Anti-Discriminatory Normative Framework in Serbia in the Field of LGBT rights

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I Normative framework for protection of LGBT rights in the Republic of Serbia

When it comes to LGBT rights in Serbia and their recognition in the national regulatory framework, some authors state that 2005 was a turning point for the issue of explicit prohibition of discrimination based on sexual orientation[1] because four laws that include sexual orientation as prohibited grounds for discrimination were passed that year: Law on Higher Education, Law on Public Information, Law on Broadcasting and Labour Law. Today, such explicit provisions are contained in at least 12 general laws, as well as special laws regulating certain areas of social life. In addition, interpretation of "other personal characteristics" as a basis for discrimination causes LGBT people to receive wide protection even if sexual orientation is not explicitly mentioned as a basis.

1. Umbrella legislation for protection of human rights

In addition to generally accepted rules of international law and ratified treaties that form our internal law, human rights and minority rights and freedoms are explicit parts of our legislative framework and they are guaranteed by the supreme legal act of the Republic of Serbia.

1.1.Constitution of the Republic of Serbia[2]

The Constitution of the Republic of Serbia identifies universally adopted rules of international law and ratified international treaties as integral to the legal system of the Republic of Serbia and that they directly apply. However, they have to be in line with the Constitution[3].

The Constitution guarantees, and as such, directly implements human and minority rights guaranteed by generally adopted rules of international law, ratified international treaties and laws. The law may prescribe the **manner of exercising** these rights only if it is expressly provided by the Constitution or if it is necessary to exercise a specific right due to its nature, whereby the law in any case should not affect the essence of the guaranteed right. Provisions on human and minority rights shall be **interpreted in favour of promoting values** of a democratic society, in accordance with international standards and the practice of international institutions that supervise their implementation.[4]

The purpose of these constitutional guarantees is to preserve human dignity and provide for full liberties and equality for every individual of the society.[5] The Constitution also provides that the level of human and minority rights may not be lowered, and that laws may restrict them only if so allowed by the Constitution, and for the purposes allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a

[1] Dr Zorica Mršević, Pravni i institucionalni okviri nasilja prema istopolno orijentisanim osobama u: Istraživanje o nasilju nad LGBTIQ populacijom u Srbiji, Labris – Organisation for Lesbian Human Rights, Belgrade, 2006

[2] Official Gazette of RS, issue no. 98/2006

[3] Article 16 of the Constitution of the Republic of Serbia

[4] Article 18 of the Constitution of the Republic of Serbia

[5] Article 19 of the Constitution of the Republic of Serbia

democratic society and without affecting the essence of the guaranteed right.[6]

The Constitution guarantees **equality** before the Constitution and the law and the right to equal legal protection, without discrimination and **prohibits any discrimination on any grounds**, without specifying sexual orientation in particular[7]. The corpus of rights guaranteed by the Constitution is very comprehensive. In the context of discrimination, there are also important provisions relating to the **support and appreciation of differences**, as well as the ban on incitement to racial, national, and religious hatred.[8] The Constitution guarantees: the right to dignity and free personal development[9]; right to life[10]; inviolability of physical and mental integrity[11]; right to freedom and safety;[12] rights in the event of detention;[13]right to equal protection of rights and to legal remedy.[14]The Constitution also guarantees: freedom of opinion and expression[15], freedom of assembly and freedom of association,[16] the right to property, inheritance, to work, to education;[17] the right to legal aid, the protection of physical and mental health.[18]The Constitution guarantees special protection of the family, the mother, the single parent and child,[19]equality of men and women [20] and foresees that **everyone has the right** to freely decide whether to get married or divorced[21], and that everyone has the right to freely decide whether to have a child.[22]

1.2.Anti-Discrimination Law[23]

The necessity of passing a special organic law resulted from the fact that it was necessary to develop a number of specific articles of the Constitution relating to the prohibition of discrimination, as well as from the fact that a number of special laws enacted before the adoption of the Law on prohibition of discrimination contained in itself

6 Article 20 of the Constitution of the Republic of Serbia

7 Article 21 of the Constitution of the Republic of Serbia

8 Articles 48-49 of the Constitution of the Republic of Serbia

9 Article 23 of the Constitution of the Republic of Serbia

10 Article 24 of the Constitution of the Republic of Serbia

11 Article 25 of the Constitution of the Republic of Serbia

12 Article 25 of the Constitution of the Republic of Serbia

13 Articles 28-35 of the Constitution of the Republic of Serbia

14 Article 36 of the Constitution of the Republic of Serbia

15 Article 46 of the Constitution of the Republic of Serbia

16 Articles 54-55 of the Constitution of the Republic of Serbia

17 Articles 58-60, Article 71 of the Constitution of the Republic of Serbia

18 Article 68 of the Constitution of the Republic of Serbia

19 Article 66 of the Constitution of the Republic of Serbia

20 Article 15 of the Constitution of the Republic of Serbia

21 Article 62 of the Constitution of the Republic of Serbia

22 Article 63 of the Constitution of the Republic of Serbia

23 Official Gazette of RS, issue no. 22/2009

particular, individual and unrelated legal norms due to which the prohibition of discrimination in Serbia was not successful.[24]Anti-Discrimination Act (2009) is the first organic law which introduces a general prohibition of discrimination in a thorough manner, the prohibition of all forms of direct or indirect discrimination, as well as methods of protection against discrimination. The law defines discrimination, describes severe and specific forms of discrimination and establishes the function of the Commissioner for the Protection of Equality as an autonomous state body, independent in performing the tasks under this law.

Sexual orientation and gender identity are explicitly covered by this law as prohibited grounds for discrimination.[25]Provoking and inciting inequality, hatred and intolerance based on sex, gender identity or sexual orientation are considered **severe forms of discrimination**.[26]

The Law explicitly states that sexual orientation is a private issue, and that no one can be asked to publicly declare their sexual orientation. On the other hand, everyone has the right to declare their sexual orientation, but any discrimination due to such declaration is prohibited.[27]

Anti-Discrimination Law prohibits **hate speech**, i.e. the expression of ideas, information and opinions that incite discrimination, hatred or violence against persons or group of persons because of their personal traits, in the media or other publications, at gatherings and places accessible to the public, by writing or displaying messages or symbols, or in any other way.[28]

Adoption of the Law on Prohibition of Discrimination has not stopped the need to adopt other specific laws, regulations or standards on discrimination in specific sectoral laws, e.g. those relating solely to some of the particularly vulnerable social groups, as has already been done by adopting the Law on Prevention of Discrimination against Persons with Disabilities.[29]

1.3.Law on Gender Equality of the Republic of Serbia[30]

Law on Gender Equality of the Republic of Serbia (2009) regulates the issue of **gender-based** discrimination as any unjustified discrimination or unequal treatment, or omission (exclusion, restriction, or preference) which has the purpose or effect to hinder, jeopardize, prevent, or negate recognition and exercising of human rights and freedoms of individuals or groups of individuals in political, economic, social, cultural, civil, family-related or some other aspect of life. However, this Law does not identify the need to pay attention to differences in women that make

[24] Dr Dejan Milenković, Vodič kroz Zakon o zabrani diskriminacije, Helsinki Committee for Human Rights in Serbia, Belgrade 2010

[25] Article 2 of the Anti-Discrimination Law, Terms

[26] Article 13 of the Anti-Discrimination Law, Severe forms of discrimination

[27] Article 21 of the Anti-Discrimination Law, Discrimination based on sexual orientation

[28] Article 11of the Anti-Discrimination Law

[29] Official Gazette of RS, issues no. 33/2006 and 13/2016.

[30] Official Gazette of RS, issue no. 104/2009

them vulnerable to discrimination, such as their sexual orientation.[31] The very title of the law speaks of his gender neutrality - it concerns only the issue of the relationship between men and women. The law does not recognise differences amongst women themselves, and **does not include the issue of gender identity and sexual orientation**. Moreover, the Law did not show any practical application, primarily because it does not contain any monitoring mechanisms, and for most of the provisions envisaged, no sanctions for violation thereto are foreseen; that leads to the conclusion that these provisions have the character of recommendations rather than legally binding norms.

Adoption of the new law had been announced for years, but the process was stopped in early 2016 when a new draft law on equality between women and men was halted because it did not contain functional provisions and because the title was changed from the "Law on Gender Equality" to "Law on Equality between Women and Men"[32].

2. Safety

2.1.Criminal Code of the Republic of Serbia[33]

With amendments to the Criminal Code that came into force in January 2006, Serbia adopted universal minimum age for engaging in sexual intercourse of any kind, and introduced full decriminalization of voluntary sexual intercourse between adults[34].

Amendments to the Criminal Code in 2012 **introduced sexual orientation as one of the special circumstances in sentencing for hate crime. In fact, if the offence was committed out of hatred** because of race and religion, nationality or ethnicity, gender, **sexual orientation or gender identity of another person**, it will be treated by the court as an aggravating circumstance, unless it is defined as an element of that particular criminal offence.[35]

The Criminal Code foresees the criminal offence of Racial and Other Discrimination,[36]which is punishable with a prison sentence from six months to five years for those who **are in breach of guaranteed human rights** and freedoms based on any difference in any of the personal traits. The same sentence is prescribed for **hassling organisations or individuals** because of their activism concerning equality.

Distribution of texts, images, or any other representation of ideas or theories advocating or inciting hatred, discrimination or violence against any person or group of persons based on any **personal trait**, is punishable by imprisonment from three months to three years (**hate speech**). The same sentence is prescribed for public threats of criminal offence against individuals or groups because of some of their personal traits.

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[31] Senka nad Srbijom (Shadow over Serbia), Report by NGOs for the 55th meeting of the CEDAW Committee, Autonomous Women's Centre ASTRA Žene u crnom Labris Glas razlike, Belgrade 2013, available at http://www.womenngo.org.rs/images/CEDAW/2013/Senka_nad_Srbijom.pdf

[32] Find more at http://www.womenngo.org.rs/vesti/436-stopiran-los-predlog-zakona-iz-skupstinske-procedure-povucen-predlog-zakona-o-ravnopravnosti-zena-i-muskaraca

[33] Official Gazette of RS, issues no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014

[34] Dr Zorica Mršević, Pravni i institucionalni okviri nasilja prema istopolno orijentisanim osobama u: *Istraživanje o nasilju nad LGBTIQ populacijom u Srbiji*, Labris – organizacija za lezbejska ljudska prava, Belgrade, 2006, page 51

[35] Article 54a of the Criminal Code, Special Circumstances for sentencing in case of hate crimes

[36] Article 387 of the Criminal Code, Racial and Other Discrimination

These provisions of the Criminal Code with explicit norms can be used directly for protection of the rights of LGBT persons, however, the criminal code can be used much more widely, meaning that at least 50 crimes can be applied directly, without any changes to protect LGBT rights (criminal offences against life and body, against the rights and freedoms of a man and citizen, against sexual freedom, against honour and reputation, against marriage and family, against labour rights, health, etc.).[37]

2.2.Act on Enforcement of Penal Sanctions[38]

This law prohibits discrimination of persons subject to penal sanctions. These persons shall not be discriminated on grounds of race, colour, sex, language, religion, political or other convictions, ethnic or social origin, financial status, education, social or other personal status.[39]

2.3.Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles[40]

This law includes specific provisions on protection of child and juvenile criminal offenders, but also special provisions on protection of child and juvenile victims in criminal proceedings.[41] Minors subject to criminal sanctions are **equal regardless of** race, colour, sex, religion, political or other opinion, national, ethnic or social origin, financial status, status acquired by birth, or other status of the child, their parents, adoptive parents or guardians, **as well as other forms of dissimilitude.** [42]

2.4.The Police Law[43]

The new Police Law (2016) explicitly **prohibits any discrimination based on sex, gender, or gender identity**[44]. This provision indicated progress made in treatment of transgender and transsexual persons by the authorities, since they are a sensitive category of population on many levels, and their rights are often jeopardized and denied. However, the downside of this law is the fact that it **does not contain any provisions prohibiting discrimination based on sexual orientation.**[45]

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37 Istraživanje o nasilju nad LGBTIQ populacijom u Srbiji, Dr Zorica Mršević, Pravni i institucionalni okviri nasilja prema istopolno orijentisanim osobama, Labris – Organisation for Lesbian Human Rights, Belgrade, 2006

38 Official Gazette of RS, issue no. 55/2014

39 Article 7 of the Act on Enforcement of Penal Sanctions, Anti-Discrimination Clause

40 Official Gazette of RS, issue no. 85/2005

41 Article 1 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles

42 Article 88 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles

43 Official Gazette of RS, issue no. 6/16

44 Article 5 of The Police Law

45 Regular Annual Report of the Ombudsman for the year 2015, Belgrade, March 2016

The Police Law explicitly prescribes that the police shall develop **professional capacities, competence, and ethics of police officers** for socially responsible activity of the police force **with full respect for human and minority rights and freedoms, and protection of all vulnerable groups**.[46]

When performing police duties defined by the Law, the Police shall apply set and achieved standards of police conduct, taking into consideration internationally recognised standards of conduct concerning the following: duty to serve citizens and the community; responding to needs and expectations of citizens; obeying laws and fighting against illegal actions; **providing for exercising of human and minority rights and freedoms; non-discrimination** in performing police tasks; appropriate use of force; prohibition of torture and inhumane or humiliating actions; providing assistance to those in need; acting professional and with integrity; protecting of confidential data; obligation to disobey any illegal orders and to report corruption.[47]

In addition to the Police Law, activities of police officers are regulated by a series of bylaws, including, inter alia, the following:

2.4.1. **Police Code of Ethics** [48] foresees that the police shall take care of the special needs **the witnesses** may have, that it shall implement rules to protect them and support them during the procedure, especially in cases when there is a risk of the witness being intimidated. The police, **without any discrimination, provides full support, assistance and information to victims of crime.**[49] In addition, the Code regulates the issue of admission to police service based on **objective and non-discriminatory conditions for admission**, aiming to admit men and women from different social groups, with a final goal to have police force that represents the actual structure of the society they serve.[50]

2.4.2. **Special Protocol on Conduct of Police Officers in Protection of Minors from Abuse and Neglect**[51] provides for the conduct of the police towards minors without discrimination, regardless of their family status, ethnic background, criminal and legal status, and any other social or individual characteristic or trait (race, colour of skin, sex, language, religion, nationality, mental, physical or other specifics) of the minor and their family, or a family member.

[46] Article 27 of The Police Law

[47] Article 33 of The Police Law, Standards of Police Conduct

[48] Official Gazette of RS, issue no. 92/2006

[49] Article 41 of the Police Code of Ethics

[50] Article 23 of the Police Code of Ethics

[51] http://www.paragraf.rs/propisi/posebni_protokol_o_postupanju_policijskih_sluzbenika_u_zastiti_maloletnih_lica_od_zlostavljanja_i_zanemarivanja.html

2.4.3. Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women[52] defines gender-based violence as a form of discrimination against women according to relevant international standards. Discrimination involves any act that causes harm or suffering of physical, mental or sexual nature, threats with such actions, coercing, and other forms of limiting freedom.

Perception of LGBT community members in the security sector has been subject to extensive research[53], and there are many **analyses of treatment by public authorities in circumstances of attack on LGBT persons in Serbia as cases of hate crime**[54]. Research and analyses, as a rule, are conducted by civil society organisations, and they should be taken into account by public authorities in drafting policies and amending laws concerning human rights of these persons.

2.5.Law on Personal Data Protection [55]

This law regulates particularly sensitive personal data that, as such, must be protected.[56] The law stipulates that data relating to, among other things, **sex, victim of violence, conviction for a criminal offence, and sex life** may be processed based on voluntary consent of the person, except when the processing is prohibited by the law despite the consent. Any such processing of personal data must have special designation and protection. Access to such data and the right to check legitimacy of processing of such data is granted to the Commissioner for Information of Public Importance and Personal Data Protection, acting in official capacity, or if requested by the person subject to the data, or the person handling the data.

2.6.Law on Public Assembly[57]

Since the right to assemble is one of the most contentious rights of the LGBT community in Serbia, adoption of this law was supposed to regulate the manner of exercising this right guaranteed by the Constitution. The Law on Public Assembly (2016) regulates public assemblies in the Republic of Serbia,[58] stipulates that peaceful assembly is allowed and that anyone has the right to organise assembly and take part in it, in line with the law[59]. Assembly is defined as gathering of more than 20 persons for the purpose of expressing, exercising and promoting national,

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[52] http://www.sigurnakuca.net/upload/documents/PlaviTekst.pdf

[53] LGBT populacija i reforma sektora bezbednosti u Republici Srbiji, Organization for Security and Co-operation in Europe, OSCE Mission to Serbia and the Public Policy Research Centre Belgrade, 2011 http://www.publicpolicy.rs/documents/7c1076128bd959d386a4f0f318f9c38fefbf2fa2.pdf

[54] ZLOČINI IZ MRŽNJE Postupanje državnih organau slučajevima napada na LGBT osobe u Srbiji, Labris – Organisation for Lesbian Human Rights, Belgrade, 2015

[55] Official Gazette of RS, issues no. 97/2008 and 104/2009 - state law, 68/2012 - Constitutional Court Decision and 107/2012

[56] Article 16 of the Law on Personal Data Protection, Particularly Sensitive Data

[57] Official Gazette of RS, issue no. 06/2016

[58] Article 1 of the Law on Public Assembly

[59] Article 2 of the Law on Public Assembly

political, social and ethnic beliefs and goals, other freedoms and rights in a democratic society. Assembly includes other forms of gathering for the purpose of exercising religious, cultural, humanitarian, sports, entertainment and other interests.[60] The Law stipulates a series of situations **when public assembly is not allowed:**[61]

1) when there is a threat to safety of people and property, public health, moral, rights of others, or safety of the Republic of Serbia;
2) when the goals are aimed at calling for or inciting armed conflict or violence, breaching of human and minority freedoms and rights, or calling for or supporting racial, ethnic, religious, or some other inequality, hatred and bigotry;
3) when there is a risk of violence, destruction of property, or other forms of major public disorder;
4) if the gathering event is contrary to provisions of this law.

2.7. Law on Prohibition of Neo-Nazi or Fascist Organisations and Associations and Prohibition to Use Neo-Nazi or Fascist Symbols and Insignia[62]

The law also regulates prohibition of events, promoting of symbols or signs, or any other activities of neo-Nazi or fascist organisations and associations, **which in any way violate constitutional rights and freedoms of citizens,** and prescribes sanctions for violations of this law.[63]

The law prohibits production, duplication, storage, presentation, glorification or any other form of distribution of propaganda material, symbols or insignia **that incite, encourage or spread hatred or bigotry towards free commitments of citizens**, racial, ethnic or religious hatred or intolerance, or propagate or justify neo-Nazi and fascist ideas and organisations, or otherwise endanger public order.[64] Sanction foreseen for violation of this provision (offence) is a fine[65], as well as a protective measure of confiscation of objects used to commit the offence.

3. Marriage, family relations and inheritance

In many countries, the right to marry and to adopt are the most disputed rights of LGBT persons. Serbia is no exception in this regard. LGBT persons face numerous obstacles in their daily lives due to their inability to exercise these rights that are primarily regulated by the Family Law of Serbia.

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[60] Article 3 Definition of Public Assembly

[61] Article 8 of the Law on Public Assembly

[62] Official Gazette of RS, issue no. 41/2009

[63] Article 1 of the Law on Prohibition of Neo-Nazi or Fascist Organisations and Associations

[64] Article 3 of the Law on Prohibition of Neo-Nazi or Fascist Organisations and Associations

[65] for legal entity, responsible person within a legal entity, entrepreneur or private person, Article 8 of the Law on Prohibition of Neo-Nazi or Fascist Organisations and Associations

3.1.The Family Law of the Republic of Serbia[66]

This law regulates marriage and marital relations, relations out of wedlock, relationships between children and parents, adoption, foster care, guardianship, child support, property relations in the family, protection from domestic violence, proceedings related to family relationships and personal name.[67] The law provides special protection for the family and that everyone is entitled to respect for their family life[68].

The law is not in any way related to LGBT persons, since marriage is defined as an organised **life union of a woman and a man** [69]and common-law marriage as a permanent union of a woman and a man who are free of any marital obstacles.[70]

These definitions of marriage and common-law marriage, explicit in the fact that the difference of sexes is required for marriage and recognition of common-law marriage, exclude the entire LGBT population and challenge their rights guaranteed by the Constitution and international standards. This, ultimately, leads to a systemic discrimination against these persons when it comes to exercising a whole series of rights, such as the acquisition of joint property of same-sex partners, the right to be supported, joint adoption of children, rights concerning criminal proceedings and execution of criminal sanctions (e.g. exemption from the duty to testify against one's partner), legal inheritance, pension, health insurance and insurance rights in case of illness or death (e.g. family pension), etc.

On the other hand, interpretation of **provisions on protection from domestic violence** could also include persons of different sexual orientation, since the law also protects from domestic violence **persons who live or have lived in the same household**; as well as **persons who have been or still are in an emotional or sexual relationship** even though they have never lived in the same household.[71]

When it comes to **adopting children**, the Family Law of Serbia provides for the possibility of **joint adoption** for spouses or common-law partners, adoption by a person who is a spouse or common-law partner of the child's parent, while **adoption by a person who lives alone is only possible if there are particularly good reasons, or based on a special permission** issued by the minister responsible for family protection.[72]

The law also regulates joint and individual property of spouses and common-law partners and stipulates that the property the common-law partners have acquired while living **in the common-law marriage is considered their joint property** and that the property relations of common-law partners are subject to provisions applicable in case

[66] Official Gazette of RS, issues no. 18/2005 and 72/2011 - state law, and 6/2015

[67] Article 1 of the Family Law

[68] Article 2 of the Family Law

[69] Article 3 of the Family Law

[70] Article 4 of the Family Law

[71] Article 197, Paragraph 3 of the Family Law

[72] Article 101 of the Family Law

of property relationships of spouses.[73]As the common-law marriage is defined as living in a union between a woman and a man, it is clear that homosexuals cannot acquire common property with their partners, which in turn results in inability to exercise a series of rights.

Action Plan for implementation of the Strategy of Prevention and Protection from Discrimination foresees changes in the legal framework in order to prevent discrimination in relation to marriage, family relations and inheritance, of vulnerable social groups and opening of a public debate on possible recognition of the institution of civil same-sex unions and recognition of inheritance rights of same-sex partners. The deadline for this activity set by the state is the last quarter of 2017, while no specific budgetary funds have been allocated for implementation of these measures.[74]

It is noteworthy that, since 2012, Serbia has a **Model Law on registered same-sex unions**,[75] which, in addition to a comparative analysis, includes solutions for registered partnerships. The Model Law was proposed by civil society organisations and it regulates the basic principles and the concept of registered same-sex unions, the procedure and conditions for registration of same-sex unions, effects and legal consequences of registration, and how to terminate registered same-sex unions. In addition, the draft law regulates all the issues of importance to the LGBT community: the issue of property relations, support, inheritance, tax relief, pension, health care and insurance in case of illness, rights during criminal proceedings and execution of criminal sanctions.

In the Draft Civil Code, **a footnote** reads that the issue of regulating same-sex unions should be taken into consideration. There is no provision dealing with legal regulation of this issue, nor are there norms that would constitute grounds for adoption of a special law on same-sex unions, except for provisions of Article 2014, where same-sex unions are mentioned in the context of the right to housing. In this regard, the Commissioner for Protection of Equality has pointed to the need to allow registration of same-sex unions.[76]

3.2.Law on Inheritance[77]

According to the law, the testator is inherited by: his/her descendants, his/her adoptees and their descendants, his/her **spouse**, his/her parents, his/her adoptive parents, his/her brothers and sisters and their descendants, his/her

[73] Article 191 of the Family Law

[74] Action Plan for implementation of the Strategy of Prevention and Protection from Discrimination, section 4.3 Marriage, Family Relations and Inheritance, measures 4.3.1; 4.3.2 and 4.3.3.

[75] The Model Law on Registered Same-Sex Unions was created as a part of the project "Fighting Discrimination and Building a Culture of Tolerance through Dialogue, Legal Reforms and Monitoring of Discriminatory Practices" in cooperation between the Centre for Advanced Legal Studies, Labris- Organisation for Human Rights of Lesbians and the AIRE Centre, Editor Sasa Gajin, Belgrade 2012

[76] Regular Annual Report of the Commissioner for Protection of Equality for the year 2015 , 15 March 2016

[77] Official Gazette of RS, issues no. 46/95 and 101/2003 - CCRS Decision and 6/2015

grandparents and their descendants, and his/her other ancestors.[78]This provision excludes common-law partners from the possibility to inherit property or pension of the testator, which should be kept in mind when dealing with inheritance in case of common-law same-sex partners.

3.3.Law on Register[79]

Registers are principal official records on personal status of citizens. Registers contain facts concerning **birth, marriage, death** and **other facts and changes thereof** stipulated by law**.** In Serbia, there are the following registers: register of births, register of marriages, and register of deaths.[80]Sex of a child, among others, is information that is recorded in the register of births.[81] Although the law provides for registration of changes of data on the personal status of citizens in the registers (record of change), which is responsibility of a registrar[82], there is a number of obstacles faced by transgender persons after medical sex change when they want to update information in the register and have their documents issued so they reflect their new gender.

Since 2013, Serbia has the **Model Law on Gender Identity**[83]with an explanation that covers all relevant international standards and decisions in this area. The Model Act was proposed by civil society organisations, and it regulates the right to express gender identity, prohibition of discrimination based on gender identity, rights of persons with gender dysphoria, how to exercise and how to protect those rights, education and keeping records of persons with sex designation changed in identification documents, supervision of implementation of this law, as well as other issues related to the rights and duties of persons with gender dysphoria.

4. Health Care

Health care is regulated primarily by the Law on Health Care, and the Law on Patients' Rights, Law on Public Health, Law on Health Insurance, Law on Healthcare Documentation and Health Records. In all these laws, sexual orientation is not explicitly indicated as grounds for discrimination.

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78 Article 8 of the Law on Inheritance

79 Official Gazette of RS, issues no. 20/2009 and 145/2014

80 Article 2 of the Law on Register

81 Article 45 of Law on Register

82 Article 27 of Law on Register

83 Gayten-LGBT**,** Centre for Promotion of LGBTIQ Human Rights, **Model Law on Gender Identity,** 2013, **http://www.transserbia.org/trans/transeksualnost/543-model-zakona-o-rodnom-identitetu**

4.1.Law on Health Care[84]

The Law on Health Care stipulates the right to health care for all citizens of the Republic of Serbia as well as other persons who have permanent or temporary residence in Serbia; [85]social care for health of the population[86]; general interest in health care[87], health care principles[88], human rights and values in health care, rights and responsibilities of patients[89], etc.

The law stipulates that health care, on the territory of the Republic of Serbia, is **on equal terms** realised by providing health care to **population groups exposed to a greater risk** of disease, health protection of persons regarding prevention, control, early detection and treatment of **diseases of greater social and medical importance**, as well as the health care for **socially vulnerable population**. As a special category of the population mentioned in particular are children, the elderly, women in relation to family planning, pregnancy, childbirth and motherhood, people with physical and mental disabilities, persons with HIV infection or infectious and suffering from other diseases; victims of domestic violence and human trafficking.[90]

The law provides that the principle of fairness of health care is achieved by prohibiting discrimination in the provision of health care on the basis of race, sex, age, ethnicity, social background, religion, political or other opinion, financial status, culture, language, type of illness, mental or physical disability.[91]

Every citizen has the right to exercise their right to health care **with the highest possible standard of human rights and values respected, and has the right to physical and psychological integrity and security, as well as to appreciation of their moral, cultural, religious and philosophical beliefs.**[92] Citizens have the right to information necessary to preserve their health and acquire healthy habits, as well as to information on adverse factors that may have negative consequences on their health, and to be informed about protection of their health in case of an outbreak of epidemics.[93]

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[84] Official Gazette of RS, issues no. 107/2005, 72/2009 - s. law 88/2010, 99/2010, 57/2011, 119/2012, 45/2013 - s. law, 93/2014, 96/2015 and 106/2015

[85] Article 3 of the Law on Health Care

[86] Articles 8 - 17 of the Law on Health Care

[87] Article 18 of the Law on Health Care

[88] Articles 19 - 24 of the Law on Health Care

[89] Articles 25 and 41 of the Law on Health Care

[90] Article 11 of the Law on Health Care

[91] Article 20 of the Law on Health Care

[92] Article 25 of the Law on Health Care, Human Rights and Values in Health Care

[93] Article 41 of the Law on Health Care

4.2.Law on Patients' Rights[94]

The law guarantees patients the right to accessible and quality health care, according to their state of health, to equal access to health services without discrimination in relation to their financial status, place of residence, type of disease, time of access to health services, or in respect of any other difference that may be the cause of discrimination.[95]

4.3.Law on Public Health[96]

The law stipulates principles of public health including the principle of solidarity and equality in public health for all and **special attention to the needs of vulnerable social groups**[97]. The law defines vulnerable social groups as groups of citizens that are exposed to **a higher risk of becoming ill** compared to the overall population.[98]

4.4.Law on Health Insurance[99]

This law regulates the rights of compulsory health insurance of employees and other citizens covered by compulsory health insurance, organisation and financing of the compulsory health insurance, voluntary health insurance and other issues of importance to the health insurance system[100].

In exercising the right to health care from the compulsory health insurance, the insured are provided with at least 65% of the costs coverage of health services from the mandatory health insurance for a **sex change due to medical reasons**.[101] Compulsory health insurance does not provide health care relating to health services, medicines and medical and technical aids related to sex change, except in cases stipulated by this law, which is the case only when sex change is done for medical reasons.[102]

4.5.Law on Healthcare Documentation and Health Records[103]

The law stipulates that data from medical records of a patient are particularly sensitive personal data. Healthcare facilities, private practices and other legal entities are obliged to collect and process personal data of the patient in

[94] Official Gazette of RS, issue no. 45/2013

[95] Article 6 of the Law on Patients' Rights, Right to Access Health Care

[96] Official Gazette of RS, issue no. 15/2016

[97] Article 3 of the Law on Public Health

[98] Article 2, Item 15 of the Law on Public Health

[99] Official Gazette of RS, issues no. 107/2005, 109/2005 - corr., 57/2011, 110/2012 - CC Decision, 119/2012, 99/2014, 123/2014, 126/2014 - CC Decision, 106/2015 and 10/2016 state law

[100] Article 1 of the Law on Health Insurance

[101] Article 45 of the Law on Health Insurance

[102] Article 61, Item 12 of the Law on Health Insurance

[103] Official Gazette of RS, issues no. 123/2014 and 106/2015

a manner respectful of the **right to privacy and the right to confidentiality of personal data** of the patient. The competent healthcare professional or other authorised person may be relieved of the duty to keep the data confidential only upon written consent of the patient, their legal representative, or if so ordered by a court.[104]

5. Social protection

5.1.Law on Social Protection[105]

The law guarantees the right to social protection to every individual and family in need of help and support to overcome their social and existential difficulties, and to create conditions where their basic needs are met. The right to social protection shall be ensured by providing social protection services and material support.[106]

The law **prohibits discrimination** against beneficiaries of social protection based on race, sex, age, ethnicity, social background, **sexual orientation**, religion, political orientation, trade union membership or any other opinion, financial status, culture, language, disability, nature of their social exclusion or any other personal characteristic or trait.[107]

5.1.1. Treatment by employees in the social protection system is governed by a series of bylaws. One of the most important bylaws in the field of social protection is a **Rulebook on Organisation, Norms and Standards of Operations in Social Welfare Centres[108]**, which, among other things, further regulates operations of social welfare centres in the context of public powers.

The Rulebook stipulates protection from discrimination, and explicitly mentions sexual orientation as one of the grounds.[109] A Centre is obliged to **represent interests and rights of beneficiaries and to ensure equal access to services** it provides to all citizens, regardless of their ethnic, cultural, religious, gender or socio-economic differences, disability or **sexual orientation**. In working with beneficiaries, a Centre will not:

- limit a person in any way in their **use of services, information, assistance or legal protection** extended by the social welfare centre;
- treat persons differently when deciding on their eligibility to **use services or exercise rights**;
- limit any individual in their capacity to **take part in the centre's programmes**, or enable them to take part differently than other persons;
- prevent or limit individuals to **participate in groups, committees, or advisory boards** integral to the operations of the social welfare centre.

104 Article 40 of the Law on Healthcare Documentation and Health Records

105 Official Gazette of RS, issue no. 24/2011

106 Article 4 of the Law on Social Protection, Right to Social Protection

107 Article 25 of the Law on Social Protection, Anti-Discrimination Principle

108 Official Gazette of RS, issues no. 59/2008, 37/2010, 39/2011 - state rulebook and 1/2012 - st. rulebook

109 Article 7 of the Rulebook on Organisation, Norms and Standards of Operations in Social Welfare Centres

5.1.2. Rulebook on Prohibited Actions by Social Workers[110]

The Rulebook prohibits emotional abuse, emotional abuse of a child, sexual abuse, exploitation, child exploitation, neglect. Emotional abuse is defined as a treatment of a beneficiary by an employee causing emotional suffering, in particular, inter alia: discrimination in treating beneficiaries and other employees on grounds of nationality, ethnicity, cultural and language differences, religious, gender, socio-economic differences and diversity with respect to disability **and sexual orientation, or any other personal trait.**[111]

5.1.3. In the field of violence against women, the **General Protocol on Procedures and Cooperation between Institutions, Bodies and Organisations in Situations of Domestic Violence against Women and in Partnerships** should also be mentioned[112], as well as the **Special Protocol for Treatment by Social Welfare Centres - Bodies in Cases of Domestic Violence and Women in Partnerships**, [113]that define violence against women as a form of discrimination against women in accordance with relevant international standards.

Civil society organisations have conducted a comprehensive **analysis of the social protection system from the perspective of civil society organisations engaged in improving the position of LGBT persons in general and LGBT persons as beneficiaries of social protection services**[114]that should be taken into account when designing policies of social protection for LGBT persons.

6. Labour and employment

6.1.Labour Law[115]

The Labour Law is another law in a series of laws that **explicitly mention sexual orientation as one of the prohibited grounds** for discrimination. This law regulates rights, duties and responsibilities resulting from labour relationships and based on labour.[116]An employee shall be entitled to appropriate salary, safety and protection of life and health at work, heath care, protection of personal integrity and other rights in case of illness, impairment or loss of working ability and old age, material compensation during times of temporary unemployment, as well as the right to other forms of protection pursuant to the law and the general document. The law guarantees special care

[110] Official Gazette of RS, issue no. 8/2012

[111] Article 7 of the Rulebook on Prohibited Actions by Social Workers

[112] http://www.sigurnakuca.net/upload/documents/NarandzastiTekst.pdf

[113] http://sigurnakuca.net/upload/documents/LjubicastiTekst.pdf

[114] Vladan Jovanović, Analiza sistema socijalne zaštite sa aspekta organizacija civilnog društva koje se bave unapređenjem položaja LGBT osoba i LGBT osoba kao korisnika usluga socijalne, Association DUGA, Belgrade, November - December 2014

[115] Official Gazette of RS, issues no. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014

[116] Article 1 of the Labour Law

for women during pregnancy and childbirth, for employees under 18 and persons with disabilities, right to special protection for child care,[117] as well as the right to form trade unions[118].

Direct and indirect discriminations are prohibited against **persons seeking employment and employees** in respect to their sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, ethnicity, religion, marital status, familial commitments, **sexual orientation**, political or other belief, social background, financial status, membership in political organisations, trade unions, or any other personal characteristic or trait. [119]

6.2. Act on Prevention of Harassment at Work [120]

The law regulates prohibition of harassment at work and related to work; measures to prevent harassment and improve relations at work; procedure for protection of persons exposed to harassment at work and other issues of importance for prevention and protection from harassment at work and related to work. [121]Provisions of this Law shall apply to cases of **sexual harassment**, in accordance with the Labour Law.[122]

The law defines harassment as any active or passive behaviour towards an employee or group of employees that is repeated, and which is aimed at or constituting **a violation of dignity, reputation, personal and professional integrity, health, the status of employee, and which causes fear or creates a hostile, humiliating, or offensive environment**, deteriorates working conditions or results in isolation of the employee, or induces their own initiative to terminate the employment contract or cancel the contract or other agreement. In addition, **encouraging or inducing others to engage is such behaviour** is considered harassment.[123]

This law **does not recognise particularly sensitive categories of employees subject to harassment at work, including LGBT population**. Supervision of implementation of the law is carried out by labour inspection, or administrative inspection,[124]and any failure to observe the provisions shall result in fines for the employer, entrepreneur, and responsible persons of the employing legal entity.[125]

[117] Article 12 of the Labour Law

[118] Article 215 of the Labour Law

[119] Article 18 of the Labour Law

[120] Official Gazette of RS, issue no. 36/2010

[121] Article 1 of the Act on Prevention of Harassment at Work

[122] Article 3 of the Act on Prevention of Harassment at Work

[123] Article 6 of the Act on Prevention of Harassment at Work

[124] Article 34 of the Act on Prevention of Harassment at Work

[125] Articles 35 and 36 of the Act on Prevention of Harassment at Work

6.3.Law on Employment and Unemployment Insurance [126]

The Law, inter alia, regulates rights and obligations of the unemployed and the employer; active employment policy; unemployment insurance and other matters relevant to employment.[127] This Law shall be governed **by principles of prohibition of discrimination, in accordance with the law**; impartiality in the conduct of employment activities; **gender equality**; affirmative action directed towards hard-to-employ unemployed persons; freedom of choice of occupation and work; provision of services to unemployed persons free of charge. [128]

Civil society organisations in Serbia are dealing with the issues of discrimination of LGBT persons seeking employment, and have produced a series of handbooks, measures and examples of good practice.[129]

7. Education

Education is regulated by a set of laws: Law on Fundamentals of Education System, Law on Higher Education, Law on Adult Education, Law on Student Standard, and Law on Textbooks. Majority of these laws stipulate equal opportunities for education free from any discrimination, where sexual orientation is recognised as one of the grounds.

7.1.Law on the Fundamentals of the Education System[130]

This law shall govern the fundamentals of the system of preschool, elementary and secondary education and pedagogy as follows: the principles, objectives and standards of education and pedagogy, manner and conditions for delivery of preschool, elementary and secondary school education and pedagogy, establishment, organisation, funding and supervision of education institutions as well as other issues of importance to education and pedagogy.[131]

The education and pedagogy system must provide all children, students and adults with equality and accessibility of education and pedagogy **without discrimination and segregation** based on gender, social, cultural, ethnic,

[126] Official Gazette of RS, issues no. 36/2009, 88/2010 and 38/2015

[127] Article 1 of the Law on Employment and Unemployment Insurance

[128] Article 5 of the Law on Employment and Unemployment Insurance

[129] **Good practice concerning anti-discrimination measures in employment: Evropska unija, Srbija i region zapadnog Balkana,** Študentski kulturni center ŠKUC, Labris i Gayten-LGBT, *Belgrade, 2014*
Mere protiv diskriminacije u zapošljavanju i uloga nevladinih organizacija, Handbook, Študentski kulturni center ŠKUC, Labris and Gayten-LGBT, *Belgrade, 2014*
Upravljanje različitostima pri zapošljavanju, u**loga nevladinih organizacija u zalaganju za jednake mogućnosti i promociji ravnopravnosti pri zapošljavanju**, Študentski kulturni center ŠKUC, Labris i Gayten-LGBT, *Belgrade, 2015*

[130] Official Gazette of RS, issues no. 72/2009, 52/2011, 55/2013, 35/2015 - authentic interpretation, 68/2015 and 62/2016 - CC Decision

[131] Article 1 of the Law on the Fundamentals of the Education System

religious or other background, temporary or permanent residence, financial or health status, developmental difficulties and impairments and disabilities, **as well as other grounds.** [132]

The law stipulates **prohibition of discrimination** in educational institutions, that is, activities aimed at threatening, belittling, discriminating or segregation of groups or individuals on the basis of their racial, national, ethnic, linguistic, religious background, or gender, physical and psychological characteristics, developmental impairments and disabilities, health condition, age, social and cultural origin, financial status or political views, as well as encouraging or not preventing such activities, **and other types of activities stipulated by the law prescribing prohibition of discrimination**. Discrimination of a group or an individual shall imply each and every direct or indirect, covert or overt, exclusion or limitation of rights and freedoms, unequal treatment or failure to treat equally, or unjustified differentiation through lax discipline or giving precedence. More detailed criteria enabling an employee, student or another person in an institution to detect different forms of discrimination shall jointly be prescribed by the minister and the body in charge of human rights.[133]

Children and students, inter alia, have the **right to respect of their personality, and to protection against discrimination, violence, abuse and neglect**; the rights of children and students shall be implemented in accordance with ratified international agreements and laws.[134]

7.2.Law on Higher Education[135]

This law guarantees the right to higher education to all persons who have completed their secondary education irrespective of their race, colour, gender, **sexual orientation**, ethnicity, national origin or social background, language, religion, political or any other opinion, birth, sensory or mobility impairment, or financial status. [136]

Activities of higher education shall be based, inter alia, on the following principles: academic freedoms; openness to the public in general, and to citizens; recognition of humanistic and democratic values of European and national traditions and cultural heritage values; **respect for human rights and civil liberties, including prohibition of all forms of discrimination.**[137]

A student of a higher education institution shall have the rights and obligations established by this law and the general act of the higher education institution, and inter alia, the right to self-organisation and expression of his/her opinion; right to study under same conditions as other students; **right to be different and to be protected against discrimination**;.[138]

[132] Article 3 of the Law on the Fundamentals of the Education System, General Principles of the Education and Pedagogy System

[133] Article 44 of the Law on the Fundamentals of the Education System

[134] Article 103 of the Law on the Fundamentals of the Education System

[135] Official Gazette of RS, issues no. 76/2005, 100/2007 - authentic interpretation, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015 - authentic interpretation, and 68/2015 and 87/2016

[136] Article 8 of the Law on Higher Education

[137] Article 4 of the Law on Higher Education

[138] Article 86 of the Law on Higher Education, Rights and Obligations of Students

Pursuant to the Law on Higher Education, all higher education institutions have adopted statutes with consistently transposed provisions on students' rights to be different and to be protected from discrimination.

7.3. **Law on Adult Education**[139]

The law stipulates that adult education shall be based on certain principles, including the **equal opportunity principle** – inclusion and acquisition knowledge and education regardless of age, gender, developmental impairments and disabilities, handicap, racial, national, social, cultural, ethnic or religious background, language, **sexual orientation**, place of residence, financial or health status, and other personal traits.[140]

7.4.Law on Pupil and Student Standard[141]

This law regulates rights, duties and responsibilities of pupils and students in the field of pupil and student standards, establishing, organisation and operation of institutions, financing of pupil and student standard, etc.[142]

Pupil and student standard is an organised activity in the field of education that provides additional conditions for **more accessible, effective and improved education of pupils and students**. Pupil and student standard aims to create material, cultural, social, health and other conditions that **encourage education, social inclusion and comprehensive development of personality of pupils and students**.[143]

In institutions of pupil and student standard, the law prohibits **discrimination, insults, violence and abuse**, i.e. any activity of overt or covert threatening, belittling or discriminating against groups and individuals on any grounds, particularly on the grounds of race, sex, ethnicity, social origin, birth, religion, political or other opinion, financial status, culture, language, age, **sexual orientation**, mental or physical disability, body shape, or any activity that encourages such behaviour.[144]

7.5.Law on Textbooks[145]

The Law on Textbooks regulates preparation, approval, selection, publishing, withdrawal and monitoring of textbooks and textbook sets, manuals and teaching material and additional teaching tools for primary and secondary school.[146]

The law guarantees **equal opportunities and prohibition of discrimination** in the sense that a textbook, manual and teaching material and teaching aid in its content and form should enable implementation of the equal

[139] Official Gazette of RS, issue no. 55/2013

[140] Article 3 of the Law on Adult Education, Principles of Adult Education

[141] Official Gazette of RS, issues no. 18/2010 and 55/2013

[142] Article 1 of the Law on Pupil and Student Standard

[143] Article 22 of the Law on Pupil and Student Standard

[144] Article 36 of the Law on Pupil and Student Standard

[145] Official Gazette of RS, issue no. 68/2015

[146] Article 1 of the Law on Textbooks

opportunities principle, and that **its content and form** must not discriminate or put at disadvantage groups and individuals, or encourage such behaviour, **in accordance with the law governing prohibition of discrimination**.[147]

8. Media

Media space of Serbia is regulated by several laws; we hereby present those of relevance to LGBT rights.

8.1.Law on Public Information and Media[148]

Public information is realised through the media,[149] and the law primarily governs methods of realisation of freedom of public information, principles of public information, public interest in public information, the role of editor, journalist, etc.[150]

The law strictly **prohibits distribution of information or other media content,** at the motion of the competent public prosecutor and as ordered by a court, if this is necessary in a democratic society and if the information calls for an act of direct **violence towards a person or a group** based on their race, ethnicity, political affiliation, religion, sexual orientation, disability or other personal characteristic or traits, and if the publication of the information poses an immediate threat and has an incorrigible effect which cannot be stopped in any other way.[151]

The law also regulates hate speech: ideas, opinions or information published in the media **shall not incite discrimination**, hate or violence against an individual or a group of individuals on grounds of their race, religion, ethnicity, sex, or their **sexual orientation** or other personal inclination, **regardless of publication itself constitutes a criminal offence**.[152]

8.2.Law on Electronic Media[153]

This Law shall regulate, in accordance with international conventions and standards, organisation and operation of the regulatory body for electronic media, conditions and the method of providing audio and audio-visual media services, conditions and procedures for issuing licenses for the provision of audio and audio-visual media services, and other issues relevant to the field of electronic media.[154] Provisions of this Law shall be interpreted **in favour of promoting democratic society values**, in accordance with the principles of the Constitution of the Republic of Serbia, the law governing the field of public information, and **current international standards of human and minority rights, as well as practices of international institutions which supervise their implementation**.[155]

147 Article 11 of the Law on Textbooks

148 Official Gazette of RS, issues no. 83/2014 and 58/2015 and 12/2006 - authentic interpretation

149 Article 1 of the Law on Public Information and Media

150 Article 3 of the Law on Public Information and Media

151 Article 59 of the Law on Public Information and Media

152 Article 75 of the Law on Public Information and Media

153 Official Gazette of RS, issues no. 83/2014 and 6/2016 - state law

154 Article 1 of the Law on Electronic Media

155 Article 3 of the Law on Electronic Media

The law prescribes an **obligation to respect human rights,** especially personal dignity,[156] as well as a **prohibition of hate speech.** The Regulator shall ensure that the programme content of the media service provider does not contain information **which overtly or covertly encourage discrimination, hatred or violence** based on race, colour, ancestry, citizenship, national origin, language, religion or political beliefs, **sex, gender identity, sexual orientation**, economic status, birth, genetic characteristics, health status, disability, marital and family status, criminal record, age, appearance, membership in political, trade union and other organisations, and other actual or assumed personal characteristics or traits.[157]

8.3.Law on Public Service Broadcasting[158]

This law governs – in accordance with European standards and international documents concerning electronic media – the operation of public service broadcasters, namely the Public Broadcasting Institution Radio and Television of Serbia and the Public Broadcasting Institution Radio and Television of Vojvodina, their business activities and guiding principles for performing these activities, public interests they serve, transparency of their operation, the process of selecting authoritative bodies and their jurisdiction, adoption of acts, and provision of resources for operation and their funding model.[159]

Public broadcaster uses its programme to **realise public interests that include respect for and representation of basic human rights and freedoms, democratic values** and institutions, and promoting of the culture of public dialogue; respect for **privacy, dignity, reputation, honour, and other fundamental human rights**; meeting the information needs of all segments of population without any discrimination, particularly taking into consideration specific social groups such as children, young and elderly people, minorities, persons with disabilities, socially and medically vulnerable, etc.[160]

8.4.Law on Advertising[161]

The Law on Advertising prohibits encouraging of discrimination namely that advertising may not, directly or indirectly, encourage discrimination on any grounds, especially on the grounds of race, skin colour, **sex**, nationality, social background, birth, religion, political **or other convictions**, economic status, culture, language, age, mental or physical disability. [162]

The Law also prohibits advertising that encourages behaviour that represents a threat to health or safety of the recipient of the advertised message, namely: **scenes of violence** and destruction of objects and nature, except for

156 Article 50 of the Law on Electronic Media

157 Article 51 of the Law on Electronic Media

158 Official Gazette of RS, issues no. 83/2014 and 103/2015

159 Article 1 of the Law on Public Service Broadcasting

160 Article 7 of the Law on Public Service Broadcasting

161 Official Gazette of RS, issue no. 6/2016

162 Article 8 of the Law on Advertising

the purpose of preventing such behaviour; **scenes that may cause fear and aggressive behaviour**; **sexual harassment**, shown as acceptable, desirable or usual social behaviour; **scenes that link minors and sexuality**, as men and women and boys and girls with sexual characteristics of adults.[163]

8.5. Bylaws in the field of media

8.5.1. Code of Journalists of Serbia[164]

UNS and NUNS set this Code as a standard of professional conduct of journalists. According to the Code, journalists and editors are professionally responsible to the public (the readers/viewers/listeners). The responsibility cannot be subordinated to interests of others such as the publisher, the government, and other public bodies.

The Code stipulates that a **journalist must confront all those violating human rights or advocating any type of discrimination, hate speech and provoking violence**.[165]

- A journalist shall inform the editor if their personal, economic, political or other interests interfere with their professional duties.
- The **profession of journalism is incompatible with dissemination of any kind of sex, gender, ethnic, racial, social, or religious stereotypes.** Journalists' personal prejudices must not be broadcast / published in any context, either openly or covertly.
- **The use of colloquial, pejorative and inaccurate names for a specific group is unacceptable.**
- In reports on criminal acts, ethnic, racial, religious, ideological and political affiliation, as well **as sexual orientation**, social and marital status of suspects or victims, may be mentioned only it that particular orientation, affiliation or status is directly related to the type and nature of the committed crime.
- A journalist shall not use inappropriate, harassing, pornographic and other contents that could have a harmful impact on children and shall respect and protect the rights and dignity of children, crime victims, persons with disabilities and **other vulnerable groups**.

In 2015, two rulebooks regulating protection in the field of media services were enacted.

8.5.2. Rulebook on Protection of Rights of Minors in Provision of Media Services[166]

The Rulebook regulates fulfilling of obligations of the regulatory body for electronic media and media service providers related to the method of the broadcasting programme that may harm physical, mental or moral development of minors, in relation to participation of minors in the programme and publication of information that directly

[163] Article 10 of the Law on Advertising

[164] http://www.savetzastampu.rs/cirilica/kodeks-novinara-srbije

[165] Code of Journalists of Serbia, Chapter IV, Responsibility of a Journalist

[166] Official Gazette of RS, issue no. 25/2015

or indirectly concern minors, as well as in terms of information on complaints about non-compliance with the rules on protection of minors and giving opinions on the compliance of the programme with the rules on protection of minors.[167]

The Rulebook regulates discriminatory actions **explicitly indicating sex, gender identity and sexual orientation as prohibited grounds for discrimination.[168]**

8.5.3. Rulebook on Protection of Human Rights in the Provision of Media Services[169]

The Rulebook closely regulates how media service providers perform their duties with regards to respecting the right to true, complete, and timely information, person's dignity, right to privacy, assumption of innocence and right to fair trial, and freedom of thought, conscious and religion.[170] The Rulebook imposes an obligation to respect human rights[171]; dignity of participants in the programme[172], prohibition of hate speech. Media service provider cannot publish or broadcast programme containing information that encourage, openly or covertly, discrimination, hatred, or violence against persons or group of persons because of their (actual or assumed) personal traits, and, inter alia, because of their **sex, gender identity, or sexual orientation**. [173]

9. Youth, Sports and Foreigners

9.1.Law on Youth[174]

According to the law, all young people shall be equal. Any unjustified difference made between or any unequal treatment of young people, direct or indirect, on any grounds, in particular on the grounds of race, gender, ethnicity, religious belief, language, social background, financial status, affiliation with political, trade union or other organisations, mental or physical disability, health, physical appearance, **sexual orientation, gender identity**, or other actual or assumed personal trait shall be prohibited. [175]

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[167] Article 1 of the Rulebook on Protection of Rights of Minors in the Provision of Media Services

[168] Article 2 of the Rulebook on Protection of Rights of Minors in the Provision of Media Services, Definitions

[169] Official Gazette of RS, issue no. 55/2015

[170] Article 1 of the Rulebook on Protection of Human Rights in the Provision of Media Services

[171] Article 21 of the Rulebook on Protection of Human Rights in the Provision of Media Services

[172] Article 221 of the Rulebook on Protection of Human Rights in the Provision of Media Services

[173] Article 271 of the Rulebook on Protection of Human Rights in the Provision of Media Services

[174] Official Gazette of RS, issue no. 50/2011

[175] Article 5 of the Law on Youth, Equality and Non-Discrimination Principle

9.2.Law on Volunteering[176]

This law regulates key terms regarding volunteering, principles of volunteering, volunteering agreement, rights and obligations of volunteers and volunteer organisers and supervision over the implementation of this law[177]. One of the volunteering principles is a principle of prohibition, i.e. any unjustified differentiating or unequal treating and pretermitting of volunteer organisers in respect of volunteers that is discriminatory in accordance with law.[178] Violations of this provision result in a fine for the organiser of the volunteering activity.[179]

9.3.Sports Law[180]

This law regulates rights and responsibilities of sportsmen and other private persons in the sports, general interest and needs, and interest of citizens in the field of sports, and other issues of relevance to the sports.[181]Sport has been declared as an activity of special importance to the Republic of Serbia.[182]

In the article of the law that deals with discrimination,[183] it is stipulated that everyone has the right to engage in sports, and that it should be available to all citizens **under equal terms**, regardless of their age, level of physical ability, level of disability they may suffer from, **sex or any other personal trait**.

The law prohibits any **direct and indirect discrimination, including hate speech**, on any basis, by sportsmen, sports experts, sports organisations and other persons participating in the system of sports, be it overt or covert, which is based on actual or assumed personal trait.

The law prohibits any type of misuse, abuse, **discrimination and violence against children** and obliges organisations in the field of sports and persons performing professional and educational work with children, to promote equality among children and **actively oppose all kinds of abuse, harassment, discrimination and violence.**

The law also stipulates undertaking of special activities to increase participation of children, youth, women and people with disabilities in sports activities, **popularisation of women's sports organisations** and giving equal importance to women and people with disabilities in sports.

176 Official Gazette of RS, issue no. 36/2010

177 Article 1 of the Law on Volunteering

178 Article 6 of the Law on Volunteering

179 Article 32 of the Law on Volunteering

180 Official Gazette of RS, issue no. 10/2016

181 Article 1 of the Sports Law

182 Article 2 of the Sports Law

183 Article 4 of the Sports Law

9.4.Law on Prevention of Spectator Violence and Misbehaviour at Sports Events[184]

Although this law is not directly related to LGBT rights, some of its articles concern issues of prohibited expression of **hatred and bigotry.** Violence and misbehaviour at sports events includes introduction of **signs and symbols that offend ethnic, racial, religious background or feelings, or otherwise incite hate or intolerance, which can lead to physical conflict,** into a sports facility.[185] When ensuring order at sports events, stewarding staff is obliged to prevent introduction of these subjects into the facility, but also **banners or signs that incite racial, religious, ethnic or any other intolerance and hatred, that is, offensive or indecent objects**.[186]

9.5.Law on Asylum[187]

In the asylum grating procedure in the Republic of Serbia, **any discrimination on any grounds** shall be prohibited.[188]

The **Draft Law on Asylum and Temporary Protection** is currently in the process of public hearing[189], and it also provides for the principle of non-discrimination and the principle of providing special reception process and guarantees for minors, persons fully or partially deprived of legal capacity, children separated from their parents or guardians, persons with disability, the elderly, pregnant women, single parents with minor children and persons victims of torture, rape or other severe forms of psychological, physical or sexual violence.[190]

The right to asylum or refugee status will be granted to an applicant who is outside of their country of origin or place of residence, who is in justified fear of persecution for reasons of race, religion, ethnicity, or belonging to a particular social group or political opinion, who cannot or does not want to accept protection from that country.[191] Depending on the circumstances in the country of origin, a particular social group may refer to a group **based on common characteristics of sexual orientation or gender identity**.[192]

Actions that constitute persecution must be of severe nature or repeated to constitute a **severe violation of basic human rights** or a threat to the individual. Among other things, those can entail physical or psychological violence, including sexual violence; legal, administrative, police and/or judicial measures which discriminate; legal

[184] Official Gazette of RS, issues no. 67/2003, 101/2005 - s. law, 90/2007, 72/2009 - s. law, 111/2009 and 104/2013 - state law

[185] Article 4 of the Law on the Prevention of Spectator Violence and Misbehaviour at Sports Events

[186] Article 8a of the Law on the Prevention of Spectator Violence and Misbehaviour at Sports Events

[187] Official Gazette of RS, issue no. 109/2007

[188] Article 7 of the Law on Asylum

[189] http://arhiva.mup.gov.rs/cms_lat/sadrzaj.nsf/nacrti_zakona.h

[190] Article 15 of the Draft Law on Asylum and Temporary Protection

[191] Article 24 of the Draft Law on Asylum and Temporary Protection

[192] Article 26 of the Draft Law on Asylum and Temporary Protection

proceedings and punishment that are disproportionate or discriminatory; denial of judicial assistance resulting in disproportionate or discriminatory punishment; acts which, by their nature, are specifically related to sex or children.[193]

9.6.Law on Foreigners[194]

This law stipulates conditions for entry, movement and stay of foreigners, as well as competence and activities of public administration bodies in the Republic of Serbia with respect thereto.[195] This law does not foresee anti-discriminatory provision, and the only provision that deals with the issue of particularly sensitive groups in the process of compulsory removal when the relevant authority will take into consideration specific status of foreigners who **fall into the category of persons with special needs** such as: minors, persons fully or partially deprived of their legal capacity, children separated from their parents or legal guardians, persons with disabilities, elderly persons, pregnant women, single parents with underage children and persons victims of torture, rape or other severe forms of psychological, physical or sexual violence. In such cases, the competent authority is obliged to act in conformity with regulations governing the status of persons with special needs and with international treaties.[196]

[193] Article 28 of the Draft Law on Asylum and Temporary Protection

[194] Official Gazette of RS, issue no. 97/2008

[195] Article 1 of the Law on Foreigners

[196] Article 58 of the Law on Foreigners

II National policies against discrimination of LGBT persons

Until the adoption of the Strategy of Prevention and Fight against Discrimination, the position of LGBT persons had not been recognised in strategic documents of the Republic of Serbia, although for the last ten years, more than 100 such documents have been adopted.[197] This issue was reported by civil society organisations to international mechanisms such as the CEDAW Committee in 2013:

> *The National Strategy for the Advancement of Women (2009-2015) ... mentions sexual orientation, but only in general terms, without specific goals and activities (with the exception of the section referring to the media), which results in* ***invisibility of the problem faced by lesbians*** *and a lack of planning in the Action Plan for implementation of the National Strategy for the Advancement of Women (2010-2015).*
>
> *Unlike lesbians, all these documents have multiple references to other groups of women discriminated on many levels. Having in mind that lesbians, as one of the most often neglected, put aside and vulnerable groups of women in the Serbian society, have not been included in the above mentioned documents in any significant way, we believe beyond any doubt that it constitutes a homophobic and discriminatory attitude of the Government of Serbia towards lesbians. Therefore, none of the measures for improvement of position of lesbians has been implemented, which makes lesbians extremely exposed to discrimination, social exclusion, violence and poverty.*[198]

In addition to failure to recognise position of LGBT persons, one of the main challenges when it comes to the relevant strategic documents of the Republic of Serbia is the issue of monitoring of their implementation.

1. Strategy for Prevention and Protection from Discrimination[199]

In 2013, the Republic of Serbia adopted the Strategy of Prevention and Protection against Discrimination for a period of 5 years, with the primary objective of respecting the constitutional principle of non-discrimination against a person or group of persons with respect to their personal traits, especially vulnerable groups (ethnic minorities, women, **LGBT persons**, persons with disabilities, the elderly, children, refugees, internally displaced persons and other vulnerable migrant groups, members of different religions and persons with regard to their health status). The

[197] As of 20 November 2016, website of the Government of the Republic of Serbia, more than 140 strategic documents and more than 15 related action plans have been available http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678

[198] Senka nad Srbijom (Shadow over Serbia), Report by NGOs for the 55th meeting of the CEDAW Committee, Autonomous Women's Centre ASTRA Žene u crnom Labris Glas razlike, Belgrade 2013, available at 2013http://www.womenngo.org.rs/images/CEDAW/2013/Senka_nad_Srbijom.pdf

[199] The Government of the Republic of Serbia, Strategy for Prevention and Protection from Discrimination 27 June 2013, 05 number: 90-5273/2013-1

task of the Strategy and the accompanying Action Plan **is to define objectives, measures and activities** that will ensure **decrease in the number of cases of violation of the constitutional and legal principles of non-discrimination**.

The Strategy defines objectives and measures in relation to ten particularly vulnerable groups of citizens, **including the LGBT community**. General goals of the Strategy concerning LGBT population are:

- **Harmonisation of legislation** with international standards.
- Preventing violations of prohibition of discrimination against LGBT people **through constitutional, legislative, regulatory reform, as well as adoption of strategic documents**.
- **Elimination or reduction of discriminatory practices** against LGBT people in various fields.
- Providing conditions for **implementation of the Law on Prohibition of Discrimination** in the part concerning discrimination of LGBT people.
- **Change of public policies** in certain areas which could be a source of discrimination against LGBT people.
- **Institutional protection of LGBT persons from public and private violence**, especially in the field of labour and employment, health and social services, private and family life, education, sports and others.
- **Change of the traditional, negative stereotype on** LGBT persons.
- Prevention and **punishment of hate speech** and physical attacks against LGBT persons.
- **Improvement of the status and** position of LGBT persons.

General goals of the strategy are planned to be achieved through the total of **12 measures**:

1) Harmonise the existing legislation with standards for prevention of discrimination of LGBT persons contained in **Treaties and Directives of the European Union and other international documents**;

2) Ensure **full exercise of rights to peaceful assembly** in open or closed space to LGBT persons by providing mechanisms of protection of participants in such gatherings and undertake preventive measures to identify potential safety threats and to eliminate them;

3) Drafting of future laws and amending of the existing ones containing anti-discriminatory provisions should involve identifying **sexual orientation and gender identity as personal traits**;

4) Improve the position of transgender people through amendments of several laws (Law on Register, Family Law, Law on Pension and Disability Insurance, Law on Primary Education, Labour Law, etc.), and prescribe effective procedures related to change of name and gender in transgender persons or regulate these issues by a special law, **or regulate all issues of legal status of transgender persons (including transsexual persons) by a special law** (taking into account the principle of legal continuity and identity, rights and duties of the transgender person and relevance of the acquired sex;

5) Proceed with continuous **monitoring of contents of textbooks** and other teaching material for elementary and secondary schools and universities **for the purpose of eliminating any discriminatory contents** concerning sexual orientation and gender identity;

6) **Fight against discriminatory practices towards LGBT persons** in all areas, especially **analysing specific cases of discrimination of** LGBT persons face by the Commissioner for Equality, the Ombudsman and the Regional Ombudsman, for the purpose of eliminating causes and effects of their occurrence;

7) **Provide training and systematic education of civil servants** and employees in the public sector for implementation of anti-discrimination rules on sexual orientation and gender identity with additional sensitization in working with LGBT persons (in education, health, police and other areas);

8) Consider **possible changes in the field of family and inheritance law**, so same-sex partners would be granted the right to registered partnership/civil union and the right to regulate legal inheritance;

9) **Provide temporary care for LGBT** persons rejected and condemned by their families and communities because of who they are;

10) **Prevent spreading, promoting and encouraging of hatred and intolerance towards LGBT** persons, whether at public meetings, in the media or on the Internet through hate graffiti or some other means;

11) **Affirm culture of tolerance** in a broader range of citizens towards LGBT persons and promote dialogue between the civil society and government authorities in order to improve position of LGBT persons and to achieve equality in accordance with the standards set by the existing legal framework;

12) **Encourage and promote LGBT culture and other activities that empower the LGBT community**, its positive visibility, and social inclusion.

Special goals of the Strategy concerning LGBT rights are defined through 7 areas:

1. Freedom of peaceful assembly, freedom of expression, and political and social participation of LGBT persons

In this field, 5 specific goals have been set: 1) **providing for public events** with ensured safety of the participants; 2) taking preventive and protective measures to achieve safety; 3) preventive action to **prevent any attempts to threat, attack** or disable holding of public meetings; 4) **education on the rights** of LGBT persons; 5) **ensuring non-discriminatory conditions for political engagement** of LGBT persons in political parties, representative bodies, security institutions, independent human rights institutions and local governments.

2. Private and family life

In the field of private and family life, there are three specific goals set to be achieved in the next five years: 1) **consideration of amendments** to the existing legal framework in the field of family and inheritance law which would

provide legal regulation of partnerships between LGBT persons in order to grant same-sex partners the **right to registered partnerships/civil unions**; 2) **regulation of sex adaptation process** in a way that enables and provides for easier and more accessible necessary medical treatment and legal recognition of the acquired sex; 3) **protection of data** on sexual orientation and gender identity as particularly sensitive personal data.

3. Labour and employment

In the field of labour and employment, five specific goals have been set: 1) **non-discriminatory employment** and work for the state and employers in the private sector; 2) **effective protection** against discrimination in employment and occupation in the public and private sector; 3) **use of non-discriminatory language** and behaviour towards persons of actual or assumed non-heterosexual orientation or transgender persons; 4) **confidentiality and protection of data on** gender identity and sexual orientation at work and employment; 5) **education directly in the workplace** to help employers understand the need and ways to protect LGBT population.

4. Education

In the field of education, six specific goals have been set: 1) ensure that the **right to education can be effectively exercised** without discrimination; 2) in particular, to **ensure protection of rights of children and youth** to education in a safe setting, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment; 3) **use education system to raise awareness among young people**; 4) it is necessary **to promote common tolerance and respect**; 5) provide objective **information in school curricula and textbook** material, 6) **support and assistance in teaching** LGBT pupils and students, as well as protection of academic staff from discrimination, harassment, dismissal due to actual or assumed sexual orientation and gender identity.

5. Health and Health Care

In the field of health and health care, the Strategy sets four specific goals: 1) **raising awareness and consciousness of people**, institutions, youth, media and others that homosexuality is not a contagious disease; 2) **actively work in relation to discriminatory and illegal practice** of treating homosexuality and transgenderism as health problems; 3) **prevent occurring of discriminatory practices** that can lead to discrimination in health care due to sexual orientation or gender identity; 4) **provide transgender people with access to effective services** for sex adaptation, including psychological, endocrinological and surgical expertise.

6. Social protection

In the field of social protection, the Strategy sets three goals: 1) **accredit training programs for personnel** engaged in the field of social protection in order to increase quality of services provided to LGBT persons; 2) **standardise social services**, which will be in accordance with the needs of LGBT community and their family members, particularly in order to prevent homelessness; 3) Take special measures in the field of social welfare in terms of LGBT **youth, their protection from domestic violence**.

7. Sports, housing, and cross-discrimination

There are four goals set in the Strategy for this field: 1) **legal provisions** against discrimination and removal of LGBT athletes from sport of all levels are needed; 2) ensure that all **sporting activities and facilities are accessible without discrimination** on grounds of sexual orientation and gender identity, and stadiums and other sports venues must cease to be places of mass "permitted" expressions homophobia and transphobia as forms of hate speech; 3) enable non-discriminatory **use of housing** by LGBT persons and the possibility of non-discriminatory **legal succession of property rights** regardless of sexual orientation and gender identity; 4) **prevent discrimination against LGBT persons on several grounds**.

2. Action Plan for Application of the Strategy of Prevention and Protection Against Discrimination

The Action Plan stipulates specific measures and activities necessary for realisation of the above mentioned strategic goals, deadlines, responsible entities, and resources for implementation. There are 18 measures in total contained in the Action Plan that concern LGBT population in particular. Specific measures should follow the set goals and objectives; however, the Action Plan is not consistent with the Strategy, for example, in the field of labour and employment, there are no specific measures to prevent discrimination and improve the position of LGBT persons in the field of labour, though all independent reports say that discrimination against LGBT people in that particular area is more than evident.

Shortcomings of the Action Plan relate to the lack of consistent deadlines for implementation, as well as lacking of resources necessary for implementation. Deadlines for implementation of the measures seem unrealistic, for example, most of the measures are planned to be implemented in the last quarter of 2017 while at the end of 2016 the activities had not even started. There are no resources foreseen for many of the planned measures, and even if they are, it usually involves donations and projects.

2.1. In the field of **Public administration and prohibition of discrimination,** only one specific measure concerning LGBT persons has been foreseen:

- Measure 3.1.14 – Ensure **implementation of decisions** rendered by the Constitutional Court and other courts concerning activities of administrative bodies in relation to prevention and protection from discrimination of certain sensitive groups **through implementation and adoption of new laws, or amendments to the existing ones;** Ensure **implementation of decision of the Constitutional Court of** the Republic of Serbia no. Už - 3238/2011 dated 8 March 2012, and guidelines presented therein.

This activity has been scheduled for the fourth quarter of 2017, **without any funds allocated for implementation**.

2.2. In the field of **Security, internal affairs and judiciary**, two specific measures and a series of activities have been aimed at LGBT persons.

- Measure 3.2.1. - **Affirmation of the culture of tolerance in a wide circle of population** towards LGBTI/ transgender persons, **promotion of dialogue** on necessity to achieve full equality in order to implement the principle of equality and equal rights and **preventive actions in order to exercise the right to peaceful assembly.**

Continuous realisation of **activities** on implementation of this measure has been planned, with donor funds provided for the year 2014[200] and planned for the period 2014-2016, mostly through donations, and to a smaller extent from the RS budget:[201]

- **Media campaign** and support to production of media content aimed at realisation of the principle of equality and equal rights of LGBTI-transgender persons;
- Active **promotion of cooperation,** communication and joint work with LGBTI community;
- **Realisation of prevention projects** aimed at promotion and respect for differences.
- Taking preventive measures, as well as **identifying potential security threats and their elimination**, due to more efficient realisation of the right to freedom of peaceful assembly of citizens, to achieve security of participants in the LGBTI gatherings and stop acts of violence and related forms of human rights violations based on sexual orientation and gender identity.
- **Regular meetings** with organisers of the Pride Parade

Measure 3.2.2. - **Combat acts of violence**, intolerance and threats to vulnerable social groups by conducting effective investigations and taking measures of criminal justice and other forms of protection, and record keeping; implementation of **effective investigation and sanctioning** of discriminatory practices towards LGBTI persons. There are two activities planned to take place continuously, using **regular budget funds**:

- **Detect, locate, arrest** and bring to justice perpetrators of criminal acts with elements of violence caused by personal traits;
- Legal **establishment of a single database** (records) on filed criminal charges, the number of convicted persons, and sanctions.

2.3. In the field of **Education,** five measures concerning LGBT population have been foreseen:

- Measure 4.1.1. - Introduce into the education system various contents and forms of work that promote anti-discrimination behaviour and values and develop competencies for living in a democratic society (implementation of these measures is planned to take 12 months, until the fourth quarter of 2015 (with funds allocated from the budget and from donations by UNICEF and CARE International). **Acquiring knowledge on the rights of LGBTI persons** through introduced courses has been planned to take place continuously after the introduction of the content.

[200] 4,444,000 RSD (2014) Project "Creating Tolerance and Understanding Towards LGBTI Population in Serbian Society", funds from Norwegian bilateral assistance - co-financing

[201] IPA 2013 (2014-2016) Twinning Project ,"Support to the Advancement of Human Rights and Zero Tolerance to Discrimination"

- Measure 4.1.3.- Develop **Draft Law on Amendments** to the Law on Fundamentals of Education System and identify sexual orientation and gender identity as specific grounds for discrimination (Deadline: six months after the second quarter of 2015, supported by regular budget funds).
- Measure 4.1.7. - Provide professional training for police officers regarding prohibition of discrimination; preparation, organisation and implementation of training dedicated to: 1) **the right to peaceful assembly** of LGBTI persons, as well as on causes of safety risks, and developing of the culture of tolerance as a basis of their safety; 2) **implementation of discrimination regulations** on sexual orientation and gender identity in police work when subjects communicating with the police are the above mentioned persons. It is planned to continuously implement activities for each calendar year; it is foreseen that implementation of these measures will be financed by regular budget funds and donations for the period 2014-2016.[202]
- Measure 4.1.9. - **Provide vocational training for judges, prosecutors and other judicial personnel** on prevention of discrimination, international standards, practice of international transnational mechanisms of human rights protection and communication between officials and employees in the judicial administration and members of vulnerable groups, through development of a training plan, preparation of manuals with emphasis on **judgments and decisions of international bodies and comparative legal systems**, implementation of training for officials in judicial administration. For this measure and supporting activities, donor funds are provided for the period 2014-2016, and the activities are planned to be implemented continuously as of the adoption of plans and programmes.
- Measure 4.1.11. - Provide special training for target groups in certain areas; provide vocational training and professional-methodological instructions for employees in social welfare centres in relation to discrimination of LGBTI persons (among others). Implementation of this measure is scheduled for the last quarter of 2014, with donor funds planned for 2014 and 2015.

2.4. In the field of **Labour and employment,** Action Plan contains **no specific measures for LGBT population,** and therefore no allocated funds for this particular category of persons.

2.5. In the field of **Marriage, family relations and inheritance** four specific measures concerning LGBT have been foreseen.

- Measure 4.3.1. - Review and amend the Family Law in order to prevent discrimination against certain vulnerable groups; ensure implementation of the provision on prevention of discrimination against LGBTI persons in terms of **recognition of same-sex common-law marriage** (that is, the right to registered partnership - civil union) through **amendments to the Family Law**.

This measure is to be implemented through the following activities: 1) **preparation of analysis** of the existing law, and 2) **preparation of the Model Law** on amendments to the law in line with the analysis concerning issues of

[202] Project "Creating Tolerance and Understanding Towards LGBTI Population in Serbian Society", funds from Norwegian bilateral assistance and the IPA 2013 Twinning Project "Support to the Advancement of Human Rights and Zero Tolerance to Discrimination"

sensitive groups. These activities are scheduled for the last quarter of 2017, and "regular budget" and "donor" funds have been planned for their implementation, however, they have not been allocated.

- Measure 4.3.2. - Develop a **draft law that opens a public debate** on sensitive social issues of introducing same-sex unions with prior analysis of specific provisions of the Constitution, and provisions of the Family Law. Activities include preparation of the model law and holding of a comprehensive public debate in relation to the Model Law in order to raise awareness on the need to recognise same-sex unions (fourth quarter of 2017, "regular budget" and "donor" funds have been planned for their implementation, however, they have not been allocated).
- Measure 4.3.3. - Develop the draft text of the law that opens a public debate on sensitive social **issues of inheritance for same-sex partners**; preparation of a draft text (model) of the Law on Amendments to the Law on Inheritance, in terms of equalisation of marriage and cohabitation, and granting same-sex partners the right to inherit in the first order of succession (fourth quarter of 2017, "regular budget" and "donor" funds have been planned for their implementation, however, they have not been allocated).
- Measure 4.3.4. - Drafting of secondary legislation to prevent discriminatory practices relating to marriage and family; preparation of mandatory instructions for social welfare centres and their application concerning discriminatory practices in relation to parenting when one of the parentis in a transgender person or a person suffering for certain health conditions. There is no set deadline, or defined resources for this measure and related activities.

2.6. In the field of **Health care, healthcare and social protection and housing**, three specific measures concerning LGBT have been foreseen.

- Measure 4.4.1. - Amend the Law on Health Care in order to ensure equal rights and access to health care without discrimination and segregation based on sexual orientation or gender identity (second quarter of 2015, no allocated budget funds)
- Measure 4.4.2 - Develop a Draft Law on Amendments to the Law on Social Protection, in the part that refers to specific measures in relation to certain vulnerable social groups; more effective protection of LGBTI persons, that is, expanded grounds for discrimination in provision of social protection to include gender identity (no anticipated deadline, no budget funds allocated).
- Measure 4.4.5 - Abolition of certain discriminatory practices in health care - abolish the practice of discriminatory aggravation of donating blood for LGBTI people; Preparation of mandatory instruction regarding blood donation by LGBTI persons (fourth quarter of 2015, funds not allocated)

2.7. In the field of **Youth, sports, culture and media**, two specific measures concerning LGBT have been foreseen.

- Measure 4.5.1 - Amend the Sports Law by introducing explicit prohibition of discrimination in sports on the grounds of sexual orientation and gender identity (second quarter of 2015 , supported by regular budget funds).

- Measure 4.5.4. - Introduction of cultural particularities of certain vulnerable social groups to wider public circles in order to promote their inclusion and increase tolerance in the public through implementation of the support programme; affirmation of culture and other characteristics that distinguish LGBTI community through **defining and implementation of support programmes and projects in culture** (continuously, with budget funds allocated for the period 2014-2016).

2.8. In the field of **Regional development and local self-government,** one measure concerning LGBT population has been foreseen.

- Measure 4.6.2 - Forming of support groups, at municipal social welfare centres, for LGBT persons who have ended up on the street and for parents of LGBTI children and adolescents; forming of support groups at social welfare centres (implementation of activity is planned to be continuous, however, no budget funds have been allocated).

3. National Strategy of Gender Equality for the period 2016 - 2020 with Action Plan for the period 2016 - 2018

The strategy recognises a category of women discriminated on multiple grounds as a category of "particular concern" in the sense of eliminating multiple discrimination and improving the position of such women. Similar to the category of women subject to multiple discrimination, the Strategy also recognises "female members of sexual minorities". In addition, the Strategy recognises that sex and gender, as grounds for discrimination, have a special role given that women belonging to vulnerable groups (including LGBTI persons) are in many areas more exposed to discrimination and social exclusion than male members of such groups.

The Strategy explicitly indicates the following vulnerable groups as **particularly exposed to the risk of multiple discrimination**: Roma women, women over 60, young women, rural women, pregnant women, women with small children, **women of different sexual orientation**, women victims of domestic violence, disabled women, single mothers, members of national and ethnic minorities, unemployed and uneducated women, and the list does not end here.

The Strategy states that certain categories of women (including women of different sexual orientation) are almost entirely "invisible" in the media, which contributes to the persistence of patriarchal gender regime and gender stereotypes that encourage discrimination based on gender.

This recognition of women of different sexual orientation and/or gender identity is certainly an improvement compared to earlier strategic documents, however, this strategy still contains some of the earlier deficiencies in the sense that already identified problems are not operationalised in measures contributing to elimination of multiple discrimination against these women and substantial improvement of their situation (if such measures live to be implemented). There are only two measures mentioning women of different sexual orientation that are planned to be implemented by the State:

- Measure 1.5.3. - Create conditions for sustainable, continuous, affordable services provided by women's and feminist associations specialised in supporting women in situations of violence (budget funds for the functioning of the universal SOS line and other specialist services of support to women in situations of violence, **including support to women of different sexual orientation** have been allocated)

- Measure 2.2.4. - Ensure participation of women, including women of vulnerable groups and/or their representative organisations, in the process of creating, implementing and monitoring policies at all levels and in all fields (ensured participation of at least 5-8 representatives of women's and feminist organisations, including Roma women, women with disabilities, **and lesbian women in the advisory body of the Government**).

4. Youth National Strategy for the period 2015 – 2020[203]

Youth National Strategy **recognises the young of different sexual orientation** as a special group of the young. The Strategy declares equality of youth, equal position and equal legal protection regardless of their personal traits. The strategy stipulates that no discrimination or unequal treatment of young people can take place, directly or indirectly, on any grounds, and as special grounds it states gender, sexual orientation and gender identity.

The Strategy also recognises the category of young people at **health risk**, that is, young people whose health is under higher risk of illness compared to general population of young people, and identifies men who engage in sexual intercourse with men as one of the most vulnerable categories.

There is a specific issue pointed out by the Strategy: The presence of bullying, violence among fan groups, **violence against the LGBT community**, violence in partner relationships and towards foreigners, lack of respect for human and minority rights and frequent use and abuse of weapons.

Based on the identified problem, goal 2 has been defined: **enhanced programmes of respect for human and minority rights, gender equality, acceptance of diversity, tolerance and fostering non-violent methods of communication** and established results and planned implementation activities: programmes of working with the youth enhanced; support training programmes for teachers and youth workers; support research activities and programmes covering the most common stereotypes and prejudices in the society and find ways for the young to overcome/supress them; develop programmes of communication and cooperation between different social groups young people belong to; support peer education programmes; develop integrative models of information that present minorities as a part of a wider social group instead of isolated, etc.

[203] Government of the Republic of Serbia, Youth National Strategy for the period 2015 – 2020 05 number: 66-1998/2015-1, in Belgrade, 27 February 2015

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