**

The government should be urged to:

- Amend the article that defines cohabitation as only between a man and a woman, based on the Albanian Constitution, the 2015 Albanian Parliamentary Resolution on LGBTI issues, the Anti-Discrimination Law and recent judgements by the European Court of Human Rights. Furthermore, positive public awareness on this issue should be raised, through cooperation between the Parliament, political parties, the government and civil society organisations. The working group that will monitor the implementation of the National Action Plan will identify potential amendments.
- Consider STREHA, the residential shelter for LGBTI young people who face domestic violence, as a beneficiary from state budget as it offers a full national service.
- On education system: Raise awareness among teachers, students, parents and psychologists about violence and abuse against LGBT individuals, as well as on the LGBT community in general, to actively fight homophobic and transphobic school-bullying. This could be done through various campaigns, and other activities, coordinated by multiple actors, including LGBT organisations.
- On the health care system: Raise awareness among health practitioners on the specific needs of LGBT people, barriers and discrimination of LGBT people in the health care system, as well as violence and abuse against LGBT individuals.
- On transgender issues: Raise awareness, especially among the media, on transgender issues in order to raise social acceptance of trans people and initiate a public debate on legal gender recognition, and adopt the law on legal gender recognition that was drafted by local and international experts, supported by the Council of Europe and civil society organisations.

## **Bosnia and Herzegovina**

The government should be urged to:

- Develop a multi-year Action Plan for the Equality of LGBTI persons that specifies the activities to be undertaken by the State, Entities, Brčko District and the Cantons, in line with Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe on measures for tackling discrimination on the basis of sexual orientation or gender identity.
- Amend the criminal codes of all three administrative units in Bosnia and Herzegovina (Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District) to expand the number of prohibited grounds (including sexual orientation, gender identity and sex characteristics) for the criminal act of incitement to hatred and violence.
- Adopt and implement laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties.
- Adopt and implement laws that would explicitly regulate and simplify legal gender recognition procedure without the request for full medical reassignment.

## **Kosovo**

The government should be urged to:

- Rule of law: engage in a dialogue with the police and the prosecutor's office to coordinate efforts to properly investigate cases of hate crimes against LGBTI people. Until now, all of the cases reported to the police from LGBTI persons/activists have not been investigated.
- Review school and university curricula and textbooks to remove homophobic, transphobic and discriminatory statements
- Law reform for transgender and intersex people: adopt legal reforms to secure the right to undergo a sex change, the right to legal gender recognition in documents, protection of the rights of intersex persons and other relevant measures.
- Offer social and psychological protection to LGBTI persons who are evicted from their homes/families.
- Implement the National Strategy against Domestic Violence (which includes an LGBTI component) and implement the Action Plan of the Human Rights Parliamentary Committee in the Assembly of Kosovo.

## **Macedonia**

The government should be urged to:

- Amend the Law on prevention and protection against discrimination to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics);
- Amend the Criminal Code to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics) for the criminal act of incitement to hatred and violence;
- Adopt and implement laws that would explicitly regulate legal gender recognition;
- Raise awareness of the harmful effects that homophobia and transphobia have on the health and general well-being of LGBTI people, and conduct public campaigns and training on promoting and respecting diversity in society for health-care professionals, media, education professionals, law enforcement bodies, prosecutors and judges.

## **Montenegro**

The government should be urged to:

- Establish implementation monitoring mechanisms for the Strategy for the Improvement of LGBT people's Quality of Life, which include CSOs, and ensure that implementation of the Strategy also takes place in the municipalities in the south and north of the country.
- Increase the financial, administrative and human capacities of both the Ministry for Human and Minority Rights and the Institution of the Ombudsman.
- Guarantee freedom of assembly and expression in all municipalities, including Nikšić, and offer adequate protection and public support for LGBT public events.
- Adopt adequate bylaws or a Law on legal gender recognition, as legal gender recognition should be a process without obstacles;
- Launch awareness and information campaigns to address various professionals: medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision-makers and representatives of the institutions that are involved in protecting LGBT rights;

## **Serbia**

The government should be urged to:

- Implement the National Strategy (the Action Plan) for prevention and protection from discrimination, to the full extent and in a timely manner;
- Create an effective system for collection of centralized official data on the number of crimes motivated by homophobia and transphobia;
- Ensure proper investigation, prosecution and sanctioning of hate-motivated offences;
- Repeal school textbooks containing discriminatory content.

## **Turkey**

The government should be urged to:

- Include the terms 'sexual orientation' and 'gender identity' in constitutional clauses on equality and non-discrimination, as well as in hate crime legislation.
- Develop a plan to adopt a legal framework for the protection of LGBTI people and to prevent hate crimes and discrimination.
- Take all administrative measures, both on the national and local level, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection to LGBT people in Turkey.
- Conduct full and independent investigations into all allegations of harassment, violence or abuse of LGBT individuals, and prosecute perpetrators.
- Develop a plan to improve conditions for LGBTI prisoners in cooperation with the Ministry of Justice.

### **3. Country submissions**

#### **3.1. Contribution from Aleanca LGBT, ProLGBT, ILGA-Europe and ERA for Albania's Report 2016**

*Submitted: 12 May 2016, updated 1 June 2016*

##### **Summary of key developments and trends**

At least 180 activists, community members and allies took part in the Tirana Gay (P)Ride on the 14<sup>th</sup> of May 2016, on the occasion of International Day Against Homophobia and Transphobia (IDAHOT). No incidents were reported.

The Ministry for Social Welfare and Youth (MSWY) invited civil rights organisations to be part of the process of drafting a Plan of Actions. This plan was finally approved by the Government in May 2016. It indicates the strategic approach that Albania will follow until 2020 on LGBTI related issues. The Plan (which according to Albanian law is now legislation to be enforced) will be focused on three main interventions:

1. Improvement of legislation and raising awareness on LGBTI issues
2. Elimination of all forms of discrimination of LGBTI people
3. Improvement of access of LGBTI people to employment services, education, health care, housing and sports by guaranteeing them equal opportunities

This is the first time that the Government not only adopts a plan like this, but it also provides a concrete budget for all the activities. The overall cost for the plan is estimated at around 2.2 million Euros (extended in a 4 year period) of which the state budget will be able to cover around 37 percent of overall costs. The largest proportion of the plan itself will aim in strengthening LGBTI organisations and supporting the services that these organisations are providing and will provide for the community. The rest of the costs should be covered by international donors. According to the plan, a special working group will be established to monitor its implementation. The government, the independent institutions like the Ombudsman, Commissioner of Protection from Discrimination and all LGBTI organisations will be members of this working group.

Aleanca LGBT and ProLGBT, together with Peace Corps volunteers, successfully organised several meetings with young people outside Tirana, in the cities of Lezhe, Sarande, Korce, Kelcyre, Kukes, Elbasan, Fier, Vlore and Berat. The first long featured documentary on the LGBTI movement was screened in those cities. This documentary was also shown at several international film festivals and received awards at some of these events. The documentary has been a great tool to raise public awareness.

The first residential shelter STREHA for homeless young people aged 18 to 25 years, which was founded by Aleanca LGBT and ProLGBT, was able to assist to 18 beneficiaries in 2015. It was officially acknowledged by the state as a national service and received the official license for the service it offers. Domestic violence remains an important challenge to address.

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

It is important to note that all the necessary actions are clearly planned and structured in the Action Plan.

The government should be urged to:

- Amend the article that defines cohabitation as only between a man and a woman, based on the Albanian Constitution, the 2015 Albanian Parliamentary Resolution on LGBTI issues, the Anti-Discrimination Law and recent judgements by the European Court of Human Rights. Furthermore, positive public awareness on this issue should be raised, through cooperation between the Parliament, political parties, the government and civil society organisations. The working group that will monitor the implementation of the National Action Plan will identify potential amendments.
- Consider STREHA, the residential shelter for LGBTI young people who face domestic violence, as a beneficiary from state budget as it offers a full national service.
- On education system: Raise awareness among teachers, students, parents and psychologists about violence and abuse against LGBT individuals, as well as on the LGBT community in general, to actively fight homophobic and transphobic school-bullying. This could be done through various campaigns, and other activities, coordinated by multiple actors, including LGBT organisations.
- On the health care system: Raise awareness among health practitioners on the specific needs of LGBT people, barriers and discrimination of LGBT people in the health care system, as well as violence and abuse against LGBT individuals.
- On transgender issues: Raise awareness, especially among the media, on transgender issues in order to raise social acceptance of trans people and initiate a public debate on legal gender recognition, and adopt the law on legal gender recognition that was drafted by local and international experts, supported by the Council of Europe and civil society organisations.

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

In the 2015 progress report, the government was urged to structurally collect data on hate crime. No progress was made concerning this action point, although the Action Plan adopted in May 2016 provides concrete steps to be undertaken in order to establish a national data collection source for hate motivated crimes and incidents and hate speech.

In the coming year, the government should be urged to take action against domestic and public violence against LGBT persons, and against hate and discriminatory speech in the media. Education and health care professionals should be trained on LGBT issues and on how to deal with violence against LGBT persons.

### **Hate and discriminatory speech in the media**

ProLGBT and “Historia Ime” ([www.historia-ime.com](http://www.historia-ime.com)) monitored seven online versions of mainstream media (daily newspapers and news agencies) in the period October-December 2015. From a total of 750 articles monitored, 208 included hate and discriminatory speech against women, LGBT persons and the Roma Community. The transgender community turned out to be the group most often targeted for hate speech.

### **Domestic violence**

Domestic violence remains an issue for the LGBTI community. Cases of domestic violence are very common. In 2015, 15 cases of domestic violence were reported to Aleanca, mostly involving psychological violence from parents who felt that their child might be gay or lesbian. In six cases, members of the community reported that they had experienced physical violence because their family had found out they were LGBT. Aleanca has supported victims of such violence, either through providing psychological support or by providing shelter at STREHA. In several cases, Aleanca also collaborated with other NGOs that operate in Albania.

In general, reports from community members to Aleanca indicate that people who experience violence in public are usually young men aged 17 to 35 years. Almost all violence in public is targeted towards men who are more stereotypically gay and towards trans people. Lesbians face discrimination in public only when their sexual orientation or gender identity is more visible. Most face verbal violence, but physical violence is also common. Trans women primarily face physical violence because a large percentage of them are also sex workers.

### **Situation on LBT and violence against women**

Aleanca LGBT, supported by UN Women, completed the first study with a focus on LBT community and violence against women<sup>2</sup> in 2015. It reveals that: “LBT

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<sup>2</sup> <http://historia-ime.com/2015/12/19/the-first-study-with-a-focus-on-lbt-community-on-violence-against-women/>

individuals face prejudice, discrimination and abuse when they access health and educational institutions". The study raises the need for capacity building and awareness-raising among service providers in health and educational institutions. The situation of LBT women in particular is worse as they are subject to discrimination and violence due to their gender and sexual orientation. The study was conducted in the regions of Tirana, Shkodra, Elbasan, Peshkopi and Vlora with the support of women's organisations. The study and face-to-face interviews with public servants focused on the education system and the health care system.

The findings in this research indicate that LBT individuals face prejudice, discrimination and verbal, psychological and physical abuse when they access these two institutions. This constitutes a serious obstacle for LBT individuals who are abused, or are at high risks of being abused because of their sexual orientation and gender identity, and need assistance from health and educational institutions. The data indicates that a lot of work needs to be done to make health and educational institutions accessible to LBT women when they face violence. With respect to health, there is a need to inform doctors and nurses on LBT related violence. As was shown in this report, the overwhelming majority of them have little or no information on violence and abuse against LBT. Moreover, with few exceptions, none of the doctors and nurses had taken any training on LBT related violence.

### **Training of police**

From 2014 on, ProLGBT (in 2015 together with Aleanca) has been training police officers in Tirana; all chiefs of all six police stations in Tirana and 20 to 30 policemen and policewomen per police station, plus 30 police from the elite forces The Eagles. The organisations believe that the police in Tirana have definitely become more professional, but there is no data available on the situation outside Tirana. The signs are mixed: there is great sporadic collaboration in some southern municipalities, but also a report of a transphobic incident with the police in Shkodra, a northern city in early 2016. Police officers there harassed a group of LGBTI activists, and one transgender woman in particular.

In general the impression of police collaboration is positive, but it is important that newly trained police officers also receive LGBT awareness training in their education. Also, it remains doubtful that the police have proper internal protocols to deal with hate crimes, even though hate crimes are now addressed by the Penal Code.

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

Freedom of assembly, association and expression for LGBTI people was largely upheld in Albania in the reporting period. At least 180 activists, community members and allies took part in the Pride bike ride, the Tirana Gay (P)Ride 2016, on the International Day Against Homophobia and Transphobia (IDAHOT). No incidents were reported.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to take action on the following points:

- More outreach and a more proactive approach by the Commissioner for Protection against Discrimination
- Further development of anti-discrimination case law and improvement of implementation
- Implementation of the resolution on the rights and freedoms of persons belonging to the LGBTI community; implementation of the action plan, legislative amendments and other measures in support of LGBTI persons

Some progress was made on these action points. The action plan was drafted, but it is still in the process of being adopted. While the mandate of the Commissioner for Protection against Discrimination ended in 2015, no move was made to replace her with a more pro-active Commissioner. There have been no developments regarding anti-discrimination case law.

In the coming year, the government should be urged to ensure implementation of the action plan 2016-2020 without delay, with a focus especially on:

- Improving the collaboration between the government and civil society organisations in raising public awareness of LGBTI rights.
- Including mechanisms for budgeting, indicators of achievement, monitoring and reporting.
- Professionalising and improving the performance of the National Implementation Coordinating Group (NICG)
- Appointing Focal Points on LGBTI equality from all relevant government departments

Also, the government should be urged to replace the Commissioner for Protection against Discrimination and to stimulate reporting of and pro-active proper handling of cases of discrimination against LGBTI persons, particularly in the labour market, education and health care.

### **Discrimination**

Regarding discrimination in different spheres, Alliance LGBT has found discrimination in workplaces, in accessing health care and in education.

### **Labour market**

Forty-three cases of discrimination in workplaces and/or discrimination in job recruitment and selection were reported to Aleanca LGBT. These are cases of LGBTI people having difficulties in finding work because of stigma and prejudice, experiencing sexual harassment based on sexual orientation and gender identity during job interviews, or being fired because the employer has found out about the

employee's sexual orientation or gender identity. Only one case was reported to the authorities.

For the first time in this period, the Head-hunter group, a human resources company in Albania, launched and implemented the LGBTIQ Employment Equality Index, the first non-EU country to have such a system in the Balkans. The index is a ranking system that determines how well companies respect the rights and dignity of LGBTIQ persons in their hiring, training, development and general employment practices. The Albanian government is encouraged to support this index by promoting it, and to have state owned companies be part of the Equality Index.

### **Education**

Ten members of the community reported 38 incidents of discrimination in schools. None of these incidents were reported to the authorities. Bullying in schools remains a major problem for young LGBTI people. Two of these 10 young LGBTI people have left school, due to discrimination and bullying from peers and teachers. The remaining eight LGBTI people were hiding their sexual orientation or gender identity in order to stay in school, but they expressed concern that if they came out at school their peers would bully them and subject them to physical and psychological violence.

### **Health care**

Alliance LGBT has had thirteen cases of discrimination with regards to accessing health care. In one case a member of the community was not able to access necessary health services without being accompanied by a representative from Alliance LGBT. In another case a gay man reported that he had never accessed the healthcare system because everyone knew his sexual orientation in the city where he lived. In the other cases, LGBTI people reported being discriminated against and that they felt that the doctors prejudged them.

### **Housing**

In recent years there has been a rise in the number of LGBT youth who have problems with housing. This is a result of a few factors: coming out to the family, harsh living conditions in discriminatory and aggressive communities (especially in small cities), inability to find a job, or inability to rent a house as a result of discrimination because on sexual orientation or gender identity.

In order to respond to this critical situation for the LGBTI community, Aleanca LGBT and Pro LGBT opened the first residential centre shelter (referred to as "STREHA" or "SHELTER") for at-risk LGBT youth. This was achieved through a common pilot project with the support of USAID through Assist Impact. SHELTER has a capacity of 8 beds and offers aid and services for homeless LGBTI youth, including services to help with re-integration into their family home or transition to independent living in society. Between December 2014 and November 2015, 45 LGBTI persons requested services at the Shelter. 18 individuals were housed for a total of 1460 nights.

The Shelter has been operating as an independent entity from Alliance LGBT and Pro LGBT since November 2015. The decision to become independent was made for the sake of sustainability and to ensure the continuity and consolidation of shelter services for the LGBT community.

### **Asylum and refugee issues**

The issue of Albanian people seeking asylum in Western countries has also affected the LGBTI community. The number of self-identified LGBTI people seeking an official report from Aleanca and ProLGBT has doubled in 2015, but the actual number of cases supported by these organisations has remained relatively low for several reasons:

- The organisations have limited human resources to deal with asylum seekers;
- The organisations have focused their interventions mostly on educating the LGBTI community regarding the very difficult process of receiving asylum. Since Albania introduced its anti-discrimination law and subsequently received the status of candidate member country in the EU, asylum has become almost impossible for Albanian citizens;
- In most cases the asylum seekers failed to seek the assistance of the organisations before leaving the country. In such cases it is very difficult to prove that the state failed to ensure their safety (thus giving the country enough proof to refuse their request for asylum);
- A number of the requests for help came from people who told the organisations explicitly that they were heterosexual but wanted to ask asylum by claiming they were LGB. These people were turned away.

Despite these difficulties, Aleanca and ProLGBT still managed to help some of the LGBTI community members in their asylum-seeking processes. Aleanca LGBT assisted 8 cases of community members asking for asylum in Sweden, Germany, France and the Netherlands. Until now, the only successful asylum case was that of a lesbian girl, seeking asylum together with her six-months old child. She was thrown out of her house by her family and discriminated continuously by society because of her gender non-conforming look. She managed to get asylum in Sweden. Other individuals were rejected and sent back to Albania or are seeking an appeal through the courts in the respective countries.

In 2015, ProLGBT assisted with the case of the first gay couple seeking asylum in Sweden (A.M and J.C). This is a clear case where state and public institutions, including the police and the Anti-Discrimination Commissioner, failed to ensure their well being and protect their lives.

In 2015, ProLGBT assisted a case involving a young gay individual from Tirana who was threatened by his father and ended up asking for asylum in France together with his mother and younger sister. This case is currently pending.

## **Legal recognition of same-sex couples and debate on Family Code**

In the coming year, the government should be urged to amend the article that defines cohabitation as between a man and a woman and to raise positive public awareness on this issue.

Both Aleanca LGBT and ProLGBT managed to raise several public debates on the importance of legal recognition of same sex partners. The Ministry of Social Welfare and Youth started the process of amending one article of the Family Code; Article 163 that defines cohabitation as between a man and a woman. The new proposal of the Ministry was to amend this article and redefine cohabitation as between two adults regardless of their sex. The Ministry of Justice officially blocked this proposal without any clear argument. The Ministry of Social Welfare and Youth did not try to negotiate and the Family Code was not amended.

A group of activists from ProLGBT and Aleanca LGBT founded AFERA (Alliance for Equal Rights in Albania, which is now in the process of being legalised by Tirana's Court). The main goal of this membership-based organisation is to challenge the Family Code, and specifically the article about cohabitation, as unconstitutional, both at Albania's Constitutional Court and Strasbourg Court. This will be the first strategic litigation process in the country.

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

In the 2015 progress report, the government was urged to remove discrimination against trans and intersex persons from legislation. No progress was made on this action point.

In the coming year, the government should be urged to raise awareness on trans issues and initiate a public debate on trans rights, and to discuss and adopt a law on gender recognition.

During the heated debate on the judiciary reform and amendments of the Constitution, a proposal to include sexual orientation as a ground for protection from discrimination was included by an independent working group of experts, but gender identity was not. Through unofficial channels, ProLGBT managed to raise their concern with the government, the parliament and to the group of experts about this. In the final proposal, gender identity was also included into the article of the Constitution that focuses on discrimination. This proposal was recently passed with no opposition in the Albanian parliament (with votes from both left and right wing parties). This development was the reason to re-activate the debate on same-sex marriages, with some noted conservative opponents expressing their concern that if the Constitution is amended in this way, the entire Family Code becomes unconstitutional.

Trans and intersex rights are not recognised as such by Albanian legislation and government. There is no legal recognition of gender and there are no procedures in place for gender reassignment or change of legal documents. The only provisions are those in the law for protection from discrimination, which recognise gender identity as protection ground, but then there is no definition of gender identity in Albanian legislation. Due to this legal vacuum, trans rights have also been largely omitted from the 2016-2020 draft Action Plan and very few activities are trans specific. There is no protection against discrimination/hate crime on the ground of sex characteristics to protect intersex people at all.

## **Public awareness and attitudes**

In the 2015 progress report, the government was urged to increase public awareness. Some progress was made on this action point, which should be reiterated for the coming year.

An opinion poll carried out by US-based National Democratic Institute, revealed that 65% of LGBTI people surveyed in Albania have been personally discriminated against because of their sexual orientation or gender identity.

The survey also found out that 42% of the general public would try to find a cure if they found out their son or daughter were homosexual. 58% said they would not vote for a political party that championed the rights of LGBTI people.

76% of LGBTI people surveyed have been verbally harassed or abused because of their sexual orientation or gender identity. The poll also revealed that 32% of the LGBTI people surveyed in Albania had suffered physical violence because of their sexual orientation or gender identity.

The ministry of Social Welfare and Youth organised a screening event of Ska Ndal, the LGBTI documentary, in an event attended by minister Blendi Klosi. In general, however, the public awareness process has been pushed forward only by the LGBTI organisations that have urged the government to do more several times.

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

The State Agency to support civil society has never awarded a project to any of the LGBTI organisations. At the start of 2015 both Aleanca and ProLGBT applied for a project with the agency that would have enabled the shelter for LGBTI youth to provide the food supplies. The board rejected this project in first instance, but after intensive lobbying from the two organisations the executive branch of the agency decided to provide the shelter with around 90,000 ALL (around 6.500 Euros).

There are mixed experiences in the relationship between authorities and CSOs. There is direct contact with the Ministry of Social Welfare with whom CSOs finalised

the action plan, and with the Prime Minister and the Mayor of Tirana, but there is no institutionalized communication with the Parliament.

The Albanian government has increased its cooperation with civil society organisations in particular with regards to consultations. However, cooperation still needs to increase in particular with regards to providing more funding and increasing professional cooperation between the state and non-governmental sector. Hopefully the Action Plan will serve as a clear road map for this.

## **3.2. Contribution from Sarajevo Open Centre, ILGA Europe and ERA to Bosnia and Herzegovina's Report 2016**

*Submitted: 15 May 2016, updated 8 June 2016*

### **Summary of key developments and trends**

2015 has not been a year of progress in terms of LGBTI people's (lesbian, gay, bisexual, transgender and intersex) human rights, compared to 2014. Unfortunately, the number of cases of discrimination and violence on the grounds of sexual orientation, gender identity and sex characteristics documented by the Sarajevo Open Centre has not gone down – it has actually gone up. A particularly worrying trend is inadequate processing of the cases of attacks on LGBTI individuals, mostly in cases where they exercise their right to public assembly: the case of Merlinka in 2014 and the attack on the visitors of the Art Kriterion Cinema in March of 2016.

It is almost a year after the State Parliament held the first special session on the state of LGBTI people's human rights in Bosnia and Herzegovina (BiH) and formed three concise conclusions, but these conclusions have yet to be implemented and achieved.

In December 2015, authorities made a pioneering move: the government of Republika Srpska passed their Annual Plan for Implementation of the Gender Action Plan (GAP) for 2016, which also contains specific measures for protection of LGBTI people's rights. The government of the Federation of Bosnia and Herzegovina followed soon after in March of 2016. An LGBTI inclusive Anti-discrimination Action Plan was adopted by the BiH Council of Ministers in April 2016.

Furthermore in December 2015, the BiH Council of Ministers confirmed the draft proposal of the Law on Changes and Amendments of the Law on Prohibition of Discrimination, which includes amendments submitted by the Sarajevo Open Centre that would ensure better protection from discrimination for all LGBTI individuals. If adopted, it will be the first Anti-discrimination Law that includes sex characteristics as a ground on which discrimination is prohibited. The Law entered legislative procedure in April 2016.

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

The government should be urged to:

- Develop a multi-year Action Plan for the Equality of LGBTI persons that specifies the activities to be undertaken by the State, Entities, Brčko District and the Cantons, in line with Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe on measures for tackling discrimination on the basis of sexual orientation or gender identity.

- Amend the criminal codes of all three administrative units in Bosnia and Herzegovina (Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District) to expand the number of prohibited grounds (including sexual orientation, gender identity and sex characteristics) for the criminal act of incitement to hatred and violence.
- Adopt and implement laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties.
- Adopt and implement laws that would explicitly regulate and simplify legal gender recognition procedure without the request for full medical reassignment.

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

In the 2015 progress report, the government was urged to:

- Address threats and attacks against LGBTI persons, and adequately investigate and prosecute cases of attacks and intimidation against human rights activists,
- Amend the Republika Srpska and Brčko District criminal codes to include gender identity and sexual orientation as grounds for hate speech, and include hate speech and hate crime in the Federation's criminal law,
- Systematically collect and track information on homophobic and transphobic hate crimes,
- Promote reporting of incidents of violence, attacks and threats against LGBTI persons,
- Prosecute the perpetrators of the 2014 attack on the Merlinka Queer Film Festival

Little progress was made concerning these action points. Threats and attacks against LGBTI persons are still not being adequately investigated and prosecuted, including the attack on the 2014 Merlinka film festival. Gender identity and sexual orientation are still not included as grounds for hate speech, reporting is not promoted and information is still not systematically collected and tracked.

In the coming year, the action points of 2015 should be reiterated, with the addition of continued training and informing of judges, prosecutors, police officers and state officials on hate crimes and incitement to hate and violence against LGBTI persons. Also, the government should be urged to introduce LGBTI inclusive modules in curricula of law schools and police academies and in the permanent and specialist programs of training for police officers, and civil service exams.

In April 2016, Criminal Code of Federation of Bosnia and Herzegovina was amended to include hate crime regulation, after a Law on Amendments to the Criminal Law

drafted by the Federal Ministry of Justice was adopted in both of the Houses of the Federation of Bosnia and Herzegovina's Parliament. However, this Law has still not been published in the Federation's Official Gazette.

Research conducted by the National Democratic Institute in 2015 showed that 15% of LGBT people in Bosnia and Herzegovina have experienced physical violence because of their sexual orientation and/or gender identity, and that as many as 72% of LGBT people in Bosnia and Herzegovina have experienced verbal abuse and harassment. However, the research did not include intersex persons.

In 2015, Sarajevo Open Centre documented 103 instances of hate speech and incitement to hate and violence and 20 crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity. In the period January-March 2016 Sarajevo Open Centre documented 23 instances of hate speech and incitement of violence and hate and two crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity. Hate crimes varied from blackmails and threats, offensive graffiti, stalking and intimidation, domestic violence and physical violence.

In December, a 14 year-old boy in Sarajevo committed suicide, allegedly due to homophobic bullying and abuse he experienced at school. The Prosecutor's Office of Canton Sarajevo and the Bosnia and Herzegovina Ombudsperson for Human Rights both announced they would work on this case. In March 2016 they published that no evidence was found which would confirm the claims made by the parents and that nothing in this case indicates that a crime was committed. However, this case clearly demonstrated that there is a link between xenophobia, homophobia and violence, and peer-to-peer violence.

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

In the coming year, the government should be urged to continue improving the institutional and political environment to create conditions for full freedom of expression and assembly.

An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 69% of LGBTI people surveyed in Bosnia and Herzegovina felt that public LGBTI events have improved the position of the LGBTI community in society.

In 2015, the Merlinka LGBT Film Festival was held in Sarajevo and Tuzla without any problems. However, an investigation by the Prosecutor's Office into the 2014 attack on the festival is still on-going.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to take action on the following points:

- More even implementation of anti-discrimination legislation and the adoption of a country-wide anti-discrimination strategy,
- Introduction of an effective free legal aid system to guarantee efficient access to justice,
- Improve the legal and institutional framework for the observance of human rights, by among others revising the anti-discrimination law to include a clear definition of gender identity and sexual orientation,
- Adequately reflect and transpose anti-discrimination legislation in labour law and higher education,
- Introduce legal gender recognition,
- Removal of procedural hurdles to implementation of the anti-discrimination law.

Some progress was made concerning these action points. Amendments to the Anti-discrimination law are in parliamentary procedure, covering sexual orientation, gender identity and sex characteristics as grounds on which discrimination is prohibited. On a practical level, there has not been any relevant progress, as no actions have taken place. Upcoming work on a general Anti-discrimination and Human Rights Strategy and implementation of LGBTI inclusive mainstream action plans might prepare the grounds for sustainable institutional work on LGBTI rights. Support for trans people is still not being provided by any institution.

For the coming year, the action points of 2015 should be reiterated, and furthermore, the government should be urged to:

- Adopt a multiyear public policy (action plan) for equality of LGBTI persons which would be applied in the entire state and which would define specific and realistic measures on state, entity, cantonal and local level;
- Include the rights and needs of LGBTI persons in all public policies at all levels of government to stop the institutional ignorance of this minority and under-privileged group;
- Ask the BiH Ombudsman Institution to urgently issue a special report on the state of rights of LGBTI persons in Bosnia and Herzegovina which would serve as a basis for developing further actions and policies;
- Introduce LGBTI-specific modules in education of future teachers.

An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 51% of the LGBTI people surveyed in Bosnia and Herzegovina had been personally discriminated against because of their sexual orientation or gender identity.

Amendments to the Anti-Discrimination Law, including prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics, were adopted by the Council of Ministers (state government) in December. The draft law entered the Parliamentary Assembly's procedure in 2016.

The Government of Republika Srpska adopted their operational plan for the implementation of the Gender Action Plan for 2016 on 15 December; this is the first operational plan approved by a government in Bosnia and Herzegovina that explicitly mentions LGBT people. The government of the Federation of Bosnia and Herzegovina followed soon after in March of 2016.

The BiH Council of Ministers adopted an LGBTI inclusive Anti-discrimination Action Plan in April 2016. This is the first time that the governments in Bosnia and Herzegovina are including LGBTI people's rights in their action plans. The Anti-discrimination Action Plan presents 32 measures to be taken by institutions. 6 of 32 activities are related to LGBTI rights. Those measures are:

- To initiate changes of health protection laws in order to provide access to sex reassignment surgeries for transsexual people,
- To initiate changes of the Birth Register Books Law of the Brcko District,
- To amend the BiH Gender Equality Law and BiH Anti-Discrimination Law in order to clearly include sexual orientation and gender identity,
- To develop an multi-annual LGBTI Equality Action Plan,
- To introduce trainings for judges, prosecutors, police officers and civil servants on discrimination of LGBTI people, and
- To initiate changes of criminal laws in BiH in order to include hate crime regulation, covering sexual orientation and gender identity.

Activities are to be implemented during 2016, with the involvement of ministries and institutions on state, entity and cantonal level. It remains to be seen how these measures will be implemented, but our hopes are high, especially because of the evolving partnership between the Sarajevo Open Centre and the institutional mechanisms for gender equality.

The BiH Ombudsman Institution recorded eight cases of discrimination on the basis of sexual orientation and gender identity in 2015 and at the beginning of 2016.

Sarajevo Open Centre documented six cases of discrimination in 2015 and three cases in the first quarter of 2016. Four cases were discrimination in the services sector, three of which were bans to enter cafes or discriminatory behaviour in cafes, and one was discrimination in offering services by the company which distributes promotional material. From other documented cases: one related to discrimination of blood donors in Republika Srpska, the second case was discrimination and intimidation of a foreign couple while they were crossing the border and the third was loss of work place because of sexual orientation; and two cases of public incitement to discriminate against LGBT persons were recorded.

## **Legal recognition of same-sex couples**

In the coming year, the government should be urged to pass and implement laws in all three jurisdictional units (Republika Srpska, The Federation of Bosnia and Herzegovina and Brčko District) which would legally recognise same-sex partnerships and define the rights and obligations arising from cohabitation of two persons in a same-sex partnership (with a particular focus on social and economic rights).

During 2015, a number of persons looking for information on registering their partnerships in the countries in the region and in the EU contacted the Sarajevo Open Centre. Three of these persons wanted to register their partnerships in Slovenia, where a precondition is a confirmation that they are unmarried and proof that Bosnia and Herzegovina does not recognise these partnerships. Sarajevo Open Centre contacted the Ministry of Human Rights and Refugees in order to obtain the document to confirm that same-sex partnerships cannot be registered in Bosnia and Herzegovina. Two more persons contacted the Sarajevo Open Centre asking for information on this document in early 2016.

Although it is believed that the majority of citizens in Bosnia and Herzegovina is against legal regulation of same-sex relationships, recent research conducted by the National Democratic Institute showed that 30% of the general population of Bosnia and Herzegovina is in favour of same-sex couples having all economic, social and other rights that heterosexual couples gain through marriage and civil partnership, with the exception of adoption.

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

In the coming year, the governments should be urged to:

- Pass and implement laws in all three jurisdictional units (Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District) that would simplify the procedure of legal sex reassignment and which would enable the legal change without having to complete medical transition;
- Pass and implement laws in all three jurisdictional units (RS, the Federation of Bosnia and Herzegovina and Brčko District) which would define the duties of medical institutions to form teams and train professionals who could follow the process and perform medical procedures for sex reassignment in Bosnia and Herzegovina, and which would establish the obligation of the Health Bureau to cover the cost of these procedures out of the health insurance budget.

NGO SOC published 'Life Beyond the Set Norms', the first major study on trans people in Bosnia and Herzegovina, in December 2015. The research showed that 70% of trans people surveyed saw fear of violence and exclusion as their main obstacle from living freely. 18% were discriminated against in health care

institutions and 30% in education. 60% of trans people that participated experienced physical violence and 80% experienced psychological/emotional violence. 100% of trans people questioned had encountered problems while filing for personal documents and 88% of trans people in the study would change their sex marker on documents right away if they were legally able to do so.

In 2015, Sarajevo Open Centre was contacted by six trans persons who inquired about the possibility of changing the sex-category on their personal documents. Unfortunately, none of them could change it, because they had not undergone complete medical sex reassignment.

### **Public awareness and attitudes**

From June to August of 2015, the National Democratic Institute, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights Defenders carried out opinion polls in the Western Balkans on attitudes towards LGBTI people. In Bosnia and Herzegovina, 44% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 52% said they would not vote for a political party that championed the rights of LGBTI people.

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

Coalitions and initiatives for human rights in Bosnia and Herzegovina for the most part include LGBTI rights in their advocacy actions and efforts. This is also a result of the work of organisations working on LGBTI rights, which are involved in larger civil society networks. This cooperation has resulted in an initiative by several CSOs in May of 2016 to jointly mark May as the LGBTI Equality Month in Bosnia and Herzegovina, with different activities each of them will conduct. The organisations issued a request to all institutions of Bosnia and Herzegovina, the entities, cantons, cities and municipalities, concretely Bosnia and Herzegovina Ministry for Human Rights and Refugees and entity ministries, to intensify their work on LGBTI human rights.<sup>3</sup>

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<sup>3</sup> <http://soc.ba/en/may-lesbian-gay-bisexual-trans-and-intersex-equality-month-in-bosnia-and-herzegovina-in-2016/>

### **3.3. Contribution from the Centre for Social Group Development, ILGA-Europe and ERA to Kosovo's Report 2016**

*Submitted: 12 May 2016, update 8 June 2016*

#### **Summary of key developments and trends**

Public acceptance of the rights of LGBTI people remained low in Kosovo. A sizable proportion of the population say that they would try to 'cure' their child if they were lesbian or gay, according to an opinion poll (NDI). The increased work of national LGBTI NGOs led to greater exposure for some LGBTI activists, which resulted in online attacks. There were public statements from high government representatives supporting LGBTI rights. The implementation of the first LGBTI Action Plan from the Advisory and Coordination Group, which ended in May, was unsatisfactory. Homophobic statements were found in some textbooks in public and private universities.

On 17 May 2016, a successful march and concert took place celebrating IDAHOT, with no incidents reported. The government was very supportive. High-level politicians attended the march and the Office of Good Governance organised a conference to mark IDAHOT.

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

The government should be urged to:

- Rule of law: engage in a dialogue with the police and the prosecutor's office to coordinate efforts to properly investigate cases of hate crimes against LGBTI people. Until now, all of the cases reported to the police from LGBTI persons/activists have not been investigated.
- Review school and university curricula and textbooks to remove homophobic, transphobic and discriminatory statements
- Law reform for transgender and intersex people: adopt legal reforms to secure the right to undergo a sex change, the right to legal gender recognition in documents, protection of the rights of intersex persons and other relevant measures.
- Offer social and psychological protection to LGBTI persons who are evicted from their homes/families.

- Implement the National Strategy against Domestic Violence (which includes an LGBTI component) and implement the Action Plan of the Human Rights Parliamentary Committee in the Assembly of Kosovo.

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

In the 2015 progress report, the government was urged to adequately address cases of verbal and physical assaults against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. No progress was made concerning this action point. In the coming year, this action point should be reiterated.

An LGBTI activist received a death threat after he posted a statement on the situation of LGBTI people on social media during the visit of US Special Envoy Randy Berry in November. The case was reported to the police and was pending at May 2016. Moreover, in the comments section in online portals and online media there is a high presence of hate speech comments.

An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 81% of the LGBTI people surveyed in Kosovo had been verbally harassed or abused because of their sexual orientation or gender identity. Also, 29% of the LGBTI people surveyed in Kosovo had suffered physical violence because of their sexual orientation or gender identity.

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

There was a street action organised by three LGBTI organisations in Kosovo in December, marking International Human Rights Day. There were no incidents and protection by police was provided.

For the third year, on the 17th of May, three LGBTI organisations CSGD, CEL and QESh marked International Day Against Homophobia and Transphobia with a march and a concert held in the centre of Pristina. The title of this year's IDAHOT Kosovo was "Our Love is Constitutional". The Government and Parliament of the Republic of Kosovo were called upon to change the anti-constitutional Law of Family and to recognise same sex marriage. This law is in breach of the Constitution of the Republic of Kosovo, under the article 24 "Equality before the Law" and article 37 "Right to Marriage and Family".

The IDAHOT march was attended by Kosovo's President Hashim Thaci, former President Atifete Jahjaga, Vice President of the European Parliament Ulrike Lunacek and many more participants from the government, civil society, international community, etc. The march was followed by a concert with U.S Music Band Mary McBride and a DJ. On the same day, the Government of Kosovo, in the form of the Office of Good Governance, organised a conference to mark IDAHOT. In the night,

the Government Building was lit with the colours of the LGBTI rainbow flag as a sign of support for the LGBTI community in Kosovo.

There were no incidents during the march or the concert. The police of Kosovo was present to secure the events. There were however homophobic comments from public figures, including a Member of Parliament Gezim Kelmendi who stated that homosexuality is a disease and destroys the family. After a TV show focusing on IDAHOT, a representative from civil society received death threats. These cases were reported in the police. Furthermore, hate speech comments were noted in online media.

The opinion poll of NDI revealed that 71% of the LGBTI people surveyed in Kosovo felt that Pride parades have improved the position of the LGBTI community in society.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to take action on the following points:

- Extend the Kosovo Prosecutorial Council's tracking mechanism to cover cases of all kinds of discrimination, not only those based on ethnicity.
- Spend more resources and invest more political will in implementation of human rights, including at local level
- Get the advisory and coordinating group for the rights of the LGBTI community to produce concrete results.

Some progress was made concerning the first action point, but not on the second and third point.

In the coming year, these action points should be reiterated, with special focus on investing in implementation of human rights, also at the local level, and gaining results from the advisory and coordinating group for the rights of the LGBTI community.

Amendments to the law for protection from discrimination have been approved in June last year. However, there has been no promotion of the rights and legal remedies abided in this law. Moreover, government has not approved additional by-laws and action plans, which would enable the implementation of the law. Cases of discrimination of LGBTI people are being reported to LGBTI organisations. However, the victims do not want to undertake legal remedies in relevant institutions. Currently three LGBTI organisations have increased their capacities to offer legal counselling.

The opinion poll by NDI revealed that 67% of the LGBTI people surveyed in Kosovo had been personally discriminated against because of their sexual orientation or gender identity.

### **Legal recognition of same-sex couples**

There is no constitutional limitation on marriage. Early in 2016 there was a public statement at an international conference from Acting Minister of Foreign Affairs that the Kosovo Constitution recognises homosexual marriages. LGBTI activists reacted publicly, stating that the law is the main obstacle to same sex marriages, as the family law defines marriage between a man and a woman. It is evident that the law is in violation of article 24 of the constitution that prohibits discrimination based on sexual orientation. However, the family law has not been challenged so far.

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

In the coming year, the government should be urged to undertake further legal reforms to secure the right to undergo a sex change, the right to legal gender recognition in documents, protection of the fundamental rights of intersex persons and other relevant measures, and to put an end to unconsented medical treatments against intersex persons.

There were some legislative improvements in May 2015, better protecting transgender and intersex persons from discrimination. However, there are still existing legal barriers in relation to transgender and intersex persons: e.g. the right to legal gender recognition and to bodily integrity.

In the beginning of 2016 it was made public that Kosovo Clinical Centre had undertaken several surgical interventions on intersex persons. The patients were of a very young age and the procedure was not regulated with any legal provision or based on international human rights standards. In line with human rights standards, the government should forbid any medically not necessary interventions on intersex children.

### **Public awareness and attitudes**

In the 2015 progress report, Kosovo's political leaders were urged to raise awareness and promote tolerance. Some progress was made concerning this action point; there were more public statements supporting the LGBTI community from key politicians and figures such as the President, the Minister of Foreign Affairs and the Prime Minister.

In the coming year, the government should be urged to make supportive statements more often and to concretely promote and raise awareness of the new anti-discrimination law.

LGBTI organisations working directly with the community undertook several public awareness campaigns in order to raise social acceptance. Also, an EU twinning project undertook several initiatives. However, there was no governmental initiative to address the public in order to promote tolerance and equality among its citizens.

From June to August, NDI, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights Defenders carried out opinion polls in the Western Balkans on attitudes towards LGBTI people. The survey combined the results of online questionnaires, focus groups with LGBTI people and face-to-face interviews with the general public. In Kosovo, 41% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 60% said they would not vote for a political party that championed the rights of LGBTI people.

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

Civil society has good cooperation with institutions. However, the public support from state institutions has been present only when foreign representatives would meet them.

### **3.4. Contribution from Subversive Front, LGBT United, ILGA-Europe and ERA to Macedonia's Report 2016**

*Submitted: 16 May 2016, updated 10 June 2016*

#### **Summary of key developments and trends**

2015 has not been a year of great progress in context to LGBTI rights and status in Macedonia. The state impunity of SOGI-based hate crimes remains a worrisome trend, in addition to the lack of legal recognition of hate crimes and hate speech based on sexual orientation, gender identity and sex characteristics. The existing legal framework for protection against discrimination is still not in alignment with the *EU acquis*, which was called for by the EU in previous progress reports. Trans and intersex people remain invisible in legislation and in society. New research data reveal the harmful effect of homophobia and transphobia on the health and the general well being of LGBTI people, and confirm the increased need of state protection against discrimination of LGBTI people in the fields of employment, police protection, and social protection.

While at national level the right to freedom of assembly is still not guaranteed and among others infringed upon using the law that allows prosecution of 'participating in a crowd which commits a crime', there was strong cooperation with and support from a number of municipalities, in particular Tetovo Municipality. Both in December 2015 and in May 2016, successful public events protected and supported by the municipality were organised there.

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

The government should be urged to:

- Amend the Law on prevention and protection against discrimination to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics);
- Amend the Criminal Code to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics) for the criminal act of incitement to hatred and violence;
- Adopt and implement laws that would explicitly regulate legal gender recognition;
- Raise awareness of the harmful effects that homophobia and transphobia have on the health and general well-being of LGBTI people, and conduct public campaigns and training on promoting and respecting diversity in

society for health-care professionals, media, education professionals, law enforcement bodies, prosecutors and judges.

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

In the 2015 progress report, the government was urged to:

- Systematically collect data on the reporting, investigation and prosecution of hate speech and hate crime and give adequate follow-up to cases of hate speech in social media and blogs
- Fully investigate and prosecute the six violent attacks on LGBTI organisations.

No progress was made concerning these action points.

In the coming year these action points should be reiterated as well as expanded to amend the Criminal Code to recognise acts of crime motivated by hatred based on sexual orientation, gender identity and sex characteristics. Even further, the government should be urged to conduct compulsory education of the competent law enforcement officers who are handling committed criminal acts, to raise awareness of the competent officials at every level of the proceeding of such a crime, and to secure a mechanism that the state officials and state heads shall use in order to publicly condemn hate speech and hate crime based on sexual orientation, gender identity, and sex characteristics.

An opinion poll carried out by the National Democratic Institute in 2015 showed that 27% of the LGBTI people surveyed in Macedonia had suffered physical violence because of their sexual orientation or gender identity. The same opinion poll revealed that 66% of the LGBTI people surveyed in Macedonia had been verbally harassed or abused because of their sexual orientation or gender identity. Bekim Asani, LGBTI activist from Tetovo, received many homophobic messages and multiple death threats after a video of his speech at Amsterdam Pride 2015 appeared online. He was also publicly harassed in Tetovo, both physically and verbally, at multiple occasions. He temporarily relocated abroad, during which period his family was threatened and verbally harassed.

In November, the Commission for Protection against Discrimination together with several CSOs launched the *Nation without Discrimination* video campaign to make the public more aware of how to report discrimination on various grounds, including sexual orientation. The campaign attracted serious bias-motivated speech. The incidents were reported to the Cyber Crime Unit but no action had been taken by the end of 2015.

In December 2015, the decision to sentence the perpetrator of a violent attack against two LGBTI activists in 2012 to 7 months imprisonment was quashed on appeal.

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

In the 2015 progress report, the government was urged to:

- Address police impunity by establishing an independent oversight mechanism and investigating complaints of ill treatment seriously and thoroughly.
- Address lack of freedom of expression in the current media culture and political climate.
- Stop infringing on the freedom of assembly through the law that allows prosecution under 'participating in a crowd which commits a crime'.
- Introduce provisions to safeguard human rights and clear operational standards to accompany the Law on Policy, and give all relevant police officers rigorous human rights training

No progress was made concerning these action points. On the contrary, the freedom of assembly through the law that allows prosecution under 'participating in a crowd which commits a crime' has been infringed several times in the reporting period.

In the coming year, these action points should be reiterated, and expanded to include stronger cooperation between the central and the local government, especially in those municipalities (e.g. Tetovo) where the local government has shown support in safeguarding the right to freedom of peaceful assembly.

The 2015 opinion poll of the National Democratic Institute revealed that 45% of the LGBTI people surveyed in Macedonia felt that Pride parades have improved the position of LGBTI community in society; Macedonia was the only one of six Western Balkans countries surveyed where only a minority agreed with this statement. In addition, 84% of the general population would not personally support the organisation of Pride events. 32% of the LGBTI people surveyed think that they would be motivated to support a Pride parade if the state authorities guaranteed the security of all of the Pride parade participants.

LGBT United Tetovo organised an event in cooperation with NGO Romano Avazi on 8 December 2016 to celebrate international Human Rights Day. At the event, called 'Human rights for all', LGBT activists, volunteers and local supporters along with the Ambassador of the Kingdom of the Netherlands were present in the main square in Tetovo. The event featured music and speeches and ended with a march around the circle at Tetovo city centre. The event was without any physical threats or violence, and was well secured by police officers. The cooperation with municipality and police was very satisfactory.

On the occasion of IDAHOT on the 17th of May 2016, LGBT United Tetovo organised public awareness raising events in the local municipalities of Gostivar, Kumanovo and Struga. These events featured informative stands on the streets, where activists were distributing leaflets about IDAHOT 2016. These street actions ended without any verbal or physical violence or threat of violence. In addition, for the first time, a

protest walk on the streets of Tetovo Municipality was organised by LGBT United Tetovo on the occasion of IDAHOT. The protest walk also ended without any verbal or physical violence or threat of violence. Moreover, Tetovo Municipality expressed support for the event and made municipality premises available for the IDAHOT event participants. In addition, media coverage of all IDAHOT events was satisfactory.

The National Broadcasting Television did not respond to a request from NGOs to air the *Nation without Discrimination* video campaign as a public interest broadcast.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to:

- Make much greater efforts to raise public awareness of the Commission for Protection against Discrimination's role and work.
- Increase staff and resources, and guarantee the independence of Commission for Protection against Discrimination.
- Align the legislative framework with the *acquis* as regards discrimination on grounds of sexual orientation (and gender identity).

No significant progress was made concerning these action points. The only and rather symbolic act of progress was the adoption of a Protocol by the State Commission for Protection against Discrimination, where the procedure on claiming discrimination on the grounds of sexual orientation and gender identity is prescribed. The Protocol contains a form annexed to it, where in addition to all the protected grounds from the Law on Prevention and Protection against Discrimination, sexual orientation and gender identity are also mentioned. Thus the plaintiff can circle “sexual orientation and gender identity” in the form for filing a complaint to the Commission for Protection against Discrimination.

In the coming year, these action points should be reiterated, and expanded to include making strong efforts of public awareness raising on the harmful effect discrimination has on LGBTI individuals.

On 13 July 2015, Subversive Front filed a complaint to the Commission for Protection against Discrimination regarding discriminatory, derogatory and openly homophobic content in some supplementary books at the University “Ss. Cyril and Methodius” in Skopje. No response to this complaint has been received to the date of sending this submission.

The 2015 opinion poll conducted by the US-based National Democratic Institute revealed that 54% of the LGBTI people surveyed in Macedonia had been personally discriminated against because of their sexual orientation or gender identity. The same poll also showed that the three areas where the LGBTI people surveyed consider to be most frequently exposed to discrimination are employment (36%),

police protection (24%), and social protection (8%) – areas where the state has mandate over.

In November 2015, several NGOs launched an anti-discrimination protocol, which outlines how to treat claims of discrimination based on sexual orientation or gender identity.

In January 2016, several NGOs expressed concern following the appointment of six new members of the Commission for Protection against Discrimination. The NGOs were particularly concerned about three appointees as they had previously expressed homophobic, islamophobic and misogynistic views.

### **Legal recognition for same-sex couples**

In the coming year, the government should be urged to withdraw the constitutional amendment on defining marriage as a union solely between a man and a woman, and to renounce any amendment that would define extra-marital union/civil union also as a union solely between a man and a woman.

The 2015 opinion poll carried out by the National Democratic Institute revealed that 89% of the general population finds same-sex marriage unacceptable. Regarding the rights coming from registered partnerships/recognised unions for same-sex couples, 44% of the general population in Macedonia think it is acceptable LGBTI people to exercise the right to visit their partner in hospital or prison, while 36% think it is acceptable for LGBTI people to exercise the right to health insurance based on their partner's insurance.

The 26 January 2016 parliamentary session on the constitutional definition of marriage as a union solely between a man and a woman was not concluded to date as the ruling coalition did not obtain the two-thirds majority of votes required. The session is still in recess.

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

In the coming year, the government should be urged to adopt and implement laws that would explicitly regulate legal gender recognition. In addition, the government should be urged to adopt and implement laws that would define the responsibilities of the competent medical institutions to set up teams and train medical professionals to perform medical procedures for gender confirmation in Macedonia, and which would assign the Health Insurance Fund the obligation to cover the expenses of these medical procedures out of the health insurance budget.

In November 2015, NGO Subversive Front filed a case in the Administrative Court in support of a trans woman whose request to change her gender marker and official ID was refused. The NGO also initiated civil proceedings due to the authorities' delay

in responding to her request; this is still pending. Some of the 5 other cases of trans people who have requested legal gender recognition are pending since 2011.

The 2015 opinion poll that National Democratic Institute conducted has revealed that 19% of the general population in Macedonia think that transgender persons work only in prostitution.

### **Public awareness and attitudes**

In the 2015 progress report, the government was urged to make considerable effort to raise awareness of and respect for diversity within society and to counter intolerance, through public campaigns and training of law enforcement bodies, prosecutors, judges and health workers.

No progress was made concerning this action point. On the contrary, the National Broadcast Television which is financed by the taxpayers' contributions, did not respond to the request from several NGOs to air the *Nation without Discrimination* video campaign as a public interest broadcast.

In the coming year, this action point should be reiterated and also expanded to target the media professionals and education professionals with public campaigns and training on promoting diversity within society and countering intolerance. Also, in the coming year, the government should be urged to make considerable efforts to raise awareness of the harmful effects homophobia and transphobia have to the health and the general wellbeing of LGBTI people.

From June to August of 2015, the National Democratic Institute, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights Defenders carried out opinion polls in the Western Balkans on attitudes towards LGBTI people. In Macedonia, 58% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 61% said they would not vote for a political party that championed the rights of LGBTI people. Only 1% of the general population could correctly answer which social group belongs to the LGBTI group. 61% of the general population agree that homosexuality is an illness, while 14% agree that it is quite right to physically punish homosexuals. 61% of the general population would not vote for a political party that at the same time actively deals with the most important problems in the country but also focuses on protecting and promoting the rights of LGBTI citizens.

The *Survey on SOGI-based bullying among youth* that Subversive Front conducted between October and December 2015, reveals that young LGBTI people are more often exposed to discrimination than their non-LGBTI counterparts, that young LGBTI people tend to conceal important information about themselves, that young LGBTI people experience higher levels of anxiety in social interaction, and that

young LGBTI people are more prone to suffer from depression than their non-LGBTI counterparts.

On 18 April 2016, Subversive Front held the first civil society forum for political participation of LGBTI where representatives of 5 different political parties, all from the opposition, discussed the level of inclusion of LGBTI issues in their political programmes and their past commitments and efforts.

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

LGBTI rights have been discussed and addressed at different civil society forums, and several CSOs have showed solidarity and support to the campaign for equal rights for LGBTI people in Macedonia. On 17 May 2016, for the first time, the representations of the EU and the UN in the country, together with Subversive Front, marked the International Day against Homophobia, Biphobia and Transphobia – IDAHOBIT.

The lack of state support to LGBTI projects and initiatives is evident. There is a lack of dialogue between the LGBTI CSOs and the government. To date there has been no state financial support to any LGBTI project and initiative. At local level, state authorities – police and local self-government units show signs of support within the scope of their mandate (see the example of the 8<sup>th</sup> December March on Human Rights Day in Tetovo).

Local and central government should show initial political will to open the dialogue on LGBTI people's rights with the LGBTI CSOs and activists, and to include them in the consultations on issues related to the mandate the respective government body has. The case of adopting the Protocol by the Commission for Protection against Discrimination, in partnership with the CSOs, shows that the government can be circumvented. However, in the long term, the government should be urged to make significant efforts and show stronger commitment in steps undertaken to improve the status of the LGBTI people in the country.

### **3.5. Contribution from Juventas, Queer Montenegro, ILGA-Europe and ERA to Montenegro's Report 2016**

*Submitted: 31 May 2016*

#### **Summary of key developments and trends**

Despite successes achieved by Montenegrin CSOs and activities taken by the Government during the previous years, LGBT persons in Montenegro still live in a hostile environment, do not enjoy the same rights as their heterosexual peers, and find themselves in a disadvantaged and unenviable position. The situation as stated in earlier reports<sup>4</sup> by CSOs remains the same: enforcement of newly adopted laws is faced with many challenges and is very often far removed from the level of implementation achieved in EU countries. Monitoring of the implementation of the adopted strategic documents shows that state institutions need additional capacities and support in executing activities defined by the action plan in a proper manner<sup>5</sup>.

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

The government should be urged to:

- Establish implementation monitoring mechanisms for the Strategy for the Improvement of LGBT people's Quality of Life, which include CSOs, and ensure that implementation of the Strategy also takes place in the municipalities in the south and north of the country.
- Increase the financial, administrative and human capacities of both the Ministry for Human and Minority Rights and the Institution of the Ombudsman.
- Guarantee freedom of assembly and expression in all municipalities, including Nikšić, and offer adequate protection and public support for LGBT public events.
- Adopt adequate bylaws or a Law on legal gender recognition, as legal gender recognition should be a process without obstacles;

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<sup>4</sup> Montenegro Report on the implementation of the Council of Europe Committee of Ministers' Recommendation CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, NGO Juventas, December 2012

<sup>5</sup> Monitoring of the implementation of the Strategy for improving the quality of LGBT people's lives 2014, NGO Queer Montenegro, February 2015

- Launch awareness and information campaigns to address various professionals: medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision-makers and representatives of the institutions that are involved in protecting LGBT rights;

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

In the 2015 progress report, the government was urged to continue training for the judiciary and the police, among others to reach progress in police investigations into attacks on LGBTI persons.

In the coming year, the government should be urged to

- Monitor and evaluate the situation, as well as the results of the action undertaken to tackle it. This should be conducted by means of systematic data collection, conforming to the commitments made by Montenegro within international institutions such as the Council of Europe;
- Trainings for judges and prosecutors should be conducted;

LGBT people are regularly victims of violence, which is rarely reported. Documented cases of discrimination, harassment, threats and violence witness differentiated practice by the police, prosecution and judiciary, which furthermore proves that capacities and knowledge need to be built upon.

Following the complaint filed by NGO Queer Montenegro against the Serbian Orthodox Church's priest Jovan Plamenac, on the matter of public hate speech against LGBT persons during orthodox New Year celebration at the main square in Podgorica, Protector of Human Rights and Freedoms of Montenegro has concluded that Plamenac's statements contained elements of hate speech against members of the LGBT community and LGBT human rights defenders.

The Ombudsman issued a recommendation for priest Plamenac to make public apology to the LGBT community within 15 days and to refrain from further hate speech against LGBT persons. The Ombudsman also expressed his opinion that “public hate speech is not and cannot be part of any religious doctrine, nor can religious beliefs or religious communities' values be used as justification for hate speech”. This is the first case of an adequate and direct public reaction of the Ombudsman when speaking about hate speech of church officials/representatives.

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

In the 2015 progress report, the government was urged to:

- Amend the law on public gatherings to clarify definitions and define state obligations, in order to guarantee freedom of assembly and association.

- Guarantee freedom of assembly and expression, also regarding LGBTI gatherings in Nikšić.

In the coming year, the government should be urged to:

- Guarantee the right to peaceful assembly as well as ensure adequate protection to LGBT persons and allies;
- Provide conditions for the safe and peaceful organisation of public events (pride marches, cultural events, etc.) in all municipalities in Montenegro;
- Give clear public support of high Government officials to public events (e.g. public statements or their personal participation in the Pride march).

The Montenegro Pride March 2015 was successfully organised by the NGO Queer Montenegro. The Pride was held with no incidents, significantly fewer police officers were on the streets compared to former years and the route was changed. In 2015 the route included streets with buildings around it for the first time.

Having in mind the fact that 2016 will be a year of parliamentary elections in Montenegro, activities and political support related to the organisation of the Montenegro Pride March 2016 and creation of the Draft Law on registered partnership will be issues of particular interest.

The Pride march due to take place in the city of Nikšić was banned for the 3rd time in September 2015. Right to assemble peacefully should be available to everybody in every city in Montenegro.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to:

- Strengthen the overall legislative framework on non-discrimination, notably regarding sanctions, to ensure effective penalties for violations.
- Match progress in the alignment of legislation with an increased institutional capacity, in particular for the fight against discrimination, the prison system and the protection of minorities;
- Fill the vacancies regarding human rights and discrimination in the Ombudsman's department and increase the department's capacity to effectively handle complaints in accordance with its broad mandate
- Introduce an internal review mechanism for complaints to improve the quality of decisions.
- Increase the number of staff of key institutions in charge of human rights policy, including the relevant Ministry, and train existing staff further, particularly on international human rights standards.
- Roll out systematic anti-discrimination campaigns in schools and universities as a matter of urgency.

The Council for protection against discrimination was disbanded in 2016, without the knowledge or any consultation with NGO representatives, or even the Prime Minister's Adviser for Antidiscrimination and Human Rights. The full jurisdiction over the implementation of the Strategy for the improvement of LGBT people's quality of life came to be in the hands of the Ministry of Human and Minority rights.

The process of creation of the Action plan for 2016 started and finished late. The call for proposals of measures was sent beginning of March 2016 and the whole process finished by the end of the same month. Activities defined by the governmental institutions are not proposing any major innovation.

NGO Juventas and Queer Montenegro participated in creating the new Action plan of the Strategy for the improvement of LGBT people's quality of life, and proposed to the Ministry of Human and Minority rights the introduction of measures that are a part of Juventas and partners' projects and funded by various donors. NGO Juventas has governmental institutions as partners in all activities envisaged in the Action plan.

The most concerning issues in this area include the fact that the Ministry of Human and Minority rights lacks capacities and is understaffed, which will make the strategy implementation and implementation monitoring activities especially challenging to perform. CSOs dealing with LGBT human rights are not familiar with mechanisms the Ministry uses in order to do monitoring and evaluate the quality and effectiveness of the activities implemented. The Ministry is designated to implement but also evaluate activities implemented, so it is not clear how the Ministry will evaluate its own work. Furthermore, the cooperation between the Institution of Ombudsman and the Ministry is not on a satisfying level and it influences the final beneficiaries of all activities undertaken in the field of human rights respect.

### **Lack of support for necessary services for LGBT people**

Although the measure of "Providing adequate support and space for the Counselling Centre for LGBT persons (DROP IN CENTER)" was introduced in the Action plan for 2016, NGO Juventas is concerned that it is not going to be implemented as in 2015 no action was taken by the state authorities either. It is important to note that the Counselling Centre for LGBT persons (DROP IN CENTER) is the only specialized counselling and preventive service for LGBT person in Montenegro. It remained functional in thanks to the voluntary efforts of the organisation, but its long-term sustainability is seriously threatened. The main activities of the Counselling Centre for LGBT persons are directed towards ensuring a safe and supportive environment for LGBT individuals as well as providing wider support, which includes primarily strengthening their capacities. These include: main health concerns related to MSM/T population in Montenegro (concentrated HIV epidemics among MSM population, low level of trust of LGBT persons in medical institutions, low HIV testing rate) promotion of healthy lifestyles through educational group sessions, advisory, consultative and educational services of a doctor, expansion of social

network support and empowerment of the LGBT community throughout structured and unstructured activities, web site, groups on social networks, as well as psychosocial support throughout consultative and educational services of a psychologists as well as "peer" counselling services.

### **Education**

Activities implemented in 2015 and the beginning of 2016 in the domain of education included strong cooperation with Ministry of education, the update of "Guidelines for professional services in their work with LGBT adolescents", trainings for professional services (PP services) in high schools (pedagogues and psychologists), consultations in the south and north of Montenegro as well as the implementation of a qualitative research among these professionals.

The aim of this qualitative research was to understand the situation in which LGBT youth finds itself within the school environment and the presence of homo/bi/transphobic violence from the perspective of professionals who work in PP services in high school, in order to formulate conclusions and create recommendations for future actions that should improve the work high schools' professional services and support LGBT youth and their adequate social inclusion.

In-depth interview was the instrument for data collection. The interviews defined several areas of interest of the research process: assessment of the visibility of LGBT people/identities in local communities/ schools; perception of changes that happened in recent years; professional experience in working with LGBT youth; existence/non-existence of physical, psychological violence when it comes to this group of young people; assessment of the atmosphere in the school when it comes to LGBT identities; perception of the role of schools when it comes to providing a safe environment for all students.

The conclusions drawn from the research and all other implemented activities once again confirmed the following; it is necessary to invest additional efforts in human rights education of students and to invest additional efforts in increasing the capacities and sensitivity of PP services, along with teachers and school management.

### **Recommendations regarding equality and non-discrimination**

#### **Legislation and policy**

- Continuous monitoring of harmonization of the Montenegrin legal framework with the needs of LGBT community and international standards should be conducted;
- Strategy implementation monitoring mechanisms should be put in place and functional. It has to include participation of CSOs;
- A system of free legal aid aimed at strengthening LGBT persons to report violence and discrimination should be established.

- The implementation of the Strategy for the Improvement of LGBT people's quality of life should be decentralized and activities should include municipalities in the south and north of the country;

### **Institutions**

- The administrative and human capacities of the Ministry of Human and Minority Rights should be strengthened;
- The administrative and financial capacities of the Institution of the Ombudsman in Montenegro should be strengthened;

### **Research**

- Implement research related to the situation and attitudes LGBT persons encounter in prison and other closed institutions;
- Research in the field of human rights protection, sexuality and gender identity should be promoted and implemented;

### **Awareness among professionals**

- Awareness and information campaigns should be launched to address various professionals: medical workers, police officers, prosecutors, judges, journalists, teachers, social workers, youth workers, representatives of political parties, decision makers, representatives of the institutions that are involved in exercising and protecting LGBT rights;

### **Health care**

- Activities related to the improvement of sexual and reproductive health of LGBT persons should be undertaken;
- Campaigns aiming to sensitise medical professionals in relation to SOGI and unify their attitudes according to internationally recognised and scientifically approved standards should be implemented;
- Providing sustainability for social and health services for LGBT persons should be one of priorities, especially in a situation where the state does not provide specialised interventions and preventive measures in the LGBT community;
- A counselling service for families of LGBT persons should be established;
- Trainings for social workers on sexual orientation and gender identity should be implemented and respective local organisations dealing with LGBT rights enabled to do the same by putting the system of programs' accreditation in function;

### **Labour market**

- Implement activities aiming to sensitize employers in respect to LGBT human rights throughout the promotion of relevant legal solutions and campaigns among the employers;

## **Education**

- Education on human rights, or more specifically sexual orientation and gender identity, should be designed and included in school curricula and programs at all levels of education;
- Trainings for teachers, school psychologists and pedagogues and management in elementary and high schools on sexual orientation and gender identity, as well as domestic and international legislation defining LGBT human rights should be conducted;
- Adopted Guidelines for professional services in their work with LGBT adolescents should be actively promoted in all high schools in Montenegro;
- Anti-bullying Strategy within the Montenegrin educational system should be adopted;
- Monitoring of the implementation of the anti-bullying Strategy within the Montenegrin educational system should be performed.

## **Housing**

- Activities aiming to support emergency housing for LGBT persons experiencing extremely negative relationship with their families in their coming out should be undertaken.

## **Recognised unions**

In the coming year, the government should be urged to:

- Create the Draft Law on Same Sex Partnership;
- Research the attitudes among the general population in respect to LGBT persons' right to private and family life, in order to create adequate and adapted campaigns sensitising the general population for the adoption of respective regulations like the Law on registered partnership.

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

In the coming year, the government should be urged to:

- Legal gender recognition should be a process without obstacles. With respect to this, adequate bylaws or a Law on legal gender recognition should be adopted;
- Implement measures, which would recognise trans persons as a less employable category, therefore prevent these persons engaging in illegal activities like sex work due to transphobia and lack of employment possibilities.

## **Public awareness and attitudes**

In the coming year, the government should be urged to:

- Educational and informational campaigns for the general population should be created and implemented with involvement of opinion makers;

- Adequate preparation (e.g. public opinion polls taken into consideration or implemented) should precede educational and informational campaign in order for the same to be more meaningful and efficient;
- Campaigns to decrease homophobia and promote the acceptance of queer identities and culture should be implemented;
- Campaigns for promotion of human rights should be implemented.

Despite the fact that LGBTIQ issues are more visible, additional and continuing activities implemented by human rights CSOs aiming to increase the visibility of LGBTIQ persons, campaigning among specific target audiences, providing solutions for missing laws and bylaws in the area of family and private life are needed to additionally increase opportunities for LGBT citizens.

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

In the 2015 progress report, the government was urged to improve cooperation between the Ombudsman and LGBTI organisations, as well as cooperation between relevant institutions.

In the coming year, the government should be urged to support NGOs and informal groups that are working on the protection and promotion of the human rights of LGBT people additionally.

### **3.6. Contribution from Labris, Gayten-LGBT and Da Se Zna to Serbia's country progress report 2016**

*Submitted: 9 May 2016*

#### **Summary of key developments and trends**

The vulnerability of trans people in Serbian society was exposed in 2015 when a former army officer was forced to retire when she began to transition. Two explicit hate crimes directed at 4 lesbians and 2 trans persons happened in the reported period without any progress in investigative and legal proceedings. Political support for LGBTI people varied through out the period; hate speech against LGBTI persons is still present in the media, and was also present in both the National Parliament and within the Government. The newly adopted Law on police included gender identity in article 5 and it prohibits discrimination based on this ground. The proposed Law on equality of men and women was withdrawn from the parliamentary procedure after lobbying efforts of women's and LGBTI groups, among other things because it did not include gender identity nor sexual orientation.

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

The government should be urged to:

- Implement the National Strategy (the Action Plan) for prevention and protection from discrimination, to the full extent and in a timely manner;
- Create an effective system for collection of centralized official data on the number of crimes motivated by homophobia and transphobia;
- Ensure proper investigation, prosecution and sanctioning of hate-motivated offences;
- Repeal school textbooks containing discriminatory content.

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

In the 2015 progress report, the government was urged to take action on the following points:

- Ensure proper investigation, prosecution and sanctioning of hate-motivated offences;
- Collect centralized official data on the number of crimes motivated by homophobia and transphobia;
- Address concerns about activities of extreme right-wing organisations and violent groups of so-called football fans.

Little or no progress was made concerning these action points.

In the coming year these action points should be reiterated as well as expanded to include increased collaboration between civil society and law enforcement institutions, and especially with prosecutors and the judiciary. Greater efforts should be made in ensuring comprehensive, large scale mandatory educational programs for police officers, prosecutors and judges, in order to increase expert knowledge on implementation of existing legal provisions and to raise awareness of all competent officials at every level of case proceedings, which involve hate speech and/or hate crime based on sexual orientation, gender identity and sex characteristics.

An opinion poll carried out by the National Democratic Institute in 2015 showed that 23% of the LGBTI people surveyed in Serbia had suffered physical violence because of their sexual orientation or gender identity. The same opinion poll revealed that 72% of the LGBTI people surveyed in Serbia had been verbally harassed or abused because of their sexual orientation or gender identity.

### Cases

A man in a café in Belgrade verbally and physically assaulted four lesbian women on 26 September. Three of the women were injured. One of the women attacked, activist and writer Dragoslava Barzut, called the police. Before assistance arrived, another man joined and attempted to harm the women; they hid in the café's toilet until police arrived at the scene. Two of the women were treated in hospital for their injuries. Speaking at a press conference after the attack, Dragoslava Barzut said that she felt a "...moral responsibility to condemn the lesbophobic attack on my friends and me...". A complaint was filed under the country's hate crime legislation. The attack was also publicly condemned by several MEPs. The case is still pending before the state prosecutor's office, with no progress whatsoever.<sup>6</sup>

In October 2015, two trans persons reported to Gayten that they were attacked in a coffee shop in a southern Serbian city, suffering light body injuries. They filed complaints, and despite their statements indicating transphobia as a motive for attack, and medical record, public prosecutor refused to pursue the case, stating light body injuries as the main reason. The persons who were attacked filed a personal complaint, but later withdraw from the further proceeding due to fear for their safety.

In February 17 2016, a man was beaten up by two men in the centre of Belgrade, while he was returning home with his friends from cinema. As reported, the motive of the attack was assumed sexual orientation.<sup>7</sup>

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<sup>6</sup> <http://www.yih.rs/bhs/drzava-da-privede-i-procesuir-a-odgovorne-za-napad-na-lbgt-aktivistkinju-dragoslavu-i-njene-prijateljice/>

<sup>7</sup> <http://www.021.rs/story/Info/Srbija/129148/FOTO-Pretukli-momka-u-centru-Beograda-jer-su-mislili-da-je-gej.html>

During a parliamentary discussion about the 2009 anti-discrimination law in May, Aleksandar Martinovic MP (Serbian Progressive Party, SNS; centre-right) made several negative remarks about the LGBTI community and affiliated NGOs. Martinovic said that while LGBTI people should have legal rights, he could not understand the need for Pride parades and that such events were against moral norms. In September, proceedings against Martinovic were dropped as the MP had been speaking under parliamentary privilege.

On April 16, 17 and 18, 2016, one of the daily newspapers “Srpski telegraf” published a series of homophobic hate speech front-page articles stating that gay persons are sick and that they are spreading AIDS all over Serbia, while misusing available information, spreading false data and promoting intolerance towards LGBTI persons, as well persons living with HIV/AIDS.

### **Reporting and registration**

On 19 November 2015, CSOs Labris and Gayten-LGBT along with the National Democratic Institute launched a new online portal “Da Se Zna” for reporting violence and discrimination against LGBTI people, which has also resulted in the establishment of a new LGBTI CSO focusing on gathering reports of incidents and also to serve as a resource by keeping track of resolved cases, and providing related services to LGBTI persons.

Serbia regularly reports on hate crimes to ODIHR. Serbia’s Criminal Code contains a general penalty-enhancement provision and a substantive offence. The data reported to ODIHR in 2014, published in 2015, also includes cases of incitement to hatred and other hate speech offences. Serbia’s Prosecutor’s Office collects data on hate crime.

Gayten-LGBT and Transgender Europe reported two physical assaults, one carried out by a group against a transgender woman, causing serious injury, and one against a lesbian on a bus, as well as a threat against a transgender woman. The OSCE Mission to Serbia reported a physical assault against a gay man from Germany.

### **Monitoring discrimination and transphobic hate crimes**

Gayten-LGBT was among five organisations participating in the ProTrans project (2014-2015), coordinated by Transgender Europe. Within this project, organisation Gayten-LGBT has created an online monitoring tool for reporting transphobic incidents and a database for systematic recording of those incidents. Besides the online monitoring tool, data was collected through our LGBTIQ help line, individual consultations and support group. During the project, 24 transphobic incidents were reported. The organisation will continue the monitoring activities in the following period.

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

In the 2015 progress report, the government was urged to:

- Create conditions for the full exercise of freedom of expression
- Ensure full implementation of the new media laws.
- Fully align the public assembly law with the Constitution.

Some progress was made concerning action point three, as new legislation on public gatherings was introduced, while freedom of assembly was fully respected. Action points one and two should be reiterated, as little or no progress was made.

The 2015 opinion poll of the National Democratic Institute revealed that 59% of the LGBTI people surveyed in Serbia felt that Pride parades have improved the position of LGBTI community in society, while 87% of the general population would not personally support organizing Pride Parades. 17% of LGBTI people surveyed think that they would be motivated to support a Pride parade if the state authorities guaranteed the security of all of the Pride parade participants.

The Belgrade Pride parade took place on 20 September 2015, with no major incidents reported. This was the second year in a row that the parade happened in a peaceful manner, after several years of threats of violence that caused the event to be cancelled. Riot police closed down the city centre and approximately 1,100 to 1,200 people marched to the Serbian parliament.

On the same day as the Belgrade Pride, in September 2015, the first ever Trans Pride also took place in Belgrade. In addition, Gayten-LGBT organised a first ever trans, intersex and queer conference, in October 2015.

In April 2016, the country's first ever Lesbian March took place.

## **Equality and non-discrimination**

In the 2015 progress report, the government was urged to:

- Implement the anti-discrimination framework more effectively, promote and protect the rights of persons belonging to the most vulnerable groups (Roma, LGBTI persons, persons with disabilities, and persons with HIV/AIDS) and minorities.
- Make sustained efforts to ensure effective and consistent implementation of human rights legislation across the country and implement the action plan for the antidiscrimination strategy.
- Further align the anti-discrimination legislation, in particular as regards the scope of exceptions from the principle of equal treatment, the definition of indirect discrimination and the obligation to ensure reasonable accommodation for employees with disabilities.
- Ensure non-discrimination at work, in the health sector and the education system
- Ensure that the office of the Commissioner for the Protection of Equality has adequate premises and its capacity is strengthened.

- Strengthen the role of the Office for Human and Minority Rights
- Repeal school textbooks containing discriminatory content

Little progress was made concerning these action points. Relevant state institutions have promised that school textbooks will be revised in line with legal frameworks for the academic year 2016/2017, however it is yet to be seen if this will indeed be enforced. Implementation of the anti-discrimination framework is still largely unsatisfactory and alignment of legislation and adoption of bylaws for implementation has not taken place. Discrimination in employment is still widespread.

In the coming year, the government should be urged to:

- Adopt and implement bylaws to implement the framework against discrimination
- Fully implement National Anti-discrimination Strategy, and effectively monitor its progress
- To create a comprehensive statistical system that would include data on prevalence and nature of discrimination and violence based on sexual orientation and gender identity.
- To conduct regular monitoring and research about the effectiveness of existing laws, when it comes to sexual orientation and gender identity.
- Ensure non-discrimination at work, in the health sector and the education system
- 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, gender identity and sex characteristics.
- Repeal school textbooks containing discriminatory content

An opinion poll that was carried out in 2015 by the National Democratic Institute has shown that 51% of the LGBTI people surveyed in Serbia had been personally discriminated against because of their sexual orientation or gender identity. In addition, it was also shown that the areas where discrimination happens the most is employment (24%) and police protection (19%).

Despite an appropriate legal framework against discrimination, laws are not implemented efficiently enough, and one of the reasons is the lack of bylaws or delay in their adoption and entry into force. The lack of sufficiently effective and efficient legal mechanisms against discrimination leads to a small number of processed cases, thereby discouraging the already small number of victims who report cases of discrimination.

### **Implement the action plan for the antidiscrimination strategy**

In 2015 and 2016, Labris initiated the process of monitoring the implementation of the Strategy for prevention and protection from discrimination (2013-18) and the related Action Plan for its implementation (2014-18), which resulted in a shadow report.

The report on monitoring the implementation of the Action Plan for the implementation of the Strategy of prevention and protection against discrimination from 2014 to 2018 includes the fourth quarter 2014 and first quarter of 2015 and is based on questionnaires completed by departmental institutions that carried out certain activities. The institutions responsible for implementation of the envisioned activities did all in their jurisdiction to implement activities, but some of them were just transferring the responsibilities from one to another. Products that were developed were not accessible to the civil society organisations, while the quality of the activities undertaken by state institutions was not high.

Labris made these recommendations:

#### ***Civil society***

- *Civil society should be more involved in the processes of monitoring and evaluation of all public policies, including ("mainstreaming") specific problems LGBT people and proposing clear and effective measures to overcome these problems.*
- *Multiple discrimination - the intersection of discrimination on various grounds such as ethnicity, education, disability, sexual orientation and so on - should be one of the all-pervasive themes that are the focus by all civil society organisations, regardless of the primary target group.*

#### ***National institutions***

- *It is necessary to establish an efficient and sustainable system of monitoring the implementation of strategic documents, enabling independent evaluation of the effects of implemented measures with SMART indicators (quantitative and qualitative) for each social group in particular.*
- *Responsible institutions, which enforce the law and implement strategic documents, must continuously improve the skills of monitoring, implementation and reporting. The manner of reporting on implementation of the public concerned by the relevant institution must be clear, comprehensive and specific by referring to the specific target group with specific activities that were implemented.*
- *National institutions should enable the participation of civil society in creation of public policies at all stages of the process with respect to the direct experience of working with a particular social group.*

### **Local institutions**

- *Establish a binding multi-sectoral cooperation among institutions at local level, with the exchange of good practice and continuous improvement. Existing models of networking - teams for combating violence and others - should be expanded with representatives of LGBT organisations to represent the interests of social groups.*
- *Local institutions must respond more effectively to cases of discrimination and sanction them, thus continuously sending the message that discrimination on all grounds is socially unacceptable behaviour.*
- *Local governments must identify and strategically fight discrimination through preparation of a local strategy or amendment of existing local strategies and through operational and budgeted action plans with measures against discrimination of LGBT people.*

### **Textbooks**

In response to a letter from CSO Labris, the Institute for the Advancement of Education confirmed in August 2015 that all school texts aged 20 years or older would be revised in line with legal frameworks in 2016. The Ministry of Education assured Labris that books without discriminatory content related to LGBT people would feature on the 2016/2017 curricula. It is yet to be seen if this will indeed be enforced.

### **Recognised unions**

In the coming year, the government should be urged to:

- Ensure that provisions allowing legal recognition of same-sex partnerships are included in the new Civil Code
- Take concrete steps towards adopting a comprehensive same-sex partnership law

Same-sex couples are completely invisible in the Serbian legislation and other measures. Problems and situations faced by same-sex couples are ignored by the state as though same-sex couples do not exist, leaving such couples in a discriminatory position compared to different-sex couples (both married and unmarried) in respect to social security, health insurance, pension, inheritance, parenting, etc.

As far back as 2010, LGBTI CSO Labris has initiated discussions about legal recognition of same-sex unions and a draft law has been made and proposed to relevant state institutions, however no progress in regards to activities of the state has been made so far.

Even though activities and measures around legal recognition of same-sex unions have been included in the state Action Plan for the implementation of the Strategy of Prevention and Protection Against Discrimination (2014 to 2018), relevant

competent bodies have failed to implement necessary steps toward legal recognition of same-sex unions.

In the draft Civil Code, which is currently in the process of public debate, same-sex unions are only mentioned in a footnote, which suggests that this issue should be discussed further, while taking into account different opinions, attitudes and arguments. Excluding same-sex unions from the draft text of the Civil Code is indicative of the state's reluctance to regulate this issue.

An opinion poll that was carried out in 2015 by the National Democratic Institute has shown that 89% of the general population in Serbia finds same-sex marriage unacceptable. However, when it comes to rights arising from registered partnerships, (such as property, inheritance, visiting rights in hospitals, rights to social security and unemployment benefits, etc.) an average of 35% of the general public has a more favourable opinion.

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

In the 2015 progress report, the government was urged to introduce procedures for legal gender recognition. No progress was made concerning this action point.

In the coming year, the government should be urged to:

- To adopt legislation that would regulate gender reassignment processes and legal recognition, as well as legal regulation of medical aspects of the gender reassignment processes.
- To build intersex anti-discrimination legislation in addition to other grounds, and to ensure the provision of all human rights and citizenship rights to intersex persons.
- To end non-consensual sterilisation of trans and intersex persons.
- To ensure that all professionals and state officers that have a role to play in trans and intersex person's wellbeing are adequately trained to provide quality services and that relevant protocols of procedure are in place.
- To introduce continuous trainings and other educational programs about sexual orientation, gender identity and sex characteristics for employees of the Ministry for Internal Affairs, prosecutors and judges.

Even though gender reassignment is allowed, it is completely unregulated by law, making legal recognition of the change highly variable, uncertain, depending on arbitrary decisions and variable procedures by relevant officials, which often take a great deal of time and involve different kinds of humiliation and abuse.

The rights of trans persons are particularly violated in the area of employment, as there are no state measures to protect them, coupled with extremely inefficient

processes of legal recognition and change of documents, which can last up to a year, during which time the person cannot find employment and is at high risk of poverty and homelessness.

Very comprehensive Gender identity Law was prepared by LGBTI CSO Gayten in 2013 and introduced to the relevant state institutions, urging them to adopt the law, however no progress has been made so far.

In 2016, Gayten has initiated different activities regarding the position of intersex persons, and first dialogues with medical professionals have started, which will be followed by discussions with relevant state institutions, both at the national and local levels, with the main aim to change the procedure according to which immediate registration of a new born child as male or female is needed, so as to bring an end to unnecessary, detrimental and non-consensual medical practices such as genital surgeries, psychological and other medical treatments, which are denying intersex persons rights to their own bodily integrity, physical autonomy and self-determination.

### **Public awareness and attitudes**

In the 2015 progress report, the government was urged to show greater political commitment to promoting a culture of respect for LGBTI persons. Little or no progress has been made in this regard.

In the coming year, the government should be urged to:

- To conduct regular and large scale media campaigns to end homophobia and transphobia in the Serbian society.
- To conduct regular research about levels of acceptance / hostility towards LGBTI persons.
- To end homophobic and transphobic hate speech made by state representatives
- To show public commitment to promoting a culture of respect for LGBTI persons
- To ensure participation of high-level state representatives at Pride events

Even though the anti-discrimination legislative framework of the Republic of Serbia is well developed, implementation of such laws remains largely unsatisfactory, and the gap between legislation and the lived realities of LGBTI persons is wide.

Homophobia and transphobia still persist at worrisome levels. Levels of knowledge and awareness of the general public about LGBTI identities are very low.

The opinion poll that was carried out in 2015 by the National Democratic Institute on attitudes towards LGBTI persons has shown that 48% of the general public said

that they would try to help their children find a cure if they found out that their child was not heterosexual, while 12% condone physical punishment of LGBTI persons, while 20% of the general population think that homosexuals are no different than criminals, and should be severely punished. 66% of the general population still think that homosexuality is an illness, while 78% that homosexual persons should only exhibit their sexuality within their home. In addition, 64% said that they would not vote for a political party that would aim to improve the position of LGBTI persons. Only 7% of the general population know what LGBTI identities are.

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

In the coming year, the government should be urged to:

- Enable greater involvement of LGBTI CSOs in the processes of developing, implementing and monitoring and evaluation of all public policies, including ("mainstreaming") specific problems and needs of LGBTI persons;
- Secure and make available adequate resources for supporting financial sustainability of LGBTI CSOs.

Cooperation between LGBTI CSOs and state authorities remains low, in many respects. LGBTI CSOs are either not involved and consulted in the policy related processes at all, or are only included in later stages, with no meaningful opportunities for influencing policy change. Availability of state funding for LGBTI CSOs remains at a symbolic level, and has no impact on the improvement of financial sustainability of LGBTI CSOs, which particularly affects those organisations providing legal, psychological and social services to LGBTI persons in need, which are not adequately provided by the state.

### **3.7. Contribution from Kaos GL, SPoD, Pembe Hayat, ILGA-Europe and ERA to Turkey's Report 2016**

*Submitted: 18 May 2016*

#### **Summary of key developments and trends**

2015 has been a year that can be considered as a step back in terms of the rights of LGBTI people in Turkey. During 2015, hate speech against LGBTI people was more prominent than previous year; in the campaigns for the general elections in June 2015 many politicians, including the President and some ministers, used discriminatory language or hate speech against LGBTI people by targeting mostly an openly gay candidate. There have been several attacks and bans on the freedom of assembly of LGBTI people. No steps have been made to prevent homophobic and transphobic hate crimes and discrimination against LGBTI people. Turkey's Human Rights and Equality Law, that does not include discrimination based on sexual orientation and gender identity, was issued in the Official Newspaper of State. The law that was negotiated and accepted on 6th of April in Turkish Grand National Assembly has officially come into force with the approval by President. Hate crime against the community, especially against trans people, is still a grave worry.

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

The government should be urged to:

- Include the terms “sexual orientation” and “gender identity” in constitutional clauses on equality and non-discrimination, as well as in hate crime legislation.
- Develop a plan to adopt a legal framework for the protection of LGBTI people and to prevent homophobic and transphobic hate crimes and discrimination.
- Take all administrative measures, both on the national and local level, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection to LGBT people in Turkey.
- Conduct full and independent investigations into all allegations of harassment, violence or abuse of LGBT individuals, and prosecute perpetrators.
- Develop a plan to improve conditions for LGBTI prisoners in cooperation with the Ministry of Justice

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

In the coming year, the government should be urged to:

- Add the terms ‘sexual orientation’ and ‘gender identity’ to hate crime legislation;
- Stop discriminatory language and hate speech against LGBTI people by politicians;
- Systematically collect and track information on hate crimes;
- Give training to police officers and prosecutors on hate crime against LGBTI persons;
- Promote reporting of incidents of violence, attacks and threats towards LGBTI persons;
- Stop impunity for the court cases for LGBTI murders.
- Regulate the arbitrary interpretation of “unjust provocation”.

In the general elections of 2015, several LGBTI people were candidates, which prompted hate speech by several media institutions. Some homophobic and transphobic posters appeared on the streets of Ankara, including a call to kill LGBTI people by the members of the Young Islamic Defence in Ankara. Moreover, an important hate crime case, that of Ahmet Yıldız, has remained open for 8 years with no developments so far.

In July, LGBTI activist and chair of the Red Umbrella Organisation Kemal Ördek was raped and robbed at her home in Ankara. Two men entered Kemal’s home; one of them raped Kemal and the other took her mobile phone. When she told the police about the incident, the officers were aggressive towards her. At the police station, she was told to drop charges and officers also did not believe the rape allegation. The two assailants continued to contact Kemal via phone after their release.

A young trans woman and a sex worker living in Avcılar, Istanbul, first became the victim of the Meis Site hate campaign against trans women where she was living and working. Later, she became target of a mob forcing trans sex workers to pay “protection money”.

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

In the coming year, the government should be urged to:

- Improve the institutional and political environment to create conditions for full freedom of expression;
- Ensure the security of parades and demonstrations for freedom and equality by the LGBTI movement as well as ensure freedom of assembly in general.
- The law regulating the right to association should be revised and improved in order to enable an easier access and less bureaucratic procedure for LGBTI initiatives, especially trans self organisations.

In the last year, there have been attacks by religious groups against assemblies by LGBTI organisations in Bursa in July 2015 and in Diyarbakır in April 2016. Both of the events were subject to a hate campaign started prior to the event. An event organised by the LGBTI organisation in Adana in January and the 13th İstanbul Pride were banned by the Governor's Office and attacked by the police.

The police attacked the Istanbul LGBTI Pride Parade with tear gas, pressurised water, and plastic bullets. Many people were injured. Protesters were taken into custody and journalists were assaulted. Parliamentarians from HDP [People's Democratic Party] and CHP [Republican People's Party] resisted police violence hand in hand. Despite the police attacks that continued throughout the day, the rainbow flag was waved in all the streets of Beyoğlu.

Keskesor LGBT, an LGBT organisation based in Diyarbakır, planned to have a panel and assembly which had to be cancelled as a result of an LGBT homophobic and transphobic hate campaign by Hüda-Par, an Islamist pro-Kurdish party.

Pembe Hayat organised a football match on 6 March 2016 as part of their International Sex Workers' Day events to raise awareness. The mediary firm running the football field inside Ankara University, Cebeci, cancelled the agreement and told Pembe Hayat that they did not approve of such kind of an event by transvestites.

On March 24 and 25 2016, the Youth Films Festival took place in the Bülent Ecevit University. Kaos GL organised the event "Love Zeki Müren / Gender and Discrimination" with a gay singer on the panel on the second day of the festival. The authorities of the university cancelled the event for morality reasons.

On the 4th of May, SES (Union for Health and Social Services Workers) organised an event on "Accessing Social Services for LGBTI people". Hospital staff tore up the poster for that event.

Kaos GL Association was targeted by ISIS. A military institution, Gülhane Military Medical Academy's intelligence document that shows ISIS's threat to Kaos GL was spread on social media. Kaos GL Association made written applications to Governorship of Ankara, Provincial Police Department, Prime Ministry and General Staff of Turkish Armed Forces after the GATA document. . The Association is awaiting a response from the General Staff of Turkish Armed Forces and the Prime Ministry.

## **Equality and non-discrimination**

In the coming year, the government should be urged to:

- Develop the capacities of the bar associations on anti-discrimination legislation on the ground of gender identity and sexual orientation;

- Introduce an effective free legal aid system to guarantee efficient access to justice;
- Develop a systematic procedure of reporting and monitoring of human rights violations based on sexual orientation, gender identity and sex characteristics.

Turkey's Human Rights and Equality Committee Law, which does not include discrimination based on sexual orientation and gender identity and discriminates against LGBTI people itself, was issued in Official Newspaper of State. The law was negotiated and adopted on the 6th of April in the Turkish Grand National Assembly and officially came into force with the approval of the President.

During Turkey's UPR session at the UN Human Rights Council in Geneva, Deputy Prime Minister Bülent Arınç (AKP) stated that the lack of any legal protection for LGBTI people did not mean that their rights were ignored. A final report under the UN's Universal Periodic Review process was adopted for Turkey.

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

In the coming year, the government should be urged to:

- Pass a law that allows trans people to undergo a gender reassignment procedure without demands of sterilisation, unmarried status, and other discriminatory points of the Civil Code.
- Introduce legal regulations to recognise the preferred gender identity based on self-determination
- Apply the ECHR decision on Y.Y. vs. Turkey case to reform Article 40 of Turkey's Civil Code
- Develop inclusive social policies and national employment strategies in order to provide equal opportunities in social services, benefits and employment opportunities for trans and intersex persons
- Report and monitor a nationwide consensus on school drop-outs of trans and intersex children; hence, to come up with national strategies about how to solve the relevant problems
- Apply European Directives on Goods and Services, and Employment to provide equal access and treatment, also for trans and intersex persons
- End arbitrary implementation of the Misdemeanour Act Law against trans persons

Trans and intersex individuals face hardships in accessing health care due to discriminatory attitudes of the hospital staff. In a legal case concerning discrimination in access to health care against trans individuals, a doctor refused to examine a trans woman patient because of her gender identity. There has been no investigation into the doctor's conduct, but the victim was punished for allegedly insulting the doctor. An intersex person was also faced with ill treatment and discrimination when they applied to be examined for a physical ailment. Finally, a

trans individual was refused by the university from which he graduated, when he asked them to reissue his diploma with his new name. He filed a complaint against the university's decision, but the court upheld it. He cannot practice his profession due to this.

The Turkish Constitutional Court will review the country's Article 40/2, which requires trans people to undergo gender reassignment surgery in order to get legal recognition of their gender identity.

According to a judgment by the Supreme Court in 2014, apart from 'sexual intercourse by the connection of a man and woman's genitals', all other sexual intercourse types are identified as unnatural.

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

One more municipality, Nilüfer from the city of Bursa, which had been helping the local LGBTI community and organisation signed SPoD's pledge of LGBTI-friendly municipalities. The municipalities that already signed SPoD's pledge, such as Şişli, Beşiktaş, Akdeniz and Kadıköy, developed their services and policies aiming at LGBTI equality.

More LGBTI activists participated in decision-making at the local level. LGBTI persons are increasingly represented in city councils, and some municipalities are opening stable institutions for equality on gender identity and sexual orientation, such as the Equality Units in Şişli, Beşiktaş and Çankaya municipalities.