# Shadow Report – Human rights of LGBTIQ people in Serbia

# Contribution to the List of issues Prior to Reporting ahead of third periodic report to the Committee against Torture

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## UN Committee against Torture (CAT)



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## Introduction

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## Executive Summary

Despite some improvements in the last decade, quite satisfactory legal framework, with Antidiscrimination Law and more than 15 laws prohibiting discrimination based on sexual orientation (and a couple of them based on gender identity as well), the situation of LGBTIQ people in Serbia remains difficult.

The risk of physical assaults and threats against members of the LGBTIQ community, including hate speech is still high. There has been a lack of systemic approach towards examining the effectiveness and enforcement of the provisions of anti-discrimination laws, strategies and by-laws, including the lack of research and state statistics on cases of discrimination and violence based on sexual orientation and gender identity.

There is still a legal gap concerning the situation of trans people and their rights. Organization Gayten-LGBT proposed a model of Law on Gender Identity (in 2013), created in accordance with the recommendations of the United Nations, the Yogyakarta principles and Thomas Hammarberg, and Council of Europe Commissioner for Human Rights recommendations. This model law provides transgender people with the protection from discrimination and a series of rights (the right to change name and sex sign regardless of medical treatment, the right to employment, insurance, marital and family life, health care, the prohibition of forced sterilization and other).

Serbian Family Law still does not recognize same-sex unions, and explicitly states that a marriage is void if it is between two persons of the same sex. As a result, person in a same-sex relationship are deprived of the rights which normally stem from this law, namely, social and health benefits, inheritance rights, housing rights, maintenance rights, visiting rights in hospitals, etc. This makes them particularly vulnerable to social, economic and health insecurity, exclusion and poverty. Not only does this gravely affect LGBTIQ people, but also their children.

In their previous annual enlargement reports, the European Commission stressed that Serbia needs to protect LGBTIQ people, and in particular trans people.

## Proposed requests to the state authorities

* The Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Ministry of Labor, Employment, Veterans' and Social Affairs and the Ministry of Education, Science and Technological Development, should prepare (in consultation with LGBTIQ CSOs) a draft regulation, regulating legal gender recognition without requirement of mandatory sterilization;
* Ministry of Labor, Employment, Veterans' and Social Affairs should draft a same sex partnership law/civil law/ or any form of registration scheme enabling same sex partners to enjoy social and health benefits, inheritance rights, housing rights, maintenance rights, visiting rights in hospitals, etc;
* The Government should ensure the full protection and implementation of the rights of LGBTIQ people, in particular the protection of physical and psychological integrity (due to high level of intolerance, rejection and direct violence towards LGBTIQ people) and the right to peaceful assembly (in particular through the continuous maintenance of the Pride Parade);
* The government of the Republic of Serbia should form a strategy to improve the lives of LGBTIQ people in Serbia, which would in no small part focus on the safety of LGBTIQ people. Such a strategy would represent the first step toward a comprehensive response in fighting violence and discrimination against LGBTIQ people in Serbia;
* Public authorities should continuously implement measures and activities dedicated to raising public awareness of the necessity of respecting the rights of LGBTIQ people;
* The Ministry of Labor, Employment, Veterans' and Social Affairs, in cooperation with local self-government units and civil society organizations, should establish a support service for young LGBTIQ people who had to leave their homes after their families learnt about their sexual orientation and gender identity;
* The Ministry of Education, Science and Technological Development should propose amendments to the Law on the basics of the education system in order to introduce into the Law provisions on explicit prohibition of discrimination based on sexual orientation and gender identity;
* The Ministry of Education, Science and Technological Development and the National Education Council of the Republic of Serbia, should introduce contents into the curricula of primary and secondary schools, and then in the textbooks, which will include all important issues related to the rights of LGBTIQ people in an acceptable, but professional way;
* Equal access to justice for all citizens in Serbia is still not ensured, since citizens' right to free legal aid is still not regulated.

## Proposed requests to the Ministry of Interior

* Ministry of Interior should adopt internal procedures dealing with the position of LGBTIQ people in the police, as well as the recruitment of LGBTIQ people in the police force;
* MoI should fighting discrimination in the workplace. This plan needs to state a clear zero-tolerance policy for discrimination and violence against members of the LGBTIQ community by members of the police in the line of duty, as well as outside of duty;
* To adopt a Plan of Action to implement the Strategy. Further, an evaluation of the last plan and its impact is needed. A new Plan of Action needs to list goals referring to respect for the difference and improvement in safety of marginalized groups, clearly focused on the LGBTI community. Activities need to be clearly defined with set deadlines and necessary material resources;
* The police needs to act according to Article 54a of the Criminal Code that defines hate crimes. The application of this article of the Criminal Code would help to understand the motives behind crimes inspired by homophobia and transphobia;
* The Ministry of Internal Affairs should adopt an annual plan for the education of police force members that would deal with topics specifically concerning the LGBTIQ population and crimes motivated by homophobia and transphobia. Additionally, education inside the Ministry of Internal Affairs is needed on these topics to decrease secondary victimization and discrimination;
* A new systematization inside the Ministry of Internal Affairs needs to include a sole position for an officer for communication with the LGBTIQ population. This would not only clarify the description of this work position and the responsibilities that it carries but would also help both the selection and education of officers for this position as well as the development of their programs by clearly defining them;
* It is necessary that the national officer for communication with the LGBTIQ community has support from the highest political level that exists in the police so that tasks are carried out more efficiently and that the national officer to be able supports local officers;
* Access to information of public importance must be improved as well as the quality of cooperation between civil society organizations and the Ministry of Internal Affairs in regards to sharing information related to LGBTIQ topics and happenings inside the Ministry of Internal Affairs that are of interest to the LGBTIQ community. To be more specific, this would include proactive and regular publishing of documents and reports on their achieved work results;
* The system of documenting cases inside the Ministry of Internal Affairs should be improved in such way that there is a central database in which data could be sorted by different criteria and followed as such afterwards;
* The system of complaints and protest letters regarding police work should be updated by a clear definition of the procedure via the website of the Ministry of Internal Affairs;
* When performing their annual inquiry about public opinion on police work, the Ministry of Internal Affairs should pay special attention to the trust (or the lack thereof) that LGBTIQ individuals have for the police.

## Overview of the situation

In Serbia, people of different sexual orientation and gender identity, as well as people who support the rights of LGBTIQ people, are subject to discrimination and violence, including physical violence and cyberbullying. It is also unfortunate that young LGBTIQ people, after parents and their family members learn about their sexual orientation and gender identity, are rejected by the family, which is why they are forced to leave their homes.

They happen to be victims of domestic violence, which is often not reported to the police, or even in cases when the violence is reported, the situation does not change, but even worsens the security of the victim. Many of these people leave school, and as they are unemployed and without great employment opportunities, they often live on the streets.

This is the beginning of the vicious circle of discrimination. Even when they find a job, which is a more difficult process than for non-LGBTIQ people, there is always a threat of losing it (because of same-sex sexual orientation and their gender identity), as well as harassment at work. Also, there are no temporary care services in Serbia, nor other measures and services for young LGBTIQ people in this situation. The Action Plan for the implementation of the National Youth Strategy for the period 2015-2017 contains activities aimed at: Establishing local services; Development of counseling and psychological support programs for young people at risk of social exclusion; Developing a training program on gender equality; Development of program of sensitization of employees in institutions of the system in order to more effectively support young people at risk of social exclusion. There are no services in place for young LGBTI people who disclose their sexual orientation and gender identity, nor are there any services for young LGBTIQ people who were forced to leave their homes since they were disowned by their families upon coming out about their sexual orientation and gender identity, and thus these people are very often forced to become homeless. The spread intolerance among young population towards the LGBT people indicates that an additional effort has to be made to educate and raise awareness of the society about the rights and status of LGBT people.

The Pride Parade has been held peacefully in Belgrade for the third year in a row, which has paved the way for enjoyment of the right to assembly for LGBTIQ people. Nevertheless, LGBTIQ people have still not been fully able to exercise their rights in the fields of education, employment, health care, social security, legal regulation of the living unions and legal consequences of gender reassignment surgery, including the protection of their physical and psychological integrity.

## The most important state achievements in 2015 and 2016

* The Council for Monitoring the Implementation of the Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the period 2014-2018 was established;
* The Law on Textbooks has been adopted;
* The Law on Police, explicitly prohibiting discrimination based on gender identity (Gayten-LGBT strongly lobbied for it) was adopted;
* A Minister without Portfolio for European Integration signed a Joint Statement on ending hate crimes against LGBTI people, together with ministers and deputy ministers from Montenegro, Croatia, Albania and Bosnia and Herzegovina;
* State authorities have for three years in a row (2014, 2015, 2016) ensured a peaceful Pride Parade in Belgrade;
* In 2016, the Republican Ombudsman made a recommendation to competent authorities regarding treatment of imprisoned transgender people, with the aim of improving their position. It was recommended that, during their admission to the prison institutions, transgender women should have the body search conducted by a person of the gender selected by the admitted person. Additionally, the recommendation has been made with respect to addressing the transgender people, which entails respect for their gender identity. Also, it was recommended that the employees of the Administration for Enforcement of Penal Sanctions should undergo appropriate training on gender-mainstreaming mechanisms, standards and principles of equality and non-discrimination concerning sexual orientation and gender identity, including the appropriate communication with LGBT population.

## The most important achievements of state bodies and independent institutions in Serbia

* During the Pride Week, a joint session of the Parliamentary Committee on Human and Minority Rights and Gender Equality and the Parliamentary Committee on European Integration was held (this practice is being applied as of 2014);
* The Republican Ombudsman initiated the drafting of the Model Law on Gender Equality (in 2014), which during the reporting period was submitted to the Gender Equality Coordination Body and the Working Group of the Gender Equality Coordination Body, in charge of drafting the Draft Law on Gender Equality. Gayten-LGBT, leading women CSOs, and Commissioner for the Protection of Equality, insisted on withdrawal of the Draft Law on Equality between Men and Women after consultations with the Government members in February 2016. The existing draft was assessed by the civil society as conservative, the provisions as incomplete. Civil sector stressed shortcomings in the quota system, transparency of the whole process of production, and the name itself, which completely neglects dimension of gender identity as a frequent basis for discrimination. The body for gender equality, the responsibility and obligation of the state should also be foreseen, and that the responsibilities of the institutions should be made clearer;
* By adopting the Opinion of the Republican Ombudsman on the Draft Law on Textbooks, the Law introduces the equal opportunities principles and the prohibition of discrimination in textbooks, in accordance with the Law on the Prohibition of Discrimination.

## Shortcomings at the state level

* The legal consequences of gender reassignment are not normatively regulated, although Gayten-LGBT together with its legal team developed a model law (and presented to the public) that would regulate legal gender recognition in 2013;
* Same sex partnership law has not been yet adopted;
* A law that adequately regulates gender equality has not yet been adopted;
* Gayten-LGBT received a negative answer to the request sent to the Ministry of Labor, Employment, Veterans' and Social Affairs (following the Law on Free Access to Information of Public Importance and Personal Data Protection), in regards to the establishment of a working group for drafting the Gender Identity draft law, which the said Ministry was obliged to establish in the last quarter of 2016, according to the Action Plan for the implementation of the Strategy for Prevention and Protection against Discrimination;
* Although Article 54a that foresaw obliged aggravating circumstance for acts committed by hatred entered into the Criminal Code of Serbia in 2012 (into force since January 2013) it has not yet been applied in court practice. Perpetrators who attacked LGBTIQ people because of their actual or perceived sexual orientation and gender identity were not found by the competent authorities, while only in 2015 organization *Da se zna* recorded 6 cases of assaults, 4 in 2016 and 4 in 2017 so far. These are only the cases that were reported to The Police, while the number of cases that remain unreported is significantly higher.
* There are no services for young LGBTIQ people who due to their sexual orientation and gender identity were forced to leave their homes;
* There is no explicit prohibition of discrimination based on sexual orientation and gender identity in the Law on the Basis of the Education System in the Republic of Serbia;
* There is no subsidiary act (bylaw) that regulates closer criteria for recognizing forms of discrimination by an employer, student or a third person in education and training institutions;
* The Government failed to ensure full protection and implementation of the rights of LGBTIQ people, in particular the protection of physical and psychological integrity;
* The public authorities still do not work with full capacities to continuously ensure the implementation of measures and activities dedicated to raising public awareness of the necessity of respecting the rights of LGBTIQ people;
* The Ministry of Labor, Employment, Veterans' and Social Affairs, in cooperation with local self-government units and civil society organizations, did not establish a support service for young LGBTI persons who had to leave their homes, upon being rejected by their families;
* The Ministry of Education, Science and Technological Development did not propose amendments to the Law on the basics of the education system in order to introduce into the Law provisions on explicit prohibition of discrimination based on sexual orientation and gender identity;
* The Ministry of Education, Science and Technological Development and the National Educational Council of the Republic of Serbia, did not include neither in the curricula of primary and secondary schools, nor in the textbooks, content that will present in an acceptable but expert way, issues related to the rights of LGBTIQ people;
* The Ministry of Justice, the Ministry of State Administration and Local Self-Government, the Ministry of Labor, Employment, Veterans' and Social Affairs and the Ministry of Education, Science and Technological Development failed to prepare a draft regulation regulating the legal gender recognition.

# About Gayten-LGBT

Founded in 2001, Gayten-LGBT was the first organization in Serbia to acknowledge and base its work primarily on gender identity and expression. Its mission is to contribute to an end of all forms of violence and discrimination toward LGBTIQ people. Gayten’s advocacy contributed to the adoption by the Serbian Parliament of amendments to the law on healthcare, enabling body modification procedures for trans people to be covered by health insurance. In addition to advocacy, Gender Identity Law first and foremost, Gayten builds and empowers trans, intersex and queer communities through support groups, LGBT SOS helpline, web site, TIQ web forum, culture and arts, education, protest actions and networking. Gayten is conducting a qualitative research on intersex issues, and translating and publishing information to aid in the education of medical professionals, trans and intersex people and their families.

# About association Da Se Zna!

# Association Da se zna! is a group of activists gathered empower LGBTI persons to be actively involved in exercising their rights, through direct and indirect work with the LGBTTIQA community; advocacy and lobbying for an adequate reaction from the state authorities of the Republic of Serbia; and improving efficiency of state support and protection mechanisms in cases of violence and discrimination.

# The main platform through which Da se zna! operates and enables anonymous and safe reporting of violence and discrimination towards LGBTI people is portal - www.dasezna.lgbt. This portal is not only a place where LGBTI people can safely report their cases, but also a hub of information for members of the community, where they can inform themselves about existing mechanisms of protection and other related legal, social and political issues.

## Terminology

* **LGBTIQ (LGBT, LGBT+)**: These acronyms refer to Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Asexual or Ally.
* **Lesbian**: A woman who is primarily attracted to other women.
* **Gay**: A person who is attracted primarily to members of the same sex. Although it can be used for any sex (e.g. gay man, gay woman, gay person), “lesbian” is sometimes the preferred term for women who are attracted to women.
* **Bisexual**: A person who is attracted to both people of their own gender and another gender. Also called “bi”.
* **Transgender**: This term has many definitions. It is frequently used as an umbrella term to refer to all people who do not identify with their assigned gender at birth or the binary gender system. This includes transsexuals, cross-dressers, genderqueer, drag kings, drag queens, two-spirit people, and others. Some transgender people feel they exist not within one of the two standard gender categories, but rather somewhere between, beyond, or outside of those two genders.
* **Transsexual**: A person whose gender identity is different from their biological sex, who may undergo medical treatments to change their biological sex, often times to align it with their gender identity, or they may live their lives as another sex.

**Please Note:** It is very important to respect people’s desired self-identifications. One should never assume another person’s identity based on that person’s appearance. It is always best to ask people how they identify, including what pronouns they prefer, and to respect their wishes.

* **Intersex**: A person whose sexual anatomy or chromosomes do not fit with the traditional markers of "female" and "male." For example: people born with both "female" and "male" anatomy (penis, testicles, vagina, uterus); people born with XXY.
* **Queer**: 1) An umbrella term sometimes used by LGBTQA people to refer to the entire LGBT community. 2) An alternative that some people use to "queer" the idea of the labels and categories such as lesbian, gay, bisexual, etc. Similar to the concept of genderqueer. It is important to note that the word queer is an in-group term, and a word that can be considered offensive to some people, depending on their generation, geographic location, and relationship with the word.
* **Gender identity**: The sense of “being” male, female, genderqueer, agender, etc. For some people, gender identity is in accord with physical anatomy. For transgender people, gender identity may differ from physical anatomy or expected social roles. It is important to note that gender identity, biological sex, and sexual orientation are separate and that you cannot assume how someone identifies in one category based on how they identify in another category.
* **Homophobia**: A range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender (LGBT). It can be expressed as antipathy, contempt, prejudice, aversion, or hatred, may be based on irrational fear, and is sometimes related to religious beliefs.
* **Sexual orientation**: The type of sexual, romantic, and/or physical attraction someone feels toward others. Often labeled based on the gender identity/expression of the person and who they are attracted to. Common labels: lesbian, gay, bisexual, pansexual, etc.