



LGBTI Equal Rights Association

for Western Balkans and Turkey



**Written Contribution on the position of LGBTI persons in the  
Republic of Serbia to the  
UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS**

**CIVIL SOCIETY SUBMISSION**

January 2022

SUPPORTED BY:



## Statement of Interest

1. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey is submitting this Written Contribution to the United Nations Committee on Economic, Social and Cultural Rights (hereinafter: the Committee), which focuses on the position of lesbian, gay, bisexual, trans and intersex (hereinafter: LGBTI) persons in the country. The report was assembled by ERA’s Advocacy Consultant Vuk Raičević.
2. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey<sup>1</sup>, is an umbrella regional association operating in 9 countries (Albania, Bosnia & Herzegovina, Croatia, N.Macedonia, Kosovo, Montenegro, Serbia, Slovenia and Turkey) with a current membership of 76 LGBTI organisations and objectives to strengthen capacities of LGBTI organisations in the region, lobby and advocate nationally, regionally and internationally for LGBTI rights and strengthen and improve the visibility of LGBTI movement and communities.

## Introduction

3. This report will primarily focus on the analysis of the issues affecting LGBTI persons highlighted within the Concluding observations on the Second periodic report of Serbia<sup>2</sup> of the United Nations Committee on Economic, Social and Cultural Rights (hereinafter: the Committee), the Third Periodic Report of the Republic of Serbia and the List of issues provided by the Committee in relation to the Third Periodic Report of Serbia. However, as the very first specific written contribution on the position of LGBTI persons in Serbia to be submitted to the Committee, the report will also present relevant data portraying the socio-economic and cultural rights of LGBTI persons in Serbia, with special focus on trans and intersex persons. Given in mind the COVID-19 pandemic, the report will also present data regarding the impact of the COVID-19 on the LGBTI communities of Serbia.

## Legal and Policy Framework

### Constitution of Serbia

4. Equality before the law based on different personal grounds is enshrined in Article 21 of the Constitution of the Republic of Serbia<sup>3</sup> (hereinafter: the Constitution). Sexual orientation, gender identity and expression and sex characteristics (hereinafter: SOGIESC) are not explicitly mentioned, however the article contains a phrase “*or other personal grounds*” which keeps an open list of different personal grounds.<sup>4</sup>
5. The Constitution also guarantees the right to work (Article 60), the right to health protection, both physical and mental (Article 68), the right to social protection and social assistance in order to overcome social and life difficulties and create conditions for meeting basic living needs (Article 69) and the right to education (Article 71).

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<sup>1</sup> For more information about ERA, please visit the website: <http://www.lgbti-era.org>

<sup>2</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Serbia, 10 July 2014, UN Doc no. E/C.12/SRB/CO/2, par. 11.

<sup>3</sup> Constitution of the Republic of Serbia: <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/70-100028/ustav-republike-srbije>

<sup>4</sup> Even though no concrete steps were taken in amending the Constitution of Serbia so far, it is important to state that LGBTI persons are among the most discriminated persons in Serbia and SOGIESC should be explicitly mentioned among other explicitly mentioned protective personal grounds.

6. According to the Law on Prohibition of Discrimination (Official Gazette of Serbia Np. 52/2021), sexual orientation, gender identity and sex characteristics are listed as protected grounds of discrimination.<sup>5</sup>
7. Same-sex partnerships and same-sex families are not legally recognized in the Republic of Serbia.

#### Antidiscrimination legislation

8. The 2009 Anti-Discrimination Law<sup>6</sup> is the first law of its kind in the Republic of Serbia. The law includes sexual orientation and gender identity on the list of protected personal grounds against discrimination. Gender expression and sex characteristics are not yet included as personal grounds.
9. In 2021 list of amendments have been adopted that, among other issues, includes sex characteristics as protected ground of discrimination. With that, this became the first Serbian legislation that recognises intersex people.
10. The 2021 Anti-Discrimination Law prohibits discrimination in the field of labour (Article 16), in access to public services (Article 17), and education (Article 19). The law includes explicit provisions for prohibition of discrimination on the ground of sex, gender, gender identity (Article 20) and sexual orientation (Article 21). Article 27 stipulates that discrimination against persons or groups of persons with regard to their health condition, as well as members of their families, is prohibited.
11. Other anti-discrimination provisions that prohibit discrimination based on gender, gender identity, and/or sexual orientation have been included in various pieces of legislation, including the Criminal Code, Media Law, Labour Law, Asylum Law etc. However, these laws mostly do not grant protection on all of the abovementioned personal grounds. The amendments of these laws and their harmonization in order to include sexual orientation and gender identity were not completed in accordance with the Strategy for Prevention and Protection from Discrimination for the period 2013-2018, while no new strategy has been adopted<sup>7</sup>.

#### Controversies over the process of amending the Law on Prohibition of Discrimination

12. In January 2021 the state charge re-opened the possibility on submitting comments and suggestions to the Draft Law. ERA, together with its members: Da se Zna!, Geten, XY Spectrum, Group Come Out, and Association Rainbow, submitted a revised list of suggestions to contribute towards the advancement of the draft law on anti-discrimination. Most of those were incorporated and adopted in the final law, including sex characteristics, intersectional discrimination and multiple discrimination.

#### Controversies over the election of the Commissioner for the Protection of Equality

13. The system of protection against discrimination in Serbia had been put to danger, as the institution of the Commissioner for the Protection of Equality, an independent national human rights body established under the Law on Protection from Discrimination 10 years ago, was completely blocked. The mandate of the Commissioner for the Protection of Equality Brankica Janković officially ended on 27 May 2020 and the new Commissioner was not elected until late November 2020. This is a consequence of a failure to elect the new Commissioner in a timely manner and before the Serbian parliament prior to the parliamentary elections that were held

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<sup>5</sup> [The Law on Prohibition of Discrimination](#) (Official Gazette of Serbia No. 22/2009 and 52/2021).

<sup>6</sup> [The Law on Prohibition of Discrimination](#) (Official Gazette of Serbia No. 22/2009).

<sup>7</sup> For more information about this, please see the section: [Strategy for prevention and protection from discrimination missing](#)

on 21 June 2020. It is absolutely unacceptable for the actors responsible to have allowed such developments to happen, putting at question the rule of law in Serbia.

14. The non-functioning of this human rights mechanism of protection against discrimination was strongly affecting LGBTI citizens of Serbia, including in the field of protection of their socio-economic rights and especially those who belong to multiple vulnerable and marginalized groups, including those who used this mechanism as a free and accessible tool for protection from discrimination and was directly against the obligations taken under the Cycle III recommendations provided to the Republic of Serbia under Universal Periodic Review (hereinafter: UPR Cycle III)<sup>8</sup>.
15. In its latest [annual report](#) for 2020, the Commissioner for the Protection of Equality repeated what was already stated in every annual report published by this body – that LGBTI persons are among the most discriminated in Serbia. When it comes to filing complaints to this institution, the number of complaints based on discrimination on sexual orientation has significantly reduced, from 42 in 2018 and 18 in 2019 to 7 in 2020. The fact that a significant part of 2020 Serbia was without active Commissioner had this negative effect on the reporting of discrimination.
16. Brankica Janković was re-elected as the Commissioner for the Protection of Equality on 26 November 2020, 6 months after her first mandate ended. The election process has been labeled by civil society as non-transparent, non-inclusive and taken overnight. Namely because she was the only candidate for the position and there was no information about her candidacy up until the day of the session of the parliamentary body in charge of the election process.<sup>9</sup>

#### Strategy for prevention and protection from discrimination missing

17. The Strategy for Prevention and Protection from Discrimination for the period from 2013 to 2018 (hereinafter: the Strategy) was the first such strategy adopted as a harmonized system of measures, conditions and public policy instruments that the Republic of Serbia should have implemented in order to prevent or reduction of all forms and special cases of discrimination, and especially towards certain persons or groups of persons with regard to their personal characteristics.
18. No new strategy has been adopted since, neither have measures defined by the Strategy been met. With the lack of implementation of the Strategy up until the submission of this report and no new strategy being adopted, the position of LGBTI persons in Serbia is significantly declining and is contrary to the recommendations provided under e.g. UPR Cycle III of Serbia (which were supported by the Republic of Serbia). As there were no new developments, this report will analyse the Strategy, that partially was also supposed to improve social, economic and cultural rights of LGBTI persons.
19. The strategy referred to the prevention and prohibition of all forms, types and special cases of discrimination. The strategy covered all persons and groups of persons with regard to their personal characteristics, especially national minorities and vulnerable social groups that are most often exposed to discrimination, including gays, lesbians, bisexuals and trans people (hereinafter: LGBT persons). The strategy did not include the position of intersex persons (who are not yet recognized in the Law on Prohibition of Discrimination or in any other law). Non-binary individuals were also not recognized.

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<sup>8</sup> For more information on the implementation of SOGIESC recommendations provided to the Republic of Serbia under Cycle III of the UPR, please consult the following report: [Written Contribution to the 3rd Cycle of the Universal Periodic Review of Republic of Serbia: Mid-term report](#)

<sup>9</sup> For more information, please see the following links: <https://otvoreniparlament.rs/aktuelno/209> and <https://pescanik.net/pravna-analiza-izbora-poverenika-za-zastitu-ravnopravnosti/>

20. The strategy was accompanied by an appropriate Action Plan, adopted for the period 2014-2018. It is noticeable that the Action Plan did not include the year of 2013, and the reason for that lies in the fact that it was adopted with a significant delay in relation to the date of adoption of the Strategy itself. Namely, the Government of the Republic of Serbia (hereinafter: The Government) adopted the Strategy at the session held on 27 June 2013, while the accompanying Action Plan was adopted by the Conclusion of the Government only after more than fifteen months – on 8 October 2014.
21. Since LGBT persons were explicitly recognized as persons exposed to discrimination and discriminatory treatment, Part IV of the Strategy was dedicated to them. The strategy in this part referred to various international and domestic regulations governing the position of LGBT people. The issue of preventing discrimination against persons on the basis of their sexual orientation and gender identity was described as a "sensitive topic in the Serbian public". The strategy stated that various forms of discrimination, violence and threats against LGBT people are still present today. Publicly and privately expressed homophobia and hate speech, as well as open forms of violence motivated by intolerance towards non-heterosexual affiliation, are the most common forms of discrimination and human rights violations against LGBT people. Security, especially in relation to the exercise of the right to peaceful assembly, had been identified as a top priority for LGBT people.
22. As a comprehensive strategic document, the strategy should have undoubtedly been of great importance in terms of improving the position of LGBT people in Serbian society and should had, through the accompanying Action Plan, set the framework for the adoption of laws and bylaws to improve their legal status and implement public policy measures to promote their equality.
23. There are far more measures and goals referring to LGBT persons that have not been met, including the following:
- 23.1. The Law on Amendments to the Law on Registry Books, among other things, regulates the data on gender reassignment in the birth register. The data on the change of sex is entered in the registry book on the basis of the decision of the competent body, which is passed on the basis of the prescribed certificate of the competent health institution. The bylaw on the manner of issuance and the form of the certificate was passed at the beginning of 2019 and is very important for the application of the law itself. However, this legal solution still deviates from international human rights standards of legal recognition based on self-determination, since trans people are still pathologized and required to perform hormone therapy and psychiatric evaluation.
- 23.2. The process of adopting a relevant law was initiated in 2021, but halted. The lack of a comprehensive law regulating the matter affects the wide scope of socio-economic rights of LGBT persons in Serbia. It is important to mention that civil society has made a Model law on same sex partnerships back in 2012. In cooperation with legal experts, CSO LABRIS revised and modernised the Model law in April 2020<sup>10</sup>. The new Model law<sup>11</sup> was disseminated among relevant state institutions, but these institutions did not react and have ignored LABRIS' invitations to meet and discuss the Model law and actions to take accordingly.

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<sup>10</sup> <http://labris.org.rs/sr/labris-predstavio-model-zakona-o-gradanskom-partnerstvu>

<sup>11</sup> The new Model law is available in Serbian via following link:

<http://labris.org.rs/sites/default/files/Model%20zakona%20o%20gradanskom%20partnerstvu.pdf>

23.3. The drafting of the model of the Law on Amendments to the Law on Inheritance has not started, in the sense of equalizing marital and extramarital union, i.e. recognizing the right to same-sex partners to inherit in the first hereditary line.

23.4. Drafting of the Law on Amendments to the Law on Social Protection has not started in the part that refers to special measures in relation to certain vulnerable social groups, in order to achieve more effective protection of LGBT people, i.e. expanding the grounds of discrimination in providing social protection to gender identity and expression.

23.5. The adopted amendments to the Labour Law in 2014 and 2017 did not explicitly include gender identity as personal characteristic in connection with the prohibition of discrimination, and the derogative terms referring to sexual orientation were not changed, which is contained in Art. 18 of this law, that regulates the prohibition of discrimination.

23.6. In the field of sports, the legal framework prohibiting discrimination is recognized in the new Law on Sports, which was adopted in February 2016, but the prohibition of discrimination does not explicitly cover discrimination based on sexual orientation and gender identity (or gender expression and sex characteristics).

23.7. In the field of health, the abolition of certain discriminatory practices and the development of mandatory instructions regarding the donation of blood to LGBT people has also not been implemented.

23.8. Professional training of civil servants regarding the application of anti-discrimination regulations in relation to vulnerable social groups, including LGBT people, has not been provided.

## Relevant data related to the socio-economic rights of LGBTI persons

### EU LGBTI Survey II

24. The European Union's Fundamental Rights Agency (FRA) launched the findings of its second Europe-wide LGBTI survey in May 2020. For the first time the report looks not only at the living experiences of LGBTI people in the European Union (including the United Kingdom), but also in two EU accession countries, North Macedonia and Serbia. A total of 139,799 persons aged 15 or older who describe themselves as LGBTI completed the online EU-LGBTI II Survey across all the countries involved. The survey was conducted online from 27 May to 22 July 2019. Its questionnaire covered a wide range of issues, such as experiences of discrimination, harassment or violence, rights awareness, openness about being LGBTI, positive and negative experiences at work and in education, socio-economic and living conditions, health and well-being, and housing issues.
25. The results from the survey, conducted present the largest international LGBTI survey of its kind.<sup>12</sup> The results show, *inter alia*, the following responses from the LGBTI participants of the survey:
- 24% felt discriminated against at work in the year before the survey in Serbia.
  - Discrimination affects many areas of life, such as going to a café, restaurant, hospital or to a shop. Overall, in Serbia in 2019, 45% felt discriminated against in at least one area of life in the year before the survey.
  - 9% reported their discrimination experiences to an equality body or another organisation in Serbia.
  - 42% of LGBTI students (15-17 years old) in Serbia say were hiding being LGBTI at school.

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<sup>12</sup> The results of the research are available here: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

- 34% of LGBTI students (15-17 years old) in Serbia say that in school someone often or always supported, defended or protected their rights as an LGBTI person.
- 60% of LGBTI teenager respondents (15-17 years old) in Serbia say their peers or teachers have often or always supported LGBTI people.
- 18% of LGBTI of teenager respondents (15-17 years old) in Serbia say their school education at some point addressed LGBTI issues positively or in a balanced way.

#### A Comparative Analysis of the Socioeconomic Dimensions of LGBTI Exclusion in Serbia

26. This survey<sup>13</sup>, conducted in 2018 by the World Bank in cooperation with ERA, IPSOS and the Williams institute, is the first known attempt to collect large-scale survey data comparing the outcomes of LGBTI people with the Serbian population at large. This report represents a quantitative baseline on the status of LGBTI people. It revealed the particular challenges faced by transgender people, that few LGBTI people are employed in the public sector and that LGBTI people's trust in Serbia's social, political, and legal institutions is extremely low. The results show, inter alia, the following:

- The experience of discrimination has a direct impact on income: LGBTI respondents who had faced discrimination in the workplace earned €24 less than those who had not. Due largely to smaller overall household size, median household income is lower in LGBTI households (€489) for households in the comparable general population (€628).
- The at-risk-of-poverty rate is similar for LGBTI respondents (17 percent) and the comparable general population (16 percent). Transgender respondents have the highest at-risk-of-poverty rate (24 percent) among LGBTI subgroups.
- Transgender and intersex respondents are at the highest risk of material deprivation (40 percent and 33 percent, respectively). Rates are also higher for older LGBTI respondents (27 percent of those over age 45) and LGBTI respondents with less education (32 percent of those without a college degree).
- LGBTI respondents are far less open about their identity to their colleagues in the public sector and far more likely to be out to their colleagues in the nongovernmental sector.
- One out of three (33 percent) LGBTI respondents report a general negative attitude at work toward LGBTI people. This increases to 62 percent for transgender respondents. This fear of discrimination is evident in the fact that nearly half (47 percent) of LGBTI respondents are completely "closed off" from their work colleagues about being LGBTI. Gay and bisexual men are the most closed off at work. One-fifth (19 percent) of LGBTI respondents report that discriminatory practices are targeted toward the LGBTI population when entering the workplace. Personal experiences of discrimination against LGBTI people once they are at work further demonstrate an unwelcome and stigmatizing environment. One out of five (20 percent) transgender respondents report suffering discrimination based on gender identity. Slightly less than one-fifth (17 percent) of intersex respondents said that they have been discriminated against at work based on their sex characteristics. Approximately one out of seven lesbian (14 percent) and gay (16 percent) respondents note that they have experienced discrimination at work because of their sexual orientation.
- In 10 percent of cases, workplace discrimination forced LGBTI people to quit their job. The rates for transgender and intersex respondents are even higher (27 and 13 percent,

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<sup>13</sup> The results of the survey were published in July 2019 and is available here: <https://www.lgbti-era.org/sites/default/files/pdfdocs/A-Comparative-Analysis-of-the-Socioeconomic-Dimensions-of-LGBTI-Exclusion-in-Serbia.pdf>

respectively). LGBTI respondents who reported experiencing any kind of workplace discrimination have lower personal and household incomes, have higher rates of material deprivation (52 versus 25 percent), and are more likely to be currently unemployed (24 versus 11 percent) than those who have not experienced workplace discrimination.

- LGBTI respondents (71 percent) less often report their state of health as very good or good compared to the general population (93 percent).

### Discrimination against sexual minorities in education and housing: evidence from two field experiments in Serbia

27. The report "Discrimination Against Sexual Minorities in Education and Housing: Evidence from Two Field Experiments in Serbia", conducted by the World Bank in cooperation with ERA, IPSOS and the Williams institute, documents, for the first time, experimental evidence of discrimination against LGBTI people in access to education and housing in Serbia.<sup>14</sup> These are just two of many important steps in the life of all people, including an LGBTI person, each with unique impacts on their social and economic lives. Despite Serbian Laws on the Prohibition of Discrimination, which include comprehensive protections for LGBTI people, evidence from these experiments suggests that discrimination exists in enrollment to primary schools and access to private rental market. Data were collected via telephone interviews in January and February 2017:

- According to the survey results, 7<sup>th</sup> grade boys that were perceived to be effeminate were three times as likely to be refused enrolment into a primary school (even though primary education is compulsory and refusal is prohibited by law). And even when those boys were accepted into a school, they met with twice as much hesitation and delay by school administrators in accepting their enrolment.
- Meanwhile, in the private rental market, 18% of same sex couples were refused apartment rentals by landlords in the survey, when no heterosexual couples were refused. And gay couples were more than three times as likely to be refused as lesbian couples.

### Institutional discrimination against LGB persons in healthcare

28. In 2019, the Rulebook on Conditions and Criteria of Selection, Testing and Evaluation of Reproductive Cell Donors of the Ministry of Health came into force, which states that a reproductive cell donor cannot be a person with a "anamnesis" of homosexual relations in the last five years.<sup>15</sup> CSO Izadi! and CSO Da se zna! filed a complaint to the Commissioner for the Protection of Equality, who found discrimination and recommended that the Ministry of Health harmonize the discriminatory provisions with The Law on the Prohibition of Discrimination. Due to non-compliance with the recommendation, the Commissioner issued an official warning to the Ministry in 2020. However, the Ministry deleted the provision which states that the donor cannot be a person with "anamnesis" of homosexual relations in the last five years in 2021 and thus ended two years of institutional discrimination against LGB people regarding this issue.

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<sup>14</sup> The research was published in 2018 and it is available here: <https://www.lgbti-era.org/sites/default/files/pdfdocs/0351-124587-WP-P156209-DISCRIMINATION-AGAINST-SEXUAL-MINORITIES-IN-EDUCATION-AND-HOUSING-EVIDENCE-FROM-TWO-FIELD-EXPERIMENTS-IN-SERBIA-PUBLIC-ENGLISH.pdf>

<sup>15</sup> The legal analysis of the Rulebook is available on pages 65-71 here: [https://www.partners-serbia.org//public/news/Privatnost\\_i\\_zastita\\_podataka\\_o\\_licnosti\\_u\\_Srbiji-\\_Analiza\\_odabranih\\_sektorskih\\_propisa\\_i\\_njihove\\_primene.pdf](https://www.partners-serbia.org//public/news/Privatnost_i_zastita_podataka_o_licnosti_u_Srbiji-_Analiza_odabranih_sektorskih_propisa_i_njihove_primene.pdf)

## 2020 Annual LGBTI survey

29. Results of the research “Annual LGBTI survey 2020”<sup>16</sup>, conducted by IDEAS and RIC, show that LGBTI+ population in Serbia have low trust or no trust at all in the government and it is on same level as back in 2018. 77% of LGBTI+ participants in research think that the Government does not care about the position of LGBTI+ population in Serbia. Accordingly, 82% of LGBTI+ citizens consider that Serbia is not good place to live as an LGBTI+ person. On subsistence of negative atmosphere in society against LGBTI+ persons leads the fact that only 14% of LGBTI+ citizens feels liberty to show their true identity.
30. Results of qualitative part of this research indicate that LGBTI+ citizens are not sufficiently informed about discrimination, nor availability of protection mechanisms against discrimination. High level of distrust of LGBTI+ citizens in Government and protection mechanisms against discrimination and not enough information, are the key factors which lead to uncertainty of LGBTI+ to use available protection mechanisms.
31. Results of the research show there is widespread discrimination in the field of work, whereby 16% LGBTI+ persons think they were discriminated in the recruitment process, while 24% think that they were discriminated at work. 92% of LGBTI+ persons think that existing mechanisms can’t guarantee their protection from discrimination in the workplace, while 83% consider that companies don't properly sanction discrimination in the workplace.

## **Advancing the cultural rights of LGBTI persons**

32. According to ERA’s “Case Study Serbia 2018”, which analyzed the LGBTI/queer cultural and arts scene currently existing in Serbia, LGBTI culture in Serbia is fragmented, underdeveloped, not adequately visible and supported.<sup>17</sup> The society is still far from having diverse and comprehensive queer arts and culture, containing different and sustainable sets of its existence – from queer arts and cultural theories, exhibitions and public debates to more commercial programmes, such as different sets of bars and clubs (that often mix with arts). The latter seem to be more visible and show progress in development. In overall, entertainment spaces such as drag shows, DJ sets, music and clubbing events have multiplied. Many of the events and initiatives are directly connected to civil society and local LGBTI CSOs.
33. Most of the queer arts and culture of Serbia are located in the capital Belgrade and to some extent, in the second largest city of Serbia – Novi Sad. LGBTI people in smaller cities and rural areas have hard access to queer arts and culture. Being outside of the big cities is difficult for LGBTI people who have no places to get to know each other and to address issues affecting the LGBTI community. LGBTI people and topics remain invisible in smaller cities and rural areas. Regular and peaceful pride events that were happening in the past years certainly are an added value and a solid foundation to this.<sup>18</sup>

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<sup>16</sup> The results of the research are available here: <https://www.lgbti-era.org/sites/default/files/pdfdocs/Annual%20LGBT%20Survey.pdf>

<sup>17</sup> This case study is available here: <https://www.lgbti-era.org/sites/default/files/pdfdocs/CASE%20STUDY%202019%20LGBTI%20Rights%20in%20Serbia.pdf>

<sup>18</sup> *Ibid.*

## Position of Trans Individuals

### Legal Gender Recognition (LGR)

34. In Serbia, legal gender recognition process is regulated by law, but remains inadequate, complicated and lengthy, while the bodies responsible for its implementation have no clear guidance on implementation or they seemed to be ignoring prescribed timelines. There is no recognition of third gender marker leaving intersex and gender non-conforming people without protection. Birth certificates may be legally amended without undertaking of gender affirming surgery. However, trans people are still pathologized and required to perform hormone therapy and psychiatric evaluation before accessing LGR.
35. LGR is regulated in the Republic of Serbia under Article 45b of the Law on registry books.<sup>19</sup>
36. The Ministry of Public Administration and Local Self-government and Ministry of Health of the Republic of Serbia Working Group adopted the Ordinance on the manner of issuing and the health care institution confirmation form regarding the person's change of sex<sup>20</sup> in December 2018. This ordinance regulates a complex issue of determining a moment of the "sex change" from Article 45b of the Law on registry books, that is, what documentation a person needs in order to legally change their gender marker in their personal documents. This Ordinance came into effect on 1 January 2019.
37. Despite the well-argued and informed suggestions and criticism of Geten and leading international organisations in the field of human rights of trans people, which pointed out the necessity of trans depathologisation and the end of medical conditioning, this ordinance requires that a person must have medical documentation including psychiatrist's report, after a year-long monitoring, and an endocrinologist's report after administered hormone therapy in order to be able to change their legal gender marker.
38. Geten [expressed regret](#) due to the lack of the governmental institutions' understanding of and value for the lives of trans people, even when governments all around the world are introducing and implementing a total depathologisation of trans identities, and are simplifying and speeding up the procedures for obtaining appropriate documents.

### Inadequate Access to Hormone Therapy

39. Trans persons in Serbia undergoing hormone therapy were already facing problems in accessing them before the abovementioned legal changes, which explicitly made administered hormone therapy as a mandatory pre-condition for LGR.
40. As a clear example, the Geten team advocated in resolving the shortage of Neofolin (estradiol valerate 5 mg/mL) [back in August 2017](#), a medication necessary for hormone therapy. This medication is not registered on the market of the Republic of Serbia, but is imported at the request of health institutions or the Ministry of Health of Serbia, which means that the problem did not arise as a result of the absence of the medication, but at the level of import of the medication. Back in that period, Geten's team contacted the wholesalers and importers, including the importer of Neofolin for Serbia, informing them of the situation and seeking an urgent solution to the problem of shortages. Request for access to information of public importance was addressed to the Ministry of Health and the Agency for Medicinal Products and Medical Devices

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<sup>19</sup> [Law on Registry book of the Republic of Serbia](#) (Official Gazette of the Republic of Serbia No. 20/2009, No. 145/2014 and No. 47/2018).

<sup>20</sup> [Ordinance on the manner of issuing and the health care institution confirmation form regarding the person's change of sex](#) (Official Gazette of the Republic of Serbia No. 103/2018).

on the issue. In its response, the Medicines and Medical Devices Agency emphasized that the pharmacy health institution that applied for the import of Neofolin in 2015 and 2016 did not do so in 2017, and that it did not come from any other institution. After this response, Geten's team got in touch with another health facility (pharmacy), requesting from it to apply for a drug import. The request has been submitted.

41. However, until the submission of this document, the situation remains the same – such that access to hormone therapy is limited or entirely inaccessible. A limited number of oral and intradermal type of hormones exist, but these are not efficient in the hormone therapy for trans women. Medications/hormones for trans women in the forms of injections, which are efficient and primarily used in the hormone therapy of trans persons, are not listed in the State registry and they can only be found in some private pharmacies, and all of them are imported.
42. It is important to mention the gender inequality elements of said situation, since it affects mostly trans women. Testosterone is comparatively cheaper and locally produced, and therefore trans men can (in most cases) receive it for free at the primary health institution where their medical file is kept. Trans women must self-finance their hormones which are at least 6 times more expensive than testosterone, if and when available.
43. When it comes to trans children, they are affected in different ways: they are not recognized by the national Commission for transgender conditions; they cannot access hormone therapy on their own before the age of 18; the hormone stoppers used by trans children are expensive, priced at app. 300 EUR per month treatment.
44. In addition, the costs of hormonal treatment of trans persons are not yet covered by compulsory health insurance, despite the fact that Article 131 of the Law on Health Insurance of the Republic of Serbia<sup>21</sup> states that at least 65% of medical services of "*sex change related to medical reasons*" are provided from compulsory health insurance funds of the Republic of Serbia. The Ministry of Health and the Government of the Republic of Serbia still have not secured full implementation of this legal provision by including hormonal treatment among services financed by compulsory health insurance in the amount of at least 65%, as well as to ensure a stable supply of medicines necessary for hormonal treatment.
45. The endocrinologist who is working with trans people in Serbia is also the head of the national Commission for transgender conditions. According to some civil society representatives, she is not being cooperative with her patients, she is monopolizing her medical position, decisions about treatment and course of treatment, which is not individual and, in some cases, not properly updated. It is currently impossible to get a second opinion from another endocrinologist on the matter. The inability to access a medical second opinion goes against Article 13 of the Law on the protection of patients of Serbia<sup>22</sup>, granting everyone the right to second professional opinion. This endocrinologist is also using her position and private contacts to provide some hormones, which are only available in one specific/recommended pharmacy.
46. Due to COVID-19 crisis, lack of hormones is an exacerbated health problem for all trans women in Serbia. All hormones are imported and importation is currently stopped because of the restrictions and measures taken by the state of Serbia.
47. Hormone therapy and regular use of hormonal preparations are essential for psycho-physical health of both trans people and all other individuals on hormone replacement therapy. Absence of this therapy without a doubt threatens the well-being of all users of hormone replacement

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<sup>21</sup> [Law on Health Insurance of the Republic of Serbia](#) (Official Gazette of the Republic of Serbia No. 25/2019).

<sup>22</sup> [Law on the protection of patients of Serbia](#), (Official Gazette of the Republic of Serbia No. 25/2013 and 25/2019).

therapy, and also prevents individuals from meeting the mandatory regulated criteria for accessing legal gender recognition.

#### Research on the needs of transgender and non-binary people in the Republic of Serbia

48. The research was conducted by CSO Geten in the period from 15 August until 30 October 2018, in the form of online questionnaire. The link to the questionnaire was distributed by means of social network of Geten and organisations Geten cooperates with, as well as via trans-affirmative mailing lists and groups.<sup>23</sup> The results of the research are, *inter alia*, the following:

- More than a third of the respondents over the age of 18, has no regular monthly income, and about a dozen of them in total has income that are above the republic average.
- Almost half of the participants of the research (45,1 per cent) never felt safe to express their gender identity during the whole course of their education, while only a fourth of the respondents (23,9 per cent) said that they were never discriminated against or exposed to violence by their peers, professors and teachers, and other staff during the course of education. Among the examples of violence to which trans people were exposed are demands for normative gender expression (*“School principal made me cut my hair short and openly and publicly attacked me on more than one occasion about how I dressed or looked”*), being made fun of by peers, getting insults, suffering physical and sexual violence, and receiving death threats, first and foremost from their peers. This is why it is not surprising that the third of the respondents (33,8 per cent) thought about dropping out of school at some point due to their gender identity, and that in the end 12,7 per cent actually did just that. As the reason for quitting education, fear of violence is usually quoted, while their decision to persevere during the education is accounted for by internal motivation (*“There is nothing that can stop me from doing what I love”*), as well as fear for their existence (*“What would I do without my graduation diploma/certificate?”*).
- Out of the respondents who are employed, one third (34,1 percent) experienced some form of violence or discrimination while trying to obtain employment, and the violence and discrimination were related to their gender identity. Here it is important to put the emphasis on the fact that 62 per cent of respondents think that they do not have equal opportunity when looking for employment, compared to the opportunities of the majority population with the same level of education.
- When it comes to being open about their trans(gender) identity in the workplace, somewhat less than a half of respondents are open about the issue of their gender identity, in the relationship with all of their co-workers and colleagues (20,4 percent) or with the majority of their colleagues (22,7 percent). Nevertheless, the majority of respondents do not share this information about their gender identity with anyone (36,6 per cent) or only few people whom they trust are familiar with this information (20,4 per cent).
- Some form of discrimination or violence in the workplace was experienced by 38,4 per cent of the respondents who were once employed, while even as many as one fifth of them (21,7 percent) decided to leave their job due to this.

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<sup>23</sup> The research was published in 2020 and is available here: [https://www.lgbti-era.org/sites/default/files/pdfdocs/Research%20on%20the%20needs%20of%20transgender%20and%20non-binary%20people%20in%20the%20Republic%20of%20Serbia%20A%20research%20report\\_0.pdf](https://www.lgbti-era.org/sites/default/files/pdfdocs/Research%20on%20the%20needs%20of%20transgender%20and%20non-binary%20people%20in%20the%20Republic%20of%20Serbia%20A%20research%20report_0.pdf)

- Transgender people experience different uncomfortable situations when they try to access general health care, both due to the difference between data in their personal documents and their gender identity and gender expression and in situations when they need to communicate that they are transgender. Almost half of the respondents (47,9 percent) said that they experienced unpleasant situations due to their gender identity, out of which one fifth (21,1 percent) think that it was the issue of discrimination and/or violence, while 31,0 per cent said that the health care providers showed disrespect towards their privacy and dignity (for example, commenting out loud about the person in question's gender identity, commenting on the appearance or form of the person's body in front of other patients/medical doctors, etc.).
- When it comes to trans-specific health care services, 45,1 per cent of our respondents have already used some of the services from this domain, 31,0 per cent have not, but are planning to do so, while 23,9 per cent have not used these services, and neither do they want to. Out of those who used trans-specific health care services, 48 percent are not satisfied with them (22,6 percent are very dissatisfied and 25,4 percent are dissatisfied), while 14,1 per cent are satisfied or very satisfied with trans-specific health care services.

## Position of Intersex Individuals

49. The 2021 Law on Prohibition of Discrimination is the first Serbian legislation that recognises sex characteristics as protected ground of discrimination.
50. The provisions of the Law on Registry Books<sup>24</sup> stipulate that the child's birth must be reported within 15 days from the day of the birth. Considering that the sex of the child must be entered in the birth register, and there is a lack of recognition of third gender marker, in the case of an intersex child, such a provision produces negative consequences. Since the competent authority must register the sex of the child, this in practice leads to the parents of the child deciding on urgent and harmful medical procedures.
51. In the Republic of Serbia, there are no appropriate bylaws that would precisely regulate the position of intersex new-borns or their position during development and growth. This includes medical protocols, but also the procedures of the competent administrative bodies, which would adequately regulate their specific position.

## The Impact of COVID-19 on the rights of LGBTI persons

52. EGAL Serbia and Loud and Queer have conducted a research on the needs and obstacles faced by the LGBTI+ community in Serbia, in face of the Covid-19 pandemic and the measures taken by the state to combat it.<sup>25</sup> CSO EGAL, which manages also a drop-in center for the LGBTI community in the Serbian capital Belgrade, needed this information in order to best design its response to the needs of the community. The survey, which was filled in by a total of 1198 respondents, being thus the biggest sample for the community in the country, revealed the hardships that a considerable part of the LGBTI community face in their lives, particularly in safety and housing, mental and physical health as well as employment. The results are, *inter alia*, the following:

<sup>24</sup> [Law on Registry Books](#) (Official Gazette of the Republic of Serbia No. 20/2009, 145/2014 and 47/2018).

<sup>25</sup> The research is available here: <https://www.lgbti-era.org/sites/default/files/pdfdocs/ENG%20L%26Q%20i%20EGAL%20Analysis%20Covid%2019%20and%20LGBTI%20community%20in%20Serbia.pdf>

- The direct economic consequences of the pandemic were suffered by one third of the LGBTI community members, including half of the businesses owned by LGBTI persons, leading to almost half of the community to be expected to look for a new and/or additional job, in order to downscale the consequences of serious financial deprivation – approximately two-thirds of those affected currently have no income.
  - More than two-thirds of LGBTI community members have trouble with satisfying at least one of the basic needs - food, housing, livelihood, employment. An urgent support is required for more than 20% of LGBTI persons.
  - One-fifth of LGBTI persons live in fear of violence or suffer from violence in the place where they are isolated during the pandemic. More than one third of the community has a very poor assessment of the notion of privacy in the place of isolation, which may be particularly associated with fear of escalation of violence in cases of coming out.
  - Every tenth LGBTI person had to move out during the onset of the coronavirus crisis, while 5% of the LGBTI community and their family members are at risk of homelessness.
53. The research results confirmed the negative consequences of the COVID-19 pandemic, manifested through socio-economic factors which increased the risk of poverty in the LGBTI community and further deteriorated the situation. Along with issues of security and protection from all forms of violence and discrimination, a greater need for mental health services both reparative as well as preventive is evident.<sup>26</sup>

## List of Recommendations

54. Based on the data presented in this report, we propose to the Committee to take into account the following list of recommendations for effective, comprehensive and complete protection of social, economic and cultural rights of LGBTI persons:

**54.1 Introduce comprehensive strategies on tackling discrimination against LGBTI persons and improvement of their socio-economic rights, with special focus in areas of employment, healthcare, education, housing and social protection, accompanied by relevant action plans of implementation on national level and within local governments in the country;**

**54.2 Adopt a comprehensive law on same-sex partnership, providing equal rights to same-sex couples as to married couples, including equal access to inheritance rights, family rights, socio-economic rights, joint adoption and foster care for same-sex partners, as well as fertility treatment for same-sex couples and single women, with no additional and discriminatory requirements in comparison to married couples;**

**54.3 In cooperation with trans and intersex civil society organizations, adopt a comprehensive law on legal gender recognition and introduce precise medical and administrative protocols and guidance on the position of intersex new-borns, as well as on trans and intersex affirming health care, based on person's self-determination, in line with international standards and best practices and by ending harmful practices;**

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<sup>26</sup> *Ibid.*

**54.4 In cooperation with LGBTI civil society, organise public campaigns in order to increase the level of reporting of cases of discrimination in the areas of employment, healthcare, education, housing and social protection experienced by LGBTI persons;**

**54.5 In cooperation with LGBTI civil society, conduct awareness-raising and education campaigns aimed at the general public and provide appropriate training to public officials on human rights and combating stereotypes, prejudices and discrimination against LGBTI persons, with particular focus to health personnel, educational personnel, social workers, members of the judiciary and police forces;**

**54.6 Allocate funds in the field of culture specifically aimed to queer arts and culture in the Serbian society and advancement of the development of their sub-culture, with particular focus on theatre, music, cinema, television, art exhibitions, literature and support to independent artists promoting LGBTI identities;**

**54.7 In line with United Nations Sustainable Development Goals (SDGs) and 2030 Agenda, secure adequate representation of LGBTI civil society in all decision-making processes relevant for LGBTI communities in Serbia.**

## **ANNEX**

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