Izveštaj

o implementaciji Preporuke CM/Rec(2010)5 Komiteta ministara zemljama članicama o merama za borbu protiv diskriminacije na osnovu seksualne orijentacije ili rodnog identiteta u Srbiji



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01.
Uvod

Kontekst

Komitet ministara Saveta Evrope je 31. marta 2010. godine usvojio Preporuku državama članicama „o merama za borbu protiv diskriminacije na osnovu seksualne orijentacije ili rodnog identiteta".

To je bio istorijski trenutak. Preporuka je, kako je generalni sekretar Saveta Evrope Thorburn Jagland prepoznao, prvi međunarodni pravni instrument na svetu koji se posebno bavi diskriminacijom po ovim osnovama, što je opisao kao „jedan od najdugotrajnijih i najtežih oblika diskriminacije sa kojima se borimo".[1]

U širem smislu, Preporuka podrazumeva tri stvari:

- Naglašava ključni princip, da su ljudska prava univerzalna i da se primenjuju na sve pojedince, uključujući i LGBT osobe;
- Priznaje činjenicu o vekovnoj i kontinuiranoj diskriminaciji koju LGBT osobe doživljavaju zbog svoje seksualne orijentacije ili rodnog identiteta;
- IPrepoznaje da je neophodno preduzeti konkretne mere kako bi se osiguralo puno uživanje ljudskih prava od strane LGBT osoba i utvrđuje mere koje se traže od vlada država članica.

Preporuku je jednoglasno izglasalo 47 država članica Saveta Evrope. Iako, kao Preporuka, a ne Kon-

1 "Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons" https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE

vencija, ona nije pravno obavezujuća, zasniva se na postojećim pravno obavezujućim međunarodnim i evropskim obavezama država članica za ljudska prava, koje stoga imaju jasnu dužnost da sprovedu njene glavne elemente.

Preporuka ima tri dela: prvo, preambula koja postavlja kontekst njenog usvajanja i ključne principe na kojima se zasniva; drugo, operativni deo Preporuke, koji je vrlo kratak, navodeći široke mere koje treba preduzeti; i treće, dodatak koji određuje specifične mere kako bi se osiguralo uživanje prava i borba protiv kršenja ljudskih prava u širokom spektru oblasti, uključujući zločine iz mržnje, govor mržnje, slobodu udruživanja i izražavanja, pravo na poštovanje privatnog i porodičnog života, zapošljavanje, obrazovanje, zdravstvo, stanovanje, sport, pravo na traženje azila i diskriminacija po više osnova. Takođe, sadrži deo o ulozi nacionalnih institucija za ljudska prava.

Preporuka je podržana Memorandumom, koji sadrži međunarodne instrumente o ljudskim pravima i pravne presedane na kojima se zasnivaju individualne mere u Preporuci i Dodatku.

Svrha izveštaja

Svrha ovog izveštaja je da proceni da li su vlasti u Srbiji napravile bilo kakav napredak u primeni Preporuke, kao i da se naglase potrebne oblasti dalje akcije. Dokumentovanjem toga koje su mere sprovedene, a koje nisu, izveštaj predstavlja bazu sa kojom će se u narednim godinama meriti dalji napredak u primeni Preporuke.

Izveštaj ima dve glavne ciljne grupe. Prvo, na nacionalnom nivou, političke lidere/ke i državne službenike/ce koji/e su odgovorni/e za sprovođenje Preporuke, a drugo, Komitet ministara Saveta Evrope, koji se složio, usvajanjem Preporuke, da će da sprovede pregled napretka prema njenoj periodičnoj implementaciji. Ovaj izveštaj treba da doprinese tom pregledu.

Metodologija

Procena izvještaja o napretku zasnovana je na kontrolnoj listi specifičnih detaljnih mera koje zahteva Preporuka. Ova lista mera je izvedena iz teksta Preporuke i njenog Dodatka, i dopunjena dodatnim detaljima navedenim u Memorandumu.

Podaci korišteni za procenu napretka implementacije su prikupljeni iz brojnih izvora:

- Individualni odgovori ministarstava i lokalnih samouprava na Labrisove dopise, koji su sadržali relevantna pitanja, ali i tražili objašnjenja o preduzetim merama i akcijama. Poslato je ukupno 151 dopis, a Labris je dobio 84 odgovora na njih.
- Informacije iz objavljenih izvora, istraživanja i dokumentacije koje su prikupili Labris i druge nevladine organizacije i nezavisne državne institucije.
- Informacije prikupljene kroz analizu Izveštaja o potrebama LGBT osoba u Srbiji.

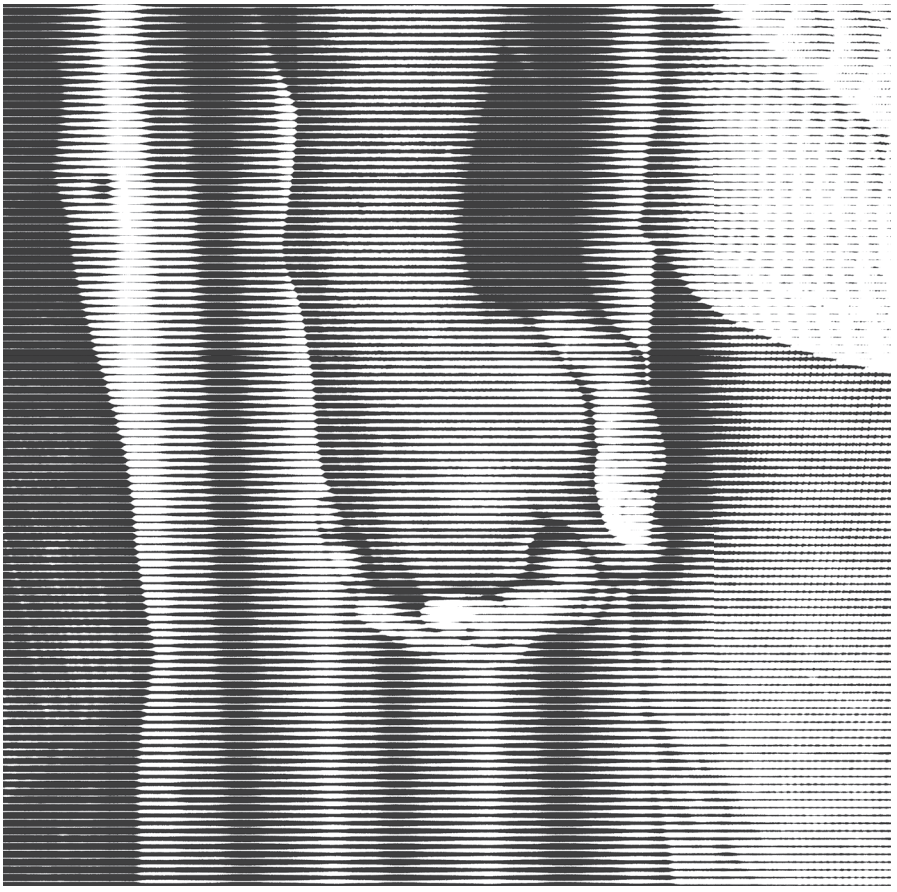
  Informacije prikupljene putem medija i interneta; konferencija i okruglih stolova; sastanci i korespondencija putem mejla sa relevantnim učesnicima.

02.
Sažetak

Imajući u vidu da je u prethodnim godinama poboljšan zakonski okvir koji zabranjuje diskriminaciju, govor mržnje i nasilje nad LGBT osobama, zasnovano na seksualnoj orijentaciji i/ili rodnom identitetu, a problemi sa kojima se suočavaju LGBT osobe su i dalje veoma prisutni u srpskom društvu i to sprečava LGBT osobe da vode ispunjen svakodnevni život. Prema informacijama dobijenim prilikom kreiranja ovog izveštaja, sprovedene mere su vrlo ograničeno u skladu sa zahtevima Preporuke CM/REC (2010)5. Podaci pokazuju da LGBT osobe u Srbiji i dalje žive u društvu u kojem su rasprostranjeni homofobija, nasilje i diskriminacija. Postoji nedostatak sistemskog pristupa u razmatranju efikasnosti i sprovođenja odredaba važećih antidiskriminacionih zakona, strategija i podzakonskih akata, kao i analizi onoga što se može učiniti u drugim sferama koje nisu direktno obuhvaćene postojećim zakonima. Iako postoje dokazi koji ukazuju da postoje sporadične inicijative i napredak, ove inicijative su retke, male i nedosledne. Zakoni o antidiskriminaciji, strategije i podzakonski akti, koji eksplicitno navode seksualnu orijentaciju i/ili rodni identitet su sveobuhvatni, ali nažalost primena svih zakonskih normativa je neadekvatna. Broj nasilnih incidenata i diskriminacije je u porastu, što je vidljivo i u izveštajima brojnih OCD.[2] Iako standardni pravni lekovi za žrtve takvih incidenata formalno postoje, u praksi često nisu lako i efikasno dostupni LGBT osobama i karakterišu ih dalje viktimiziranje i diskriminacija LGBT osoba. Istopolni parovi su potpuno nevidljivi u zakonodavstvu i drugim merama u Srbiji. Probleme i situacije sa kojima se istopolni parovi suočavaju država ignoriše, kao da istopolni parovi ne postoje, ostavljajući takve parove u podređenoj poziciji u poređenju sa heteroseksualnim parovima (i venčanim i nevenčanim) u pogledu socijalne zaštite, zdravstvenog osiguranja, penzija, nasleđivanja, roditeljstva, itd. Iako je prilagodba pola dovoljena, potpuno je zakonski neregulisana, što čini da njeno pravno priznavanje bude vrlo varijabilno, neizvesno, zavisno od proizvoljnih odluka i promenljivih procedura od strane relevantnih državnih službenika/ca, što često oduzima mnogo vremena i uključuje različite vrste ponižavanja i zlostavljanja. Iako sveobuhvatni Zakon o diskriminaciji i

2 https://dasezna.lgbt/

Zakon o radu zabranjuju diskriminaciju zasnovanu na seksualnoj orijentaciji u zapošljavanju, ona je i dalje rasprostranjena. Obrazovanje je jedna od najzapostavljenijih područja od strane države, kada su u pitanju seksualna orijentacija i rodni identitet. Ne postoje efikasni programi i politike za sprečavanje ili senzibilizaciju javnosti o vršnjačkom nasilju. Iako su homofobija i transfobija, uključujući nasilje i uznemiravanje, prisutni u sportu, država nije preduzela nikakve mere za rešavanje ove situacije. Homofobično i transfobično skandiranje na sportskim događajima i dalje ostaju jedan od najčešćih oblika i manifestacija govora mržnje, koji uvek prođu nekažnjeno. Postoji nekoliko državnih institucija za zaštitu ljudskih prava, sa različitim ulogama, mandatima i opsegom aktivnosti. Većina ovih institucija je u većoj ili manjoj meri uključena u aktivnosti usmerene na poboljšanje položaja LGBT osoba. Međutim, ove aktivnosti su uglavnom limitirane, retke i kratkoročne.



03.
Preporuka Vladi Republike Srbije

01.

Razviti bolje pokazatelje i verifikatore za nastavak Antidiskriminacione strategije (2014-2018) i pratećeg Akcionog plana koji bi sadržao aktivnosti usmerene na poboljšanje položaja LGBT osoba, odgovorne institucije, i odgovarajuća sredstva za takve aktivnosti.

02.

Proveriti aktivnosti vezane za poboljšanje položaja LGBT osoba iz Antidiskriminacione strategije (2014-2018) i pratećeg Akcionog plana.

03.

Usvojiti Akcioni plan za implementaciju CM/REC(2010)5 Preporuke.

04.

Usvojiti zakon koji bi regulisao istopolna partnerstva.

05.

Usvojiti zakon koji bi regulisao pravno priznavanje roda, baziran na procesu samoopredeljenja, bez uvredljivih zahteva, poput sterilizacije, medicinske dijagnoze, ili hirurških/medicinskih zahvata.

06.

Kreirati sveobuhvatan statistički sistem koji bi uključivao podatke o prevalenciji i prirodi diskriminacije i nasilja zasnovanog na seksualnoj orijentaciji i rodnom identitetu.

07.

Sprovoditi redovna istraživanja o nivoima socijalne inkluzije LGBT osoba.

08. Sprovoditi redovna istraživanja o efikasnosti postojećih zakona, u pogledu seksualne orijentacije i rodnog identiteta.

09. Sprovoditi redovno velike medijske kampanje za sprečavanje homofobije i transfobije u srpskom društvu.

10. Formirati radnu grupu za analizu svih osnovnoškolskih, srednjoškolskih i univerzitetskih udžbenika kako bi se mapirao i eliminisao diskriminatorni i netačni sadržaj svih nastavnih sredstava, i kako bi se uključile afirmativne i tačne informacije o LGBT osobama.

11. Uvesti kontinuirane obuke za prosvetne radnike/ce na svim obrazovnim nivoima, za učenike/ce i studente/kinje, kao i za zaposlene u Ministarstvu prosvete, Zavod za unapređenje obrazovanja i Nacionalnom prosvetnom savetu.

12. Uvesti kontinuirane obuke i druge edukativne programe o seksualnoj orijentaciji i rodnom identitetu za zaposlene u Ministarstvu unutrašnjih poslova, tužiteljima/kama i sudijama.

13. Uvesti kontinuirane obuke i druge edukativne programe o seksualnoj orijentaciji i rodnom identitetu za medicinske, psihološke i socijalne službenike/ce.

14. Obezbediti jednak pristup veštačkoj oplodnji i planiranju porodice za sve žene bez obzira na njihov bračni status ili seksualnu orijentaciju.

15. Uspostaviti sigurne kuće za LGBT osobe i efikasne mere koje bi sprečile beskućništvo LGBT osoba.

16. Kreirati programe, kampanje i pravila ponašanja za poslodavce/ke i zaposlene u privatnom i javnom sektoru, kako bi se obezbedila radna sredina bez diskriminacije zasnovane na seksualnoj orijentaciji i rodnom identitetu.

04.
Ključna saznanja

Preporuka

> Operativni tekst Preporuke sadrži četiri glavna zahteva: pregled postojećih mera da bi se eliminisala bilo kakva diskriminacija na temelju seksualne orijentacije ili rodnog identiteta, uvođenje efektivnih mera za borbu protiv te vrste diskriminacije, osiguravanje da žrtve imaju pristup efektivnim pravnim lekovima i osiguravanje da je Preporuka prevedena i rasprostranjena u najvećoj mogućoj meri. Takođe se zahteva da se države članice vode principima i merama sadržanim u Dodatku Preporuke.

Iako se Srbija obavezala da će promovisati, poštovati i ojačavati prava LGBT zajednice, ratifikacijom mnogih međunarodnih dogovora i dokumenata[3], i usvajanjem mnogih sektoralnih, nacionalnih zakona koji bi trebalo da štite LGBT prava, ovi zakoni se u praksi ne sprovode adekvatno. Pored zakona, Srbija je usvojila Nacionalne strategije koje pominju LGBT osobe (Antidiskriminacionu strategiju[4], Nacionalnu strategiju za ravnopravnost polova za period 2016-2020[5], Nacionalnu strategiju za mlade za period 2015-2020[6]) i razvila prateće Akcione planove[7], koji takođe nisu adekvatno sprovedeni.

Postoji nedostatak sistemskog pristupa u praćenju efektivnosti i unapređenja odredbi u postojećim

3 http://www.ljudskaprava.gov.rs/sr/fascikla/ljudska-prava/me%C4%91unarodni/konvencije

4 http://www.ljudskaprava.gov.rs/sr/node/145

5 http://www.ljudskaprava.gov.rs/sr/node/145

6 Vlada Republike Srbije, Nacionalna strategija za mlade za period 2015 – 2020 05 broj: 66-1998/2015-1, Beograd, 27.02.2015.

7 http://www.ljudskaprava.gov.rs/sr/node/145

antidiskriminacionim zakonima i podzakonskim aktima, kao i u analizi onoga što bi moglo biti urađeno u drugim sferama, koje nisu direktno pokrivene postojećim zakonima, uključujući i nedostatak istraživanja i državnih statistika o slučajevima diskriminacije i nasilja na temelju seksualne orijentacije ili rodnog identiteta.

Dodatak Preporuci CM/REC(2010)5

01. Pravo na život, bezbednost i zaštitu od nasilja

"Zločini iz mržnje" i drugi incidenti motivisani mržnjom

> Ključna preporuka u delu I A. dopune pokriva obuku policije, sudskog i zatvorskog osoblja, uvođenje nezavisnog aparata za istraživanje zločina iz mržnje navodno počinjenih od strane zaposlenih pri policiji ili u zatvorima, te spektar mera za borbu protiv „zločina iz mržnje" i mržnjom motivisanih incidenata na temelju seksualne orijentacije ili rodnog identiteta, uključujući i legislaciju o zločinima iz mržnje. Od država članica se takođe zahteva da analiziraju podatke o učestalosti i prirodi diskriminacije na ovom polju.

Standardna osnovna obuka policajaca je sprovedena u periodu od 2015. do 2018. godine, a u određenom delu te obuke su podigle svest o specifičnim pitanjima vezanim za homofobične ili transfobične zločine ili incidente. Produkt ovih obuka su i priručnici za rad sa LGBT osobama, koji su ponuđeni za policijski pravni antidiskriminatorni okvir po kojem bi trebalo da rade. Pored obuka policijskih službenika, tokom 2017-2018. godine sprovedene su i obuke za lica koja rade u pravosuđu i zatvorske službenike/ce. Ove obuke su sproveli državni/e službenici/e, a bile su predviđene u Akcionom planu za Strategiju protiv diskriminacije za period 2014-2018.

Iako mehanizmi za istraživanje zločina koje su navodno počinili zaposleni u policiji ili zatvorima postoje, dokazi ukazuju da postoji i razlog za brigu o efektivnosti ovih mehanizama, jer žrtve najčešće

odlučuju da ne podnesu žalbu zbog nedostatka poverenja u policijske i zatvorske strukture i iz straha od dalje viktimizacije. Istraživanje potreba LGBT zajednice u Srbiji je pokazalo da 85,5% ispitanika/ca nema poverenja u policiju, a samo 17,3% je prijavilo zločine iz mržnje.

Zločini iz mržnje na temelju seksualne orijentacije ili rodnog identiteta se ubrajaju u otežavajuće okolnosti u Zakonu o amandmanima i dopunama Krivičnog zakona[8], koji je usvojen 2012. godine, ali do danas u Srbiji ne postoji sudska presuda koja je sadržala ovaj akt.

Takođe, država ne čini ništa kako bi prikupila i analizirala podatke o diskriminaciji, zločinima i drugim incidentima vezanim za seksualnu orijentaciju i rodni identitet.

"Govor mržnje"

> Deo I B. Dodatka zahteva mere za borbu protiv „govora mržnje", na temelju seksualne orijentacije ili rodnog identiteta, uključujući zakone koji sankcionišu „govor mržnje", te promovisanje pozitivne prakse u medijskim organizacijama i od strane internet provajdera, javno odbijanje ovakve vrste govora od strane zvaničnika, vodiče za zvaničnike/ce da se suzdrže od takvog govora i da promovišu poštovanje ljudskih prava LGBT zajednice.

Legislativa koja inkriminiše „govor mržnje" postoji, i može se reći da je njen zakonski okvir adekvatan. Zakoni kojima se zabranjuje „govor mržnje" su Zakon o radiodifuziji, Zakon o javnom informisanju, te Krivični zakon i opšti Zakon o zabrani diskriminacije. Iako ti zakoni postoje, postoje očigledni problemi sa njihovom efektivnošću, kako je „govor mržnje" i dalje veoma prisutan u javnom diskursu, uključujući medije, intenet i grafite, kao i izjave zvaničnika/ca, političara/ki, profesora/ki i religijskih vođa.

Izveštaji o analizi medijskog sadržaja[9] pokazuju da se broj primera „govora mržnje" u medijima povećava, a da se smanjuje broj neutralnih članaka i izveštaja u nacionalnim medijima. Najviše zabrinjava činjenica da je „govor mržnje" sve više prisutan u medijima, ali i među državnim predstavnicima/cama u Skupštini[10].

8 https://www.legislationline.org/documents/section/criminal-codes/country/5

9 http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/

10 https://www.danas.rs/drustvo/sukob-lgbt-zajednice-i-brankice-jankovic/

Čak i u prisustvu premijerke Ane Brnabić[11], na zasedanju Skupštine, tokom debate o izboru članova/ica za Agenciju za borbu protiv korupcije, nekoliko poslanika/ca je imalo negativne izjave vezane za homoseksualnost[12].

Takođe je važno napomenuti da su stope govora mržnje i huškačkog govora usmerenog protiv LGBT zajednice izuzetno visoke u periodima pre, tokom i nakon samog održavanja Parade ponosa, što je i dalje najturbulentniji period u kojem je u javnom diskursu intenzivno i veoma zastupljen homofobičan i transfobičan govor mržnje različitih društvenih aktera. U aprilu 2017. godine NVO Gayten-LGBT je podnela tužbu protiv lidera Pravoslavne crkve patrijarha Irineja, nakon što je patrijarh optužio gej muškarce da šire HIV širom Srbije u članku u novinama Srpski telegraf. Patrijarh je kasnije tvrdio da je bio pogrešno protumačen, te da je istraga završena[13].



11 https://en.wikipedia.org/wiki/Ana_Brnabi%C4%87

12 https://www.youtube.com/watch?v=r_LVRsZil1k

13 https://www.danas.rs/drustvo/patrijarh-irinej-nije-diskriminisao-lgbt-osobe/

02. Sloboda udruživanja

> U delu II Dodatka se od država članica zahteva da preduzmu potrebne mere kako bi LGBT organizacijama osigurale mogućnost dobijanja zvanične registracije, da mogu da rade slobodno, da su uključene u partnerstva kad se stvaraju i implementiraju javne politike koje utiču na LGBT osobe, i da mogu pristupiti javnim sredstvima rezervisanim za NVO-e bez diskriminacije; kao i da su LGBT organizacije za ljudska prava efektivno zaštićene od neprijateljstva i agresije.

Parade ponosa, kao i drugi LGBT događaji, su održani bez ikakvih većih incidenata u poslednje četiri godine. Pored događaja organizovanih u Beogradu, takođe su organizovani i događaji u manjim gradovima tokom 2016. i 2017. godine, bez bilo kakvih problema.

Saradnja LGBT organizacija sa državnim institucijama uglavnom je poboljšana u proteklih nekoliko godina i ide u pozitivnom smeru, posebno u pogledu saradnje sa državnim institucijama za ljudska prava, i to sa Poverenicom za zaštitu ravnopravnosti, Pokrajinskim zaštitnikom građana i Zavodom za rodnu ravnopravnost AP Vojvodine. Poboljšanje se ogleda u činjenici da je nekoliko LGBT organizacija implementiralo projekat finansiran od strane države, održano je više sastanaka u vezi sa Paradom ponosa, a najvažnija je činjenica da su LGBT organizacije uključene u kreiranje Strategije protiv diskriminacije za period 2014-2018 i pratećeg Akcionog plana.

Najveći napredak je vidljiv na lokalnom nivou formiranjem Lokalnih mreža za prevenciju i zaštitu od nasilja i diskriminacije LGBT osoba[14], koje se sastoje od lokalnih institucija i lokalnih OCD. Mreže su formirane u sedam gradova u Srbiji. Ove Lokalne mreže su formirane kroz projekat „Umreženi protiv diskriminacije" koji je implementirao Labris, uz finansijsku podršku Američke agencije za međunarodni razvoj u periodu od 2015. do 2017. godine. Mreže se sastoje od organa lokalne samouprave, osnovnih i viših tužilaštava, policijskih uprava, zdravstvenih i obrazovnih ustanova, centara za socijalni rad, zaštitnika građana na lokalnom nivou, organizacija civilnog društva, kancelarija za mlade, Crvenog krsta i filijala nacionalne službe za zapošljavanje. Gradovi u kojima su formirane Mreže su Subotica, Novi Sad, Pančevo, Beograd, Kragujevac, Niš i Novi Pazar. U ovim gradovima ukupno dvadeset dve organizacije civilnog društva i šezdeset sedam relevantnih lokalnih institucija udružilo se u prevenciji i zaštiti LGBT zajednice.

14 http://labris.org.rs/en/advocacy?tid_1=9

03. Sloboda izražavanja i mirnog okupljanja

> U delu III Dodatka od članica država zahteva da garantuju slobodu izražavanja i mirnog okupljanja LGBT osoba, da osiguraju slobodu primanja i prenošenja informacija i ideja koje se tiču seksualne orijentacije i rodnog identiteta, da podstiču pluralizam i ne-diskriminaciju u medijima, te mirno okupljanje i osudu od strane javnih vlasti ukoliko bude bilo kakvih ometanja u sprovođenju slobode izražavanja i mirnog okupljanja LGBT osoba.

Bezbednost, posebno vezana za ostvarivanje prava na mirno okupljanje, jedan je od prioriteta u borbi za ljudska prava LGBT osoba. Političari u Srbiji i dalje ne zauzimaju jasan i jedinstveni stav o važnosti poštovanja prava na javno okupljanje svakog građanina i građanke, što doprinosi homofobičnoj i transfobičnoj atmosferi. Međutim, Parade ponosa i obeležavanje IDAHOT-a, kao i drugi važni datumi za LGBT osobe, održani su od 2014. do 2018. godine bez većih incidenata.

Organizatori parada ponosa i dalje primaju pretnje, a Odeljenje za suzbijanje visokotehnološkog kriminala Ministarstva unutrašnjih poslova Republike Srbije identifikovalo je 30 lica osumnjičenih za prijetnje i širenje govora mržnje na društvenim medijima. Nažalost, do danas nijedna osoba nije bila pravno gonjena zbog pretnji. Organizovanje Parade ponosa sa snažnom policijskom zaštitom i nesigurnošću da li će skup biti odobren uopšte ne predstavlja slobodu okupljanja[15]. Izgleda da Republika Srbija gleda na marš kao jednu od obaveza koje je Evropska Unija postavila, a ni svest građana/ki o pravima marginalizovanih društvenih grupa se nije poboljšala[16].

15 https://sh.wikipedia.org/wiki/Belgrade_Pride

16 https://www.kurir.rs/vesti/politika/1567063/kritike-izvestaj-iz-brisela-negativan-ako-ne-bude-prajda

04. Pravo na poštovanje privatnog i porodičnog života

> Ovi paragrafi dela IV Dodatka odnose se na kriminalizaciju istopolnih seksualnih činova, sakupljanje ličnih informacija i diskriminaciju u vezi s pristupom pravima roditeljstva i usvajanja.

Prema raznim međunarodnim izveštajima (UN - Univerzalni periodični pregled, CEDAW, Godišnji izveštaji o napretku Evropske komisije za Srbiju) brzo usvajanje Modela Zakona o istopolnim partnerstvima bila je preporuka izdata Republici Srbiji od 2012. godine do danas. Nažalost, nije mnogo promenjeno kako bi se obezbedilo priznavanje istopolnih partnerstava, bez obzira na činjenicu da su Labris i druge LGBT organizacije izradile Model[17] i rade na promovisanju i zagovaranju usvajanja tog Zakona.

Strategijom za prevenciju i zaštitu od diskriminacije i pratećim Akcionim planom[18] (2014-2018) predviđena je izrada Modela Zakona koji bi regulisao istopolno partnerstvo, ali ova aktivnost uopšte nije sprovedena. Činjenica da istopolni partneri ne mogu ostvariti pravo na brak ili pravo na partnerstvo dovodi do diskriminacije u nekolicini prava, kao što su: pravo na alimentaciju, zajedničko usvajanje, zajednička imovina, posebna zaštita od nasilja u porodici, nastavak iznajmljivanje stana nakon smrti supružnika, povlastice za izjašnjavanje o krivici, nasleđivanje, porodične penzije, itd.

Država nije učinila ništa da se kreiraju mere koje bi uzimale u obzir teškoće sa kojima se suočavaju istopolni parovi. Lezbejski parovi nisu uključeni u pitanja vezana za planiranje porodice, tj. bio-medicinski potpomognutu oplodnju. Prema sadašnjem zakonu[19], lezbejke (u vezi ili ne) ne smeju da usvoje decu ili da se podvrgavaju procedurama bio-medicinski potpomognute oplodnje, što ih stavlja u nejednaku poziciju u odnosu na druge žene.

Istraživanje potreba LGBT zajednice u Srbiji pokazalo je da 53,9% ispitanika/ca u stabilnim dugoročnim vezama i da 37,1% osoba živi zajedno sa svojim partnerima/kama, dok 34% planira da živi zajedno. 1,3% LGBT osoba koji su se venčale ili sklopile partnerstva van Srbije, imale su problema prilikom dobijanja potvrde o slobodnom bračnom statusu, zbog svoje seksualne orijentacije/rodnog identiteta. Da postoji mogućnost, 67,7% ispitanika/ca bi iskoristio priliku da sklopi partnerstvo, a 56,4% bi usvojilo dete.

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17 http://labris.org.rs/sr/model-zakona-o-registrovanim-istopolnim-zajednicama

18 http://www.ljudskaprava.gov.rs/sr/node/145

19 https://www.paragraf.rs/propisi/zakon_o_biomedicinski_potpomognutoj_oplodnji.html

Srbija ispunjava zahteve CM/REC(2010)5 Preporuke samo kada se radi o troškovima prilagodbe pola koje pokriva zdravstveno osiguranje. U svakom drugom pogledu, država uglavnom ne ispunjava zahteve Preporuke.

Ovim paragrafima dela IV Dodatka zahteva se od država članica da garantuju puno zakonsko priznavanje prilagodbe pola, na brz, transparentan i dostupan način, te da se uklone svi prethodni zahtevi za pravno priznavanje u kojima se ogleda zlostavljanje (uključujući i zlostavljanje fizičke prirode), te da se transrodnim osobama obezbedi pravo na brak kad se prilagodba pola uradi. U paragrafima dela VII zahteva se od zemalja članica da obezbede transrodnim osobama da imaju efikasan pristup odgovarajućim institucijama za promenu pola, i da odluke koje ograničavaju troškove koje pokriva zdravstveno osiguranje budu zakonite, objektivne i proporcionalne.

Najteži problem kome se država nije posvetila jeste odsustvo bilo kakvog zakonskog okvira koji bi regulisao proceduru prilagodbe pola, uključujući i pravno priznavanje. Pošto je ovo polje u potpunosti neregulisano, pravno priznavanje prilagodbe pola, uključujući i promenu dokumenata, je najčešće veoma teško[20], a ponekad traje i do godinu dana, što transrodne osobe ostavlja u teškoj situaciji koja vodi ka diskriminaciji, siromaštvu, izolaciji, depresiji, a ponekad i samoubistvu.

Prisilna sterilizacija osobe koja prolazi kroz proces prilagodbe pola je obavezna, a uključuje zlostavljanje, kao i nasilne i ponižavajuće procedure kada se dokazuje pol osobe. Drugi nasilni zahtevi uključuju preglede sudskih veštaka, posmatranje i merenje genitalija. Ovakav slučaj se desio na sudu u Leskovcu 2017. godine.

Dodatno, novi nacrt verzije Zakona o amandmanima i dopunama Zakona o vansudskim procesima[21] uvodi veoma zabrinjavajući zahtev za osobu koja želi da prođe kroz proces prilagodbe pola. Ovaj zakon predviđa da je za prilagodbu pola potrebna dozvola suda, što praktično znači da je promena pola nezakonita dok sud ne odluči drugačije. Ovo donosi dodatne probleme i jasno predstavlja kršenje CM/REC(2010)5 Preporuke.

20 http://www.ljudskaprava.gov.rs/sh/press/vest/odrzana-panel-diskusija-zakon-o-rodnom-identitetu-brzo-i-jednostavno-do-prava-trans-osoba

21 https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html

05. Zapošljavanje

> U delu V Dodatka se zahteva od država članica da obezbede efektivnu zaštitu protiv diskriminacije na temelju seksualne orijentacije i rodnog identiteta na polju zaposlenja, uključujući i legislativu kojom se zabranjuje diskriminacija, druge mere za borbu protiv diskriminacije, i posebne mere u vezi s naoružanim silama i transrodnim osobama. Takođe se od država članica zahteva da štite privatnost transrodnih osoba na polju zaposlenja.

Prema informacijama i objašnjenjima, Srbija samo delimično ispunjava uslove iz Preporuke CM/REC(2010)5, i to samo u delu da Zakon o borbi protiv diskriminacije[22] i Zakon o radu[23] zabranjuju diskriminaciju zasnovanu na seksualnoj orijentaciji, iako sami zakonski okvir generalno nije efikasno i adekvatno sprovedeno. Prema važećem Zakonu o radu zabranjena je diskriminacija zasnovana na seksualnoj orijentaciji, ali LGBT osobe se suočavaju sa problemima u procesu zapošljavanja i na radnom mestu, kada njihova seksualna orijentacija postane poznata ili se pretpostavlja, čineći ih lakim metama za uznemiravanje, zastrašivanje i ponižavanje. Osim toga, pravni sistem u Srbiji ne prepoznaje istopolno partnerstvo bilo koje vrste, što znači da osobe u istopolnim odnosima nemaju jednaka prava kao i osobe u heteroseksualnim odnosima, kao što su pravo na socijalno osiguranje, penzijsko i zdravstveno osiguranje, bolovanja za partnere, porodiljsko i trudničko bolovanje.

Ne postoje političke mere koje bi promovisale različitost u zapošljavanju i obeshrabrile diskriminaciju, uznemiravanje i viktimizaciju, zasnovane na seksualnoj orijentaciji i rodnom identitetu. Nema kodeksa ponašanja, programa podizanja svesti ili podrške zaposlenih LGBT osoba.

22 https://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html

23 https://www.paragraf.rs/propisi/zakon_o_radu.html



06. Obrazovanje

> U delu VI Dodatka se zahteva od država članica da obezbede da pravo na obrazovanje osobe mogu uživati bez diskriminacije na temelju seksualne orijentacije ili rodnog identiteta, uključujući i zaštitu od nasilja i društvenog isključivanja, kao što su politike jednakosti i bezbednosti, pravila ponašanja, obuka za zaposlene i mere da se promoviše obostrana tolerancija i poštovanje u školama, uključujući i objektivne informacije u školskom planu i programu i obrazovnim materijalima, jasne informacije i podršku LGBT đacima i studentima, kao i mere da se izađe u susret specifičnim potrebama transrodnih studenata.

Srbija ima samo dva zakona koji se fokusiraju na LGBT mlade, Zakon o visokom obrazovanju[24] koji zabranjuje diskriminaciju zasnovanu na seksualnoj orijentaciji i Zakonu o mladima[25] koji takođe pominje seksualnu orijentaciju i rodni identitet.

Brojna istraživanja[26] su pokazala da obrazovni materijali (udžbenici, nastavni planovi i programi), kao i obrazovni kadar nisu rodno osjetljivi, te promovišu i održavaju tradicionalne rodne uloge na svim nivoima obrazovanja u Srbiji. Dodatno, obrazovni materijali koji sadrže diskriminatorni sadržaj[27] i dalje su u upotrebi, a Ministarstvo prosvete, nauke i tehnološkog razvoja Republike Srbije prenosi odgovornost na druge državne institucije, bez obzira na činjenicu da im je Poverenica za zaštitu ravnopravnosti dala preporuku o odgovornosti za uklanjanje diskriminatornog sadržaja iz udžbenika za srednje škole[28].

Srbija takođe nije pružila informacije i podršku LGBT učenicima i studentima, kao i za LGBT nastavni kadar, niti kreirala mere za zadovoljavanje posebnih potreba transrodnih studenata i transrodnog nastavnog kadra.

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24 https://www.paragraf.rs/propisi/zakon_o_visokom_obrazovanju.html

25 https://www.paragraf.rs/propisi/zakon_o_mladima.html

26 http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima

27 labris.org.rs/sites/default/files/Analiza-diskriminatornog-sadrzaja-srednjoskolskih-udzbenika.pdf

28 http://ravnopravnost.gov.rs/prituzba-zbog-diskriminatornog-sadrzaja-u-udzbenicima-na-osnovu-seksualne-orijentacije-u-oblasti-obrazovanja/

07. Zdravstvena zaštita

> Ovim paragrafima u delu VII Dodatka zahteva se od država članica da obezbede najviši moguć standard zdravstvene nege koji osoba može imati, 2 Pogledati deo V bez diskriminacije na osnovu seksualne orijentacije i rodnog identiteta. Mere podrazumevaju uzimanje u obzir posebnih potreba LGBT osoba u razvoju nacionalnih zdravstvenih planova, uključujući i mere prevencije samoubistva, ankete o zdravlju, program i obuke, dopuštanje pacijentima da odrede sebi najbližeg srodnika bez diskriminacije, povlačenje medicinskih udžbenika i drugih knjiga kojima se homoseksualnost tretira kao bolest iz upotrebe, te obezbeđivanje da ni jedna osoba ne može biti prisiljena na medicinski tretman na temelju svoje seksualne orijentacije ili rodnog identiteta.

Iako se u Zakonu o zdravstvenom osiguranju[29] navodi da je glavni cilj da se postigne najviši mogući nivo zdravstvene zaštite građana/ki i porodica, jasno je da LGBT osobe nemaju pristup istom nivou zdravstvene zaštite u mnogim aspektima, poput diskriminacije zasnovane na seksualnoj orijentaciji i/ili rodnom identitetu, što nije navedeno u zakonu.

Srbija nije pružila adekvatne obuke zdravstvenim radnicima/cama, kao ni uključila tačan i najnoviji materijal o seksualnoj orijentaciji i rodnom identitetu u medicinske udžbenike i priručnike. Većina udžbenika nije revidirana niti u skladu sa naukom zbog činjenice da su objavljeni u 80-im. Zbog toga zdravstveni/e radnici/e nisu spremni/e da se efikasno bave svim specifičnostima koje mogu karakterizirati zdravstvene probleme LGBT osoba, bilo fizičke ili psihološke.

U strahu od uskraćivanja adekvatne zdravstvene zaštite, LGBT osobe često odluče da ne otkrivaju svoju seksualnu orijentaciju ili rodni identitet, čak i kada bi takvo otkrivanje bilo medicinski relevantno. Pored toga, neki udžbenici za medicinsko i mentalno zdravlje još uvek smatraju homoseksualnost bolešču[30] i/ili nekom vrstom društvenog odstupanja, mada Srpsko zdravstveno društvo tvrdi da homoseksualnost nije bolest[31].

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29 https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html

30 http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima

31 http://www.autonomija.info/ministarstvo-homoseksualnost-nije-bolest.html

LGBT zajednica u Srbiji imala je nekolicinu problema sa zdravstvenim sistemom - prvo je bilo u vezi sa doniranjem krvi, 6,3% ispitanika/ca u Labrisovom istraživanju potreba LGBT zajednice izjavili/e su da su odbijeni/e na osnovu svoje seksualne orijentacije; drugo 8,6% izjavilo je da imaju probleme tokom ginekoloških/urooških pregleda jer su ih doktori diskriminisali na osnovu SORI. Jedan od problema sa kojima se suočavaju LB žene jeste da bi 46,4% ispitanica koristilo priliku za bio-medicinski potpomognutu oplodnju ukoliko bi država imala definisan pravni okvir.

08. Stanovanje

> U delu VIII dopune zahteva se da se obezbedi pravo na adekvatno stanovanje bez diskriminacije na temelju seksualne orijentacije ili rodnog identiteta putem mera poput zabrane diskriminacije tokom prodaje ili iznajmljivanja nekretnine, u davanju kredita za kupovinu nekretnine, u priznavanju stanarevog partnera/ke, i u slučaju izbacivanja sa zakupljenog mesta stanovanja; takođe, pružanje relevantnih informacija stanodavcima i stanarima i mere da se obezbedi ne-diskriminatorni pristup skloništima i smeštaju u hitnim slučajevima, te da se pažnja usmeri na rizik beskućništva s kojim se suočavaju LGBT osobe, uključujući i mlade koje su roditelji odbacili.

Zakonodavstvo i mere u Srbiji su i dalje neosetljive na probleme sa kojima se LGBT zajednica suočava u pogledu stanovanja. Pošto srpski pravni sistem ne priznaje brak ni bilo koju drugu alternativnu zajednicu otvorenu ka istopolnim parovima, diskriminacija istopolnih parova postoji kada se radi o stanovanju. Pravni sistem Srbije ne pruža zaštitu od izbacivanja, uključujući i pravo na preseljenje bez diskriminacije na temelju seksualne orijentacije ili rodnog identiteta.

Srpski zakonski okvir ne pruža jednaka prava na zemljište, posedovanje kuće i nasleđivanje bez diskriminacije na temelju seksualne orijentacije i/ili rodnog identiteta[32]. Zbog nedostatka pravnih mehanizama, 70,5% anketiranih osoba izjavilo je da nisu autovani svojim komšijama, a svega 5% nije imalo nikakvih problema nakon autovanja.

32 https://www.paragraf.rs/propisi/zakon_o_osnovama_svojinskopravnih_odnosa.html

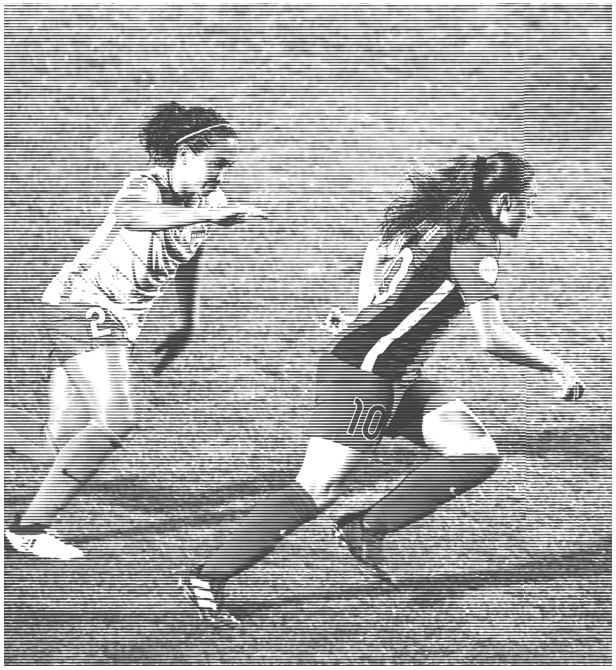
09. Sport

> U delu IX Dodatka od država članica zahteva se da se bore protiv diskriminacije na temelju seksualne orijentacije i rodnog identiteta u sportovima putem mera neutralizacije i kažnjavanja upotrebe diskriminatornih uvreda, uvođenjem pravila ponašanja za sportske organizacije, podsticanjem partnerstava između LGBT organizacija i sportskih klubova, putem antidiskriminativnih kampanja, te da se zaustavi isključivanje transrodnih osoba iz sportskih aktivnosti.

Iako je došlo do porasta diskriminacije i netolerancije u oblasti sporta[33], važno je istaknuti da država nije uspostavila saradnju sa organizacijama civilnog društva koje se bave pravima LGBT osoba, iako je u obavezi da radi sa LGBT udruženjima.

Važno je napomenuti da Zakon o sportu[34] sad sadrži odredbe o poboljšanju ženskog sporta i položaju žena u sportu, antidiskriminaciju (seksualna orijentacija i rodni identitet nisu eksplicitno navedeni), zaštitu sportista/kinja i sankcionisanje prekršaja.

Homofobično skandiranje na sportskim događajima je veoma rasprostranjeno, ali nikada nije sankcionisano[35]. Državni organi nisu učinili ništa da uđu u dijalog sa sportskim udruženjima i navijačkim klubovima, niti je sa LGBT organizacijama uspostavljen takav dijalog po pitanju sporta.



33 http://www.publicpolicy.rs/arhiva/1394/dve-trecine-pripadnika-lgbt-populacije-izlozeno-verbalnom-i-psihickom-nasilju

34 https://www.paragraf.rs/propisi/zakon_o_sportu.html

35 http://www.butasport.rs/fudbal/delije-na-vozdovcu-necemo-da-srbija-bude-zemlja-pedera-video/

10. Pravo na traženje azila

> U delu X Dodatka, od država članica se zahteva, tamo gde postoje međunarodne obaveze, da prepoznaju osnovan strah od progona na temelju seksualne orijentacije i rodnog identiteta kao validan osnov za dobijanje statusa izbeglice i da osiguraju da oni koji su tražili azil nisu poslati u zemlje gde bi im život ili sloboda bili ugroženi, ili gde bi se suočili s rizikom mučenja, nehumanog ili ponižavajućeg tretmana ili kazne zbog seksualne orijentacije ili rodnog identiteta. Takođe se zahteva da oni koji su tražili azil budu zaštićeni od diskriminatornih politika i prakse po ovom osnovu, i da osoblje odgovorno za procesuiranje zahteva za azil prođe obuku glede specifičnih problema s kojima se suočava LGBT zajednica koja traži azil.

U postupku davanja azila u Republici Srbiji zabranjena je diskriminacija po bilo kom osnovu.

Zakon o azilu i privremenoj zaštiti[36] predviđa princip nediskriminacije i princip obezbeđivanja posebnog procesa prijema i garancija za maloljetnike, lica koja su u potpunosti ili delimično lišena poslovne sposobnosti, decu odvojenu od roditelja ili staratelja, osobe s invaliditetom, starije osobe, trudnice, samohrane roditelje sa maloletnom djecom i osobe žrtve mučenja, silovanja ili drugih teških oblika psihološkog, fizičkog ili seksualnog nasilja.

Pravo na azil ili izbeglički status biće odobreno kandidatu/kinji koji/a je izvan svoje zemlje porekla ili prebivališta, koji/a je u opravdanom strahu od progona zbog rase, vere, etničke pripadnosti ili pripadnosti određenoj društvenoj grupi ili političkom mišljenju, a ne može ili ne želi prihvatiti zaštitu od te zemlje. U zavisnosti od okolnosti u zemlji porekla, termin određena društvena grupa može se odnositi na grupu zasnovanu na zajedničkim karakteristikama seksualne orijentacije ili rodnog identiteta kao što je propisano Zakonom o azilu i privremenoj zaštiti.

Tokom perioda izveštavanja, Kancelarija za azil Ministarstva unutrašnjih poslova odobrila je izbeglički status u dva slučaja, na osnovu opravdanih strahova od progona, iz perspektive zemlje porekla, zbog seksualne orijentacije ili rodnog identiteta.

36 https://www.paragraf.rs/propisi/zakon-o-azilu-i-privremenoj-zastiti.html

11. Državne institucije za zaštitu ljudskih prava

> U delu XI Dodatka od država članica zahteva se da obezbede to da se državne institucije za zaštitu ljudskih prava bave diskriminacijom na temelju seksualne orijentacije ili rodnog identiteta, a posebno da mogu da daju preporuke o legislativama i politikama, da podižu svest javnosti i da, ukoliko nacionalni zakon to obezbeđuje, da istražuju individualne žalbe, te da učestvuju u sudskim procesima.

Republika Srbija ima nezavisne institucije sa posebnim mehanizmima i mandatima za rešavanje diskriminacije zasnovane na seksualnoj orijentaciji i/ili rodnom identitetu. Te nezavisne institucije su Poverenik za zaštitu ravnopravnosti, Ombudsman, Ustavni sud i Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti. Na nacionalnom nivou postoji i Ured za ljudska i manjinska prava, koji vrši stručni rad za vladu i nadležna ministarstva u oblasti zaštite i unapređenja ljudskih i manjinskih prava, uključujući i prava LGBT osoba. Na nivou AP Vojvodine, Pokrajinski ombudsman i Zavod za rodnu ravnopravnost se bave pravima LGBT zajednice. Sve navedene ustanove u nekom obliku su se bavile diskriminacijom zasnovanom na seksualnoj orijentaciji i/ili rodnom identitetu tokom perioda izveštavanja.

Nedostatak svesti u generalnoj javnosti za obraćanje nezavisnim institucijama u slučaju diskriminacije zasnovane na seksualnoj orijentaciji i/ili rodnom identitetu odražava se u tome što 57,6% LGBT osoba koje su učestvovale u istraživanjimu nemaju poverenja zbog uočenog nedostatka kompetentnosti unutar tih institucija.

12. Višestruka diskriminacija

> Deo XII Dodatka podstiče države članice da preduzimaju mjere kako bi osigurale da zakonske odredbe u nacionalnom zakonu koje zabranjuju ili sprečavaju diskriminaciju takođe štite od diskriminacije na više osnova, uključujući i na osnovu seksualne orijentacije ili rodnog identiteta.

Srbija u svom pravnom sistemu nema definiciju niti pominje višestruku diskriminaciju kao oblik diskriminacije. Jedini dokument koji pominje i rešava ovo pitanje je Nacionalna strategija za ravnopravnost polova za period 2016-2020[37]. Strategija eksplicitno ukazuje na sledeće ranjive grupe kao posebno izložene riziku od višestruke diskriminacije: Romkinje, žene preko 60 godina, mlade žene, žene na selu, trudnice, žene sa malom decom, žene različite seksualne orijentacije, žene žrtve nasilja u porodici, žene sa invaliditetom, samohrane majke, pripadnice nacionalnih i etničkih manjina, nezaposlene i neobrazovane žene, a lista se ne završava ovde.

Ovaj vid priznavanja žena različite seksualne orijentacije i/ili rodnog identiteta svakako predstavlja poboljšanje u odnosu na nepostojeće zakonodavstvo, međutim, ova Strategija i dalje sadrži neke od nedostataka u smislu da već identifikovani problemi nisu operacionalizovani u merama koje doprinose eliminaciji višestruke diskriminacije.

Podaci istraživanja pokazuju da je 32,4% ispitanika/ca diskriminisano po više osnova - 26,4% zbog toga što su žene, 0,7% zbog boje kože, 4,6% na osnovu etničke pripadnosti, 0,7 % na osnovu invaliditeta.



37 http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-od-2016-do-2020-godine-sa-akcionim



Pojmovnik

BIFOBIJA - Iracionalan strah, netolerantnost i predrasuda prema biseksualnim osoba.

BISEKSUALNA OSOBA - Osoba koju seksualno i/ili emotivno privlače osobe oba pola.

DISKRIMINACIJA - Diskriminacija je svako razlikovanje, isključivanje, ograničavanje i svaki oblik stavljanja u nepovoljan položaj osobe ili grupe osoba po nekoj osnovi. Različite su osnove, odnosno karakteristike po kojima se osoba ili grupa osoba dovodi u nepovoljan položaj. Tako se lezbejke, gejevi i biseksualne osobe mogu diskriminisati na osnovu seksualne orijentacije, trans* osobe na osnovu rodnog identiteta i rodnog izražavanja, a interpolne osobe na osnovu polnih karakteristika. Stoga je jako važno da sve tri osnove (seksualna orijentacija, rodni identitet i polne karakteristike) budu prepoznate kroz zakone, kao osnove na kojima je zabranjena diskriminacija.

GOVOR MRŽNJE usmeren protiv LGBT osoba se odnosi na javne govore koji šire, podstiču, promovišu ili opravdavaju mržnju, diskriminaciju ili neprijateljstvo prema LGBT osobama - na primer, izjave političkih i verskih lidera ili drugih lidera javnog mnjenja koga pokreću štampa ili internet koji imaju za cilj podsticanje mržnje.

HOMOFOBIJA - Iracionalan strah, netolerantnost i predrasuda prema gej muškarcima i lezbejkama. Manifestuje se kao ubeđenje u superiornost heteroseksualnosti. To ubeđenje rađa nasilje prema neheteroseksualnim osobama koje se opravdava uverenjem u vlastitu superiornost (i njihovu inferiornost). Nasilje se ogleda u verbalnim i fizičkim napadima, te diskriminaciji.

HOMOSEKSUALNA OSOBA - Osoba koju privlače osobe istog pola.

Lezbejka Žena koju seksualno i/ili emotivno privlače druge žene.

Gej (gay) Muškarac kojeg seksualno i/ili emotivno privlače drugi muškarci.

INCIDENTI MOTIVISANI MRŽNJOM su incidenti, dela ili manifestacija netolerancije počinjene sa moti-

vom pristrasnosti koji možda ne dođe do praga zločina iz mržnje, zbog nedovoljnog broja dokaza na sudu za krivično djelo ili pristrastnost, ili zato što sam akt nije možda bio krivično delo prema nacionalnom zakonodavstvu.

INTERPOLNE OSOBE - Osobe čije polne karakteristike, uključujući hromozome, gonade i genitalije, odstupaju od tipične, binarne podjele na muška i ženska tela. Postoje različiti oblici interpolnosti. Osobe se tako po polu mogu deliti na muške, ženske i interpolne. Interpolne osobe, kao i muške i ženske osobe, imaju svoju seksualnu orijentaciju i rodni identitet. U prošlosti ove osobe su često nazivane hermafroditima, ali se ovaj termin smatra diskriminatornim i medicinski u potpunosti neispravnim.

LGBTI - Sveobuhvatni pojam koji se koristi kako bi se označile lezbejke, gej muškarci, biseksualne, trans* i interpolne osobe. Pojam označava heterogenu skupinu koja se obično imenuje akronimom LGBTI ili LGBT u društvenom i političkom aktivizmu.

NVO je skraćenica za termin „nevladina organizacija“.

RODNI IDENTITET - Rodni identitet vezuje se za individualno iskustvo i shvatanje vlastitog pola, što može, ali ne mora odgovarati polu dodeljenom pri rođenju. Rodni identitet se, između ostalog, odnosi na lični doživljaj sopstvenog tijela, odevanje i način govora. Osobe čiji je rodni identitet u skladu sa polom koji mu/joj je dodeljen pri rođenju nazivaju se cisrodnim osobama, a osobe čiji rodni identitet nije u skladu sa polom koji mu/joj je dodeljen pri rođenju nazivaju se trans(rodne) osobe.

RODNO IZRAŽAVANJE - Vizuelna i spoljna prezentacija svake osobe koja se ogleda kroz odevanje, odevne ili telesne oznake, frizuru, ponašanje i govor tijela.

SEKSUALNA ORIJENTACIJA - Emocionalna i/ili seksualna privlačnost ili naklonost, koja može biti prema osobama istog i/ili različitog pola/roda. Obično se koristi klasifikacija na heteroseksualne (privlačnost prema osobama različitog pola), homoseksualne (privlačnost prema osobama istog pola) i biseksualne (privlačnost prema osobama istog i različitog pola) osobe.

TRANSRODNA OSOBA - Termin za osobe čiji rodni identitet nije u skladu s polom koji im je dodeljen pri rođenju. Transrodnost obuhvata one osobe koje osjećaju, preferiraju ili biraju da predstave sebe drugačije od očekivanih rodnih uloga koje im tradicionalno pripadaju na osnovu pola dodeljenog pri

rođenju, bilo kroz način odevanja, način govora, manirizme, kozmetiku ili modifikacije tela. Između ostalog, transrodnost se odnosi i na osobe koje se ne identifikuju kao muške i ženske, zatim transeksualne osobe, transvestite i cross-dressere.

Transrodni muškarac je osoba kojoj je pri rođenju dodeljen ženski pol, ali je njegov rodni identitet muški ili se nalazi negde na spektru maskulinih rodnih identiteta.

Transrodna žena je osoba kojoj je pri rođenju dodeljen muški pol, ali je njen rodni identitet ženski ili se nalazi negde na spektru femininih rodnih identiteta.

TRANSEKSUALNA OSOBA - Osoba koja ima jasnu želju i nameru da promeni/prilagodi svoj pol, kao i osoba koja je delimično ili potpuno modifikovala svoje telo (što uključuje fizičku i/ili hormonalnu terapiju i operacije).

TRANSFOBIJA - Iracionalan strah, netolerantnost i predrasuda prema transeksualnim i transrodnim osobama.

VIŠESTRUKA DISKRIMINACIJA predstavlja diskriminaciju na više zasebnih nivoa.

ZLOČIN IZ MRŽNJE - Odnosi se na kaznena dela motivisana predrasudama prema određenoj osobi ili grupi osoba. Zločini iz mržnje uključuju zastrašivanje, pretnje, oštećenja imovine, zlostavljanje, ubistvo ili bilo koje drugo kazneno delo, kod kojeg je žrtva postala meta napada zbog stvarne ili pretpostavljene seksualne orijentacije, rodnog identiteta, ili je žrtva povezana, pripada, podržava ili je član/ica neke LGBT grupe.



O Labrisu – organizaciji za lezbejska ljudska prava

Labris, jedna od najstarijih organizacija za lezbejska ljudska prava u regionu, je organizacija koja smatra da je pravo na različitu seksualnu orijentaciju osnovno ljudsko prava. Labris je ženska, LGBT organizacija i organizacija za ljudska prava. Naša misija je raditi na eliminaciji svih oblika nasilja i diskriminacije lezbejki i učestvovati u stvaranju ravnopravnog društva. Naša vizija je društvo bez mržnje i straha, društvo vladavine zakona, kao i društvo u kojem bi seksualne i rodne manjine imale jednaka prava kao većina.

Labris ima tri glavna programa u okviru kojih radimo na osnaživanju LGBT osoba:

01 U okviru Programa za rad sa zajednicom organizujemo edukativne i psihološke radionice i grupe za podršku, neformalna druženja, kao i sastanke sa istaknutim lezbejkama iz celog sveta. Pored toga, nudimo veliki broj knjiga, brošura i video zapisa o LGBT pravima, identitetima i iskustvima, a posebno o kaming autu. Sve ove aktivnosti su organizovane sa ciljem osnaživanja LGBT osoba, a posebno lezbejki, i želje da im pomognemo da prihvate svoj identitet, da žive lagodnije u svom privatnom i profesionalnom okruženju, ali i da prepoznaju i prijavljuju diskriminaciju.

02 U okviru Programa obrazovanja organizujemo različite vrste radionica kako bismo senzibilisale različite relevantne aktere. Uglavnom radimo radionice za zdravstvene radnike/ce, socijalne radnike/ce, profesore/ke, policiju, studente/kinje, novinare/ke, zaštitnike/ce građana, i slično, kako bismo ih upoznale sa LGBT pravima i identitetima, diskriminacijom i svakodnevnim iskustvima LGBT zajednice.

03 U okviru Programa zagovaranja zagovaramo na lokalnom, nacionalnom, regionalnom i evropskom nivou (koristeći dokumentovane dokaze o diskriminaciji) radi poboljšanja pravne zaštite i društvenog prihvatanja LGBT osoba. Labris je učestvovao u pisanju Zakona protiv diskriminacije i lobirao za njegovo usvajanje. Labris je pripremio nacrt Zakona o registrovanim partnerstvima. Labris aktivno prati postojeći zakonski okvir.

Naslov: IZVEŠTAJ o implementaciji Preporuke CM/Rec(2010)5 Komiteta ministara zemljama članicama o merama za borbu protiv diskriminacije na osnovu seksualne orijentacije ili rodnog identiteta u Srbiji

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LABRIS
ORGANIZACIJA ZA LEZBEJSKA LJUDSKA PRAVA

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LABRIS
ORGANISATION FOR LESBIAN HUMAN RIGHTS

About Labris – Lesbian Human Rights Organization

Labris, one of the oldest lesbian human rights organizations in the region, is an organization that considers the right to different sexual orientation as one of the basic human rights. Labris is women, LGBT and human rights organization. Our mission is to work on the elimination of all forms of violence and discrimination against lesbians and to take part in creating a more equal society. Our vision is a society without hate, fear, with rule of law, society where sexual and gender minorities would have equal rights as majority.

Labris has three main program areas within which we are working on empowering LGBT people:

01 Within the Community Development program, we organize educational and psychological workshops and support groups; informal social gatherings as well as meetings with prominent lesbians from around the world. In addition, we offer a large number of books, brochures and videos about LGBT rights, identities and experiences, and particularly about "coming out". All these activities are organized with the aim to empower LGBT people, particularly lesbians, and help them accept their identity, live more comfortably within their private and professional surroundings, and to recognize and report discrimination.

02 Within the Education Program, we organize different kinds of workshops in order to sensitize various relevant stakeholders. Mostly, we conduct workshops for health workers, social workers, professors, police, prosecutors, journalists and political parties, in order to make them more sensitive and aware of LGBT rights and identities, discrimination and everyday experiences of sexual and gender minorities.

03 Within the Advocacy Program we advocate at national and European level (using the documented evidence of discrimination) for improved legal protection and social acceptance of LGBT people. Labris took part in writing the Anti-discrimination Law and lobbied for its adoption. Labris has prepared the draft law on registered same-sex partnership and beside that Labris is actively monitoring the implementation of existing legal framework and is submitting shadow reports.



Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels "male" or "female", transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned "female" at birth but has a gender identity which is "male" or within a masculine gender identity spectrum. A transgender woman is a person who was assigned "male" at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

Transphobia refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

Hate-motivated incident are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

Hate speech against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

Homophobia is defined as an irrational fear of and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

Intersex people are persons who are born with chromosomic, hormonal levels or genital characteristics which do not correspond to the given standard of "male" or "female" categories as for sexual or reproductive anatomy. This word has replaced the term "hermaphrodite", which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

LGBT people or LGBT people is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple-discrimination describes discrimination that takes place on the basis of several grounds operating separately.

NGO is the abbreviation for "non-governmental organisation".

Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Glossary

Gender identity refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

Gender reassignment treatment refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

Hate crime towards LGBT people refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.



12. Discrimination on multiple grounds

> Section XII of the Appendix encourages member states to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity.

Serbia within its legal system does not have definition nor mentions multiple-discrimination as a form of discrimination. Only document that mentions and addresses this issue is National Strategy for Gender Equality for the Period 2016-20201. 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.

This recognition of women of different sexual orientation and/or gender identity is certainly an improvement compared to non-existing legislation; however, this strategy still contains some of the deficiencies in the sense that already identified problems are not operationalized in measures contributing to elimination of multiple-discrimination.

Research data shows that 32,4% of respondents have been discriminated on multiple grounds – 26,4% on grounds of being women, 0,7% because of the color of their skin, 4,6% based on ethnicity, 0,7% on grounds of disability.



1 http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-od-2016-do-2020-godine-sa-akcionim

11. National Human Rights Structure

> Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

The Republic of Serbia has independent institutions with specific mechanisms and mandates to address discrimination based on sexual orientation and/or gender identity. Those independent institutions are Commissioner for the Protection of Equality, Ombudsman, the Constitutional Court and the Commissioner for Information of Public Importance and Personal Data Protection. At the national level, there is also the Office for Human and Minority Rights, doing expert work for the government and relevant ministries, within the field of protection and improvement of human and minority rights, while also including LGBT rights. At the level of the Autonomous Province of Vojvodina, the Provincial Ombudsman (Deputy for Gender Equality) and the Gender Equality Institute have been dealing with LGBT rights. All stated institution have in some form dealt with discrimination based on sexual orientation and/or gender identity in reporting period.

The lack of raising awareness amongst the general public for addressing independent institutions in case of discrimination based on sexual orientation and/or gender identity reflects in 57,6% of LGBT people which participated in research not having trust due to the perceived lack of competency within those institutions.

10. Right to seek asylum

> Section X of the Appendix requires member states, where they have international obligations in this respect, to recognize a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

In the asylum granting procedure in the Republic of Serbia all discrimination on any grounds is prohibited.

The Law on Asylum and Temporary Protection[1], provides 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.

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. 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 as the Law on Asylum and Temporary Protection in act 26 stipulates.

In the reporting period, the Asylum Office of the Ministry of Interior granted refugee status in two cases, based on justified fears of persecution for reasons of, from the perspective of the country of origin, due to sexual orientation or gender identity.

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1 https://www.paragraf.rs/propisi/zakon-o-azilu-i-privremenoj-zastiti.html

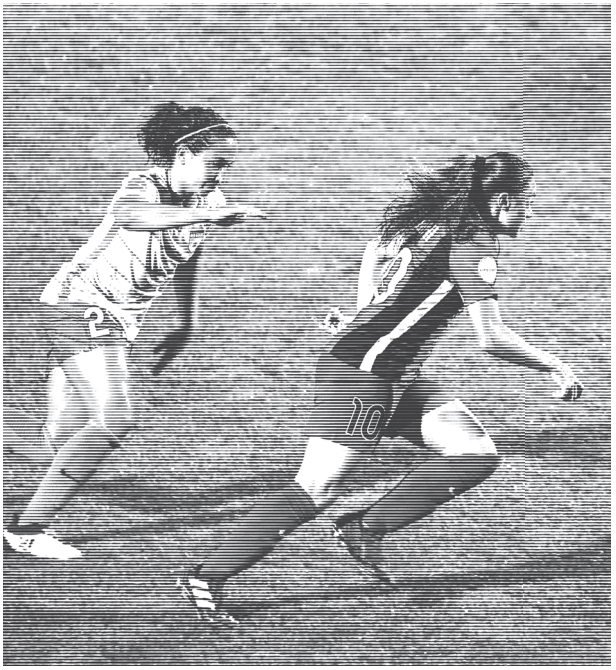
09. Sports

> Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

Although there has been a rise in discrimination and intolerance in the area of sport[2], we would like to point out that the State has not established cooperation with civil society organizations that deal with the rights of LGBT people, in spite of being obligated to work with LGBT associations.

It is important to note that the Law on Sport[3] now includes provisions on improving women's sport and the position of women in sport, anti-discrimination (sexual orientation and gender identity are not specifically mentioned), protection of athletes and sanctioning offences.

Homophobic chanting at sport events is widespread, but never sanctioned[4]. State authorities have done nothing to enter into dialogue with sport associations and fan clubs, nor has such dialogue been established with LGBT organizations, regarding sports.



2 http://www.publicpolicy.rs/arhiva/1394/dve-trecine-pripadnika-lgbt-populacije-izlozeno-verbalnom-i-psihickom-nasilju

3 https://www.paragraf.rs/propisi/zakon_o_sportu.html

4 http://www.butasport.rs/fudbal/delije-na-vozdovcu-necemo-da-srbija-bude-zemlja-pedera-video/

grounds of their sexual orientation; secondly 8,6% stated they had problems during gynaecological/urological exams because doctors were discriminating them on SOGI grounds. The one of the issues that LB women are facing is that 46,4% of LB women respondents would use opportunity of artificial insemination if State would have a clear legal framework.

08. Housing

> Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

Legislation and measures in regards to the adequate housing in Serbia are still insensitive to the problems that LGBT people face in the domain of housing. Since the Serbian legal system does not recognize same-sex couples, discrimination of those couples exist when it comes to housing. Serbia's legal system does not provide protection from eviction, including the right to resettlement without discrimination, based on sexual orientation and/or gender identity. LGBT youth, due to the coming out, are especially vulnerable to homelessness and State has not established social programmes or support for them.

Serbian legislation does not ensure equal rights to land, home ownership and inheritance without discrimination on grounds of sexual orientation and/or gender identity[1]. Due to the lack of the legal mechanisms 70,5% of research respondents have stated that they are not out to their neighbours, and only 5% have not had any issues if they were out.

1 https://www.paragraf.rs/propisi/zakon_o_osnovama_svojinskopravnih_odnosa.html

07. Health

> These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Although, Law on Health Insurance[6] states that the main goal is to reach the highest possible level of health protection of citizens and families, it is clear that LGBT people do not have access to the same level of health protection in many aspect as discrimination based on sexual orientation and/or gender identity is not mentioned in the law.

Serbia has failed to provide adequate trainings to health professionals as well as to include accurate and up-to-date material about sexual orientation and gender identity in medical textbooks and manuals. Majority of the textbooks have not been revised and in line with science due the fact they were published in 80s. Health professionals are therefore not prepared to effectively deal with all the various specificities that might characterize health concerns of LGBT people, whether physical or psychological.

In fear of being denied adequate health care, LGBT people often choose not to disclose their sexual orientation or gender identity, even when such disclosure would be medically relevant. In addition, some medical and mental health textbooks still regard homosexuality as an illness[7] and/or as some form of social deviance, although Serbian Health Society states that homosexuality is not an illness[8].

LGBT community in Serbia had several issues with health system, first was in relation to the donation of blood, 6,3% of respondents in Labris LGBT community needs research stated they were rejected on

6 https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html

7 http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima

8 http://www.autonomija.info/ministarstvo-homoseksualnost-nije-bolest.html

06. Education

> Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programs for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

Serbia has only two laws that are focusing on LGBT youth, Law on Higher Education1 that forbids discrimination based on sexual orientation and Law on Youth2 that also mentions sexual orientation and gender identity.

Various studies[3] have shown that educational materials (textbooks, curricula), as well as educational staff, are not gender sensitive, and promote and perpetuate traditional gender roles in all educational levels in Serbia. By extension, educational materials are containing discriminatory content[4] are still in use and The Ministry of Education, Science and Technological Development of the Republic of Serbia is transferring the responsibility on other State Institutions regardless to the fact that Commissioner for the Protection of Equality made the recommendation on the responsibility for the exclusion of the discriminatory content from the high school text books[5].

Serbia has also failed to provide information and support for LGBT pupils and students, as well as for LGBT teaching staff, and to create measures to meet the special needs of transgender students and transgender teaching staff.

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1 https://www.paragraf.rs/propisi/zakon_o_visokom_obrazovanju.html

2 https://www.paragraf.rs/propisi/zakon_o_mladima.html

3 http://labris.org.rs/sr/istopolna-orijentacija-u-srednjo%C5%A1kolskim-ud%C5%BEbenicima

4 labris.org.rs/sites/default/files/Analiza-diskriminatornog-sadrzaja-srednjoskolskih-udzbenika.pdf

5 http://ravnopravnost.gov.rs/prituzba-zbog-diskriminatornog-sadrzaja-u-udzbenicima-na-osnovu-seksualne-orijentacije-u-oblasti-obrazovanja/



risome requirement for a person that wants to go through gender reassignment. This law stipulates that a court's permission is required for gender reassignment, which practically means that gender reassignment is illegal until the court decided otherwise. This brings additional problems, and clearly represents a violation of CMCE Recommendation.

05. Employment

> Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

According to the information and explanations Serbia only partially complies with the requirements of the CMCE Recommendation and only in the fact that the comprehensive Antidiscrimination Law[1] and Labour Law[2] forbid discrimination based on sexual orientation, although legislation alone is generally not effective and adequately implemented. According to the current Labour Law, discrimination based on sexual orientation is forbidden, however, there is reason to believe that LGBT people are facing problems in the employment process and at the workplace, when their sexual orientation becomes known or is presumed, leaving them exposed to harassment, intimidation and humiliation. In addition, Serbian law does not recognize same-sex partnerships of any kind, which means that persons in same-sex relationships do not have equal rights as people in heterosexual relationships, such as the right to social security, pension and health insurance, sickness-leaves for partners, parental-leaves for children and bereavement leaves.

There are no policy measures that would promote diversity in employment and discourage discrimination, harassment and victimization, based on sexual orientation and gender identity. There are no codes of conduct, awareness raising programs or support for LGBT employees.

1 https://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html

2 https://www.paragraf.rs/propisi/zakon_o_radu.html

obtaining certificate of free marital status due to their sexual orientation/gender identity. If there was a possibility, 67,7% respondent would use opportunity to register their partnership and 56,4% would adopt a child.

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Serbia complies with the requirements of the CM/REC(2010)5 Recommendation only when it comes to costs of gender affirming services that are covered by health insurance. In every other respect, the state has generally failed to comply with the Recommendation.

The most pressing problem that has not been addressed by the state is the absence of any legislation that would regulate gender affirming procedures and legal gender recognition. Since this field is completely unregulated, legal recognition of gender reassignment, including change of documents, is usually very difficult[4], sometimes lasting up to a year, leaving transgender persons in a seriously vulnerable situation, that leads to discrimination, poverty, isolation, depression and sometimes suicide.

Forced sterilization is a requirement for legal gender recognition, which constitutes abuse, as well as abusive and humiliating procedures when trying to prove one's gender. Other abusive requirements include forensic examinations, observations and measurements of genitalia, as a proof of transition for example happened in courtroom in Leskovac in 2017.

In addition, the new draft version of the Law on Amendments and Addendums of the Law on Extrajudicial Proceedings[5] introduces an extremely wor

4 http://www.ljudskaprava.gov.rs/sh/press/vest/odrzana-panel-diskusija-zakon-o-rodnom-identitetu-brzo-i-jednostavno-do-prava-trans-osoba

5 https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html

04. Right to respect for private and family life

> These paragraphs of Section IV of the Appendix address criminalization of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

According to various international reports (UN - Universal Periodic Review, CEDAW, Annual progress reports of the European Commission for Serbia) swift adoption of the Model Law on Same-Sex Partnerships was a recommendation issued to the Republic of Serbia from 2012 till today. Unfortunately not a lot has been changed in order to ensure recognition of the same-sex partnerships regardless of the fact that Labris and other LGBT organizations have drafted the Model[1] and are working on promoting and advocating for the adoption of that law.

The Strategy for the Prevention and Protection against Discrimination and related Action Plan[2] (2014-2018) has foreseen drafting a Model law which would regulate same-sex partnerships, but this activity has not been implemented at all. The fact that same-sex partners cannot exercise the right to marriage or the right to a domestic partnership leads to discrimination in a number of rights, such as: the right to alimony, joint adoption, community property, special protection against domestic violence, continuing to rent the apartment after the death of the spouse-lessee, testimonial privilege, intestate inheritance, family pensions, etc.

The state has done nothing to consider any measures that would take into account the difficulties which same-sex couples face. Lesbian couples are not included in matters relating to family planning, including medically assisted artificial insemination. Under current law[3] lesbian women (in a relationship or not) are not allowed to adopt children or to undergo medically assisted artificial insemination, putting them in an unequal situation with other women.

Research of the needs of the LGBT community in Serbia showed that 53,9% of respondents are in stable relationships and that 37,1% persons are living together with their partners, while 34% are planning to live together. 1,3% of LGBT people who registered/married outside of Serbia had issues

1 http://labris.org.rs/sr/model-zakona-o-registrovanim-istopolnim-zajednicama

2 http://www.ljudskaprava.gov.rs/sr/node/145

3 https://www.paragraf.rs/propisi/zakon_o_biomedicinski_potpomognutoj_oplodnji.html

formed networks are Subotica, Novi Sad, Pancevo, Belgrade, Kragujevac, Nis and Novi Pazar, in these cities total of twenty-two civil society organisations and sixty seven relevant local institutions are joined in prevention and protection of LGBT community.

03. Freedom of expression and peaceful assembly

> Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

Security, especially related to exercising the right to peaceful assembly is one of the priorities in the fight for human rights of LGBT people. Politicians in Serbia still do not take a clear and uniform stance on the importance of respecting the right to public assembly of each citizen, which contributes to the homophobic and transphobic atmosphere. However, Pride Parades and marking of IDAHOT and other important dates for LGBT people were held from 2014 -2018 without major incidents.

Organizers of Pride Parades still receive threats and the Department for Combating High-Tech Crime of the Ministry of the Interior of the Republic of Serbia has identified 30 persons suspected of threatening and spreading hate speech on social media. Unfortunately until today not a single person has bees prosecuted for threats. Organization of the Pride Parades with heavy police protection and uncertainty as to whether the gathering will be approved at all does not constitute freedom of assembly.[2] The Republic of Serbia seems to view the march as one of the obligations imposed by the European Union, while the citizens' awareness of the rights of marginalized social groups has not improved[3].

2 https://sh.wikipedia.org/wiki/Belgrade_Pride

3 https://www.kurir.rs/vesti/politika/1567063/kritike-izvestaj-iz-brisela-negativan-ako-ne-bude-prajda

02. Freedom of association

> Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT people, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

Pride Parades, as well as other LGBT gatherings, have been held without any major incidents in last four years. Beside event that were organised in Belgrade lots of activities took place in smaller cities during 2016/2017, were held without any problems.

Cooperation of LGBT organizations with state institutions has for the greater part been improved in the past couple of years and is moving in the upward trend, particularly regarding the cooperation with national human rights structures, most notably with the Commissioner for the Protection of Equality, the Provincial Ombudsman and the Gender Equality Institute of the Autonomous Province of Vojvodina. Improvement can be seen in fact that several LGBT organizations had implemented project funded by State representatives, more meetings in relation to Pride Parade have been fold and the most important is the fact that LGBT organisations are included in creation of the Antidiscrimination strategy 2014-2018 and related Action Plan.

The biggest progress has been made at local level, Local Networks for prevention and protection from violence and discrimination of LGBT people[1], consisted from local institution and local CSO`s, have been created in seven cities. These Local Networks were formed within the project "The Network change for Serbia`s LGBT community" implemented by CSO Labris, with the financial support of the United States Agency for International Development during 2015-2017. Networks are made of local self-government bodies, primary and higher prosecutor's offices, police administrations, health and educational institutions, social welfare centres, citizen's protection at the local level, civil society organizations, youth offices, Red Cross and branches of the National Employment Service. Cities that have

1 http://labris.org.rs/en/advocacy?tid_1=9

The most concerning is fact that media report are regressing in regards to reporting on “hate speech” which is often heard from government officials in Parliament[3].

Even in presence of the Prime Minister Ana Brnabic[4] at the Parliament preceding, during the debate on selection of the members of the Anti-Corruption Agency, several members of the Parliament had negative statement about homosexuality[5].

It is also important to note that rates of hate speech and inflammatory speech directed against LGBT people are extremely high in the periods before, during and after Pride Parades are scheduled to take place, which remains to be the most dramatic period in which public discourse is intensely and widely saturated by homophobic and transphobic hate speech, by various social actors. In April 2017 NGO Gayten-LGBT submitted a complaint against Orthodox Church leader Patriarch Irinej, after the patriarch accused gay men of spreading HIV throughout Serbia in an article in the Srpski Telegraf newspaper. The patriarch later claimed he had been misinterpreted and the equality commissioner’s investigation ended[6].



3 https://www.danas.rs/drustvo/sukob-lgbt-zajednice-i-brankice-jankovic/

4 https://en.wikipedia.org/wiki/Ana_Brnabi%C4%87

5 https://www.youtube.com/watch?v=r_LVRsZil1k

6 https://www.danas.rs/drustvo/patrijarh-irinej-nije-diskriminisao-lgbt-osobe/

Although mechanisms for investigating crimes allegedly committed by law-enforcement and prison staff exist, evidence suggests that there is reason to be concerned about the effectiveness of these mechanisms, as victims usually do not decide to file a complaint due to lack of trust in police and prison structures and fear of further victimisation. Research of the needs of the LGBT people in Serbia showed that 85, 5% of the respondents do not trust the police and only 17,3% of persons had reported hate crimes.

Hate crime based on sexual orientation and gender identity is included as an aggravating circumstance in the Law on Amendments and Addendums of the Criminal Code[1] adopted in 2012, but until today in Serbia there is no court judgment that sustained this act.

Also, the state still has not developed mechanism for collecting and analysis of data about discrimination, crimes and other incidents related to sexual orientation and gender identity.

"Hate speech"

> Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalizing such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Laws that penalize "hate speech" exist and are adequate (Law on Broadcasting, Law on Public Information, Penal Code and the comprehensive Antidiscrimination Law). Even though these laws exist there are obvious problems with the effectiveness of implementation of these laws, as "hate speech" is still very much present in the public discourse, including media, internet and graffiti, as well as within statements of government officials, politicians, professors and religious leaders.

Media analysis reports[2] indicate that the number of "hate speech" examples within media reports is increasing, with the decreased number of neutral reports and representations in national media.

1 https://www.legislationline.org/documents/section/criminal-codes/country/5

2 http://gayecho.com/glic/lgbt-populacija-u-medijima-izvestaj-o-monitoringu-medija-za-2015-godinu/

There is a lack of systemic approach towards examining the effectiveness and enforcement of the provisions in the valid antidiscrimination laws, strategies and by-laws, as well as towards analysis of what could be done in other spheres which are not directly covered by existing laws, including the lack of research and state statistics on cases of discrimination and violence based on sexual orientation and gender identity.

Appendix to the Recommendation CM/REC(2010)5

01. Right to life, security and protection from violence

"Hate crimes" and other hate-motivated incidents

> The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

The standard basic training of police officers was implemented in period from 2015-2018 and to some extend those trainings ensured awareness about specific issues regarding homophobic or transphobic crimes or incidents, and manual for the work with LGBT people offered for police legal anti-discriminatory framework within they should work. Apart from trainings of police officers trainings for persons working in judiciary system and prison officers were also implemented during 2017-2018. These training were conducted by State representatives and were envisioned in Action Plan for Antidiscrimination strategy 2014-2018.

04.
Key findings

Recommendation

> The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

Even though Serbia has committed itself to promoting, respecting and enforcing rights of LGBT people, by ratifying many international agreements and documents[1], and by adopting many sectoral national laws that should protect LGBT rights, these laws are not adequately implemented in practice. Beside laws Serbia has adopted National Strategies which mention LGBT people (Antidiscrimination strategy[2], National Strategy for Gender Equality for the Period 2016-2020[3], Youth National Strategy for the period 2015 – 2020[4]) and developed related Action Plans[5] which are also not adequately implemented.

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1 http://www.ljudskaprava.gov.rs/sr/fascikla/ljudska-prava/me%C4%91unarodni/konvencije

2 http://www.ljudskaprava.gov.rs/sr/node/145

3 http://www.ljudskaprava.gov.rs/sr/node/145

4 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

5 http://www.ljudskaprava.gov.rs/sr/node/145

08. To conduct regular research about the effectiveness of existing laws, when it comes to sexual orientation and gender identity.

09. To conduct regular and large scale media campaigns to end homophobia and transphobia in the Serbian society.

10. To create a working group for the analysis of all primary, secondary school and university textbooks in order to map and eliminate discriminatory and inaccurate content in all teaching aids, and in order to include affirmative and accurate information about LGBT people.

11. To introduce continuous trainings for educational staff at all educational levels, to pupils and students, as well as for employees of the Ministry of Education, Institute for the Advancement of Education and the National Educational Council.

12. To introduce continuous trainings and other educational programs about sexual orientation and gender identity for employees of the Ministry for Internal Affairs, prosecutors and judges.

13. To introduce continuous trainings and other educational programs about sexual orientation and gender identity for medical, mental health and social service professionals.

14. To ensure equal access to artificial insemination and family planning for all women irrespective of their marital status or sexual orientation.

15. To establish safe houses for LGBT people and effective measures that would prevent homelessness of LGBT people.

16. To create programmes, campaigns and codes of conduct for employers and employees both in private and public sectors, in order to provide working environments free of discrimination based on sexual orientation and gender identity.

03.
Recommendation to the Serbian government

01. To develop better indicators and verifications for continuation of the Antidiscrimination strategy (2014-2018) and related Action Plan that would list activities aimed at improving the position of LGBT people, responsible bodies, along with adequate funds for such actions.

02. To fact-check implemented activities related to improvement of position of LGBT people from Antidiscrimination strategy (2014-2018) and related Action Plan.

03. To adopt an Action plan for implementing CM/REC(2010)5 Recommendations.

04. To adopt legislation that would regulate same-sex partnerships.

05. To adopt legislation transparent legal framework for legal gender recognition, based on a process of self-determination, free from abusive requirements (such as sterilisation, GID/medical diagnosis, or surgical/medical intervention.

06. To create a comprehensive statistical system that would include data on prevalence and nature of discrimination and violence based on sexual orientation and gender identity.

07. To conduct regular research about levels of social inclusion of LGBT people.

and involve different kinds of humiliation and abuse. Though comprehensive Antidiscrimination Law and Labour Law forbid discrimination based on sexual orientation in employment, discrimination and harassment of LGBT people is still widespread. Education is still one of the most neglected areas by the state, when it comes to sexual orientation and gender identity. There are no efficient programmes and policies for preventing or sensitising general public on bullying. Even though homophobia and transphobia, including violence and harassment, are present in sports, no measures have been undertaken by the state to tackle this situation. Homophobic and transphobic chanting at sport events remains one of the most frequent forms and manifestations of hate speech, which always go unpunished. There are several different national human rights structures, with different roles, mandates and scopes of activities. Most of these structures are to a greater or lesser extent involved in activities aimed at improving the position of LGBT people. However, these activities are generally limited, rare and short-term.



02.
Executive Summary

Considering that legal framework that prohibits discrimination, hate speech and violence against LGBT people, based on sexual orientation and/or gender identity, in previous years had been improved, issues that LGBT people are facing are still highly present in Serbian society and that are preventing LGBT people from leading a fulfilled everyday life. According to information obtained during creation of this report complies with the requirements of the CM/REC(2010)5 Recommendation to a very limited extent. Data is showing that in Serbia LGBT people are still living in a society in which homophobia, violence and discrimination are widespread. There is a lack of systemic approach towards examining the effectiveness and enforcement of the provisions in the valid antidiscrimination laws, strategies and by-laws, as well as towards analysis of what could be done in other spheres which are not directly covered by existing laws. Although there is evidence to suggest that sporadic initiatives exist and that things are moving forward, these initiatives are rare, small scale and inconsistent. Antidiscrimination laws, strategies and by-laws that explicitly mention sexual orientation and/or gender identity are the comprehensive but unfortunately there is a gap in adequate implementation of all legal normative. Number of violent incidents and discrimination is on the rise which is showing in CSOs reports[1]. Even though standard legal remedies for victims of such incidents formally do exist, in practice they are often not easily and effectively accessible by LGBT persons and are characterised by further victimisation and discrimination of LGBT persons. Same-sex couples are completely invisible in Serbian legislation and other measures. Problems and situations faced by same-sex couples are ignored by the state as though same-sex couples do not exist, leaving such couples in a discriminatory position comparing to different-sex couples (both married and unmarried) in respect to social security, health insurance, pension, inheritance, parenting, etc. Even though gender reassignment is allowed, it is completely unregulated by law, making legal recognition of the change highly variable, uncertain, depending on arbitrary decisions and variable procedures by relevant officials, which often take a great deal of time

1 https://dasezna.lgbt/

Methodology

The reports assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and local governance to letters from Labris listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures. Total of 151 letters was submitted, Labris received total of 84 responses.
- Information from published sources, research and documentation assembled by Labris and other non-governmental organisations and independent state institutions.
- Information gathered through research of the needs of the LGBT people in Serbia?

  Information gathered from media and internet; conferences and roundtables; in person meetings and email correspondence with relevant stakeholders.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

Purpose of the report

The purpose of this report is to assess if any progress has been made by Serbian authorities in implementing the Recommendation, and to highlight the areas were further action is needed. By documenting which measures have, and which have not, been completed, It provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation and secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation periodically. It is intended that this report will contribute to that review.

01.
Introduction

Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states "on measures to combat discrimination on grounds of sexual orientation or gender identity".

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat" .[1]

In broad terms the Recommendation does three things:

- It emphasizes the key principle, that human rights are universal and apply to all individuals, including therefore LGBT people;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT people on account of their sexual orientation or gender identity;
- It recognizes that specific action is required to ensure the full enjoyment of human rights by LGBT people, and sets out the measures required of member state governments.

1 "Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons" https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE



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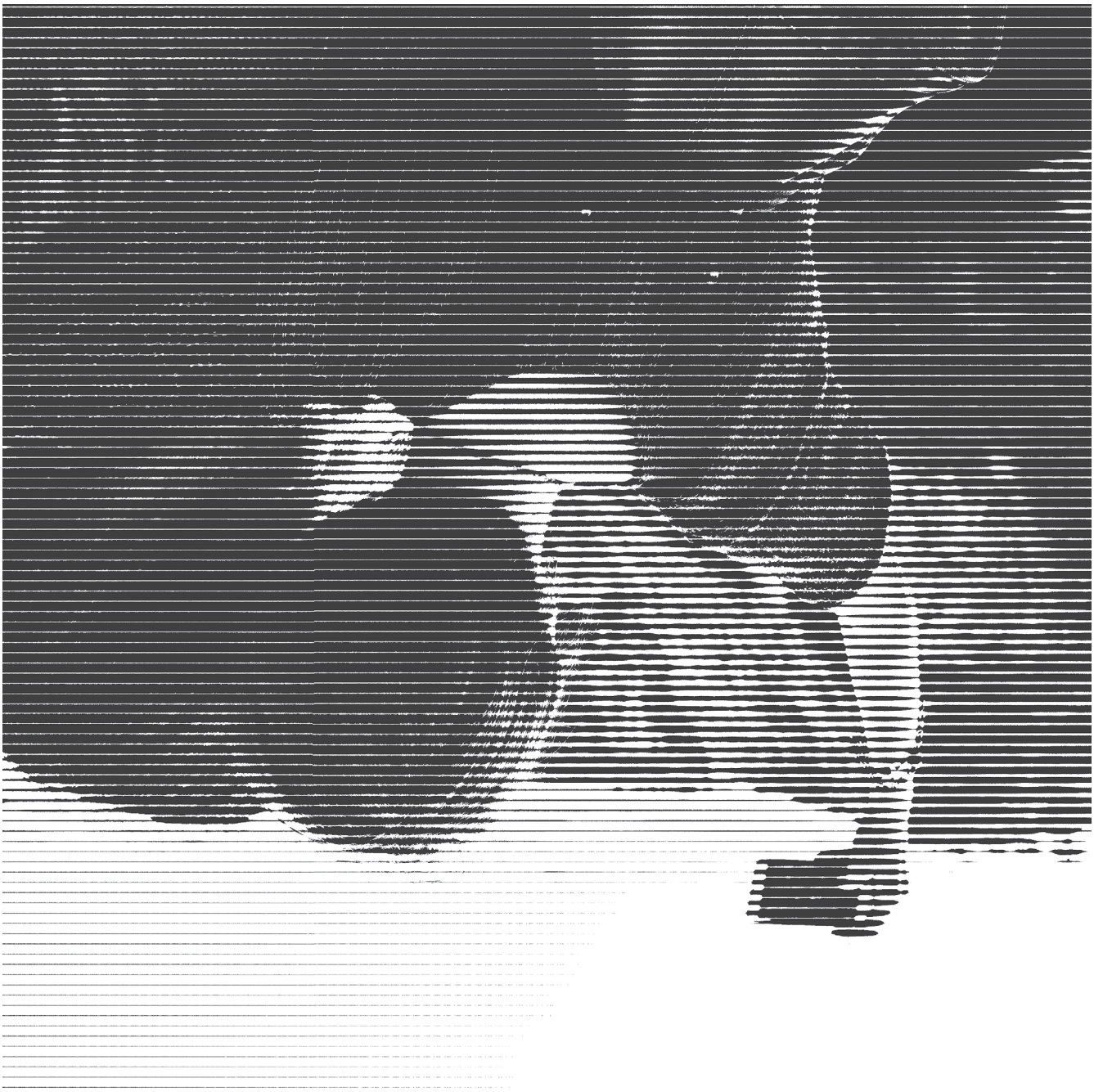
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Report

on implementation of the Recommendation CM/Rec(2010)5
of the Committee of Ministers to member states on measures
to combat discrimination on grounds of sexual orientation
or gender identity in Serbia