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FOUNDATION** For Freedom.
Western Balkans

HOW EUROPE WORKS FOR LGBTI RIGHTS

The Serbian Story



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The Serbian Story

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Foreword

The Friedrich Naumann Foundation for Freedom supports, in its work and activities, LGBTI rights, which are still stagnant in the countries of the Western Balkans. In the specific case of Serbia, this stalemate can be measured not only by the poor implementation of existing legislation, but also by the still incomplete legal framework.

Through accession negotiations with the European Union, Serbia is approaching topics concerning the rights of the LGBTI community in principle, but without substantial application and implementation.

This publication presents the author's review of what has been partially done so far, started but unfinished, and what is still to come and which will need to be implemented; the EU accession negotiations offer the basis and mechanisms for both these actions, and their implementation.

Based on the experience he has gained through his education and work on the rights of the LGBTI community, this brochure presents chronologically the path, and the obstacles in it, towards accomplishing the rights of the LGBTI community in Serbia, as well as making necessary recommendations to strengthen and permanently establish these rights within the process of Serbia's accession to the European Union.

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**FRIEDRICH NAUMANN
FOUNDATION** *For Freedom.*
Western Balkans

Introduction

The transition from an authoritarian political environment and closed market economy to all that the European Union (EU) stands for has been a long process that started two decades ago in Serbia, after the victory of the Democratic opposition. Following the EU – Western Balkans summit in Thessaloniki in 2003, the accession of Serbia to the EU became an inevitable and irreversible process. Moreover, it became the major instrument for reconciliation in a region which had gone through a turbulent decade of wars, ethnic conflicts and economic and societal crises, and a path leading towards respect for human rights and the rule of law for everyone. This process has not, however, been without obstacles and it has not yet been completed.

Within this period, the position of lesbian, gay, bisexual, trans and intersex (LGBTI) persons has changed drastically. The EU accession process has indeed served as an anchor for reforms when it comes to the human rights protection of LGBTI persons, who have finally been recognised as part of Serbian society, and a human rights framework providing protection from discrimination and violence and guaranteeing freedom of peaceful assembly has been set up to ensure that they are treated equally.

However, just as Serbia's EU accession process remains an on-going process, so does the achievement of equality for LGBTI persons in Serbian society, and this is no easy task. Serbia is still on the way to treating LGBTI persons as fully equal members of society and, among other things, lacks legal recognition of same-sex partnerships, legal gender recognition based on self-determination, with no legal recognition of same-sex families or intersex persons in any law or policy.

Meanwhile, two Western Balkans countries have joined the EU (Slovenia and Croatia, in 2004 and 2013 respectively), two countries have started negotiations for EU membership (Montenegro and Serbia, in 2012 and 2014 respectively), two countries have been granted candidate status (North Macedonia and Albania, in 2005 and 2014 respectively), while two countries remain potential candidates (Bosnia and Herzegovina and Kosovo*). Serbia's neighbourhood clearly has a future in the EU, but the process of EU accession requires more effort to be made, especially when it comes to the improvement of Serbia's human rights framework.

In times when, in an increasing number of European countries, we are witnessing the ongoing rise of popu-

lism and political and religious extremism, as well as the emergence of powerful anti-gender and anti-LGBTI movements, which are trying to restrict and threaten the rights and freedoms of LGBTI persons, LGBTI communities and movements still live under a fragile democratic system in the yet to be fully reformed Serbia, facing a large number of human rights challenges. EU accession is, therefore, maybe even more significant for their protection than ever before.

From the Decriminalisation of Homosexuality to the First (Violent) Pride in Serbia

Behaviour and acts associated with homosexuality in Serbia were first criminalised in 1860, when the first modern Criminal Code was adopted¹. Sexual intercourse “against the order of nature” between males became punishable by six months to four years imprisonment. As in contemporary legal documents from many other countries, lesbian sexuality was ignored and not mentioned. From that year and through various regimes, including the Kingdom of Serbia, the Kingdom of Yugoslavia and the Socialist Federal Republic of Yugoslavia, criminalisation primarily affected gay men. Homosexuality was first decriminalised in the Socialist Autonomous Province of Vojvodina in 1977, when this province had its own legislative powers. When Vojvodina was reintroduced fully into Serbia’s legal system during the breakdown of Yugoslavia, it was again re-criminalised, until 1994, when male homosexual sexual intercourse was finally decriminalised in all of Serbia.

The late 1980s brought a more formalised LGBT movement across Yugoslavia and the establishment of the first LGBT civil society organisations. Arkadia, the very first LGBT organisation in Serbia, was established in 1990, and the first lesbian association, LABRIS – still one of the most influential LGBTI organisation in the Balkans – in 1995. Like other civil society organisations, LGBTI civil society faced many difficulties during the 1990s, mainly because its anti-war stance and opposition to the Milošević regime’s human rights violations.

The political changes in 2000, strongly supported and welcomed by the European Union, were seen as crucial to the improvement of human rights in Serbia, including LGBTI rights. Civil society believed that LGBTI persons would no longer face high levels of stigma, violence and discrimination. As such, the decision to or-

¹ Criminal Code of the Principality of Serbia (1860), Art. 206: <http://www.smrtnakazna.rs/Portals/0/SrbijaPropisi/Kaznitel-ni%20zakonik%201860.pdf>

ganise the very first Pride in 2001 was taken. However, the event held in Belgrade on 30 June 2001 under the slogan “There is space for all of us” was provided with inadequate police protection and ended in brutal violence against the participants. It became clear that the rights of LGBTI persons and their equal position within Serbian society were still in question. Human rights defenders and civil society organisations recognised setting a path towards Serbia's future in the European Union as the key factor in advancing the rights of LGBTI persons in the country.

The EU – Western Balkans Summit in Thessaloniki

The EU – Western Balkans Summit was held in Thessaloniki, Greece, on 21 June 2003. It was an important step in the deepening relationship between the EU and the Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Serbia and Montenegro). The European Union had clearly underlined the prospect of EU membership for these countries.

17 years ago, in Thessaloniki² the EU and Western Balkan countries agreed that they all shared the values of democracy, the rule of law, respect for human and minority rights, solidarity and a market economy, fully aware that these constitute the very foundations of the European Union. The EU reiterated its unequivocal support for the European perspective of the Western Balkan countries and clearly stated that the future of the Balkans is within the European Union. The process, and the prospects it offered, were to serve as the anchor for reform in the region through a shared agenda, and commitment to its implementation by all parties, all the way to their future accession, in the same manner as the accession process in Central and Eastern Europe. This summit was crucial for Serbia's future and cleared its path towards EU membership. Strengthening the rule of law and respect for human and minority rights, and sending a clear message that these constitute the

² https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163



First Pride in 2001, Blic/Andrija Ilić

very foundations of the European Union, was an unequivocal signal that ensuring the protection of the rights of LGBTI persons is a fundamental part of Serbia's accession to the EU.

The Rights of LGBTI Persons in Serbia and EU Enlargement Policy

Even though the European Union has limited authority in terms of the protection of the rights of LGBTI persons, human rights and the rule of law are a crucial part of the accession process for every state wishing to join the EU. This is especially highlighted during the process of the harmonisation of the domestic legal and policy framework of any candidate state with the *acquis communautaire* of the European Union. The closer a potential member state gets to accession, the more respect towards human rights and the rule of law is expected to be incorporated. The rights of LGBTI persons undoubtedly fall under the human rights framework and equal rights granted to LGBTI persons and communities are an essential part of the rule of law. In addition, the rights of LGBTI persons have become an integral part of the enlargement policy, fundamental rights and what are usually known as *the European values*.

The EU enlargement process has significantly affected the rights of LGBTI persons in Serbia. As a candidate country, Serbia is obliged to provide LGBTI persons with protection from discrimination, and has therefore adopted some fundamental legal and policy measures to prevent discrimination and violence against LGBTI persons for the first time in its history. The EU has demonstrated public support for the rights of LGBTI persons from the very beginning of Serbia's accession process and requested a formal dedication from Serbia to advance the rights of LGBTI persons.

As the protection of LGBTI rights belongs to the very core of European values, the EU accession process is an incredibly efficient instrument in encouraging EU candidates to reform, and to reform primarily in the interest of their own people. Moreover, it is fundamental for filling the gaps related to LGBTI rights.

The strong and committed presence of the EU in Serbia has been crucial for the overall improvement of the position of marginalised groups such as LGBTI persons, and its absence could severely damage the hard won progress of the past two decades. The LGBTI movement in Serbia has always been in the forefront of defending EU integration and its values, whenever this has been questioned. The EU has also become the

strongest ally of LGBTI civil society which has bravely fought and still fights for the advancement of the rights of every LGBTI individual.

Serbia's Accession to the European Union and the Protection of LGBTI Rights in Serbia

Serbia's Accession to the European Union

On 7 November 2007, Serbia initiated a Stabilisation and Association Agreement (SAA) with the European Union. The European Commission recommended making Serbia an official candidate on 12 October 2011. After the Council's recommendation of 28 February 2012, Serbia received full candidate status on 1 March the same year. In December 2013, the Council of the European Union approved opening negotiations for Serbia's accession.

Up until the end of September 2020, Serbia has opened 18 out of 34 chapters³ and has provisionally closed two chapters. The first two chapters were opened on 15 December 2015, and the last chapter was opened on 10 December 2019. Serbia's negotiation process is significantly slower than that of other countries which have recently joined the European Union. However, out of the candidate and potential candidate states, only Montenegro is ahead of Serbia in terms of the accession process. Within Chapter 35, Serbia has a specific set of requirements related to relations with Kosovo*.

In terms of the advancement of the protection of LGBTI rights, the most important was the opening of Chapter 23 – Judiciary & Fundamental Rights, on 18 July 2016. This chapter is crucial for the overall improvement of the position of LGBTI communities in Serbian society. However, its implementation has faced many obstacles since its opening, thus affecting the level of the further improvement of human rights of LGBTI persons. Some other chapters important for the rights of LGBTI persons in Serbia, such as Chapter 19 – Social Policy & Employment, are still to be opened.

3 Chapter 34 is not included in the list.

To date, the period between 2007 and 2014 has been the busiest in terms of the protection of the rights of LGBTI persons. Among the crucial steps taken in the progress towards EU membership in this period, Serbia adopted its first anti-discrimination law, its first Strategy for the prevention of and protection from discrimination and introduced protection from hate crimes into its criminal legislation. All the above include sexual orientation and gender identity as protective grounds.

Protection from Discrimination

The first Serbian Law on the Prohibition of Discrimination⁴ was adopted in 2009. For the first time in Serbia, discrimination based on sexual orientation and gender identity was explicitly prohibited. The law was drafted in cooperation with civil society and, even though it was adopted with certain linguistically imprecise or incorrect constructions and spelling errors and did not entirely respond to the requests from LGBTI civil society, it was the first law of its kind in Serbia. The form of the law has not been changed since its adoption, although it has faced some challenges in its implementation.

Other anti-discrimination directives 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 the above-mentioned personal grounds.

The Serbian antidiscrimination legal framework does not explicitly protect intersex persons, as there are no legal provisions granting protection based on sex characteristics.

Protection from Violence

Article 54a of the Criminal Code of Serbia⁵, regulating hate motivated crimes as an aggravating circumstance, was adopted in 2012 and incorporated into the criminal legislation as of 1 January 2013, the first

⁴ [Law on the Prohibition of Discrimination](#) (Official Gazette of the Republic of Serbia, No. 22/2009)

⁵ [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).

time such an important legal provision had been introduced into Serbia's criminal legislation. Sexual orientation and gender identity are incorporated under the closed list of protective grounds.

Despite this, to date only two verdicts, both relating to hate crimes motivated by the victim's sexual orientation, have been given on the basis of this legal provision. The first was given six years after article 54a was adopted, in November 2018,⁶ while the second was reached in February 2020.⁷

Despite legislative changes in Serbia ensuring improved access to justice for LGBTI individuals, they still face obstacles. Underreporting of cases of violence and discrimination is still prevalent; prompt and impartial investigation into alleged cases of hate crimes has been carried out with some difficulty, with inconsistent implementation of legal provisions and inadequate processing by the police; limited measures have been taken by the authorities in order to encourage victims to report hate crimes based on sexual orientation and gender identity; sex characteristics are not listed as protective grounds in any law.

European Union officials have made clear on many occasions that Serbian society should not tolerate violence against LGBTI persons and has called for such crimes to be properly addressed by the relevant law enforcement and judicial authorities.

Freedom of Peaceful Assembly

Freedom of peaceful assembly is generally recognised as a fundamental right. Its enjoyment represents one of the cores of what the European Union stands for. However, LGBTI persons in Serbia have faced the violation of these rights on many occasions.

The very first Pride, held in Belgrade in 2001, ended in violence and was not afforded adequate protection by the police. It also did not receive support from state officials, who further did not publicly condemn the violence perpetrated against the Pride participants, as expected. In fact, state banning of Pride Parades became a common practice.

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

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

The second Pride Parade, scheduled for 20 September 2009, had to be cancelled. One day before it was scheduled, the organisers announced that the Parade would not take place. The reason given was the decision of the Ministry of Internal Affairs by which the duly reported gathering in the centre of the city was moved to the square in front of the Palace of Serbia for security reasons. This decision was assessed as a "capitulation of the state in the face of threats of violence". The event was followed by strong anti-LGBTI rhetoric from right-wing activists, politicians and religious officials, and also did not receive support from the Mayor of Belgrade Dragan Đilas, creating a climate of negative perceptions of LGBTI persons in the wider part of Serbian society. EU Member State Embassies in Serbia, such as the Netherlands, Sweden, the United Kingdom and Germany, provided significant support for the event.

The following year, pride was organised on 10 October in Belgrade under high level security measures and was opened by the Head of the EU Delegation to Serbia, Vincent Degert. This event also ended in violence. Six thousand five hundred hooligans caused riots in Belgrade, attacking police and buildings. During the riots, hooligans attacked the building of the Democratic Party and the Socialist Party of Serbia, the Radio Television of Serbia building, a mobile mammogram, as well as numerous shops in the centre of Belgrade, from which goods were looted. During the riots, 132 police officers and 25 citizens were injured. Two hundred and forty-nine people were arrested, about 60% of whom were not from Belgrade. Despite representing the Democratic Party, which strongly supported European values and the accession of Serbia to the European Union, the Mayor of Belgrade, Dragan Đilas, once again showed no support for the LGBTI communities, stating that "no matter what rights they have, they should not organise demonstrations that lead to such things". As a consequence, the 2011 Pride Parade was also cancelled. It took three more years for the next Pride event to happen.

Pride Parade, 2010



1. Reuters, Marko Djurica; 2. Beta, Milan Obradović; 3. Beta, Emil Vas;
4. Goran Miletić

In 2014, both domestic and foreign media connected the Pride Parade to Serbia's accession process to the European Union. More than ever before, it was highlighted that in Serbia, as in other conservative societies in the Balkans, homophobia was widespread, but with the preparations for the EU accession talks, Brussels had made it clear that Pride was an important test of the country's commitment to human rights. In fact, Commissioner Stefan Füle underlined that this was a significant step forward in the modern history of democratic Serbia, stating also that "holding the parade represents significant progress in the protection of human rights not only of the LGBT population, but of human rights in general".

Pride events in Belgrade have been successfully organised since 2014, with minor incidents happening on the day of the event. The very first Pride event in Novi Sad, the second largest city in Serbia, was successfully organised in May 2019. These events represent a huge victory for the LGBTI communities. The role of LGBTI civil society and its efforts to finally make this happen are of immense importance, with the support received from the EU and its member states as an integral part in the process.



Pride Parade 2016, Civil Rights Defenders/Vesna Lalić



Pride Parade 2017, Civil Rights Defenders/Vesna Lalić

Pride Parade 2018,
Civil Rights Defenders/Vesna Lalić



Pride Parade 2019,
Civil Rights Defenders/Vesna Lalić



Challenges in the Further Protection of LGBTI Rights and the Accession of Serbia to the EU

Despite the noticeably clear dedication to joining the EU demonstrated in the period between 2007 and 2014, the overall pace of Serbia's accession to the EU has significantly slowed in the past five years. Even though the biggest obstacle to Serbia's accession is the strained relationship with Kosovo*, which declared independence on 17 February 2008, another still important challenge is strengthening the rule of law and respect for human and minority rights.

Serbia managed to open only two chapters in 2019 and has failed to open any new chapters in the accession process during the first nine months of 2020. Such developments have strongly affected LGBTI communities in Serbia – not only has the improvement of the overall human rights framework of LGBTI persons not been put in place, but the existing one is under question.

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

The necessity of amending the existing law has been publicly raised by both state authorities and civil society on many occasions. State representatives have mentioned the possibility of such a process starting in the past few years, although no concrete steps have been taken.

In early 2019, the Government of the Republic of Serbia approved the **Draft of Amendments to the Law on the Prohibition of Discrimination** (Draft Law).⁸ Contrary to the legal rules governing the procedure of drafting and adopting draft laws,⁹ those interested in its content were not allowed to participate in its drafting, nor was a discussion on the proposed solutions organised before the Government formally adopted them.

The State authorities have mentioned on several occasions that two round tables with civil society on the topic of the amendments had been held. However, neither the Civil Society Coalition against Discrimination

8 The Draft Law is accessible here: <https://www.paragraf.rs/dnevne-vesti/050919/050919-vest13.html>

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

nor any LGBTI civil society organisation were ever invited to such meetings, and no public information has ever been released on the participants of these meetings, or their conclusions.

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 from eliminating its numerous shortcomings. This led to civil society openly protesting against the process and drawing media attention to it.¹⁰ The Coalition against Discrimination,¹¹ with the support of 45 CSOs, made a **public statement**¹² on the matter.

Eventually, in September 2019 the state authorities allowed the possibility of submitting comments and suggestions on the Draft Law, both through a number of public discussions across the country and through online submissions. It is important to state that the public discussions were announced at practically the last minute, resulting in many CSOs not being able to attend or make adequate preparations. In addition, the possibility of making comments on the Draft Law was limited to the amendments already proposed by the Government, excluding the possibility to commenting on and proposing amendments to the entire Law on the Prohibition of Discrimination.

The Opinion of the Commissioner for the Protection of Equality on the Draft Law

The Commissioner for the Protection of Equality provided **comments**¹³ on the Draft Law in October 2019. It is stated in the opinion that the relevant Ministry of the Government of Serbia had sent a note to the Commissioner for the Protection of Equality requesting this opinion on 27 September 2019, which suggests that this institution was also not properly included in the preparation of the Draft Law prior to its adoption by the Government of Serbia. The comments within the opinion, however, do not relate to LGBTI rights or the need to amend the existing provisions related to sexual orientation and gender identity, or to the adoption of new provisions, which would regulate the protection of intersex persons.

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

11 This Coalition is made of 8 CSOs working in the field of discrimination, including LABRIS, Geten and Civil Rights Defenders.

12 The statement is accessible here: https://www.womenngo.org.rs/images/zagovaranje/Zahtev_zapovlacenje_Predloga_izmena_Zakona_o_zabrani_diskriminacije.pdf

13 The comments are accessible here: <http://ravnopravnost.gov.rs/36547-cir/>

Serbia left without a Commissioner for the Protection of Equality

The system of protection against discrimination in Serbia was endangered, as the work of 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 previous Commissioner for the Protection of Equality, Brankica Janković, officially ended on 27 May 2020 and a Commissioner was not elected, due to the failure to hold such an election in a timely manner before the dissolution of the Serbian parliament prior to the parliamentary elections in June 2020. It is absolutely unacceptable for the actors responsible to have allowed this situation, which puts the rule of law in Serbia in doubt, to arise.

The citizens of Serbia have been left without adequate protection from discrimination for some time, as the Commissioner for the Protection of Equality is elected by the National Assembly of Serbia by a majority vote of all MPs. Elections in Serbia were held on 21 June and it has taken weeks, even months, to constitute the newly elected National Assembly and the parliamentary boards in charge of submitting the proposal for the election to the MPs.

Numerous civil society organisations that had filed complaints for protection against discrimination were informed in early June that the complaints procedure would continue only "***after the election of the Commissioner for Protection of Equality***". This situation further victimises those who have suffered discrimination, and increases the risk of people being discriminated against with no protection provided. A further area of great concern is who will take procedural actions in anti-discrimination lawsuits and criminal proceedings initiated by the Commissioner before the end of her mandate that are already in progress, further contributing to the uncertainty of legal protection against discrimination.

That this human rights mechanism of protection against discrimination is unable to function is seriously affecting Serbia's LGBTI citizens, especially those who belong to multiple vulnerable and marginalised groups, including those who have used this mechanism as a free and accessible tool for protection from discrimination.

2019 Annual Report of the Commissioner for the Protection of Equality

In her latest annual report for 2019¹⁴, the Commissioner for the Protection of Equality repeated what had already been stated in every annual report published by this body – that LGBTI persons, along with the Roma community, are among the most discriminated against in Serbia. The degree of social distance expressed by the general population towards LGBTI persons is the second highest for all demographic groups. However, when it comes to filing complaints to this institution, the number of complaints regarding on discrimination based on sexual orientation has reduced significantly, from 42 in 2018 to 18 in 2019. The Commissioner brought two criminal charges during 2019 in relation to discrimination based on sexual orientation, but did not, however, launch any civil court proceedings, which is also a possibility granted by the law. It is also important to note that the annual report only has a section on discrimination based on sexual orientation.

Strategy for Prevention and Protection against Discrimination missing

The ***Strategy for Prevention and Protection against Discrimination*** (the Strategy) for the period from 2013 to 2018 was the first strategy of its kind adopted as a harmonised system of measures, conditions and public policy instruments, which the Republic of Serbia should have implemented in order to prevent or reduce all forms and special cases of discrimination, especially towards certain persons or groups with regard to their personal characteristics.

No new strategy has been adopted since 2018, neither have the measures defined by the original Strategy been met. The failure to implement the Strategy and to adopt a new one, has contributed to a significant decline in the position of LGBT persons in Serbia and runs contrary to respect for human rights and the rule of law.

The Strategy referred to the prevention and prohibition of all forms, types, and special cases of discrimination, and covered all persons and groups regarding their personal characteristics, especially the national minorities and vulnerable social groups most often exposed to discrimination, including LGBT persons. The

14 The report is accessible here: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/03/FINAL-RGI-2019-ZA-NARODNU-SKUPSTINU.pdf>

Strategy did not include the position of intersex persons (who are not yet recognised in the Law on Prohibition of Discrimination or any other law), or non-binary individuals.

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 2013, the reason for which lies in the significant delay in its adoption relative to the date of the adoption of the Strategy itself. In fact, the Serbian Government adopted the Strategy at a session held on 27 June 2013, while the accompanying Action Plan was not adopted until more than 15 months later, by a Conclusion of the Government on 8 October 2014.

Since LGBT persons were explicitly recognised as being exposed to discrimination and discriminatory treatment, Part IV of the Strategy was dedicated to them. This part of the Strategy refers to various international and domestic regulations governing the position of LGBT persons. The Strategy describes the issue of preventing discrimination against persons based on their sexual orientation and gender identity as "a sensitive topic in the Serbian public", and goes on to state that various forms of discrimination, violence and threats against LGBT persons are still present today. Publicly and privately expressed homophobia and hate speech, as well as open forms of violence motivated by intolerance towards a non-heterosexual affiliation, are the most common forms of discrimination and human rights violations against the LGBT community. Security, especially in relation to the exercise of the right to peaceful assembly, has been identified as a top priority for LGBT people.

Despite being warmly welcomed by the European Union, this Strategy was poorly implemented in terms of the rights of LGBT persons. The model of the Law on Same-Sex Partnerships has not been developed, and no legal amendments within Family Law, Inheritance Law, Labour Law, Law on Social Protection, Law on Sports etc., have been adopted to provide adequate protection for LGBT persons. Legal gender recognition still deviates from international human rights standards when it comes to the process of the legal recognition of gender for trans people, since they are still required to perform hormone therapy and psychiatric evaluation, which is not in line with the accepted standards of self-determination.

The European Union and LGBTI Civil Society in Serbia

It can be said without any doubt that LGBTI civil society has faced numerous obstacles in their efforts to secure human rights and equality for LGBTI communities and persons in Serbia. Their firm dedication has been challenged on many occasions. LGBTI human rights defenders have experienced social stigmatisation and many have been victims of hate speech and violence. Among the most important tools in their everyday work of making Serbian society a better place for its LGBTI members have been the financial support received from the EU and the opportunities for lobbying the representatives of EU institutions and EU member states. Consequently, LGBTI civil society has developed over the past 15-20 years and has become a strong voice for LGBTI communities in Serbia. In 2015, Belgrade also became the seat of ERA – LGBTI Equal Rights Association for the Western Balkans and Turkey, giving the voice of LGBTI communities a more regional focus.

LGBTI human rights defenders clearly recognise the importance of the support received from the European Union:

The country's processes of EU integration have tremendously affected the political climate around the human rights of LGBTIQ people in the past decade. EU Institutions in Serbia, as well as the Embassies of EU countries and EU based donors, have contributed to the strengthening of policies, legislation, independent equality bodies, and LGBTIQ civil society organisations. European experiences in different areas such as police, healthcare, and social welfare, even education to a certain extent has been shared and applied in the reform of Serbian institutions. Regardless of political controversies overshadowing her mandate, the appointment of Ms. Ana Brnabić, an openly out lesbian, to the position of Prime Minister, proved the change in the perception of LGBTIQ persons in political life in Serbia.
(Jovanka Todorović, Geten)

The EU integration process is very important for the entire society and situation of Serbia, as well as for the LGBTI community and our rights. Since 2012, when Serbia officially received the status of a candidate for EU membership, the situation has drastically changed. Many laws and bylaws have been adopted, amendments have been passed and laws have been improved: Article 54a has been introduced in the Criminal Code of the Republic of Serbia, i.e. a special circumstance for sentencing for a criminal offense committed out of hatred

motivated, inter alia, by gender, sexual orientation and/or gender identity, and the first verdict in which Article 54a was applied, has been handed down. Also, I would like to add that since 2014, an annual Pride Parade has been organised in Serbia without incidents and disturbances. All these are steps forward for LGBTI people.

(Maja Šenk, LABRIS)

LGBTI human rights defenders still see many challenges ahead, but also recognise the need for further support from the European Union and its member states:

The EU integration process serves as a checkpoint for building an inclusive and democratic society. When it comes to the position of the LGBTI+ community in Serbia, it has traditionally been faced with low visibility and even lower acceptance within society. Even though some progress has been made in the past decade, we are still far behind the European standards, not only when it comes to the legislative issues but also when it comes to living conditions in general. Human Rights as a concept are not really understood by the general public in the Balkans, it is our hope that the path towards EU membership will do more to educate and show the public perception to be aware of the importance of human rights and diversity for building a stable democracy and an inclusive society.

(Marko Mihailović, Belgrade Pride)

Unfortunately, the so-called "pink-washing", i.e. declarative passing of laws and public support for the community in order to collect political points, is in place, so we have a completely paradoxical situation in Serbia, headed by Ana Brnabić, a publicly proclaimed lesbian, who even recently had a child with her partner, but who as Prime Minister has done literally nothing to improve the position of LGBTI people in Serbia. There are a large number of laws that have been adopted, but they are implemented either inadequately or not at all. Although the adoption of the Law on Gender Identity and the Law on Civil Partnership has been advocated for years, they have never even entered the adoption procedure. It can be said that EU integration has brought a lot of good for the LGBTI community, but it seems to me that a lot of it is just an illusion and that we still have a long way to go to achieve fully equal treatment in this society.

(Maja Šenk, LABRIS)

At the risk of sounding paternalistic, I think that the support of, and/or pressure from the European Union regarding the improvement of the legislation and position of LGBT+ people in Serbia is crucial nowadays,

and one of the few (and perhaps only?) channels through which one can influence the competent authorities. Almost every government in the last ten years has made some "concessions" to the LGBT+ community exclusively as part of the obligation that Serbia must fulfil in the process of European integration, and striving for EU membership. The explanation that it is a question of improving the position of one's own citizens has unfortunately rarely or never been heard. As Serbia slides more and more into electoral authoritarianism, it seems that the authorities have less and less will for their already poor cooperation with civil society, which is almost completely ostracized. The European Union and its reports (FRA, Annual Progress Report, etc.) remain virtually the strongest advocacy method to make certain changes happen. **(Stefan Šparavalo, Da se zna!)**

In countries like Serbia, the European Union is also seen as a strong advocate for the implementation of the human rights standards originating from other major European organisations, such as the Council of Europe:

EU accession acceleration will further improve standards and practices in exercising the human rights of LGBTIQ persons and provide better protection, among other things, through decisions ruled by the European Court of Human Rights. In future I expect to see institutions in Serbia act upon decisions ruled by this court when it comes to the regulations of same-sex unions. Also, the huge legal gaps in the fulfilment of the basic human rights of transgender persons, could be overcome simply by applying the relevant rules of the European Court of Human Rights such as the historical decision following which the sterilisation requirement in legal gender recognition violates human rights. Setting the legal precedent for Europe, this decision will stimulate the remaining 22 countries using the infertility requirement to change their laws and end the dark chapter of state-induced sterilisation in Europe. **(Jovanka Todorović, Geten)**

The Rights of LGBTI Persons in the Recent EU Country Reports for Serbia

Every year the European Commission adopts its Enlargement Package – a set of documents explaining its policy on EU enlargement. Most importantly, this Package includes a Communication on Enlargement which takes stock of the situation in the candidate and potential candidate countries, and sets out the way forward. In addition to this Communication, the Package contains the Reports in which the Commission services present both their detailed assessment of the state of play in each candidate and potential candidate country and what has been achieved over the last year, and set out guidelines on reform priorities.

Six countries, including Serbia, currently involved in the EU accession process are covered under this Enlargement Package, and while some show constant levels of progress towards the EU, others are still expected to take more concrete steps or to overcome current political developments negatively affecting the process.

The rights of LGBTI persons are analysed in every country which is part of the EU accession process. Here is what the EU highlighted in its two most recent Country Reports for Serbia:

2019 Report

As regards the rights of LGBTI persons, two Pride parades, in June and September 2018, took place without any incidents, the latter attended by the Prime Minister and several high level officials. There was a noticeably smaller police presence than in previous years. The first LGBTI community centre in Serbia was opened in Novi Sad in April 2018, primarily targeting LGBTI youth and their families. There was also some progress made in education, as six out of eight textbooks with discriminatory content were changed. Amendments to the law on birth registry now enable the entering of data on gender change into the registry. However, the overall situation in Serbia remains broadly the same as in previous years, with low implementation of activities under the expired anti-discrimination strategy. Implementation of the hate crime legislation, including on grounds of sexual orientation, remains inadequate. While centralised official data on hate crimes is still lacking, civil society organisations reported a slight increase in violence and attacks on LGBTI persons, including from within their families. In November 2018, six years after the introduction of the concept of hate crime in the Criminal Code, the first hate crime decision was delivered in a case of domestic violence, motivated by the fact that the victim was an LGBTI person. Transgender

persons are particularly vulnerable to violence, abuse and discrimination. Intersex persons remain invisible both socially and legally. Serbia needs to step up measures to protect the rights of persons facing discrimination, including LGBTI persons, actively pursue investigation and convictions for hate-motivated crimes and adopt a new anti-discrimination strategy. Human rights defenders, together with LGBTI persons, often face hate speech, threats and violence. These abuses should be promptly and properly investigated and penalised. Access to healthcare services needs to be improved for LGBTI people.

2020 Report

Human rights defenders, together with LGBTI persons, often face hate speech, threats and violence. These abuses should be promptly and properly investigated and penalised. The Equality Commissioner raised concerns over the increased occurrences of discriminatory and hate speech during the state of emergency, which were targeting in particular women, the elderly, people infected with COVID-19, those returning from abroad, and LGBTI persons. Two Pride parades, in June and September 2019, took place without any incidents, the latter attended by the Prime Minister and several high-level officials. In May 2019, a public civil society event aimed at marking the International Day against Homophobia, Transphobia and Biphobia was successfully held in Novi Sad, the first time such an event was held outside Belgrade. 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. Training courses for employees in municipality offices are needed to avoid uneven practices as regards implementing the legislation. Overall, the situation of LGBTI persons in Serbia remains broadly the same as in previous years. The implementation of the hate crime legislation, including on grounds of sexual orientation, remains inadequate. Centralised official data on hate crimes broken down by bias motivation is still lacking. Due to the lack of trust in institutions and the fear of stigmatisation and victimisation, cases of violence and discrimination towards LGBTI persons are often unreported. Transgender persons are particularly vulnerable to violence, abuse and discrimination. Intersex persons remain invisible both socially and legally. A new rulebook on 'Closer Conditions, Criteria and Methods for Selection, Testing and Evaluation of Reproductive Cell Providers and Embryos' includes a provision banning the donation of reproductive materials to people who have had homosexual relations in the last 5 years. Access to healthcare services needs to be improved for people with disabilities, people living with HIV, children and adults who use drugs, prisoners, women involved in prostitution, LGBTI people, internally displaced persons and the Roma.

Serbia Included in the 2020 FRA LGBTI Survey

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, 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.

The findings provide national and European policy makers with much needed evidence on progress made in the EU as well as in the United Kingdom and in the candidate countries of North Macedonia and Serbia. It gives them evidence-based information so that they can put in place measures to effectively protect and promote the rights of LGBTI people.

The inclusion of Serbia in this survey is of immense importance. On the one hand, it demonstrates that the European Union is closely following the developments of the rights of LGBTI persons in Serbia. On the other hand, it provides detailed data on the position of LGBTI persons within Serbian society, which is exceptionally significant for further support and measures to be adopted during the accession process in order to secure proper advancement of human rights of LGBTI persons in Serbia.¹⁵

Lessons Learned from Serbia's Accession to the European Union

While basic protections for the human rights of LGBTI people are in place in Serbia, further development is needed. Primarily, the provision of legal gender recognition procedures and legislation and the recognition of same-sex partnerships need to be addressed. The EU accession process has already created a real op-

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

portunity for achieving an increase in the protection of the rights of LGBTI persons in the past, and the EU's encouraging voice is considered to be crucial in achieving more in this field in the future.

Public attitudes towards LGBTI persons have improved in Serbia, but continue to be predominantly negative. Concrete recommendations from the EU to tackle these issues and promote thorough and sustainable implementation have served as a driving force for sustainable change to the lived realities of LGBTI people in the country. LGBTI communities can benefit from Serbia upholding this process and focusing more on its implementation in the course of accession to the EU.

Further accession of the Western Balkans to the European Union will not only advance the rights of LGBTI persons in the neighbouring countries, but is also important in securing equality for LGBTI communities and persons in Serbia.

Recommendations

- The European Union should reiterate its unequivocal support for the European perspective of Serbia whenever possible, and clearly state the future of Serbia is within the European Union;
- Strengthening the rule of law and respect for human and minority rights should remain the very foundation of Serbia's accession to the European Union, ensuring the protection of the rights of LGBTI persons as a fundamental part of the process;
- The European Union should continue to demonstrate public support for the rights of LGBTI persons within Serbia's accession process and request a formal dedication from Serbia to advance the rights of LGBTI persons by the adequate implementation of the existing laws and policies and amend its legal and policy framework in order to fill the gaps;
- The European Union should continue with its comprehensive and crucial support for LGBTI civil society and human rights defenders;
- The European Union should continue its efforts to address the lack of data on the life experiences of LGBTI persons in Serbia, and support Serbia in achieving equality for its LGBTI citizens through the proper usage of such data;
- Any future LGBTI-related strategic documents adopted within the European Union should also refer to the candidate countries, including Serbia.

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Find out more about the Friedrich Naumann Foundation for Freedom's liberal human rights work: www.freiheit.org/humanrights

