

LGBTI Enlargement Review 2020

ILGA-Europe, in cooperation with ERA – LGBTI Equal Rights Association for Western Balkans and Turkey (Regional); Aleanca, Streha LGBT, Pro LGBT, Pink Embassy, Open Mind Spectrum Albania - OMSA (Albania); Sarajevo Open Centre (Bosnia and Herzegovina); Center for Social Group Development CSGD and Center for Equality and Liberty CEL (Kosovo); Association Spectra, LGBT Forum Progress, LGBTIQ Social Centre, Juventas and Queer Montenegro (Montenegro); Helsinki Committee for Human Rights – LGBTI Support Centre, Coalition for sexual and health rights of marginalized communities MARGINS, Subversive Front, LGBT United Tetovo (North Macedonia); Da se zna!, Geten – Center for LGBTIQA People's Rights, Labris, XY Spectrum, Crisis Response and Policy Centre (Serbia); SPoD, Red Umbrella Sexual Health and Human Rights Association and Kaos GL (Turkey).



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1. Introduction

Rationale

In order to ensure an accurate representation of the developments relating to the human rights of LGBTI people ILGA-Europe and ERA, together with our member organisations in EU accession countries, have compiled this submission to the Progress Reports of the European Commission.

This report reflects developments in the recognition and respect for the human rights of LGBTI people in each accession country during the period from January through December 2020. It is intended to assist the European Commission in assessing the progress made en route to EU accession in each country to date. In addition to outlining key developments and challenges on the road to LGBTI equality, the report also highlights gaps in legislation and policy for the promotion and protection of the human rights of LGBTI people, and the priorities which authorities in each country should tackle in the coming year, as identified by LGBTI activists in the respective countries.

In light of the devastating impact of the Covid-19 pandemic this year on the LGBTI community and work of LGBTI activists, we have also included information about its impact, and the necessary assistance that the EU can help provide in supporting LGBTI people. ILGA-Europe and ERA members have reported that the LGBTI community has been heavily impacted by the Covid-19 pandemic and that state support services have failed to reach the most vulnerable in LGBTI communities. As a result, LGBTI NGOs have had to adapt their previous plans and budgets to cover humanitarian aid gaps within the State response to the crisis, providing food, hygiene kits and shelter to LGBTI people who have lost their jobs or been rendered homeless. This has left organisations depleted in terms of human resources and finances, and they have found donors and funders in many cases to have not been flexible with their funding. Even funding specifically earmarked for Covid-19 response has not been possible to use for service provision and support. Given the unsustainable response by governments, it is more essential than ever for the EU to support LGBTI people in the accession countries via funding for supporting LGBTI communities and community-needs advocacy. This funding is essential in order to allow LGBTI NGOs to support the community during the pandemic and ensuing economic crisis, and for them to also have the financial and human resources capacity to continue advocacy work for legislative and policy change within the accession framework. A [survey](#) conducted by ERA with its members in the summer of 2020, found that the Covid-19 related measures taken by governments have had numerous negative consequences for the LGBTI+ community including: interruption of essential health services by state institutions, inability to receive essential community services from NGOs, heightened levels of homelessness, increased incidents of domestic violence, closure of LGBTI+ businesses, a significant loss of jobs and rising mental health problems. LGBTI+ organisations have also faced challenges due to the Covid-19 pandemic measures including: loss of funding, closure of community centres, cancellation of services and other activities as well as a general shift towards emergency humanitarian work for LGBTI+ people in need.

Local Context

In the majority of the accession countries, the legal frameworks and existing policies for the promotion and protection of the human rights of LGBTI people are sound. However, these frameworks have remained largely stagnant for a number of years, with little further progress, in particular as regards implementation. While basic protections for the human rights of LGBTI people are in place in all

countries apart from Turkey, further development is needed across the region. In particular, provision of legal gender recognition procedures and legislation, and recognition of same-sex partnership need to be addressed.

There is currently a real opportunity to create momentum for achievement of both of these changes, and the EU's voice of encouragement could be crucial in achieving this. In 2020 we have seen Montenegro become the first accession country to adopt same-sex partnership legislation, which has created momentum in other accession countries such as Serbia, which expects to have a vote on this by the Spring of 2021. In 2020 we also saw renewed political commitment to the adoption of legal gender recognition in North Macedonia, where the vote is expected to take place in early 2021. It is important to emphasise that Parliaments and Governments need to make clear and comprehensive agendas for such achievements, and that once such laws are passed they should be implemented thoroughly and without unnecessary delay.

Access to healthcare for trans people also remains an issue, both for trans specific healthcare as well as for non-discriminatory access to general health care. This has, of course, been exacerbated by Covid-19 as access to hormones and life-saving surgery was interrupted in all accession countries. In addition, Covid-19 resulted in the interruption of access to HIV medication. Intersex people are largely invisible across the region, with only Albania, Montenegro and Bosnia & Herzegovina having added sex characteristics as a protected ground against discrimination. Turkey does not have non-discrimination provisions on grounds of sexual orientation and gender identity, hate speech laws do not name grounds of sexual orientation and gender identity in North Macedonia, Turkey or Serbia (only sexual orientation). None of the EU accession countries have policies designed to tackle hate speech in place, yet hate speech is a prevalent issue in all of them.

Moreover, the lived reality for LGBTI people remains starkly different to the protections which exist on paper. Implementation of existing legislation remains a prominent issue. While hate crime legislation naming specifically grounds of sexual orientation and gender identity exists in a majority of the accession countries, identifying the hate element in bias motivated crimes against LGBTI people remains problematic. Hate speech continues to be an issue both in the media and on social media, often coming from political players, with little to no convictions despite regular reporting by civil society, showing that hate speech legislation, which also exists in a number of EU accession countries, is also not being applied effectively. Public attitudes, while improving in a number of countries, continue to be predominantly negative. Concrete recommendations from the EU side to tackle these issues and promote thorough and sustainable implementation can serve as a driving force for sustainable change to the lived realities of LGBTI people in the region.

Headings for country submissions

Each country submission is arranged under the following headings. In cases where organisations have no updates to share, the respective heading has been left out. In light of the Covid-19 pandemic and the upcoming deepening economic crisis that the region faces, we have including a new heading entitled "Recommendations on how the EU Delegation can support LGBTI civil society". This section aims to show the priorities and needs of LGBTI civil society, especially in situations in which governments are unable to support them, for example as regards Covid-19 response or support for specific legislation in the current context.

- Summary of key developments
- Main action points for the coming year
- Bias motivated violence, hate speech, hate crimes
- Education
- Employment
- Equality and non-discrimination, including legislation and enforcement
- Freedom of assembly, association and expression
- Health
- Human rights defenders (including Covid-19 impact on LGBTI CSOs)
- Public opinion and attitudes
- Recognised unions for same sex couples
- Rights and equal treatment of trans people
- Rights and equal treatment of intersex people
- A supportive and enabling environment for civil society
- Recommendations on how the EU delegation can support LGBTI civil society

Closing remarks

The EU accession process has been, and continues to be, a driving force for change in the recognition of the human rights of LGBTI people throughout the region. Year on year the human rights of LGBTI people continue to feature notably in the reports, assessing progress to date and setting out recommendations for the authorities to implement in the future. In order to ensure this implementation, we deem it necessary to extend this reporting process so that it includes mechanisms for the follow-up of the recommendations to national governments, and for reporting back to civil society on how data published in the reports are used in this regard throughout the year. In this way we can ensure that the reports reach their full potential when it comes to securing social and legal change for the rights of LGBTI people in the region.

We hope that this input will be useful in the process of assessing the progress of each country to date, and in identifying key priorities in the coming year. We also hope that this report will be used as guidance by the EU officials, MEPs and EU representatives in the accession countries throughout the year, when referring to rights of LGBTI persons in the accession countries and the much-needed further improvement of their position in society and within legal and policy frameworks.

For any further questions or concerns about the information in this report, please don't hesitate to get in touch.

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2. Main priorities in the coming year

For each of the accession countries, local LGBTI organisations have identified key priorities for reform in the area of human rights of LGBTI persons. If these priorities are reflected in the country reports 2020, the organisations and the European Commission can deliver a unified message to the governments of accession countries and monitor the progress made on these issues in the coming year.

2.1 Albania

- Budgeting the National LGBTI Action Plan 2021-2025 and designing and implementing an integrated institutional protection mechanism for it;
- Implementation of the current National LGBTI Action Plan, until the new one comes into effect;
- Approval of changes in the family code to recognize same-sex partnership;
- Adoption of the law on gender recognition based on self-determination;
- Ensuring full implementation of current legislation, including through conducting discrimination prevention training to groups of professionals like the police, school teachers, doctors, journalists, prosecutors, and judges;
- The government should implement the European Commission against Racism and Intolerance (ECRI) [recommendations](#) given in June 2020.

2.2 Bosnia and Herzegovina

- Adoption of the Action Plan for Equality of LGBTI Persons in Bosnia and Herzegovina;
- Adoption of the Law on Same-Sex Partnerships;
- Amendment and harmonization of laws regulating the freedom of assembly of LGBTI people;
- Prosecutors, judges, police officers and civil servants need to be continuously educated, trained and informed about hate crimes and incitement to hatred and violence against LGBTI people.

2.3 Kosovo

- Inclusion of same-sex partnerships in the Civil Code;
- Drafting of a law to enable legal gender recognition (LGR) based on self-determination;
- Continue to effectively implement the National Action Plan;
- The Municipality of Prishtina should continue its support and close contact with CSOs regarding the construction of the LGBTI Shelter.

2.4 Montenegro

- Continuation of cooperation with the working group for legal gender recognition;
- Ensure that rights of trans, intersex, gender-diverse people and LGBTI women are part of gender equality programs;
- Ensure the continuation of the body for the monitoring of the LGBTI strategy implementation. All national stakeholders should improve their reporting on activities implemented within a specific Action Plan of the Strategy and the final report should also include activities which were not necessarily defined in the Action Plan.

2.5 North Macedonia

- Election of the new Commission for Protection against Discrimination (CPPD) transparently and professionally, and implementation of the LPPD;
- Adoption of the Law on Civil Registry introducing LGR based on self-determination;
- Adoption of the National Action Plan for LGBTI 2021-2025 with incorporated suggestions from NGOs;
- Support of LGBTI services by the government;
- Ensure harmonisation of laws with the LPPD.

2.6 Serbia

- Urgent adoption of the new Anti-discrimination Strategy;
- Urgent adoption of the Same-Sex Partnership Law;
- Urgent adoption of Law on gender recognition in line with international human rights standards and based on self-determination;
- Better implementation of the Anti-discrimination Law to tackle hate crime and hate speech;
- Better and consistent implementation of existing provisions tackling discrimination against LGBTI people.

2.7 Turkey

- Repeal the ban on LGBTI marches in Izmir, Mersin, Antalya and other cities;
- Condemnation and prosecution of hate speech, hate crimes and discrimination of LGBTI persons specifically including the trans community, sex workers and LGBTI refugees;
- Acquit the LGBTI+ human rights defenders who face charges for participating in peaceful pride marches at the METU campus and in İstanbul;
- Continue EU and international support and monitoring of the trial and future such trials, as this helps keep the pressure on Turkish authorities to deliver justice;
- Conduct studies to strengthen the right to association and freedom of expression, and to strengthen disadvantaged groups.

3.6 SERBIA

Submitted by: Labris – Lesbian Human Rights Organization, Crisis Response and Policy Centre – CRPC, Da se zna!, Geten, XY Spectrum

Summary of key developments, including political context and trends

- Parliamentary elections were held in Serbia on 21 June 2020. Initially organized for 26 April, they were postponed by a state of emergency due to the COVID-19 pandemic in the country;
- After the elections, new Ministers were appointed and a new Parliament was formed in October;
- The Ministry for Human Rights and Social Dialogue was formed (it did not exist for several years) – Gordana Čomić was appointed as a Minister for Human Rights, who is seen as an ally;
- The new Anti-discrimination strategy, meant to be adopted in 2019, is still not adopted;
- On 26 November, the new Commissioner for Protection of Equality was elected. Civil society published a [joint statement](#) about the lack of transparency of the election process.
- On 16 December 75 CSOs published a [joint statement](#) expressing their dissatisfaction with the government's progress on reforms in the framework of the EU accession process. They also criticised the increase in violence against CSOs, journalists and media, and decreasing respect for democracy and rule of law, which has accelerated under the Covid-19 crisis.

Main action points for the coming year:

- Urgent adoption of the new Anti-discrimination Strategy;
- Urgent adoption of the Same-Sex Partnership Law;
- Urgent adoption of Law on gender recognition in line with international human rights standards and based on self-determination;
- Better implementation of the Anti-discrimination Law to tackle hate crime and hate speech;
- Better and consistent implementation of existing provisions tackling discrimination against LGBTI people.

Bias motivated speech, bias motivated violence

On 28 February, a group of masked extremists [attacked](#) the Pride Info Centre, broke the door and caused damage to the exterior. Pride Info Center was the first safe space opened for LGBTI people in Serbia. On 2 March, a group of extremists [gathered](#) in the town of Leskovac to protest against a Pride march that was falsely rumoured to take place that day. They chanted slogans such as "kill gays" and assaulted two journalists, threatening to "slaughter" them. Both cases are currently pending.

Serbia formed its government in the autumn of 2020 after elections over the summer. Ratko Dmitrović became the Minister of Demographic Development and Family Care. Dmitrović is a long-time journalist who has become especially famous in recent years for his misogynistic and homophobic rhetoric on social media. For example, he called the pride parade "a parade of shame, shamelessness and hidden Satanism", whilst he also said that he "never saw a beautiful feminist". LGBTI CSO Da se zna! published a [press release](#) afterwards.

A new report on unlawful conducts against LGBT+ people in the Republic of Serbia by Da se zna! has been published. In 2019, 63 SOGIE hate-motivated incidents were committed and recorded, which is 50% more than in the previous year. Most of the hate-motivated incidents reported to the police and 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.

Main action points for the coming year:

- Improve response to hate crime and hate speech;

- Utilise all legal options to prevent groups who commit hate crime and hate speech;
- More efficient and effective education of judges and prosecutors;
- Proper implementation of hate crime provisions within criminal legislation and the usage of Article 54a of Criminal Law in the indictments;
- Creation of a database of hate crimes and related incidents against LGBTI people.

Education

Labris conducted a legal analysis of school protocols and rulebooks, and created an [advocacy tool](#) for the improvement of the position of LGBTI students and youth. It has also started analysing discriminatory content in University textbooks.

Employment

In September, for the first time ever, Labris conducted a one-day training for the employees of the National Employment Service (NES). The training included participants from branches from all over Serbia, not only Belgrade. This was the first time working with representatives of NES. 40 of them passed the training. We see this as a great step forward for the improvement of the position of the LGBTI community in the field of work and employment.

Unfortunately, the pandemic brought many hardships to the community, especially regarding employment. Many LGBTI people have been left unemployed since the beginning of the pandemic, and where it was already difficult for LGBTI people to find a job, this has been worsened by the pandemic.

The joint meeting of the Ministry of Labour, Employment, Veteran and Social Affairs with LGBTQI civil society organisations was postponed in February 2020.

Equality and non-discrimination, including legislation and enforcement

Discussion concerning the amendments to the Anti-discrimination Law has been [ongoing since 2019](#), but nothing has happened yet. Although civil society was able to comment on the proposed amendments in 2019, they have not received any response to this date, and proposed changes have not been incorporated. In 2019 the Coalition against Discrimination, consisting of 56 NGOs, reacted and contacted the Commissioner for Protection of Equality who sent official letters to Ana Brnabić, the Prime Minister, and Zoran Đorđević, the Minister of Labor (the Ministry in charge of this matter), however there has been no further development to date. The Coalition against Discrimination have been arguing for postponement of this Bill on Amendments so that the public and representatives of vulnerable groups can be involved in the process of drafting the amendments.

In May, Serbia failed to re-elect the Commissioner for the Protection of Equality, which left the country without the authoritative body to implement the anti-discrimination law, and complaints were effectively blocked. 52 CSOs signed a [joint statement](#) calling for the re-election of the Commissioner as soon as possible. Regional LGBTI organisation ERA published a similar [call](#). After 5 months without a Commissioner, the new Commissioner was elected on 26 November, which is again Brankica Janković, in a process which was extremely un-transparent. The Coalition against Discrimination published a [joint statement](#) about this, and called for future elections to be more transparent and inclusive of civil society.

The new Anti-discrimination strategy, due to be adopted in 2019 after the expiration of the previous one in 2018, has still not been adopted. In addition, it should be noted that the previous strategy was

not properly implemented. There have been no meetings so far of the National Working Group for the new strategy. Labris conducted an [analysis](#) of the process so far.

Main action points for the coming year:

- Postponement of the Bill on Amendments to the Anti-discrimination Law, so that the voices of civil society are heard and their suggestions are included in the amendments;
- Urgent adoption of the new Anti-discrimination strategy, as the previous one expired in 2018.

Freedom of assembly, association and expression

Pride parades were not held this year due to the pandemic, although numerous online Zoom talks and Instagram lives were held.

Main action points for the coming year:

- Continuation of support for Pride parades, including if they are online in 2021.

Health

Due to the pandemic, many LGBTI people experienced health problems. Especially when it comes to trans people who were unable to see their doctors or attend their regular medical appointments. Their transitions were literally put on hold, since the pandemic was and still is the top priority. At the beginning of pandemic, Geten wrote a letter to the Commission for transgender states, asking about access to health services for trans people during the state of emergency. The Commission members politely responded that only emergency cases will be considered, and stressed that "all other patients should continue with regular therapy until the end of the emergency". Serbia also experienced a decrease in access to hormones due to lockdowns.

Human rights defenders

Organizations have been experiencing numerous funding problems since March this year, due to Covid-19. Many funders withdrew their funds and many put funding on hold, which has put LGBTI CSOs in a precarious situation. Organisations had to find new ways of functioning, adjusting activities to online spaces, finding new channels of communication with communities, managing to create activities and support. CSOs also had to adapt to the socioeconomic reality facing the LGBTI community, even while they themselves experienced a loss in funding. Labris launched an emergency grant during the lockdown, delivering between 50 to 100 packs with food, hygiene and disinfection products to those LGBTI persons in need.

Public opinion and attitudes

Xenophobia is on the rise in Belgrade, and right-wing formal and informal paramilitary groups have stated they will start patrolling other cities and towns in order to "protect the citizens from migrants". These groups, either by themselves or associated with other individuals and groups, have made homophobic comments and other acts of hate speech, including spreading misinformation.

At the beginning of the year, CRPC conducted several trainings and seminars in order to raise awareness and capacitate state actors and CSOs involved in refugee and migrant protection on LGBTI+ sensitive migration approaches. These events were supported by ERA, UNHCR, IRIS Network and state authorities in charge of non-discrimination and protection of citizens – Commissioner for Equality and Protector of Citizens' offices.

From 15 March to 6 May 2020, Serbia was under the state of emergency. This implied a lockdown, and migrants, asylum seekers and refugees who were accommodated in government reception centres were not allowed to leave their designated centre. People who were accommodated privately fared better as their movement was limited in line with provisions for the general population. Identification of LGBTI+ persons in mixed migration flow was difficult during the time of lockdown, as most of the activities and services were conducted remotely. When the state of emergency was lifted, the activities continued accordingly.

Main action points for the coming year:

- Create a campaign that would bridge the gap between migrants and host communities, and condemn xenophobia, homophobia, transphobia other forms of hatred against minorities;
- Authorities and other actors should continue working with NGOs in charge of refugee and migrant protection in the area of LGBTI+ sensitive migration.

Recognised unions for same sex couples

In April 2020, Labris, together with legal experts, produced amendments and created a new Model Law on Civil Unions, regulating the rights of both registered and non-registered same-sex unions. The Model Law was presented to the community, LGBTI and human rights organizations, as well as sent via mail and e-mail to the cabinet of Prime Minister Ana Brnabić, the Ministry of Labor, the Anti-discrimination group within the Ministry of Labor, the Commissioner for Protection of Equality, and many others, however Labris never received a response.

On 30 November, the new Minister of Human Rights and Social Dialogue, Gordana Čomić, [announced](#) that a draft law on same-sex partnerships should come before MPs by the Spring of 2021. However, it remains to be seen whether concrete steps will be taken.

On 15 December the Serbian ombudsperson published a [recommendation](#) to the Ministry of Human and Minority Rights and Social Dialogue to draft laws that would enable the legal regulation of same-sex partnerships. The Ministry has 60 days to inform the Ombudsperson about acting upon the recommendation.

Main action points for the coming year:

- Adoption of a Same-Sex Partnership Law, based on the Model Law created by LGBTI activists, with the inclusion of their expertise.

Rights and equal treatment of trans and intersex people

The state still has not provided any information or mechanism regarding trans specific healthcare, and trans women still face difficulties accessing hormones (currently only patches and spray are available). During the lockdown, several trans people reported a loss of their income and verbal violence from their family.

In its previous Action Plan for the implementation of the anti-discrimination strategy (2013-2018), the government committed to regulating legal gender recognition. However, the Law on legal gender recognition has yet to be adopted. Amendments to the law on birth registry, which now enable data on gender change to be entered into the registry, came into force in January 2020. However, currently trans people are still pathologized and must undergo one year of hormonal treatment. On 15 December the Serbian Ombudsperson published a [recommendation](#) to the Ministry of Human and Minority Rights and Social Dialogue to draft laws that would enable the regulation of legal gender recognition to improve the position of trans people in Serbia. The Ministry has 60 days to inform the Ombudsperson about acting upon the recommendation.

On 24 November, the Ombudsperson [confirmed](#) that Serbian citizens who live abroad and have undergone surgical and medical interventions abroad, can present medical certificates at their local consulates or embassies and have their legal gender changed. Surgery and hormonal treatment are mandatory requirements for legal gender recognition in Serbia. The Ombudsperson's statement was a response to a case in which a Serbian trans woman living in Sweden tried to have those procedures recognised in Serbia without success. The local healthcare authorities refused to provide a certificate to her, as they were not the ones overseeing the medical process and the person was not registered with the local healthcare system, being a resident abroad. The Ombudsperson's solution should provide for a quicker process for those living abroad.

Parents of intersex people have contacted XY Spectrum for support during 2020. From the beginning of the pandemic, it is very difficult for them to follow medical treatment for their children. There is still no accurate estimate of the number of intersex people in Serbia. Serbia was [reviewed](#) within Cycle III of the UPR in January 2018 where it received a recommendation from Australia to enact legislation that includes protection from discrimination on the grounds of intersex status. However, no amendments have been made thus far.

Main action points for the coming year:

- Adopt the Law on gender recognition in line with international human rights standards and based on self-determination;
- The government should work on a mechanism for trans specific health care;
- End discriminatory practices against trans and intersex people and adopt measures to end pathologisation of gender identity and sex characteristics;
- Include sex characteristics in the anti-discrimination legal and normative framework, in line with the UPR recommendation from Australia.

Recommendations on how the EU delegation can support LGBTI civil society

- The EU Delegation should work with local LGBTIQ organizations and strengthen their relationship with them;
- The EU Delegation should conduct consultations with LGBTIQ-led CSOs and groups when designing and planning financial and other types of support programmes and priorities;
- The EU Delegation should provide financial support to the LGBTIQ organizations for implementing programs that tackle hate crimes, hate speech and discrimination, and programs on providing access to the right to private life, such as access to legal gender recognition and same-sex partnership, among others;
- The EU Delegation should continue including LGBTIQ organizations in the consultation process for the preparation of the Country Progress Reports.