



# Status of vulnerable groups in the process of the accession of the Republic of Serbia to the EU

## SITUATION OVERVIEW: LGBTI

09.11.2021.

The status of vulnerable groups from the aspect of compliance with obligations in the process of the accession of the Republic of Serbia to the European Union

European integration is a strategic goal of the Government of the Republic of Serbia. The process of adopting the required legislation and raising administrative capacities has been ongoing continuously since the start of accession negotiations in 2014. However, to improve the process of accession, the European Union (EU) adopted a new accession methodology on 5 February 2020 under the name "Enhancing the accession process – a credible EU perspective for the Western Balkans".<sup>1</sup> The European Commission adopted a document on 9 March 2021 whereby the new methodology also applies to Serbia and Montenegro.<sup>2</sup> This methodology changed the way of monitoring Serbia's success in the process of EU accession so that, aiming for a more dynamic process and acceleration of reforms that the candidates need to implement, negotiation chapters are organised into thematic clusters. Negotiations will be opened in all chapters in a cluster simultaneously, after

the opening benchmarks are met. The negotiation chapters were divided into 6 clusters: 1. Fundamentals; 2. Internal market; 3. Competitiveness and inclusive growth; 4. Green agenda and sustainable connectivity; 5. Resources, agriculture and cohesion; 6. External relations.

Vulnerable groups primarily have their place under the first (chapter 23 Judiciary and fundamental rights) and third cluster (chapter 19 Social policy and employment), and in a way they are intertwined with the other clusters. This methodology brought about certain changes within the institutional system of the Republic of Serbia, thus in May 2021 a Decision was adopted on establishing Coordination for running the accession negotiations of the Republic of Serbia to the European Union and the Team for supporting the negotiations.<sup>3</sup> This was aimed at harmonisation with the new methodology for monitoring success in the accession of Serbia to the European Union. Despite certain activities in 2020, Serbia did not open a single chapter, nor the expected third cluster during the first half of 2021. Regarding European integration, 2020 will be remembered as the year of changing the existing frameworks and priorities of the EU, as well as the year of the COVID 19 epidemic that also

had a negative impact on the dynamics of the European integration process for Serbia. However, there is progress. The Government of the Republic of Serbia adopted the Negotiation position and Action plan for Chapter 19 – Social policy and employment, and the revised Action plan for Chapter 23 – Judiciary and fundamental rights.

On the other hand, there is a notable delay in the implementation of activities envisaged by these plans that are important for improving the status of vulnerable groups. The activities primarily relate to improving the strategic and legislative framework and other public policies relevant for improving the status of vulnerable groups. The Employment and Social Policy Reform Programme has ended, and the drafting of a similar document is not envisaged, while the implementation of structural reform in the field of social welfare and inclusion defined by the Economic Reform Programme has been assessed as limited, insufficient or partial for a number of years, as implemented by the European Commission.<sup>4</sup>

The Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia has started an initiative to draft an analytical review of the status of vulnerable groups in the context of EU accession with the following objectives:

- To increase the visibility of the challenges faced by vulnerable social groups in the Republic of Serbia;
- To inform stakeholders on current processes in the development of the strategic and legislative framework in the field of social inclusion;

- To promote a dialogue and cooperation in meeting the obligations under the process of Serbia's accession to the EU in the field of social inclusion.

The series of informative analytical situation overviews on the status of vulnerable groups in the context of meeting the obligations in the process of European integration is intended for a broad circle of stakeholders: decision makers, state administration and staff in local self-government units, development partners, civil society organisations, the academic community, journalists, and other stakeholders.

The situation overview covers the following vulnerable groups: persons with disabilities, LGBTI, women, children, the elderly, youth, Roma, national minorities, migrants/asylum seekers, and persons living with HIV. This analysis covers the status of LGBTI persons in the process of Serbia's accession to the European Union.

## The status of LGBTI persons from the aspect of compliance with obligations in the process of the accession of the Republic of Serbia to the European Union

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The European Commission (EC) Progress Report for the Republic of Serbia for 2019<sup>5</sup> notes that the legislative and institutional framework for the protection of the human rights of LGBTI persons has been largely established in Serbia. Since then, amendments to the Anti-Discrimination Law have been adopted<sup>6</sup> However, two years after stating that the legislative framework has been correctly

established, the EC Progress Report for the Republic of Serbia for 2021 notes that further efforts are still required in the consistent and efficient implementation of regulations, in particular regarding the prevention of hate speech and hate crimes.<sup>7</sup> During the past decade there have been positive steps regarding the rights of sexual and gender minorities, but LGBTI persons in Serbia still face discrimination, hate speech, threats and violence.<sup>8</sup>

Violence motivated by the perception of sexual orientation and gender identity remains widespread in Serbia, and personal safety is one of the main priorities for LGBTI persons.<sup>9</sup> According to a survey implemented in 2018 by the Labris non-governmental organisation, 56% of LGBTI respondents express fear for their safety.<sup>10</sup> To reduce the risk of discrimination or violence, LGBTI persons often opt to hide their LGBTI identity. The results of a survey on LGBTI persons in the European Union (EU), North Macedonia and Serbia implemented by the EU Fundamental Rights Agency (FRA) in 2019 show that more than half of the LGBTI persons in Serbia (53%) avoid being open about their LGBTI identity towards family members, friends and neighbours, from fear of being assaulted, abused or threatened.<sup>11</sup> Furthermore, they tend to hide their sexual orientation and gender identity in public transport (63%), public places and buildings (59%), as well as in cafés, restaurants, pubs and clubs (49%).<sup>12</sup> Most LGBTI persons are avoiding publicly holding hands with a same sex partner (71%). This percentage is particularly high for homosexuals (89%) and bisexual men (91%).<sup>13</sup>

Discrimination based on sexual orientation, gender identity and sexual characteristics is widespread in various areas of life and has far-reaching effects on the overall welfare and health of LGBTI persons. Accordingly, LGBTI persons in Serbia are less satisfied with their life in comparison with the general population: their average life satisfaction result is 5.3, compared to 6.3 registered among the general population.<sup>14</sup> Stigma and discrimination prevent LGBTI persons from achieving their full potential and hamper their contributions to social development. Various conceptual and theoretical models suggest that excluding LGBTI persons from the labour market and the educational and healthcare system can have high costs for the national economy, since it leads to lower productivity, lower human capital levels and poorer health outcomes.<sup>15</sup> The inclusion of LGBTI persons thus not only represents care about human rights, but also an important socio-economic issue.

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## Socio-Economic Status of the LGBTI Population in the Republic of Serbia

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This chapter covers the socio-economic status of the LGBTI community in the Republic of Serbia through analysing their status in the labour market, in the educational and healthcare system, public opinion perceptions, occurrence of discrimination, incidence, and prevalence of violence against members of the LGBTI population.

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## Labour Market

Since the majority of complaints submitted to the Commissioner for the Protection of Equality are in regards to the field of labour and employment, this institution has implemented a survey on discrimination in the labour market in 2019. According to collected data, 71% of survey employers, 69% of employed persons and 66% of unemployed persons believe that LGBTI persons are being offended and humiliated at work.<sup>16</sup> The results have also shown that 12% of employers, 23% of employed persons and 23% of unemployed persons do not wish to work with LGBTI persons. The findings have further indicated that 6% of employed and 7% of unemployed respondents faced discrimination based on sexual orientation and gender identity. The findings of the FRA survey are also in accordance with this, indicating that 16% of LGBTI persons felt discriminated seeking work (39% of trans persons), while 24% of respondents were exposed to discrimination at work (40% of trans respondents) during the past 12 months.<sup>17</sup> However, nearly half the surveyed LGBTI persons have stated that they usually hide their sexual orientation and gender identity in the workplace (44%) or are only selectively open (47%).<sup>18</sup>

In a 2017/18 study implemented by the Centre for Research and Social Development "IDEAS", 38% of LGBTI persons have reported having suffered discrimination in the labour market during the past five years. Similarly to the findings of other surveys, part of the respondents have stated that they hide their LGBTI identity at work.<sup>19</sup> Nearly half (46%) have reported having been exposed to psychological violence at work, 19%

were threatened with dismissal, 18% were under threat of physical violence, and 9% have experienced physical violence.<sup>20</sup> The results are unchanged in a survey implemented in 2020 by the same organisation in cooperation with the Regional Info Centre. This survey has shown that 16% of LGBTI+ persons believe their job application was rejected due to their sexual orientation and/or gender identity, while 24% of employed LGBTI+ persons believe they have experienced discrimination at work during the past year, while 20% were unsure.<sup>21</sup> In this survey, the majority (92%) of LGBTI+ persons expressed the belief that national protection systems and mechanisms are unable to protect them from discrimination at work. Only 17% of respondents believe their employer is efficiently punishing abuse and discrimination of employed LGBTI+ persons, while 53% have stated that their employer does not punish abuse and discrimination based on sexual orientation and/or gender identity at all. However, although the majority of employed LGBTI+ persons believed that their LGBTI identity does not affect promotion at work (64%), 33% believe it has a negative impact on them, and only 3% positive.<sup>22</sup>

The World Bank has implemented a survey in 2017 on the socio-economic status of LGBTI persons in Serbia<sup>23</sup> through an adapted version of the Survey on Income and Living Conditions (SILC).<sup>24</sup> Despite certain limitations stemming from the sample characteristics and method of data collection, this is the only source of data on activity/inactivity and employment/unemployment of LGBTI persons in Serbia. According to the analysis, the activity rate among LGBTI persons was 66%, the employment rate 56%, and the

inactivity rate 14%. Compared to the overall population, LGBTI respondents have a higher inactivity rate (34% compared to 25%). The analysis has also shown that the mean monthly personal income of LGBTI respondents (EUR 256) was somewhat above the comparable general population (EUR 236), but the difference is not statistically significant. However, transgender persons are in a significantly worse position with a median income at EUR 203.<sup>25</sup>

Precious evidence is also provided by the "COVID-19 and LGBTI community in Serbia" study<sup>26</sup>, implemented in 2020 by the Loud & Queer and Egal non-government organisations. Nearly a third of the respondents (29.4%) reported being unemployed, with the great majority in long-term unemployment: 21.2% of respondents sought a job for more than six months and had no employment prior to the pandemic. As a direct consequence of the coronavirus pandemic, firing has considerably reduced income, and unpaid absences from work affected one third of the respondents. Trans persons are in the most unfavourable position.<sup>27</sup> It should also be noted that the unemployment rate is gender-conditional, since the highest unemployment rate is registered among bisexual persons (women predominate in the sample) and lesbians. Specifically, 38.2% of bisexual persons and 34.9% of lesbians are unemployed. For trans persons this percentage drops to 31%, while the unemployment rate of gay men is 23.9%.<sup>28</sup>

## Health and Healthcare

According to the FRA study, 36% of LGBTI persons in Serbia view their health as very good, 42% as good, 17% as solid, 4%

as poor and 1% as very poor.<sup>29</sup> Intersex persons see their health status as poor or very poor to a greater extent compared to lesbians, homosexuals, bisexual persons and trans persons that have participated in the survey. Similar findings were presented in the World Bank analysis from 2019: the majority of LGBTI respondents have described their health status as good or very good (71%), but on the other hand, a significantly higher percentage of the general population described their health as such (93%). At the same time, 5% of LGBTI respondents assessed their health as poor compared to 1% among the overall population.<sup>30</sup>

Regarding discrimination by healthcare workers or staff of social services, 16% of respondents have experienced discrimination, while 84% have not.<sup>31</sup> The percentage related to discrimination experiences was highest among intersex persons: 35% of intersex respondents were exposed to discrimination.<sup>32</sup> However, nearly half the LGBTI persons (41%) hide their LGBTI identity at a healthcare institution from fear of being assaulted, threatened or harassed by others.<sup>33</sup>

The domain of health is highly important for trans persons, since legal recognition of sex in Serbia remains conditional on medical criteria. Since 2011, the Law on Health Insurance<sup>34</sup> contains provisions envisaging that 65% of the cost of a sex change surgical intervention is covered by the Republic Fund for Social Insurance. Approvals for the operation are provided by the National Commission for Transgender States of the Clinical Centre of Serbia. During the past 30 years, 286 persons had a sex change operation in the Republic of Serbia. During 2018, the National Commission for Transgender

States has received 19 requests for a sex change, with 17 approved, while two requests were resolved in 2019. As a comparison, in 2017 there were 15 requests submitted to the Commission for Transgender States, with 12 approved, and three returned with a request for further medical documentation.<sup>35</sup>

## Education

Although data on “milder” cases of violence are collected and analysed within schools, the Ministry of Education, Science and Technological Development (MoESTD) is registering data on cases of discrimination and serious (third level) violent incidents (number of cases and form of violence). According to MoESTD data, reporting in regards to violence is increasing: 820 cases were reported during the 2017/18 school year, 890 in 2018/19, and 950 in 2019/20. The MoESTD is establishing a database that would contain detailed information regarding violence (third level) and discrimination, collected and reported by schools in Serbia, in accordance with the above rulebooks. Specifically, the database will contain information on the incident (type and level of violence/discrimination) and involved persons (e.g. their relationship, sex, age). Furthermore, it will be possible to enter the description of suspicion or confirmed incident that would enable determining the actual or presumed motive for violence/discrimination.

Despite existing protection, LGBTI children and youth in Serbia still face a high level of discrimination and abuse. The data collected by Labris in 2018 indicate that 59% of LGBTI participants in the survey have experienced

discrimination, with the predominant environments: school (44%), workplace (28%) and restaurant/shop (27%).<sup>36</sup> The FRA survey has shown that 54% of LGBTI persons have experienced violence in school (homosexuals have reported the highest frequency of school abuse with 74%), 16% have decided to leave or change school due to their sexual orientation and gender identity, and 66% of respondents have said they are hiding (or hid) their LGBTI identity in school.<sup>37</sup>

As the existing data shows, discriminatory views based on sexual orientation and gender identity are widespread among children. More than one third of students aged 12-18 years who participated in the survey by the Centre for the Rights of the Child in 2012 where against homosexuals holding public office, while 36% of the respondents agreed that homosexuality is a disease that needs to be treated, by force if necessary (44% of boys and 28% of girls).<sup>38</sup> Evidence from the study on gender-based violence in schools implemented by the Centre for Gender Studies and Policy in 2013 indicate that 28% of surveyed boys (VI to VIII grade of primary school) believe it is okay to mock a feminine boy, while this percentage is even higher for secondary school students (38%).<sup>39</sup> Furthermore, 20% of boys attending sixth to eighth grade of primary school, and 27% of boys attending secondary school believe it is okay to mock a tomboy girl.<sup>40</sup> It is particularly concerning that 60% of boys and 27% of girls of primary school age justified violence against homosexuals (gay men), along with 66% of male secondary school students and 19% of female secondary school students.<sup>41</sup>

Data collected in the pilot survey

implemented by Labris in 2017 among secondary school students has shown that 74% of the respondents have identified LGBTI students as those most exposed to violence in school<sup>42</sup> Over one half (54%) of students believed homosexuality is a disease, and 40% that members of the LGBT community should not have the same rights as heterosexuals. Furthermore, 43% of students would avoid other students because of their sexual orientation and gender identity.<sup>43</sup> The Helsinki Committee for Human Rights has determined in a study from 2019 that homophobia is clearly present among secondary school students in Serbia: 31% of respondents were moderately, and 44% seriously homophobic.<sup>44</sup> One quarter (25%) of the respondents believe LGBT persons deserve to be beaten, 60% are against the right to a "sex change" for trans persons, while 44% of secondary school students would be against a same-sex couple being their neighbours. On the other hand, nearly half the respondents stated they were friendly towards LGBT persons (47%) and would share their school desk with a homosexual or lesbian (47%).<sup>45</sup>

Data from a survey implemented in 2018 by the Centre for International Public Policy among students of the University of Belgrade has shown that 51% of students have agreed that LGBT persons face discrimination in the labour market, but also that 58% of respondents are against same-sex marriages, and 53% would not allow same-sex partners to adopt a child.<sup>46</sup> Other surveys among young people confirm these negative attitudes and expressed a tendency not to be friends with LGBTI persons.<sup>47</sup> As schools play a key role in shaping

views towards sexual diversity, it is particularly important to examine the views of teachers and educational experts towards LGBTI persons. Although data in this field is scarce, data from two studies provides important insights. A field experiment by the World Bank implemented in 2017 has shown that the probability is three times higher for a feminine boy to be rejected from enrolling in a public primary school than for boys who are not feminine (4%). Even when they were accepted, 51% of feminine boys were accepted with hesitation, compared to only 25% of non-feminine boys.<sup>48</sup> Regarding the views of teachers, a survey implemented in 2013 by the Centre for Gender Studies and Policy suggests that 19% of primary school teachers agreed or were undecided about the statement "A man who is homosexual should be beaten up" (8% of female teachers), while 18% of male and 5.5% of female teachers in secondary school have responded in the same way (agree/undecided).<sup>49</sup> Furthermore, one third of teachers in primary and secondary schools believe a gay person should not be teaching children (among female teachers this view was held by 18% of primary and 15% of secondary school teachers).<sup>50</sup>

### Perception of Public Opinion

In the public opinion survey implemented by the Commissioner for the Protection of Equality in 2019, people in Serbia have seen LGBT persons (along with Roma and women) as the most vulnerable to discrimination (33% of respondents), while at the same time stating they prefer not to spend time with them.<sup>51</sup> The largest social distance<sup>52</sup> was noted towards migrants/ asylum seekers (3.2),

followed by Albanians (2.57) and the LGBT population (2.57). The social distance measure for 2019 towards LGBT persons decreased slightly compared to 2016, when this group was in first place with an average of 2.7. According to survey data from 2019, 22% would mind if an LGBT person is their colleague, 45% a teacher for their child, and 63% a spouse, son or daughter in law.<sup>53</sup> Furthermore, findings by a survey of the youth organisation Centre E8 from 2017 show that 59% of men and 45% of women would be ashamed of having a homosexual son, 37% of men agreed with the statement that "they will never have a friend who is a homosexual/lesbian", while 38% of men would not support a trans person (if they knew them) to "come out" and subject themselves to a sex change procedure.<sup>54</sup>

A survey implemented by the Commissioner for the Protection of Equality in 2018 has shown that 28% of surveyed public administration representatives have identified LGBT persons as the most vulnerable to discrimination in Serbia.<sup>55</sup> This is a significant decrease compared to 2013, when 61% of respondents saw LGBT persons as the group that experiences the most discrimination.<sup>56</sup>

Media play an important role regarding the perception of LGBT persons, since they have the power to shape people's views on sexuality and issues related to gender identity, especially among younger viewers. The citizens of Serbia identified media as a key stakeholder in promoting equality in surveys implemented by the Commissioner for the Protection of Equality during recent years.<sup>57</sup> However, as shown by various media analyses, reporting on LGBT persons in Serbia is

often characterised by homophobic and discriminatory messages.<sup>58</sup> A survey by the Commissioner for the Protection of Equality from 2018 has shown that the majority of media representatives believe that hate speech and discriminatory views are present in Serbian media (93% and 77%, respectively).<sup>59</sup> Regarding LGBT persons, 9% of media representatives have stated they believe homosexuality is a disease, while 21% have stated they have nothing against LGBT persons, as long as their sexuality is not public ("I have nothing against LGBT persons, but they should be such at home, not in public").<sup>60</sup>

### Occurrence of discrimination

According to reports by the Commissioner for the Protection of Equality, during the 2015-2019 period civil society organisations have submitted the highest number of complaints listing sexual orientation as the grounds for discrimination.<sup>61</sup> Many LGBT persons are worried for their safety and thus unwilling to report discrimination. As suggested by the conclusions of a Labris survey from 2018, 91% of LGBT persons who experienced discrimination decided not to report it due to mistrust of state officials/institutions (50%), fear of revealing their sexual orientation and/or gender identity (31%) or fear of reprisal (31%).<sup>62</sup> Similarly, the results of a FRA survey from 2019 indicate that 91% of LGBTI respondents did not report cases of discrimination (latest case) because they thought nothing would happen (42%), did not trust authorities (33%) or did not want to reveal their LGBTI identity (29%).<sup>63</sup> Therefore, the number of complaints submitted to the Commissioner for the Protection

of Equality does not reflect the true scope of discrimination based on sexual orientation and gender identity.

The Protector of Citizens also receives and acts upon complaints regarding violation of rights based on sexual orientation and gender identity. The Protector of Citizens received 15 complaints in 2019 related to the rights of LGBTI persons, with the majority related to “adapting the sex to the gender identity” and “changes to data in official registries”.<sup>64</sup> During 2020 the Protector of Citizens received 25 complaints regarding the rights of LGBTI persons. The majority was related to violence against LGBTI Persons and changes to data in official registries.<sup>65</sup> Due to methodological issues, all cases related to sexual orientation and gender identity from 2015 to 2018 were classified as cases of “gender equality”, thus disaggregated data is not available. The majority of complaints received by the Protector of Citizens were related to challenges regarding access to healthcare services for prisoners and trans persons, obtaining required documents for concluding same sex marriages abroad and legal recognition of such unions, securing legal recognition of sex, and resolving discrimination in schools.

The Pride Parade has been regularly organised in Belgrade since 2014.<sup>66</sup> During 2020 the parade was organised virtually, due to the COVID 19 pandemic. In September 2021, the parade was organised in compliance with measures against the COVID 19 pandemic.<sup>67</sup> The following requests of the LGBTI community were presented during the parade:

- Adoption of the Law on Same-Sex

Unions,

- Adoption of the Law on Gender Identity and improvement of healthcare services for trans persons.
- Rapid and appropriate reaction by state bodies and public condemnation of hate speech and crimes motivated by hate against the LGBTI community by representatives of authorities.
- Adoption of local action plans for the LGBTI community.
- Apology to all citizens of Serbia who were prosecuted by court and in other ways before 1994 due to their sexual orientation and gender identity.
- Education of youth on sexual orientation and gender identity.

### Violence against LGBTI Persons

The monitoring of hate crimes in Serbia remains a challenge because of the lack of centralised official data on these incidents. The registration of hate crimes is performed at the public prosecution in accordance with official guidelines. In accordance with instructions by the Republic Public Prosecutor, all prosecutor’s offices have appointed a contact person for hate crimes. According to data by the Republic Public Prosecutor, during the 2017-2019 period, public prosecutor’s offices have invoked Article 54a of the Criminal Code in 26 cases. Among those 26 cases, sexual orientation was identified as a motive in 13, while gender identity was the motive in two cases.<sup>68</sup>

Regarding physical and verbal attacks

motivated by sexual orientation and gender identity, according to data from the Ministry of the Interior (Moi), during the 2015-2019 period there were 77 registered attacks against LGBTI persons, with 42 physical attacks (six persons were severely, and 16 lightly injured). Criminal charges were filed for 36 crimes and requests for initiating misdemeanour proceedings for 13 misdemeanours, while in other cases reports were submitted to the competent prosecutor's office.<sup>69</sup>

Due to the lack of centralised and open official databases, the Da Se Zna! NGO has established a web platform in 2016 enabling the reporting of cases of violence based on sexual orientation and gender identity. In addition to reported incidents, the Da Se Zna! NGO is also using other sources, such as information collected from other organisations and through monitoring media to provide a more complete view. From January to October 2017 the Da Se Zna! NGO has registered 20 hate crimes based on sexual orientation and gender identity,<sup>70</sup> while an additional 36 cases were documented in 2018.<sup>71</sup> In 2019 this organisation has registered 63 cases of hate crimes.<sup>72</sup> Between January 2017 and 30 June 2020 there were 166 illegal acts committed and documented, motivated by sexual orientation and gender identity. The highest number of incidents, 94 (56.6%) were not reported, for five (3.0%) incidents it was unknown whether they were registered, while 67 (40.4%) of incidents were reported to another stakeholder other than Da Se Zna!, while 57 (34.3%) were reported to the police, prosecution, or court proceedings were initiated.<sup>73</sup> However, even the data collected by the

Da Se Zna! organisation likely do not represent the full prevalence of violence based on sexual orientation and gender identity, since LGBTI persons are often unwilling to report the violence they face. The data collected by Labris in 2018 shows that 31% of LGBT persons were exposed to some form of violence due to their sexual orientation and gender identity, and that only 30% of those who experienced violence actually reported it, mainly to the police (63%) or a non-government organisation (37%).<sup>74</sup> Those who did not report the incident did not do so due to a lack of trust in officials involved in the reporting process (52%), fear of revealing their LGBT identity (36%) and fear of the perpetrator of violence (35%).<sup>75</sup>

An FRA survey on the status of LGBTI persons has shown that 17% of LGBTI respondents have experienced physical or sexual assault during the past five years, while 41% have experienced harassment during the past 12 months because of their sexual orientation and gender identity. The majority of LGBTI persons who experienced violence (82% in cases of physical or sexual assault and 90% in cases of harassment) decided not to report the case. The main reasons for not reporting physical or sexual assault were: lack of trust in the police (35%), fear of a homophobic and/or transphobic reaction by the police (29%), feeling of shame (28%) and doubt that anything would happen after the report (27%). Regarding harassment based on sexual orientation and gender identity, the respondents decided not to report the latest incident because they considered it minor/insufficiently serious (30%) or because they did not trust the police (27%).<sup>76</sup> The Centre for Public Policy Research

implemented a survey in 2016 aimed at testing the effect of the security sector reform on LGBT persons. The findings obtained through focus groups indicate that LGBT persons feel unsafe and express distrust about the work of the police.<sup>77</sup> Studies on the views of police officers indicate that many express strong aversion towards Albanians, LGBT persons, persons living with HIV, and migrants.<sup>78</sup> In a 2015 study, general competence and traffic police officers stated they would be against an LGBTI person being their neighbour (34%), colleague (33%), boss (37%), friend (42%), teacher to their child (46%), or spouse of their child (51%).<sup>79</sup> Furthermore, 39% of surveyed traffic police officers and 47% of general competence police officers stated that homosexuality was a disease that should be treated.<sup>80</sup>

### Availability of data on the status of the LGBTI population

The majority of public institutions in Serbia do not collect administrative data regarding sexual orientation and gender identity since this is considered sensitive personal data and not relevant for services provided by their institutions. Therefore, a large part of the available data on the status of the LGBTI community is being collected by civil society organisations, research institutions or other organisations.

The Statistical Office of the Republic of Serbia (SORS) does not collect data related to sexual orientation and gender identity, effectively making LGBTI persons invisible in national data sets and preventing the acquisition of a more comprehensive view of the social status of LGBTI persons. The Commissioner for the Protection

of Equality collects valuable data on complaints submitted based on sexual orientation and gender identity, and regularly conducts surveys on the perception and views of citizens towards discrimination, including discrimination against LGBTI persons, making it possible to monitor changes in these views through time. The Protector of Citizens collects data in regards to violations of rights based on sexual orientation and gender identity. However, due to methodological issues, the data related to sexual orientation and gender identity was not available until 2019 as it was classified as "gender equality and rights of LGBTI persons". The data in the Commissioner's reports is still mainly presented in a summary manner (for the entire field "gender equality and rights of LGBTI persons"). Only a small amount of information on complaints due to violations of the rights of LGBTI persons submitted to this institution can be drawn from regular reports.

Available data collected by independent bodies, non-government organisations and international organisations provides a precious insight into discrimination based on sexual orientation and gender identity in the labour market and at work. However, comprehensive data is lacking about employment, unemployment, inactivity and other characteristics required to better understand the socio-economic situation of sexual and gender minorities in Serbia.

Different healthcare institutions collect data regarding intersex and transgender persons (those who opt for medical or surgical transition). However, there are no centralised databases that would provide the data required to develop

relevant policies. National data on the mental health of LGBTI persons is very scarce.

Discrimination in the educational environment is the focus of several studies produced by various organisations. The line ministry is currently not collecting data related to cases of violence and abuse in schools due to actual or presumed sexual orientation or gender identity. Further efforts need to be invested in the collection and processing of data on the status of LGBTI persons in education.

The monitoring of hate crimes against sexual and gender minorities remains a challenge because of the lack of centralised and open official data on these incidents.

Numerous studies that aim to examine views towards sexual and gender minorities only use the umbrella term LGBTI (or LGBT) that does not allow these studies to obtain data on views of different subgroups denoted by the LGBTI acronym.

The majority of studies focusing on the experiences of LGBTI persons collected data through online surveys. On the one hand, this tool facilitates the participation of people who are unwilling to publicly disclose their sexual orientation and gender identity, while on the other hand it affects the sample composition. Reaching LGBTI persons who are not open regarding their LGBTI identity and the most vulnerable citizens remains a challenge.

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## Legislative Framework in the Republic of Serbia

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Important amendments to the Law on the Prohibition of Discrimination<sup>81</sup> were adopted in 2021. The Law on the Prohibition of Discrimination regulates the overall prohibition of discrimination, forms and cases of discrimination, and procedures for protection from discrimination. The law is introducing the terms gender, gender identity, sexual orientation, sexual characteristics, and prohibits all forms of discrimination based on any of the above characteristics. Article 21 of the Law notes that sexual orientation is a private issue and a person may not be forced to state it, and if they do state it, sexual orientation may not be grounds for different treatment.

The field of labour and employment is regulated by the Law on Labour<sup>82</sup>, prescribing the rights and obligations of both employees and employers. Article 18 of the Law prohibits direct and indirect discrimination of job seekers and employees based on sexual orientation. Although gender identity and sexual characteristics are not explicitly covered, the Law elaborates that "other personal characteristics" may not be grounds for discrimination. The law also prohibits sexual harassment, defined as any verbal, non-verbal or physical behaviour that aims to violate or represents violation of the dignity of any job candidate or full-time employee, or that causes fear or creates a hostile, degrading or offensive work environment. Furthermore, the Law on Preventing Abuse at Work<sup>83</sup> prohibits abuse and harassment at work and in regards to the workplace.

prescribes measures to prevent abuse and improve relations at work, and regulates procedures for the protection of persons exposed to workplace abuse and in regards to work in general, although without stating the reason for the abuse and types of abuse in question.

The Law on Healthcare<sup>84</sup> regulates the healthcare system in the Republic of Serbia, including its organisation, social care for the health of the population, supervision over the implementation of the law and other issues relevant for the organisation and implementation of healthcare. Article 21 of the Law is related to the principle of equity of healthcare and involves the prohibition of discrimination in the provision of healthcare based on race, sex, sexual orientation and gender identity, age, nationality, social origin, religion, political or other beliefs, financial status, culture, language, health status, type of disease and mental or physical disability, and other personal characteristics that may represent grounds for discrimination.

The legislative framework and policies in the domain of education envisage protection from discrimination against LGBTI youth. Specifically, the Law on the Fundamentals of the Education System<sup>85</sup> prohibits discrimination based on sexual orientation and gender identity. The same provisions are contained in the Rulebook on the further criteria for recognising forms of discrimination by employees, children, students or third persons in an educational institution<sup>86</sup> and the Rulebook on actions by the institution in case of suspicion or determined discriminatory behaviour and offences against the reputation, honour or dignity of a person.<sup>87</sup> The Rulebook on actions by

the institution contains definitions of the terms "homophobia" and "transphobia" and states that a team for protection against discrimination, violence, abuse and neglect, that should be formed in every primary school in Serbia, has the mandate of collecting and storing data on cases of discrimination in the given school.

Legislation relating to hate crimes contains provisions prohibiting violence based on sexual orientation and gender identity, but the implementation of these regulations is still inadequate. The Criminal Code<sup>88</sup> from 2012 recognises crimes motivated by someone's perceived or true sexual orientation and gender identity as aggravating circumstances, but the first verdict on a hate crime was issued only in 2018, related to a case of domestic violence motivated by sexual orientation and gender identity.<sup>89</sup>

The legal recognition of sex was introduced into the legislation of the Republic of Serbia by amendments to the Law on Registries<sup>90</sup> and the relevant Rulebook on the method of issuing and form of a certificate by competent healthcare institutions on a sex change.<sup>91</sup> According to the Rulebook, to change the sex marker in the registries and obtain the relevant personal documents, trans persons must undergo hormone therapy for one year, or undergo a sex change operation, not in line with established international legal practice.<sup>92</sup>

According to data from the Ministry of Public Administration and Local Self-Government, since January 2019 to mid-2020, 38 persons have changed their sex marker in registries (20 persons changed their marker from female to male and 18 from male to female).

## Overview of the Situation and Obligations in the Process of EU Accession

During recent years the EU has made gradual progress towards the equality of LGBTI persons, but discrimination towards LGBTI persons still remains. In 2019 in the EU 76% of citizens believed lesbians, gay and bisexual persons should have equal rights as heterosexual persons, compared to 71% in 2015. However, 43% of LGBTI persons felt discriminated in 2019, compared to 37% in 2012.<sup>93</sup>

EU law protects people from discrimination based on sexual orientation - as well as age, disability, religion and beliefs - in the field of employment (Framework Employment Directive 2000/78). However, European legislation does not protect against discrimination based on sexual orientation, age, disability, religion and beliefs in other walks of life, such as access to goods and services (including housing), social welfare, education and healthcare. Furthermore, EU law currently does not contain express prohibition of discrimination based on gender identity and gender expression of a person, nor is the prohibition of discrimination against trans persons listed in the EU Fundamental Rights Charter.<sup>94</sup>

In December 2020 the European Commission initiated activities promoting the Union of Equality for All by adopting the first strategy for EU LGBTIQ equality. This strategy aims to raise the voice of LGBTIQ persons and gather member states and stakeholders at all levels in

a joint effort to efficiently deal with the equality of LGBTIQ persons.

The strategy sets a number of key objectives through four pillars to be achieved by 2025.<sup>95</sup>

1. Tackling discrimination against LGBTIQ people;
2. Ensuring LGBTIQ people's safety;
3. Building LGBTIQ inclusive societies; and
4. Leading the call for LGBTIQ equality around the world.

Under the first pillar work will be done to strengthen and improve legal protection from discrimination, promote inclusion and diversity in the workplace, combat inequalities in education, health, culture and sport, and uphold the rights of LGBTIQ applicants for international protection.<sup>96</sup>

The second pillar involves activities such as: reinforcing legal protection for LGBTIQ people against hate crime, hate speech and violence; strengthening measures to combat anti-LGBTIQ online hate speech, disinformation; reporting anti-LGBTIQ hate crimes and exchanging good practices; and the protection and promotion of LGBTIQ people's bodily and mental health.<sup>97</sup>

The third pillar covers: ensuring rights for LGBTIQ people in cross border situations; improving the legal protection for rainbow families in cross-border situations; improving the recognition of trans and non-binary identities, and intersex people; fostering an enabling environment for civil society.<sup>98</sup>

Under the fourth pillar the Strategy envisages strengthening the EU's

engagement on LGBTIQ issues in all its external relations.<sup>99</sup> It is precisely the fourth pillar of the Strategy that enables the EU to increase the extent of its influence during the forthcoming period on improving respect for the rights of the LGBTIQ community in EU membership candidate states.

Numerous policies related to improving the equality of LGBTIQ persons are primarily the national responsibility of Union member states. It is important to note that legal protection against discrimination under various grounds differs from country to country in the EU and there are no minimum standards of non-discrimination policies applicable across the EU.

However, the EU plays an important role in providing guidelines for policies, coordination of member states' actions, monitoring implementation and progress, provide support through EU funds and promote the exchange of good practices among member states. The states themselves are encouraged to extend existing good practices and develop their action plans on LGBTIQ equality.

Having in mind that even within the EU itself LGBTI rights remain under the sphere of recommendations to member states, there are no clear guidelines on the obligations of the Republic of Serbia in this regard through the EU accession process.

The Economic Reform Programme (ERP)<sup>100</sup> drafted annually by the Republic of Serbia is the most important strategic document in the economic dialogue with the European Commission and member states of the European Union. The ERP covers the main reform measures the

Republic of Serbia plans to achieve during a three-year period with the aim of achieving an economically competitive and socially just state. This document does not envisage reform measures aimed at improving the status of LGBTI persons.

Not even the Economic and Social Policy Reform Programme (ESRP),<sup>101</sup> focusing far more on the social aspect of life, such as social inclusion, human rights, education, and healthcare did not specifically list the LGBTI population as a vulnerable category of the population that requires particular attention.

The action plan for Chapter 23 - Judiciary and fundamental rights<sup>102</sup> (AP 23), under its section on fundamental rights, states that the Republic of Serbia will continue to improve its legislative and normative framework in the field of protection and promotion of fundamental rights, in line with the EU Acquis, international and European standards and best practices.

Under activities planned for AP 23 the Republic of Serbia adopted amendments to the Law on the Prohibition of Discrimination in 2021, aiming for full harmonisation with the European Acquis. The amendments have introduced into the Law the terms of sexual orientation (the previous law used the term sexual preference) and gender identity (it was not defined under the previous law), and prohibition of discrimination based on sex, gender and gender identity. Article 27a introduced the prohibition of discrimination in the field of housing based on any grounds, including sex, gender, gender identity, and sexual orientation. These are important novelties, particularly having in mind

that gender identity is not recognised as grounds for discrimination even in European legislation, nor is discrimination recognised in fields such as housing, healthcare, or social welfare in the EU.

The AP for chapter 23 further plans for the adoption of a new Strategy for Prevention and Protection from Discrimination and its Action Plan, and its consistent implementation and active monitoring aimed at improving the status of the most vulnerable groups. Work on drafting the strategy was initiated by the Ministry of Labour, Employment, Veteran and Social Affairs in December 2019, by drafting an ex-ante review of the Strategy. The coronavirus pandemic and the new division of competences and new ministries in the Government of the Republic of Serbia (since October 2020) have led to a slowdown in this process. Work on the adoption of the strategy was continued in 2021. The drafting of the above Strategy is under way, now under the competence of the Ministry of Human and Minority Rights and Social Dialogue. The Strategy is planned to be adopted by the end of 2021.

The AP for chapter 23 also plans for the continued implementation of an efficient model of community policing and continuous cooperation with representatives of the LGBTI community to continue working on improving the safety of all members of the LGBTI community. During the forthcoming period the plan is to continue the positive practice of raising awareness on the prohibition of all forms of discrimination and methods for its prevention, to be achieved through a number of educational events, trainings for citizens and public officials, and the printing and

distribution of manuals for recognising and reacting to discrimination.<sup>103</sup>

An important step in improving the rights and status of the LGBTI community in Serbia would be the adoption of the Law on Same-Sex Unions. The Republic of Serbia did not commit to this step under its negotiation position with the EU. The fact that not all EU countries have adopted a similar law, and that some are already suspending their adopted laws leads to the conclusion that this will not be part of the accession negotiations. On the other hand, the adoption of this law is recommended by the Council of Europe. Furthermore, the European Court of Justice, despite not requiring the adoption of a Law on Same-Sex Unions, has made the decision that a same-sex marriage has the same importance as a heterosexual one, and that member states must recognise homosexual marriages established in EU countries by ensuring the right of residence to same-sex spouses, just as in the case of heterosexual marriages. The drafting of the Law on Same-Sex Unions has been initiated several times in Serbia during the previous years. Finally, the draft Law on Same-Sex Unions was prepared in 2021, with the involvement of the Council of Europe and it completed public review, but its adoption was stopped without further explanation.

The adoption of the law and strategies is only the first step in respecting the rights of LGBTI persons. A far more important step, frequently missing, is its full and consistent implementation. The European Commission Progress Report for the Republic of Serbia for 2019<sup>104</sup> notes that the legislative and institutional framework for the protection of the human rights of LGBTI persons

has been largely established in Serbia. However, the Progress Report for the Republic of Serbia for 2020 notes that further efforts remain necessary for the consistent and efficient implementation of regulations.<sup>105</sup> The latest Progress Report for the Republic of Serbia for 2021<sup>106</sup> is similar, in particular noting the poor implementation of the provisions of the Criminal Code of the Republic of Serbia on hate crimes and hate speech (with considerable impact on members of the LGBTI community and human rights advocates).

The Progress Report for 2021 also states that after 2020, due to the COVID 19 pandemic, no Pride Parade was held, with only online events on this occasion instead.<sup>107</sup>

Having in mind that the Republic of Serbia is a member of the Council of Europe, it is also a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome in 1950.<sup>108</sup> Article 4 of this Convention prescribes that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Protocol no. 12 to this Convention, adopted in 2000, further introduces a general prohibition of discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The provisions of this Convention need to be implemented through domestic legislation.

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## Conclusions and Key Recommendations for Improving the Status of the LGBTI Population in the Republic of Serbia

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In the Republic of Serbia LGBTI persons are, according to all studies, perceived as one of the particularly vulnerable categories of the population. The vulnerability of the LGBTI population in the Republic of Serbia is mainly manifested in their exposure to various forms of violence and being faced with a high degree of discrimination, stigmatisation and marginalisation, leading to numerous economic and social issues.<sup>109</sup>

Physical and sexual violence is motivated by prejudice towards the true or presumed sexual orientation and gender identity of the victim, and is still widespread in the Republic of Serbia. A large percentage of LGBTI persons are exposed to discrimination at work or when seeking work, and in the educational and healthcare system. Perception and views towards the LGBTI community remain predominantly negative within all systems (educational, healthcare, police, media). A large percentage of members of the LGBTI community still opts to retain their sexual orientation and gender identity secret, while a vast majority of them opt not to report cases of discrimination or violence (due to fear, mistrust of institutions, or lack of belief in change). The lack of a Strategy for the Prevention and Protection from Discrimination is an enabling factor for this situation, along with the inconsistent implementation of existing regulations, with no monitoring of their implementation.

The life union of same-sex partners in the Republic of Serbia is still not legally regulated, therefore members of the LGBTI community are unable to exercise numerous rights in the field of family law, inheritance and healthcare under equal conditions.<sup>110</sup>

The lack of administrative data regarding LGBTI persons limits the capacity for understanding the experiences and needs of sexual and gender minorities in various fields, and reviewing their social status. Research by civil society organisations is compensating to a certain extent for this lack of data on the status of the LGBTI community in the Republic of Serbia. The creation of efficient and inclusive public policies and monitoring of their impact, however, requires that institutions under the public administration system (line ministries, SORS, Public Health Institute, etc.) systematically collect and maintain data sorted by sexual orientation and gender identity.

## Recommendations

With the aim of improving the status of the LGBTI population in Serbia it is necessary to ensure the implementation of existing regulations and facilitate social dialogue on missing public policy documents on the rights of LGBTI persons. This can be achieved by raising awareness among all stakeholders in the public sector that the above public policy documents, in addition to representing so-called soft law, are mandatory and need to be fully implemented in the legal system of Serbia and realised in practice.

It is of key importance to ensure clear and measurable steps to achieve a safe environment and improve tolerance towards LGBTI persons, while ensuring effective prevention to prevent acts of violence and intolerance towards LGBTI persons, including hate crimes and hate speech, and undertake measures to prevent the spread, promotion and incitement of hatred and intolerance in public events, through media and the internet, graffiti and in other ways.<sup>111</sup>

It is necessary to work on reducing social distancing, stereotypes and prejudice towards LGBTI persons, while increasing antidiscrimination culture and equality in society, through training, public campaigns, education at all levels, cultural activities, informational activities, and targeted trainings for representatives of all sectors, including active media participation.<sup>112</sup>

Furthermore, it is necessary to ensure the continuous capacity development of police officers, judges, prosecutors, civil servants and lawyers through the organisation of training regarding international standards in the exercise of the rights of LGBTI persons, and regarding the appropriate application of anti-discrimination regulations and regulations for protection from violence against persons based on their sexual orientation, gender identity, gender expression and sexual characteristics.

It is necessary to raise awareness on the importance of data disaggregated by sexual orientation, gender identity and sex. Further efforts need to be invested in raising the capacities of representatives of relevant institutions to collect data on sexual orientation, gender identity and sex, characteristic for standardised surveys, while recognising the methodological challenges and sensitivity of such data.

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