



The Violations of the Rights of Lesbian, Gay, Bisexual, and Transgender Individuals in Serbia

A Shadow Report

Submitted to the U.N. Human Rights Committee by:

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Executive Summary¹

In March of 2009, the Serbian National Assembly narrowly passed the Anti-Discrimination Law despite immense opposition from religious leaders and right-wing political parties.² The law bans discrimination on the basis of sexual orientation, gender, race, religion, and other characteristics,³ and was part of broader reforms in Serbia to meet standards for admission to the European Union.⁴ In addition to the Anti-Discrimination Law, Article 21 of the Serbian Constitution states that “everyone shall have the right to equal legal protection, without discrimination,”⁵ and Article 387 of the Serbian Criminal Code provides a framework for prosecuting those who threaten organizations and individuals due to their commitment to the “equality of people.”⁶ With regard to international law, Serbia is a party to the European Convention on Human Rights (“ECHR”) and the International Covenant on Civil and Political Rights (“ICCPR”), both of which prohibit discrimination under the law.⁷

While the Anti-Discrimination Law demonstrates a positive step forward for LGBT rights in Serbia, the government has been slow to implement and apply the law. For example, following the cancellation of the 2009 Pride Parade due to threats of violence, leaders of right-wing organizations “1389” and *Obraz* were charged under Article 387 of the Criminal Code but were not charged under the Anti-Discrimination Law.⁸ In addition, Article 62 of the 2006 Serbian Constitution defines marriage as between a man and a woman,⁹ whereas the 2000 Constitution does not mention gender in Article 29, its marriage provision.¹⁰ This shift demonstrates backsliding with regard to marriage equality. Furthermore, national law does not address transsexual and transgender individuals, demonstrating an unwillingness on the part of the government to acknowledge their existence and rights.

Beyond law and policies, pervasive homophobia in Serbian society leads to disproportionate violence and discrimination against LGBT individuals.¹¹ Right-wing groups, religious organizations, and the media perpetuate hostility against the LGBT community through discriminatory and hateful public speech.

Serbia is bound by its commitments to the ICCPR and the ECHR, and must honor these commitments by taking affirmative steps to protect the rights of LGBT individuals in law and in practice. In particular, the government should use the Anti-Discrimination Law to prosecute discrimination, should take steps to acknowledge and protect transsexual individuals, and should develop and promote education programs to combat pervasive discriminatory attitudes from the bottom-up.

¹ The present report was drafted by Elizabeth Hague (13 HLS), under the supervision of Mindy Jane Roseman (J.D., Ph.D., HLS), with the support of Marija Savic, independent activist, and Stefano Fabeni (J.D., L.L.M.), Director of Global LGBT Advocacy, Heartland Alliance for Human Rights and Human Needs.

² *Serbian Lawmakers Pass Anti-Discrimination Law*. The Washington Post. at <http://www.washingtontimes.com/news/2009/mar/26/serbian-lawmakers-pass-anti-discrimination-law-1/> (March 26, 2009).

³ Article 2. The Anti-Discrimination Law [hereinafter *ADL*]. 26 March 2009.

⁴ Serbian Lawmakers Pass Anti-Discrimination Law, *supra* note 1.

⁵ Article 21. Serbian Constitution. 8 Nov. 2006.

⁶ Article 387. Criminal Code of the Republic of Serbia. 1 Jan. 2009.

⁷ European Convention on Human Rights, protocol 12, art. 8 (April 11, 2000) [hereinafter *ECHR*]; International Covenant on Civil and Political Rights, G.A. Res. 2200A, 999 U.N.T.S. 171, art. 26 (Dec. 16, 1966) [hereinafter *ICCPR*].

⁸ *Annual Report on the Position of LGBTIQ Population in Serbia in 2010*, Labris, Jan. 2011, at 11.

⁹ ICCPR, *supra* note 4 at Article 26.

¹⁰ Article 29. Serbian Constitution. 10. Oct. 2000.

¹¹ *Predjudices Exposed – Homophobia in Serbia: Public Opinion Research Poll on LGBT Population*, Belgrade Gay Straight Alliance, 2008.

Substantive Violations of the Covenant

Articles 2(1) and 26 (Non-Discrimination)

The ICCPR affirms the rights of all individuals in signatory nations regardless of their sexual orientation or gender identity. Article 2(1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status* (emphasis added).¹²

In General Comment 31 to this Article, the Human Rights Committee elaborates on the responsibilities of state parties, asserting that states are accountable not only for governmental violations of the ICCPR, but also for violations by non-state actors if the state has not taken action to stop these violations.¹³

Additionally, Article 26 of the ICCPR affirms that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. . . [t]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on *any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status* (emphasis added).¹⁴

In the landmark 1994 decision *Toonen v. Australia*, the Human Rights Committee interpreted the references to “sex” in Articles 2(1) and 26 to encompass sexual orientation, and therefore held that criminalizing same-sex actions violated these articles of the ICCPR.¹⁵ In the wake of *Toonen*, discrimination based on sexual orientation is prohibited, and state parties must affirmatively protect the rights of their LGBT citizens. However, despite the strong anti-discrimination stance taken by the ICCPR and Serbia’s Anti-Discrimination Law, legal practices, non-state actors, and pervasive homophobia in Serbia continue to perpetuate discriminate against LRGTT individuals.

The Anti-Discrimination Law

Prior to the promulgation of the Anti-Discrimination Law, the primary legal tool for combating discrimination was Article 387 of the Serbian Criminal Code, which entered into force in 2006 and provides a legal framework for prosecuting those who threaten organizations and individuals due to their commitment to the “equality of people.”¹⁶ Article 387 encompasses actions taken on the “grounds of race, colour, religious affiliation, nationality, ethnic origin, [and] other personal characteristics,” avoiding an explicit mention of sexual orientation or gender identity.¹⁷ The European Commission’s

¹² ICCPR, *supra* note 4 at Article 2(1).

¹³ General Comment 31 to Article 2 of the ICCPR.

¹⁴ ICCPR, *supra* note 3 at Article 26.

¹⁵ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

¹⁶ Criminal Code of the Republic of Serbia, *supra* note 5 at Article 387.

¹⁷ *Id.*

2008 report on Serbia noted that: “A comprehensive anti-discrimination law has not yet been adopted [in Serbia]. In practice, there is still widespread discrimination, primarily against national minorities, Roma or women as well as lesbian, gay, bisexual and transgender (LGBT) people.”¹⁸

In response to this criticism, Serbia promulgated the Anti-Discrimination Law on March 26, 2009.¹⁹ The current Anti-Discrimination Law, which bans discrimination on the grounds of race, religion, sexual orientation, gender, gender identity, and other personal characteristics,²⁰ was passed amidst immense scrutiny from right-wing political leaders and conservative religious organizations. On March 4, 2009, a draft of the law was removed from legislative consideration due to criticism from religious groups, particularly the Serbian Orthodox Church. Religious groups opposed, in particular, articles that affirmatively stated the right of all individuals to declare their sexual orientation and gender identity and that discrimination based on declarations was prohibited.²¹

Human rights and liberal groups strongly criticized the government’s withdrawal of the law, and the government ultimately resubmitted the law, which passed with a narrow margin. While the promulgated law includes strong affirmative statements about sexual orientation in Article 21 (“Everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden”),²² there is no longer similarly affirmative language about gender identity in the law. However, Article 20 presents language that may be interpreted to prohibit discrimination against transsexual and transgender individuals: “It is forbidden to deny rights or to grant privileges . . . pertaining to gender or gender change.”²³

Beyond the provisions pertaining to sexual orientation and gender identity, the law encompasses both direct and indirect discrimination, and prohibits hate speech and harassment. With regards to implementation, the law establishes a Commissioner for Equality; the Serbian Assembly elects the Commissioner, but all candidates must meet minimum requirements, including at least ten years experience working with human rights law.²⁴ The Commissioner hears complaints filed by those who consider themselves victims of discrimination, and, if the complaint is successful, the Commissioner issues a recommendation to provide redress. If the perpetrator does not heed the Commissioner’s recommendation, the Commissioner issues a public statement condemning the perpetrator’s non-compliance.²⁵

The Anti-Discrimination Law clearly reflects a marked improvement in the legal status of LGBT individuals and communities, as well as other minorities. Yet the law has been criticized for allowing overly-broad exceptions, and the government has been slow in implementing the law and responding to complaints. The Serbian lesbian group Labris produced an “Annual Report on the Position of LGBTIQ Population in Serbia,” and in the report details the process of selecting a Commissioner of Equality. Candidates for Commissioner included Liberal Democratic Party candidate Goran Miletic, a longtime human rights activist, who was supported by over 200 civil society organizations, and Nevena Petrusic,

¹⁸ *Serbia 2008 Progress Report*, Commission of the European Communities, 11 May 2011, at 39.

¹⁹ *Serbia: Pass Anti-Discrimination Law*, Human Rights Watch, at <http://www.hrw.org/en/news/2009/03/10/serbia-pass-anti-discrimination-law> (10 March 2009).

²⁰ ADL, *supra* note 2 at Article 2(1).

²¹ *Serbia: Anti-Discrimination Law is Passed*, IGLHRC, at [http://www.ilgaeurope.org/home/guide/country by country/serbia/the serbian anti discrimination law is adopted](http://www.ilgaeurope.org/home/guide/country%20by%20country/serbia/the%20serbian%20anti%20discrimination%20law%20is%20adopted) (29 April 2009).

²² ADL, *supra* note 2 at Article 21.

²³ *Id.* at Article 20.

²⁴ *Id.* at Article 28.

²⁵ *Id.* at Articles 33, 35, 38, 40.

a law school dean with a background in women's rights.²⁶ The National Assembly voted Petrusic Commissioner of Equality in May 2010; she serves a five-year term.

Since Petrusic's appointment, Labris has filed three complaints to the Commissioner, all related to homophobic, discriminatory statements made by public figures. In a December 17 meeting, the Commissioner seemed to stall proceedings, stating that one of the complaints had not yet been responded to due to her inability to find the address of the perpetrator.²⁷ While the delayed nature of the Commissioner's actions is certainly disheartening, Petrusic responded affirmatively to two of Labris's complaints, recommending that perpetrators publicly apologize for their discriminatory statement; this "represents the FIRST positively resolved complaint to the Commissioner for Equality regarding the human rights violations based on sexual orientation."²⁸ The third complaint filed by Labris is pending. Since the Commissioner's office is less than a year old, only time will tell how effective Petrusic will be as Commissioner and what the true impact of Anti-Discrimination Law will be.

Discriminatory Attitudes of Politicians

The past several years have seen both positive and negative statements from politicians with regard to LGBT rights. In particular, the canceled 2009 Pride Parade and the 2010 Pride Parade (discussed at length below) proved to be a lightning rod for comments from both sides. According to Labris's Annual Report, in early 2010 the Serbian Gay Straight Alliance (GSA) met with leaders of political parties in order to prepare for the Pride Parade; of the parties the GSA spoken with, all either agreed to support the Parade or abstain from making any comment about the Parade, and nearly all parties issued public statements calling for restraint from violence against LGBT individuals during the Parade.²⁹ The somewhat positive response with regard to the 2010 parade contrasts with the actions of politicians the previous year; in 2009, most politicians refrained from issuing any statement or public disassociated their political party from the parade.

The response of government officials to the 2010 Pride Parade also demonstrated a shift from 2009. Prior to 2009's parade, Serbian President Boris Tadic was largely silent on the subject, issuing just one statement about the parade in which he asserted the government's obligation to address legal violations but did not affirmatively assert the government's commitment to protecting LGBT individuals and parade participants.³⁰ In 2010, Tadic openly supported the Pride Parade, and other government agencies responded in kind; the Ministry of Internal Affairs, Ministry of Human and Minority Rights, the Republic Prosecutor's Office, and members of the City Assembly all endorsed the Pride Parade. These public statements demonstrate a positive shift in the attitudes of political leaders.

However, following the violence which plagued the 2010 Parade (discussed at length below), many political leaders, including the Minister of the Police and the Mayor of Belgrade, stated their hope that the LGBT community would limit similar events in the future or hold them away from the city center to limit confrontation.³¹ These statements perpetuate the negative attitude that LGBT organizers brought the violence upon themselves simply by openly supporting LGBT rights. Additionally, following the 2010 Pride Parade government officials have largely avoided addressing LGBT issues; for example, despite a public opinion poll which demonstrated a high degree of discrimination on the

²⁶ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 6-7.

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.* at 5.

³¹ *Id.* at 5.

grounds of sexual orientation and gender identity, the Ministry of Human and Minority Rights drafted a human rights report in 2010 which fails to mention LGBT Serbians as a group that experiences discrimination.³² Notably, State Secretary Marko Karadžić, who was perhaps the most vocal government advocate for LGBT rights, resigned in September 2010 due in part to his dissatisfaction with the government's stance on human rights.³³

Despite 2009's Anti-Discrimination Law, politicians continue to make discriminatory public statements. Prior to the Pride Parade, the City Board of New Serbia prohibited its members from participating in the Pride Parade, citing religious justification and stating that homosexuality "significantly demolishes the traditional values of the Serbian people; the Serbian Orthodox Church and the Patriarch are against it, and the Patriarch has the last say."³⁴ Additionally, Labris highlights a November 2010 City Assembly in which members of the Radical Party of Serbia and the Democratic Party of Serbia made homophobic statements. For example, a Democratic Party of Serbia member described homosexuality as an "illness, perversion, deviance and aberration, and asocial problem which caused a confrontation between the representatives of a healthy, heterosexual Serbia."³⁵ Government officials failed to take a public stand against these statements. Thus, while political support for the 2010 Pride Parade was strong, silence from the government in the face of public negative statements about the LGBT community combined with hate speech from certain political parties implicitly condones discriminatory attitudes.

Discriminatory Attitudes of Religious Leaders

Religious leaders play a significant role in perpetuating discrimination on the basis of sexual orientation and gender identity. The Serbian Orthodox Church forcefully opposed the promulgation of the Anti-Discrimination Law, and the bill was initially withdrawn from the National Assembly due to pressure from religious organizations. Paradoxically, the Anti-Discrimination Law condones discriminatory attitudes from religious leaders; Article 18 of the Law exempts "behavior of priests and religious officials which is consistent with . . . religious doctrine; [religious] beliefs . . . shall not be considered discriminatory, in accordance with the law governing freedom of religion and the status of churches and religious communities."

Prior to the canceled 2009 Pride Parade, the Serbian Orthodox Church opposed the parade, comparing support for the LGBT movement to the immorality of Sodom and Gomorrah. However, in the same statement, the Church emphasized their anti-violent stance, and that the Church "has never, nor will ever call for violence against anyone."³⁶ The Church's response to the 2010 Parade was similar; while the Church stated that the parade "violated public morality" and would undermine "sacred Christian values,"³⁷ the Church also reiterated their previous comments condemning violence in the

³² *Id.* at 6.

³³ *Human Rights Ministry Official Resigns*, B92, at http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=09&dd=25&nav_id=69878 (25 Sep. 2010)

³⁴ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 8.

³⁵ *Id.* at 6.

³⁶ *SPC Compares Pride Parade to "Sodom and Gomorrah"*, B92, at http://www.b92.net/eng/news/society-article.php?yyyy=2009&mm=09&dd=17&nav_id=61813 (17 Sep. 2009).

³⁷ Christopher Brocklebank, *Serbian Orthodox Church Issues Anti-Pride Statement Ahead of Sunday's Parade in Belgrade*, Pink News, at <http://www.pinknews.co.uk/2010/10/08/serbian-orthodox-church-issues-anti-pride-statement-ahead-of-sundays-parade-in-belgrade/> (8 Oct. 2008).

name of religion.³⁸ Despite the Church's condemnation of violence against the LGBT community, their statements perpetuate discrimination on the basis of sexual orientation and gender identity. In order to combat this discrimination, the Commissioner for Equality should interpret the religious exception of the Anti-Discrimination Law narrowly.

Discriminatory Attitudes in the Media

Over the past several years, Serbian media has experienced some positive change with regard to its coverage of issues of sexual orientation and gender identity, but the media continues to reinforce discriminatory societal attitudes about the LGBT community. Labris conducted a detailed examination of Serbian media's coverage of LGBT issues, and found that, historically, LGBT-related articles have been placed in the "Entertainment" pages. However, over the past two years more LGBT-focused articles have appeared in the "Politics" and "Society" pages, and there has been an overall increase in articles with LGBT content.³⁹ With regard to the 2010 Pride Parade, media coverage focused largely on the violence that surrounded the parade and, when covering the violence, failed to seek out perspectives from parade organizers or LGBT organizations.

Hate speech remains a problem in Serbian media despite the presence of the Law on Public Information and the Law on Broadcasting, both of which prohibit the media from promulgating discriminatory language and hate speech based on sexual orientation.⁴⁰ While the Serbian Criminal Code does not recognize hate speech as a crime, Article 38 of the Law on Public Information provides a framework for bringing legal action against perpetrators, although accusers are faced with the challenge of proving discriminatory intent on the part of the perpetrator.⁴¹

The Law on Broadcasting charges the Republican Broadcasting Agency (RBA) with monitoring discriminatory and hateful content.⁴² Over the past several years, Labris has filed several complaints with the RBA regarding homophobic statements made on television. For example, in 2006 and 2007 Labris reported the television station "Pink" to the RBA due to homophobic and sexist statements made on its programs. When the RBA failed to respond within a year, Labris compelled the Ombudsperson, an independent state human rights authority, to intervene, and the RBA subsequently dismissed Labris's complaints, stating that "Pink" did not espouse hate speech.

Importantly, in 2010 the RBA found that the television program *Luda Kuca* (Crazy House) on the station "Kosava" had disseminated hate speech against transsexuals. This marked the first time that the RBA made such a finding without intervention from the Ombudsperson, and demonstrates that tolerance of discriminatory language and hate speech may be declining.⁴³ Additionally, the Anti-Discrimination Law has the potential to reduce hate speech in the media if the Commissioner hears and responds to complaints related to the media, but only time will tell how aggressively this law is implemented. Even if discriminatory language and hate speech decrease under the media laws and the Anti-Discrimination Law, there is always the danger that the media will simply cease to report on the challenges that face the LGBT community; indeed, the media was recently criticized for underreporting incidences of violence

³⁸ Bridgette P. LaVictoire, *Serbian Orthodox Church Denounces Violence Ahead of LGBT Pride Parade*, Lez Get Real, at <http://lezgetreal.com/2010/10/serbian-orthodox-church-denounced-violence-ahead-of-lgbt-pride-parade/> (8 Oct. 2010).

³⁹ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 15.

⁴⁰ *Thematic Legal Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity*, Labris, Jan. 2010, at 19.

⁴¹ *Id.*

⁴² Article 21, Law on Broadcasting. Official Gazette 42/2002, 97/2004, 76/2005, 79/2005.

⁴³ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 16.

against the LGBT community in Serbia.⁴⁴

Discriminatory Societal Attitudes

Surveys of Serbian citizens demonstrate extremely high levels of homophobia, discrimination on grounds of sexual orientation and gender identity, and misinformation regarding issues related to sexual orientation and gender identity. In a 2008 study conducted by the Serbian Gay Straight Alliance, 50 percent of Serbians asserted that they find homosexuality dangerous to society and supported the idea of state suppression of the LGBT community.⁴⁵ Furthermore, seven out of ten Serbians stated that they considered homosexuality to be an illness. Even more troubling was the finding that only 11 percent of Serbians have a positive view towards LGBT individuals.⁴⁶

The same survey indicates that Serbians do not deny the presence of LGBT individuals (67 percent state that homosexuality has always existed);⁴⁷ rather, they are opposed to public expressions of LGBT identity, with 75 percent of respondents opposing gay parades.⁴⁸ These attitudes perpetuate a culture of silence and fear among LGBT individuals; indeed, a 2006 Labris study found that, among victims of violence based on sexual orientation and gender identity, only 10 percent reported the crimes to the police.⁴⁹ An anti-discrimination legal framework alone will not fully overcome these pervasive homophobic and discriminatory attitudes; rather, the state should commit to education and sensitization programs to combat these attitudes throughout Serbian society.

Article 7 (Freedom from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment)

In 2001, the UN Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment published a report that examined the issue of torture of LGBT individuals. The report stated that LGBT individuals disproportionately face harassment and other violations that affect their basic dignity, directly contravening Article 7 of the ICCPR.⁵⁰

While police forces commendably protected participants in the 2010 Pride Parade (indeed, many police officers were injured by violent right-wing protestors), Marija Savic, a Serbian LGBT activist, offers examples of police prejudice against LGBT individuals. For example, she recounts the story of a fellow activist who reported the presence of threatening graffiti on the side of his home. The police officer he spoke with told the activist that the police were unable to help him, and that any ensuing violence would be his own fault. Meanwhile, the activist's companion, a fellow activist, was taunted with homophobic slurs by other police officers and was ultimately thrown out of the station. After this incident, the men went to the main police office in Belgrade, and the matter was resolved promptly. The offending officers were punished, albeit lightly.

Furthermore, Marija recounts the story of LGBT activists who, in June 2007, requested police

⁴⁴ *Radicalization: A Constant Threat to Democratic Forces*, Helsinki Committee for Human Rights, at <http://www.helsinki.org.rs/doc/HB-No44.pdf> (Oct. 2009).

⁴⁵ *Prejudices Exposed*, supra note 10 at 5.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Thematic Legal Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, supra note 8 at 7.

⁵⁰ Report of the UN Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nigel Rodley, p. 6-7 (UN Doc. A/56/156, July 3, 2001).

protection at one of their social events due to safety concerns. The police agreed to be present at the event, but during the event police officers arrived and demanded identification from the attendees. When some activists refused to provide identification, they were arrested for failing to have personal documents in a public space and were denied legal counsel in jail. A subsequent complaint to Internal Control of Police was dismissed as unfounded.⁵¹ Both these stories illustrate that harmful societal attitudes are present in the police force; in order to ensure that Article 7 is not violated, the Serbian government should implement education programs in all levels of the police force to educate officers about LGBT rights.

Article 14 (Right to a Fair Trial)

While Article 24 of the ICCPR asserts that “[a]ll people shall be equal before the law,”⁵² and Article 21 of the Serbian Constitution states that “all are equal before the law,”⁵³ the state has only sparingly pressed charges against perpetrators of anti-LGBT violence under Article 387 of the Criminal Code (“Racial and Other Discrimination”); furthermore, the Commissioner on Equality has been slow issue recommendations under 2009’s Anti-Discrimination Law. For example, in 2008 ten right-wing hooligans attacked four participants in the Queer Belgrade Festival. Three of the attackers were arrested, and, while Labris urged the state prosecutor to bring charges Article 387, the prosecutor declined to take the attackers’ motive into account, charging them only with “violent behavior” (Article 344 of the Criminal Code).⁵⁴

Additionally, right-wing protestors arrested during the 2010 Pride Parade were not charged under discrimination legislation. Rather, they were charged under other criminal statutes: “violent behavior” (Article 344), “preventing an official in discharge of duty” (Article 322), and under a new provision which explicitly criminalizes violence at a sporting event or public gathering (Article 344 (a)). The trials for those arrested during Pride 2010 are ongoing. While the fact that the state is prosecuting the attackers under *any* law is commendable, the inability or failure of the government to aggressively utilize Article 387 of the Criminal Code and the Anti-Discrimination Law demonstrates that problems in implementation persist; the government should address these problems in order to ensure the effectiveness of the laws and meet obligations under the ICCPR.⁵⁵

Articles 16 (Recognition as person before the law) and Article 17 (Freedom from Arbitrary Interference with Privacy, Family, Home)

While gender reassignment surgeries have taken place in Serbia since 1989 and many doctors perform gender reassignment in Serbia,⁵⁶ transsexual and transgender Serbians are not recognized by national law. There is no legal framework through which transsexual and transgender Serbians can

⁵¹ Marija Savic, *personal communication*, 22. Feb. 2011.

⁵² ICCPR, *supra* note 6 at Article 14.

⁵³ Article 21. Serbian Constitution. 8 Nov. 2009.

⁵⁴ Marija Savic, *personal communication*, 22. Feb. 2011.

⁵⁵ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 10.

⁵⁶ Thematic Legal Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, *supra* note 8 at 3.

change their name and personal identification number.⁵⁷ Additionally, there is no legal protection for marital and parental rights of transsexual and transgender individuals.⁵⁸

In April 2010, A.T., a transsexual woman who underwent gender reassignment surgery, addressed Labris' legal counselling in regards to the lack of legislation regulating the rights of transgender/transsexual persons in Serbia and filed a complaint with the Constitutional Court of the Republic of Serbia. Despite the request for expedite procedure, given the unstable legal position of the woman and the fact that she is married and has a child, the case has not been considered so far⁵⁹.

The tenuous legal position of transsexual and transgender Serbians contravenes Articles 16 and 17 of the ICCPR. Furthermore, the state's failure to legally recognize post-operative transsexuals violates Article 8 of the European Convention on Human Rights, to which Serbia is a party.⁶⁰

In its case law, the European Court of Human Rights (ECtHR) has established that the failure to recognize the legal status of post-operative transsexual individuals constitute, *inter alia*, a violation of the right to private life under article 8 of the European Convention on Human Rights and Fundamental Freedom (ECHR). Similarly, transsexual and transgender persons are entitled to protection from arbitrary interference with privacy with reference to Articles 17 of the ICCPR.

In particular in *Goodwin v. UK* (2002), the ECtHR held that the UK government failed to protect Article 8 (right to privacy) and Article 12 (right to marry) of the Convention by denying a post-operative transsexual's right to be recognized in her new gender which, as a consequence, would affect the right to formally obtain the status as a woman with her own separate and distinct identity for National Insurance purposes, as well as her fundamental right to marry a person of the opposite sex enshrined under both Article 12 ECHR and Article 23 ICCPR. Furthermore, according to the judges, "the lack of legal recognition of the change of gender of a post-operative transsexual lies at the heart of the applicant's complaints under Article 14 of the Convention."⁶¹ The Court also emphasized the importance of the provisions of Article 8 and their relevance to the case by arguing that "gender identity is one of the most intimate and private aspect of any person's life"⁶².

In *L. v. Lithuania*⁶³, the ECtHR established that the failure of the state to allow the change of legal name and sex as a consequence of lack of domestic legal framework constituted a violation of art. 8 ECHR. On this regard the judges held that "States are required, by their positive obligation under Article 8, to implement the recognition of the gender change in post-operative transsexuals through, *inter alia*, amendments to their civil status data, with its ensuing consequences."⁶⁴

The Serbian government should develop a framework through which transsexual and transgender Serbians can change their legal status. Additionally, the state should address the issue of marital and parental rights, and should develop health and education materials so that transsexual and transgender individuals receive accurate medical information.

Article 21 (Freedom of Assembly)

The right of LGBT activists to assemble has received international media attention due to the

⁵⁷ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 5.

⁵⁸ *Id.*

⁵⁹ Marija Savic, *personal communication*, 22. Feb. 2011.

⁶⁰ *European Convention on Human Rights*, Protocol 12, Apr. 11, 2000, Article 8.

⁶¹ *Goodwin v United Kingdom*, application no. 28957/95, 11 July 2002, para. 108.

⁶² *Van Kuck v. Germany*, application no. 35968/97, 12 June 2003, para. 12.

⁶³ Application no. 27527/03, 11 September 2007.

⁶⁴ *Id.*, para. 56.

cancellation of the 2009 Pride Parade and the violence that plagued the 2010 Pride Parade. The history of Pride Parades loom large in all discussions of LGBT individuals in Serbia, and reflects upon the “right of peaceful assembly” affirmed in the ICCPR.⁶⁵

2001 Pride Parade

On June 30, 2001, Serbian LGBT activists held the first Serbian Pride Parade, but the parade ended in violence when two thousand right-wing extremists and football hooligans violently attacked the participants and chanted homophobic slurs. Activists criticized the police for inadequately protecting those marching in and attending the parade; only 50 police officers were present, and reports indicated that they did little to stop the violence. Following the parade, Belgrade’s Chief of Police demonstrated his discriminatory attitude towards LGBT individuals by blaming the activists for the violence, stating: “As a society [Serbians] are not mature enough to accept such demonstrations of perversity.”⁶⁶

2009 Pride Parade

Eight years later, on July 21, 2009, LGBT activists announced that a second Pride Parade would be held on September 20, 2009; this would be the first attempt at a Pride Parade since 2001. The government promised that they would monitor the parade with several thousand police officers, and, up until a day before the scheduled event, government officials affirmed that the parade would take place despite valuable criticism and threats of violence from right-wing and religious organizations.⁶⁷ Prior to the event, Serbian President Boris Tadic failed to endorse the event, but did affirm his commitment to combating discrimination and violence.⁶⁸

The day before the parade was scheduled to take place, the government abruptly asked the organizers to move the parade to a less central location, citing safety concerns and a perceived threat to public order. Serbian Interior Minister Ivica Dacic expressed her concerns about protestors: “We’re not talking about a handful of hooligans — there were several thousand people ready to attack the participants and the police with everything from Molotov cocktails to knives, iron bars and steel-ball slingshots.”⁶⁹ The parade’s organizers refused to change the event’s location, and the parade was subsequently canceled.⁷⁰

The government’s fears were not unfounded. Prior to the parade, the ultra-nationalist organizations “1389” and *Obraz* espoused extremely inflammatory language, with an *Obraz* leader stating, “[e]veryone knows what will happen if they go ahead with that parade of shame, and the responsibility for that will be on those who organized it. . . They cannot expect to poke their finger in the eye of our nation and go unpunished,”⁷¹ and 1389 offering to purchase pictures of the parade from the press so that “parents will be able to recognize sexually deviant persons and protect their children from

⁶⁵ ICCPR, *supra* note 6 at Article 21.

⁶⁶ Rob Miller. *Gay Pride Shows Serbia’s Progress*. The Guardian, at <http://www.guardian.co.uk/commentisfree/2010/oct/11/gay-pride-serbia-progress> (11 Oct. 2011).

⁶⁷ Dejan Anastasijevic. *Right-Wing Threats Scrap Serbian Gay-Pride Parade*. Time, at <http://www.time.com/time/world/article/0,8599,1925715,00.html> (23 Sep. 2009).

⁶⁸ *Serbia : Gay Pride Parade Postponed*. Global Voices, at <http://globalvoicesonline.org/2009/09/24/serbia-gay-pride-parade-postponed> (24 Sept. 2009).

⁶⁹ Anastasijevic, *supra* note 60.

⁷⁰ *Serbia : Gay Pride Parade Postponed*, *supra* note 61.

⁷¹ Anastasijevic, *supra* note 60.

this harmful influence.”⁷² Additionally, the parade was condemned by religious organizations, with a representative of the Serbian Orthodox Church deeming the event “the shame parade, the parade of Sodom and Gomorrah.”⁷³ In addition to discriminatory and hateful public statements, threatening graffiti filled the city prior to the parade, and on two occasions soccer hooligans attacked foreign tourists; one of the victims said he was targeted because he “looked gay.”⁷⁴

Following the parade’s cancellation, organizers criticized the government for failing to take affirmative steps to promote a safe environment for the event. For example, Republican Prosecutor Slobadan Radovanovic stated in response to the threats and inflammatory language leading up to the parade that “[the government] cannot react at news stories, we can react only at their factual consequences.”⁷⁵ Additionally, the government neglected to take action against calls for lynching of participants put forward in newspapers such as *Politika* and *Vecernje Novosti*.⁷⁶ Following the parade’s cancellation, police arrested leaders of 1389 and *Obraz*; however they were charged only with misdemeanors and not prosecuted under Article 10 of the Anti-Discrimination Law or Article 387 of the Criminal Code.⁷⁷ The Ministry of Justice banned *Obraz*, 1389, and some football clubs in response to the violence.

The case regarding the ban on 2009 Pride Parade is currently pending before the Constitutional Court and the European Court on Human Rights: the applicants, members of the organizing committee of the Belgrade Pride 2009, claim that the Order 03 No. 8988/09-20 by which the Police Directorate of the Ministry of the Interior of the Republic of Serbia (*Direkcija policije Ministarstva unutrašnjih poslova Republike Srbije*) ordered the applicants to change the location of the parade to a remote area constituted a *de facto* ban of the Parade as organized in violation of the right to freedom of assembly of article 11 ECHR. Considering that the Order was communicated only one day before the scheduled event, the petitioners claim that the state failed to provide an effective legal remedy to the decision of the authorities.

In *Baczkowski v. Poland*⁷⁸ the Court argued that by banning the Warsaw Pride March, that eventually took place, the state violated article 11 because the ban may have “discouraged other persons from participating in the assemblies on the grounds that they did not have official authorisation and that, therefore, no official protection against possible hostile counter-demonstrators would be ensured by the authorities⁷⁹.” Even if the Constitutional Court eventually overruled the ban, the judges condemned Poland on stating that “it is important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act⁸⁰”.

Based on this precedent, it is clear that leading up to the 2009 Pride Parade the state failed to guarantee the right to freedom of assembly, and thus demonstrated that they were not committed to fighting discrimination based on sexual orientation and gender identity.

2010 Pride Parade

⁷² 2009 Human Rights Report : Serbia. U.S. Department of State, at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136056.htm> (11 March 2010).

⁷³ *Id.*

⁷⁴ Anastasijevic, *supra* note 60.

⁷⁵ Radicalization: A Constant Threat to Democratic Forces, *supra* note 42 at 3.

⁷⁶ *Id.*

⁷⁷ Anastasijevic, *supra* note 60.

⁷⁸ Application no. 1543/06, 3 May 2007.

⁷⁹ *Id.*, para. 67.

⁸⁰ *Id.*, para. 83.

Following the 2009 debacle, government officials were vocal in their support of the 2010 Pride Parade prior to the event, with the President making a more affirmative statement in support: “[T]he Gay Pride in Belgrade is to be a historical event which will show that Serbia is a safe society for all its citizens, regardless of their sexual orientation.”⁸¹

The Pride Parade took place on October 10, 2010 in downtown Belgrade. An estimated 1,000 people participated in the parade, and the participants were protected by a police force of 5,000.⁸² Yet outside the fortified police checkpoints were thousands of protestors who opposed the parade’s message and marred the successes of the event through their actions.⁸³ Hate speech was common, with protestors chanting “death to homosexuals” and “go to Kosovo.” Additionally, violence was pervasive; protestors threw rocks, bottles, and Molotov cocktails and looted cars and buildings. Ultimately, an estimated 140 people were injured during the march, most of them police officers.⁸⁴ Notably, this event demonstrated a shift in the police response to protestors; during the 2001 parade, police were largely passive in the face of violence, while in 2010 the police actively defended participants against protestor violence.⁸⁵

Post-parade, the state’s response to the violence has been ambivalent. 249 arrests were made following the parade, but thus far only two convictions have been made; both individuals were charged with “preventing an official in discharge of duty” (Article 322).⁸⁶ While more indictments are pending trial, none of the attackers are expected to be charged with discrimination; rather, they are expected to be prosecuted under Article 332 of the Criminal Code and under a new criminal law which prohibits violence at a sporting event or public gathering (Article 344 (a)).⁸⁷ This reflects the state’s inability or unwillingness to enforce the Anti-Discrimination Law and Article 387 of the Criminal Code, both of which are charges that condemn discriminatory motive.⁸⁸

Despite the large presence of protestors and the state’s failure to aggressively prosecute attackers, international LGBT activists have praised the 2010 Pride Parade as a milestone event. According to Amnesty International’s David Diaz- Jogeix: “[the parade] was a historic moment in Serbia – the first time in a decade when the LGBT community and its supporters could freely gather – with full and proactive protection from the police – and celebrate diversity. We hope this will be a benchmark for future dialogue and tolerance in Serbia.”⁸⁹ Only time will tell if the large protestor presence at the parade detracts from government support of Pride Parades in upcoming years.

Article 23 (Family Life)

The U.N. Human Rights Committee has not considered denying recognition of marriage to same-sex couples a violation of non discrimination or rights to family life under the ICCPR (see *Joslin v. New*

⁸¹ Ljubica Vujadinovic. *Serbian President Supports Belgrade Gay Pride*. Allvoices, at <http://www.allvoices.com/contributed-news/6201502-serbian-president-supports-belgrade-gay-pride> (30 June 2010).

⁸² Miller, *supra* note 59.

⁸³ *Scores Arrested in Belgrade After Anti-Gay Riot*. BBC, at <http://www.bbc.co.uk/news/world-europe-11507253> (10 Oct. 2010).

⁸⁴ Miller, *supra* note 59.

⁸⁵ *Id.*

⁸⁶ Article 322. Criminal Code of the Republic of Serbia. 1 Jan. 2009.

⁸⁷ Article 344 (a). Criminal Code of the Republic of Serbia. 1 Jan. 2009.

⁸⁸ Annual Report on the Position of LGBTIQ Population in Serbia in 2010, *supra* note 7 at 2.

⁸⁹ Lydia Aroyo. *Belgrade Pride 2010 – A Call for Tolerance*. Amnesty International Livewire, at <http://livewire.amnesty.org/2010/10/10/belgrade-pride-2010-%E2%80%93-a-call-for-tolerance-against-discrimination> (10 Oct. 2010).

Zealand stating that a state party's failure to recognize same-sex couples did not violate Article 23 of the Convention.⁹⁰ However, in *Young v. Australia* where the Human Rights Committee held that a state party's failure to extend benefits to same-sex couples which are granted to unmarried opposite-sex couples violates Article 26 of the Convention (Equality Before the Law). The Human Rights Committee also affirmed this decision in *X v. Columbia*, holding that Article 26 was violated when the state party denied pension rights to a same-sex life partner when the benefits were extended to de facto opposite-sex couples.

Article 26 of the 2006 Serbian Constitution explicitly defines marriage as between a man and a woman.⁹¹ This reflects a step backwards from the previous Constitution, which does not mention gender in its marriage provision.⁹²

⁹⁰ Ms Juliet Joslin et al. v. New Zealand, Communication No. 902/1999, U.N. Doc. A/57/40 at 214 (2002).

⁹¹ Article 26. Serbian Constitution. 8 Nov. 2006.

⁹² Article 29. Serbian Constitution. 10. Oct. 2000.

Conclusion

In violation of ICCPR Articles 2(1), 7, 14, 16, 17, 21, 23 and 26, the practices and policies herein described deprive lesbian, gay, bisexual and transgender individuals in Serbia of a range of rights, including the right to be free from discrimination based on their sexual orientation or gender identity; the right to be free from cruel and degrading treatment or punishment; the right to a fair trial; the right to recognition before the law and the right to freedom from arbitrary interference with privacy, family, or home; the right to freedom of assembly; and the right to freely-chosen family life.

While the strong police presence at the 2010 Pride Parade demonstrated the government's commitment to protecting LGBT participants, the government has failed to prosecute violent protesters under the new Anti-Discrimination Law or Article 387 of the Criminal Code ("Racial and Other Discrimination"). More broadly, it remains to be seen how aggressively the Anti-Discrimination Law will be utilized to combat discriminatory language and hate speech. Furthermore, instances of state-based discrimination against LGBT individuals persist, transsexual and transgender individuals are unable to change their legal status post-gender reassignment surgery, and pervasive discriminatory attitudes persist in Serbian society. The Serbian government must take affirmative steps to address these issues in order to meet its obligations under the ICCPR.

Recommendations

The State should:

1. ensure the right to freedom of assembly, movement and expression without political repression, instigation of fear and under full and adequate protection from violent groups and individuals before, during and after public gatherings.

The Government of Serbia should use all appropriate means, including criminal prosecutions, against individuals who incite, threaten, and or carry out acts of violence against LGBT individuals and groups;

2. incorporate the abovementioned acts into the already existing Anti-Discrimination Law and/or enact specific LGBT hate crime legislation, counteract hate crimes and other violence against LGBT persons and to provide them with legal redress in the case of discrimination or abuse, even (and particularly) when committed by state actors;

3. actively condemn hate crimes against LGBT persons through state institutions, and especially representatives of executive power;

4. enhance the Anti-Discriminatory legislative framework, and appropriate family and other codes, to ensure that the rights of all transsexual and transgender individuals to and in marriage and as parents protected, respected and fulfilled;

5. undertake all appropriate measures (legislative, administrative and budgetary) to permit transsexual and transgender Serbians to change and record their name, sex and personal identification number on all official documents;

6. provide equality and human rights training for teachers and staff in schools, governmental officials at all levels, and law enforcement officers. Enact an accountability system whereby individual officials, staff or law enforcement officers can be hold accountable for discriminatory behavior;

7. conduct community outreach workshops to address longstanding and prevailing social and cultural beliefs and attitudes towards LGBT persons.

Proposed Questions for the Government of Serbia

1. What is the government doing to ensure that LGBT citizens can fully exercise their right to freedom of assembly, movement and expression and to redress the alleged violation of article 11 with regard to the ban on the Belgrade 2009 Pride Parade?
2. What is the government doing to ensure that state actors are being educated, trained, and sensitized to issues of LGBT rights?
3. What measures are being taken to address the specific instances of abuse and the violations described in this report as well as the general measures being taken to fight stigma and *de facto* discrimination against LGBT individuals?
4. What are specific accountability mechanisms in place to ensure that violations do not occur?
5. How frequently has the Anti-Discrimination Law or Article 387 of the Criminal Code been utilized to discriminatory speech about LGBT individuals?
6. How is the government addressing the precarious legal position of transsexual transgender individuals?