

ERA

LGBTI Equal Rights Association

for Western Balkans and Turkey

LYBRIC
ORGANIZACIJA ZA LEZBEJKA LJUDSKA PRAVA



YUCOM
Lawyers' Committee
for Human Rights

**Written Contribution on the position of LGBTI persons to the
3rd CYCLE OF THE UNIVERSAL PERIODIC REVIEW
of
REPUBLIC OF SERBIA**

MID-TERM REPORT

7 October 2020

SUPPORTED BY:



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Statement of Interest

1. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey in close partnership with its member organisations from Serbia: LABRIS, XY Spectrum, Geten, Da se zna!, IZADĀI and Lawyers' Committee for Human Rights - YUCOM is submitting this Written Contribution to the 3rd Cycle of the Universal Periodic Review of Republic of Serbia, which focuses on the mid-term reporting 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 Turkey¹, is an umbrella regional association operating in 9 countries (Albania, Bosnia & Herzegovina, Croatia, Macedonia, Kosovo, Montenegro, Serbia, Slovenia and Turkey) with a current membership of 66 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.
3. LABRIS² is a Lesbian Human Rights Organization and is one of the oldest LGBTI organizations in the Western Balkans. The organization exists for 25 years now. Labris works through three programs: Advocacy Program, Education Program and Community Development Program, with the vision of elimination of discrimination based on sexual orientation and gender identity and creation of the society of equal opportunities and rights for everyone.
4. XY Spectrum³ was founded in 2017 in Belgrade. The organization is committed to promoting the rights, improving the position and quality of life of intersex and trans people and their families.
5. Geten⁴, founded in 2001, is the first all-inclusive organization that, in addition to lesbian and gay men, brings together bisexual, trans people, as well as intersex, queer and heterosexual people, affirming their rights, needs, problems, existence and culture.
6. Da se zna!⁵ is one of the youngest (founded in 2016) and currently one of the largest Serbian LGBT+ organizations, which recognizes as its main goal the mapping and documentation of cases of unlawful conducts against LGBT+ people. Da se zna! provides support to LGBT+ people by improving the efficiency of the protection system and advocating for an appropriate response by the authorities.
7. The Group IZADĀI⁶ (hereinafter: IZADĀI) was formed in response⁶ to the need of young LGBTI people to socialize, associate and act in their community. The first activity in 2010 was a self-support group for young gay and bisexual men, followed by creative and cooking workshops, as well as work with parents of LGBT children, which we conducted in cooperation with partner organizations.
8. Lawyers' Committee for Human Rights - YUCOM⁷ (hereinafter: YUCOM) was founded in 1997 as an expert, voluntary, non-governmental organization whose members are legal experts engaged in promoting and advocating for the rule of law and compliance with human rights, raising public awareness, conceiving, establishing and leading civic initiatives, providing legal assistance to

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

² For more information about LABRIS, please visit the website: <http://www.labris.org.rs>

³ For more information about XY Spectrum, please visit the website: <http://xyspectrum.org>

⁴ For more information about Geten, please visit the website: <https://www.transserbia.org>

⁵ For more information about Da se zna!, please visit the website: <https://dasezna.lgbt>

⁶ For more information about IZADĀI, please visit the website: <https://izadji.rs>

⁷ For more information about YUCOM, please visit the website: <https://www.yucom.org.rs/>

victims of human rights violations, as well as developing co-operation with national and international organizations involved in human rights' protection and promotion.

Recommendations received within Cycle III of Serbia

9. Republic of Serbia was reviewed within Cycle III of the UPR in January 2018⁸. During Cycle III of Serbia, the country received 197 recommendations in total. The six following are considered to specifically refer to LGBTI persons:

114.29 Strengthen efforts to eliminate discrimination on the basis of sexual orientation and gender identity (Czechia);

114.32 Strengthen measures to combat all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation, gender identity and HIV status (Portugal);

114.33 Take concrete steps to protect lesbian, gay, bisexual, transgender and intersex people and their freedom of assembly and expression, and to eradicate all forms of discrimination and violence based on sexual orientation and gender identity (New Zealand);

114.34 Improve measures aimed at eradicating all forms of social stigmatization, discrimination and violence on the basis of sexual orientation, gender identity and HIV status (Honduras);

114.35 Strengthen discrimination protections for lesbian, gay, bisexual, transgender and intersex persons, and enact legislation that includes protection from discrimination on the grounds of intersex status (Australia);

114.36 Strengthen measures to eradicate all forms of social stigmatization, discrimination and violence against persons based on their sexual orientation and gender identity (Iceland);

10. The recommendations formulated during the interactive dialogue/listed above have been examined by Serbia and enjoy the support of Serbia.
11. These recommendations cannot be considered as S.M.A.R.T, as they are not entirely Specific, Measurable, Achievable, Relevant and Time-bound. As such, they will be jointly referred to within the following chapters that will analyse the position of LGBTI persons in Serbia in the context of social stigmatization, discrimination and violence against LGBTI persons, their right to freedom of assembly and expression, legislation that should include protection from discrimination on the basis of intersex status and the (lack of) measures taken by Republic of Serbia to implement these recommendations. The specific recommendations will be highlighted once again where appropriate.

⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/113/90/PDF/G1811390.pdf?OpenElement>

Legal and Policy Framework

Constitution of Serbia

12. Equality before the law based on different personal grounds is enshrined in Article 21 of the Constitution of the Republic of Serbia⁹. 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.
13. 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.

Istanbul Convention

14. On the 21 November 2013, Serbia became the eighth member state of the Council of Europe to ratify the Istanbul Convention.
15. However, there is no adequate state response to implementation of the Istanbul Convention when it comes to lesbian, gay, bisexual, trans and intersex women (hereinafter: LGBTI women), which is preventing further strengthening of protection from violence when it comes to these women.

Antidiscrimination legislation

16. The 2009 Anti-Discrimination Law¹⁰ 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.
17. 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.
18. Serbian antidiscrimination legal framework does not explicitly protect intersex persons, as there are no legal provision granting protection on the basis of sex characteristics.

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

19. The necessity of amending the existing law was publicly raised by both state authorities and civil society on many occasions. The state representatives mentioned the possibility of such process to start in past couple of years. However, no concrete steps were taken.
20. In early 2019, the Government of the Republic of Serbia approved the [Draft of Amendments to the Law on Prohibition of Discrimination](#) (hereinafter: Draft Law). Contrary to the legal rules governing the procedure of drafting and adopting draft laws¹¹, those interested in the content of the draft law were not allowed to participate in its drafting, nor was a discussion on the proposed solutions organized before the Government formally adopted them.
21. The State authorities mentioned on several occasions that two round tables with civil society were held on the topic of the amendments. However, the civil society Coalition against discrimination

⁹ Constitution of the Republic of Serbia: <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/70-100028/ustav-republike-srbije>

¹⁰ [The Law on Prohibition of Discrimination](#) (Official Gazette of Serbia No. 22/2009).

¹¹ See more – [Law on Planning System](#) (Official Gazette of the Republic of Serbia, No. 30/2018).

nor any LGBTI civil society organization were ever invited to such meetings and no public information was released on the participants of these meetings, its conclusions etc.

22. The lack of a broad discussion on the new legal solutions directly prevented the interested parties from constructively influencing the quality of the Draft Law, and above all the elimination of its numerous shortcomings. This led to civil society openly protesting against such process taking place and also draw media attention¹². Coalition against Discrimination¹³ made a [public statement](#) on the matter, which was supported by 45 CSOs.
23. Eventually, in September 2019 the state authorities in charge opened the possibility on submitting comments and suggestions to the Draft Law, through several public discussions across the country and through online submissions. It is important to state that public discussions were practically announced the last minute, which resulted in many CSOs not being able to attend them or make adequate preparations. In addition, the possibility to provide comments on the Draft Law was limited only to the changes proposed by the Government in the Draft Law, leaving out the possibility to comment and propose amendments on the entire Law on Prohibition of Discrimination.
24. The Commissioner for the Protection of Equality provided [comments](#) on the Draft Law in October 2019. It is stated in the opinion that the Ministry of the Government of Serbia in charge had sent a note to the Commissioner for the Protection of Equality to provide this opinion on 27 September 2019, which suggests this institution was also not properly included in preparation of the Draft Law prior to its adoption by the Government of Serbia. The comments within the opinion, however, do not relate to rights of LGBTI persons and the need to amend the existing provisions related to sexual orientation and gender identity, as well as to adopt new provisions, which will regulate the protection of intersex persons.

Serbia left without the Commissioner for the Protection of Equality

25. The system of protection against discrimination in Serbia has 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, is completely blocked. The mandate of the current Commissioner for the Protection of Equality Brankica Janković officially ended on 27 May 2020 and the new Commissioner was not elected. 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 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.
26. The citizens of Serbia are left without adequate protection from discrimination for months, as the Commissioner for the Protection of Equality is elected by the National Assembly of Serbia by majority votes of all MPs. Elections in Serbia were held on 21 June 2020 and it has taken months to constitute the newly elected National Assembly and the parliamentary boards in charge of submitting the proposal for the election to the MPs.
27. Numerous civil society organizations that filed complaints for protection against discrimination were informed that the complaints procedure will continue only "*after the election of the Commissioner for Protection of Equality*". This situation further victimizes all those who have suffered discrimination and increases the risk of being discriminated against with no protection provided. Also, it is of great concern who will take procedural actions in anti-discrimination

¹² See more: <https://www.danas.rs/drustvo/nadlezni-da-povuku-predlog-izmena-zakona-o-zabrani-diskriminacije/>

¹³ This Coalition is made of 8 CSOs working in the field of discrimination, including members of ERA: LABRIS, Geten and Praxis.

lawsuits and criminal proceedings initiated by the Commissioner that are already in progress, which further contributes to the uncertainty of legal protection against discrimination.

28. The non-functioning of this human rights mechanism of protection against discrimination is strongly affecting LGBTI citizens of Serbia 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 is directly against the obligations taken under the Cycle III recommendations provided to the Republic of Serbia.
29. In its latest [annual report](#) for 2019, the Commissioner for the Protection of Equality repeated what was already stated in every annual report published by this body – that LGBTI persons, along with Roma, are among the most discriminated in Serbia. The level of social distancing towards LGBTI persons by general population is among the highest, placing LGBTI persons in the second place. However, 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 to 18 in 2019. The Commissioner for the Protection of Equality pressed two criminal charges during 2019 in relation to discrimination based on sexual orientation. It, however, did not launch any civil court proceedings, which is also a possibility granted by law to this institution. It is also important to notice that the annual report only has a section on discrimination based on sexual orientation (gender identity does not have a separate section).

Strategy for prevention and protection from discrimination missing

30. The Strategy for Prevention and Protection against 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.
31. 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 Cycle III of Serbia and supported by the Republic of Serbia. As there were no new developments, this report will analyse the Strategy, that only partially goes under the period of Cycle III of Serbia.
32. 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.
33. 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.

34. 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.
35. 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 have, 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.
36. There are far more measures and goals referring to LGBT persons that have not been met, including the following:

36.1 The domestic legal framework is not harmonized with the standards for preventing discrimination against LGBT people. The revised Action Plan for Chapter 23 within Serbia's accession to the European Union contains the activity of amending the Law on Prohibition of Discrimination, which was envisaged in the previous action plan and which has not been completed. Despite the attempt of the Ministry of Labour, Employment, Veterans and Social Affairs to amend this law, the drafted text of the law did not meet the set standards and after a public hearing in which all interested parties were invited to submit their proposals and suggestions on the draft amendments, which lasted until 23 September 2019. It is unknown at what stage of the legislative process this draft is, since the Ministry of Labour, Employment, Veterans' Affairs and Social Affairs has never published a report from the public hearing.

36.2 The Law on Amendments to the Law on Registry Books, among other things, regulates the possibility of entering data on national affiliation, as well as 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 when it comes to the process of legal recognition of gender in trans people, since trans people are still required to perform hormone therapy and psychiatric evaluation, which is not in line with accepted standards of self-determination.

36.3 Not only that no model of the Law on Same-Sex Partnerships has been developed, but no action has been initiated by the authorities that would have raised the awareness of the general public about the need to regulate this issue. The drafting of bylaws to prevent discriminatory practices related to marriage and family has also not even begun. The same refers to the

implementation and analysis and amendments to the Family Law in order to prevent discrimination against certain vulnerable social groups, in terms of recognizing same-sex extramarital unions (i.e. the right to registered partnership - civil union) through amendments to the Family Law. 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, LABRIS revised and modernised the Model law in April 2020¹⁴. The new Model law¹⁵ 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.

36.4 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.

36.5 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.

36.6 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.

36.7 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).

36.8 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.

36.9 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.

Access to Justice

37. Despite legislative changes in Serbia ensuring improved access to justice to LGBTI individuals, there are still obstacles that they face. Underreporting of cases of violence and discrimination is still present. Prompt and impartial investigation into alleged cases of hate crimes has been carried out with some difficulties, with inconsistent implementation of legal provisions and inadequate processing by the police. Limited measures have been taken by the authorities in order to

¹⁴ <http://labris.org.rs/sr/labris-predstavio-model-zakona-o-gradanskom-partnerstvu>

¹⁵ The new Model law is available in Serbian via following link:

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

encourage victims to report SOGI-based hate crimes. Sex characteristics are not enlisted as protective ground in any law.

38. Even though article 54a of the Criminal Code of Serbia¹⁶, regulating hate motivated crimes as an aggravating circumstance, was adopted in 2012 and incorporated in the criminal legislation as of 1 January 2013, only two verdicts contain this legal provision. Both verdicts are in relation to hate crimes motivated by victims' sexual orientation. The first such verdict was adopted six years after article 54a was adopted, in November 2018¹⁷, while the second verdict was reached in February 2020¹⁸.
39. Data on hate crime is not systematically collected by any governmental or judicial body. Civil society is documenting cases of violence through its channels of reporting such cases.
40. In 2019, 63 survivor's sexual orientation, gender identity and expression (hereinafter: SOGIE) motivated illegal acts that were committed were documented¹⁹ by Da se zna!, which is 50% more than in the previous year. According to Da se zna!, for the past three years, violence has been a form of illegal action motivated by SOGIE, which is mostly recorded, while discrimination occurs to a lesser extent or is less recognized as a problem worth reporting. In 2019, 27 physical attacks were committed and documented, 12 of which implied bodily injuries inflicted to the survivors. The share of the physically violent incidents in the total number of documented incidents is by 28.1% higher compared to the previous year. In 2019, human rights defenders were survivors in 19% of documented incidents, which is twice as many as in the previous year. Young cis gays from the capital city of Belgrade are most often the survivors of documented hate-motivated incidents. A much higher percentage of hate-motivated incidents were reported to the police and the prosecutor's office in 2019 than in the year before. However, most of the documented incidents are still reported only to civil society. Most of the hate-motivated incidents reported to the police and the prosecutor's office are still in the pre-investigation procedure. As many as 87.1% of the survivors have no information whether the received criminal report was even acted upon.
41. Despite the encouraging willingness of survivors and witnesses of hate-motivated incidents to report such cases, it should be noted that documented cases continue to be just the tip of an iceberg of violence and discrimination against the LGBTI community in Serbia. The number of the documented incidents can hardly be interpreted differently, considering that 17% of members of the LGBTI community have suffered physical or sexual violence in the previous five years, while as many as 41% of members of the LGBTI community have suffered mild abuse in the past year, for who they are or for whom they love²⁰. Therefore, the documented 63 hate-motivated incidents should by no means, be taken as data on *all incidents that were committed*, but only as *data on incidents that were actually committed* in the observed period.

¹⁶ [Criminal Code of Serbia](#), (Official Gazette of the Republic of Serbia No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

¹⁷ <https://www.lgbti-era.org/news/criminal-verdict-hate-crime-reached-first-time-serbia>

¹⁸ <https://www.lgbti-era.org/news/new-criminal-verdict-hate-crime-serbia>

¹⁹ The report for 2019 has not yet been published. For reports of cases documented by Da se zna! during 2017 and 2018, please visit the following link: <https://dasezna.lgbt/publikacije.html>

²⁰ According to the latest European Union Agency for Fundamental Rights 2020 data.

Position of Trans Individuals

42. 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 are no legal provisions for any gender options except male and female. Birth certificates may be legally amended to recognise the change and the undertaking of gender affirming surgery is no longer mandatory for legal gender recognition.
43. Legal gender recognition is regulated in the Republic of Serbia under Article 45b of the Law on registry books²¹. This article was introduced when the law was amended in 2018 and stipulates the following:
- Information on gender change is based on the decision of the authority referred to in Article 6 para. 2 and 4 of this Law, which shall be issued on the basis of the prescribed certificate of the competent health institution.*
- The health institution referred to in paragraph 1 of this Article shall submit the certificate to the competent authority referred to in Article 6 para. 2 and 4 of this Law within 15 days from the date of gender change.*
- The health institution shall deliver the certificate referred to in paragraph 1 of this Article electronically and without delay and by mail.*
- The certificate referred to in paragraph 1 of this Article shall include: name and surname; date; place; municipality/city of birth; personal identification number; the name and surname of the parent, of whom the sex has been changed; information about the gender change for that person, as well as the name of the physician who issued the certificate.*
- The minister and the minister competent for health affairs shall mutually agree on the method of issuance and the form of the certificate referred to in paragraph 1 of this Article.*
44. 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 sex²² 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.
45. 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 either documentation that confirms that sex reassignment surgery is performed or 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.
46. Geten welcomed the decision according to which genital operations are no longer mandatory condition for the change of personal documents (as it *de facto* was in Serbia prior to these changes). However, the current directive still persists in pathologising and discriminating against

²¹ [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).

²² [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).

trans persons who do not want to or cannot go through hormone therapy and prohibits them from accessing legal means to change their gender marker. Some of these reasons include risks to their health, mental wellbeing, and other conditions, including their right to their physical and bodily integrity and self-determination of such. Additionally, this policy still puts the lives of trans people who want to access their right to change their gender marker on hold until they complete psychiatric monitoring and hormone treatment, which means that during that period they will not have appropriate personal documents, that is, the ones reflecting their appearance and gender identity, and therefore will face discrimination in accessing education, employment, study, and in traveling out of the country, etc.

47. 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.
48. 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 legal gender recognition.
49. 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 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.
50. 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.
51. 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.
52. 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 so-called puberty stoppers, which are used in the hormone therapy of trans children, are expensive, priced at app. 100 EUR per month treatment.

53. 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 Serbia²³ 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.
54. In practice, trans people face serious problems when accessing trans-specific health services, especially when it comes to access to endocrinological examinations, which are necessary for trans people on hormone therapy. The centralization of trans-specific health services puts trans people from the suburban area in a discriminatory position and also affects the quality of the health services provided due to the small number of doctors and the growing number of health care users. For example, trans people from all over Serbia can perform endocrinological examinations only in the Clinical Center of Serbia and only on Wednesdays. The examination, on average, takes less than 5 minutes with no possibility to get second opinion²⁴. 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 working in the field of protection of trans rights, 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 Serbia²⁵, 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.
55. 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.
56. Criminal justice system also does not recognize the health and well-being of transgender prisoners as there are no procedures following which transgender inmates or transgender persons deprived from freedom could get hormone therapy and gender reassignment surgery. Part of the problem is the fact that hormones for trans people are not on the "white list".
57. 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 therapy, and also prevents individuals from meeting the mandatory regulated criteria for accessing legal gender recognition.

Position of Intersex Individuals

58. There are no laws or bylaws in Serbia that regulate the position of intersex persons. The current provisions of the Law on Prohibition of Discrimination do not recognize sex characteristics as a personal characteristic and a basis for discrimination.

²³ [Law on Health Insurance of the Republic of Serbia](#) (Official Gazette of the Republic of Serbia No. 25/2019).

²⁴ According to the testimonials from the trans self-support group.

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

59. The Criminal Code of Serbia²⁶ also does not recognize sex characteristics as a personal characteristic under Article 54a, which regulates a special circumstance for sentencing for a hate crime.
60. Another problem is the provisions of the Law on Registry Books²⁷, which stipulate that the fact of the child's birth must be reported within 15 days from the day of the child's birth. Considering that the sex of the child must be entered in the birth register, 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.
61. 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.
62. Within Cycle III of Serbia, Australia provided a recommendation to the Republic of Serbia calling for strengthening the protection of LGBTI people from discrimination and adopting regulations that include protection from discrimination based on intersex status.
63. Although the Republic of Serbia supported the above-mentioned recommendation, the proposed Amendments to the Law on Prohibition of Discrimination from 2019 did not include sex characteristics as a protected personal ground. ERA, XY Spectrum and others have sent joint written comments on 23 September 2019 calling, among other things, for the implementation of this recommendation.
64. Having in mind the seriousness of the problems that intersex persons face, it is necessary to immediately recognize sex characteristics as a personal ground for protection in anti-discrimination legislation and to adopt adequate laws and bylaws that would improve their position.

Freedom of Association and Peaceful Assembly

65. Most public events of LGBT community are held in the capital of Belgrade (where most LGBT organisations are based) and the second largest city Novi Sad. Belgrade Pride²⁸ and Ponos Srbije are organised annually in Belgrade, with no major incidents happening in the recent years. The first Pride in Novi Sad was held in May 2019.
66. Other events include cultural, sports and activist activities, as well as places of association like clubs and bars²⁹.

List of Recommendations

67. Based on the data presented in this report, it can be concluded that the Republic of Serbia has not properly implemented the LGBTI specific recommendations provided within Cycle III of Serbia, even though they enjoy the support of Serbia. Therefore, we propose the following list of recommendations to

²⁶ [Criminal Code of Serbia](#), (Official Gazette of the Republic of Serbia No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

²⁷ [Law on Registry Books](#) (Official Gazette of the Republic of Serbia No. 20/2009, 145/2014 and 47/2018).

²⁸ <http://parada.rs/en/>

²⁹ More about this can be found here: <https://www.lgbti-era.org/one-stop-shop/case-study-serbia-2018>

be taken into consideration for effective, comprehensive and complete implementation of these recommendations:

67.1 Within the rest of the reporting cycle, ensure that all awareness-raising activities related to the Istanbul convention include vulnerable groups of women, mentioned in explanatory memorandum of the Convention, especially lesbians, bisexual women and transgender persons, as well as all LGBTI topics in order to achieve equality in Serbia;

67.2 Within the rest of the reporting cycle, adopt a comprehensive law on same-sex partnerships, providing equal rights to same-sex couples as to married couples, including access to 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;

67.3 Within the rest of the reporting cycle, secure consistent implementation of legal provisions related to hate crimes, adequate processing of hate crimes by the police and take concrete measures in order to encourage victims to report hate crimes based on sexual orientation and gender identity;

67.4 Within the rest of the reporting cycle, introduce comprehensive strategies on tackling violence and discrimination against LGBTI persons, accompanied by relevant action plans of implementation on national level and within local governments in the country;

67.5 Urgently take all necessary steps to elect the new Commissioner for the Protection of Equality;

67.6 Within the rest of the reporting cycle, amend antidiscrimination and criminal legislation to include gender expression and sex characteristics as a personal ground for protection from discrimination and hate crimes and provide support to LGBTI civil society in organizing public campaigns and events to increase the visibility of intersex persons;

67.7 Within the rest of the reporting cycle and in cooperation with trans civil society organizations, adopt a comprehensive law on legal gender recognition and introduce precise protocols and guidance on legal gender recognition and trans affirming health care, based on person's self-determination and in line with international standards and best practices;

67.8 Within the rest of the reporting cycle and 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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