
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Serbia

by independent researcher Dragana Vučković

Disclaimer:

This report was drafted by an independent expert and is published for information purposes only. Any views or opinions expressed in the report are those of the author and do not represent or engage the Council of Europe or the Office of the Commissioner for Human Rights.

Table of Contents

A. EXECUTIVE SUMMARY	3
B. FINDINGS	7
B.1. Overall legal framework	7
B.2. Freedom of assembly and association	8
B.3. Freedom of expression	9
B.4. Hate crime - Penal Code	10
B.5. Family issues	12
B.6. Asylum and refugee issues	13
B.7. Social security, social care and insurance	14
B.8. Employment	16
B.9. Housing	18
B.10. Health care	19
B.11. Access to goods and services	19
B.12. Media	20
B.13. Transgender issues	23
B.14. Intersex issues	24
B.15. Miscellaneous	24
B.16. Good practice	24

A. Executive summary

1. The social climate in Serbia at the end of the last, and the turn of this, century has been marked with very strong homophobia, prejudices, violence and discrimination against LGBT people. This atmosphere affected the low visibility (or invisibility) of the LGBT population in the public discourse of the country. Although Serbia ratified most of the international human rights documents and conventions, Serbian society is still characterised by strong prejudices and ignorance towards LGBT people, as well as the lack of understanding and tolerance towards everything that is different.
2. Through adoption of the new Penal Code, which came into force on 1 January 2006, Serbia fulfilled the condition regarding the same age of consent for all sexual relationships. Homosexuality was already decriminalised in 1994. The whole term and criminal act called "unnatural fornication" was removed in 2006. Still, the Penal Code does not recognise hate crime as a criminal act. In August 2009, the Penal Code has changed with new provisions in Article 387:
 3. "Whoever spreads or otherwise make publicly available texts, images or any other representation of ideas or theories advocated or incites hatred, discrimination or violence against any person or group of persons based on race, colour, religion, nationality, ethnic origin or other personal property, shall be punished with imprisonment from three months to three years."
and "Whoever publicly threatened that, against a person or group of persons because of membership in a particular race, colour, religion, nationality, ethnic origin or for other personal characteristics, make the offence punishable by imprisonment for more than four years in prison,
shall be punished with imprisonment from three months to three years.. " In December 2009, the Penal Code has changed again and since then it forbids violent behaviour at sporting events or public meetings: Who physically attack or physically charged with participants at sporting event or public assembly...shall be punished with imprisonment from six months to five years and a fine.
4. By 2009, the Serbian Parliament adopted four laws, which specifically ban discrimination based on sexual orientation: Labour Law, Law on Higher Education, two media laws: Law on Public Information and Law on Broadcasting. In March 2009, the Serbian Parliament finally adopted the comprehensive Anti-Discrimination Law and Article 21 of the law specifically bans discrimination based on sexual orientation and allows the right to privacy, as well as free expression of sexual orientation. Unfortunately, these laws are not adequately implemented in practice. The biggest problem related to the protection of LGBT human rights in Serbia is lack of implementation of these adopted laws as well as unreported homophobic and transphobic violence and discrimination.
5. According to research two thirds of the respondents suffered some kind of violence based on their sexual orientation.
6. Regarding the transgender population, the situation is very complicated. On the one hand, Serbia has probably the best doctors and experts team in the entire region, but on the other hand, legislation on the issue of gender marker change absolutely does not exist in Serbian legal system. Transgender people are even more vulnerable; hate and violence against them resulted in the murder of one transsexual woman, Minja Kočiš, in January 2009. Because of lack of legislation, transsexual persons depend on the goodwill of officials who are responsible for changing the documents in Serbian municipalities. The fact is that people from all around the country must come to the one particular municipality

in Belgrade because that is the only place in Serbia where they can change their documents after the gender reassignment treatment.

7. According to Serbian legal system, assembly is free and the application for maintenance of the public meeting may submit any individual. Still, there is no successful Pride parade in Serbia. In June 2001 the first Serbian Pride took place in Belgrade and many participants were brutally beaten by people identified as nationalists, members of right-wing organisations and some members of Serbian Orthodox Church. Eight years after the 2001 Belgrade Pride Parade, the second one, in 2009 was banned because the police were not able to ensure the constitutional right for a peaceful assembly.
8. Five members of the former Organising Committee of Belgrade Pride 2009 filed a complaint with the Constitutional Court on 19 October because of the ban of Belgrade Pride and on 31 December the application was also sent to the European Court of Human Rights in Strasbourg.
9. Freedom of expression is guaranteed by Constitution of the Republic of Serbia but in February 2009, press conference one of LGBT organisation was cancelled, because the management of the rented space, Sava Centre, said "I don't want fags here". .
10. Physical assaults are very often targeted towards LGBT persons. Perpetrators are often family members, neighbours, or co-workers. LGBT human rights defenders in Serbia are particularly under pressure from neo-Nazi and ultraconservative groups, who very often threaten them on their websites and through statements in the media.
11. The first criminal case on the basis of sexual orientation was when a group of 10 people attacked and injured four participants of the Belgrade Queer Festival but the district prosecutor dismissed the allegations of discrimination on the basis that there was no evidence.
12. The Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples and transgender persons are not allowed to marry in accordance with the rules pertaining to their preferred gender, and transgender persons are required to divorce for a legal change of their gender markers or name.
13. Adoption is allowed by partners in marriage or in common-law marriage which actually means that same-sex partners are not allowed to adopt children according to Serbian legislation, however, there is no explicit prohibition for adoption by LGBT people. Also, a single person may adopt a child but only with special permission of the Minister of Labour and Social Affairs.
14. Serbian Parliament adopted a Law on Asylum and this act does not explicitly mention discrimination on grounds of sexual orientation and/or gender identity, but according to Article 2 and Article 6 of the Law on Asylum "belonging to some other social group" could be applicable on sexual orientation and gender identity. .
15. Due to the fact of defining marriage and common-law marriage as partnership between man and woman and also not recognising same-sex partnership, the Serbian legal system does not have all necessary legislative and administrative to provide social security and other social protection measures without discrimination on grounds of sexual orientation and/or gender identity.
16. According to the Constitution of the Republic of Serbia, everyone shall have the right to education; still prejudice and violence against LGBT children in school are widespread. The important fact is that the Law on basis of the educational system says that it is forbidden to

discriminate based on all grounds and Law on higher education explicitly mentions sexual orientation in its anti-discriminatory provision. Medical studies textbooks discuss same-sex orientation almost negligibly and mostly in negative context and in secondary education, LGBT people are completely invisible.

17. The right to work is guaranteed by Constitution of the Republic of Serbia to all citizens, however, there are situations when LGBT people are victims of discrimination at work, which go unreported.
18. Since the Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples, the very same problems and types of discrimination of same-sex couples exist in the housing area. Even these days there are cases where LGBT people are diagnosed as being sick because of their sexual orientation and gender identity and some medical professionals do not act professionally and ethically towards LGBT persons and their personal information.
19. LGBT organisations are sometimes victims of indirect discrimination in access to goods and services. During the implementation of its activities, organisations sometimes face the difficulty of work – in renting billboards, mini buses, spaces.
20. Media laws were the first in Serbian legislation to recognise sexual orientation as one of the basic human rights and forbid hate speech on grounds of sexual orientation. Until now, there is only one court sentence for hate speech in printed media, but it does not concern sexual orientation.
21. The Anti-Discrimination Law is the first Serbian act that actually recognises discrimination on the grounds of the gender but there is no law to specifically address the procedure to change gender markers on birth certificates and other documents.
22. Transsexual people face a reportedly higher chance to get fired from their jobs when undergoing gender reassignment procedures. Also, transsexual persons usually cannot afford hormone treatment and since gender reassignment treatment is not covered by health insurance, sometimes the transition process is very long. Due to that, a significant number of transsexual persons have entered the sex industry which make them even more vulnerable to discrimination and violence. Moreover, according to existing laws in Serbia, prostitution is still criminalised.
23. There is no legislation in the Serbian legal system regarding intersex people and there is a huge ignorance and lack of basic information about intersex issues among representatives of institutions , including doctors and medical workers in Serbia, which results in significant violations of human rights.
24. For the LGBT population, the most important national strategies that the Serbian parliament has adopted in the last decade, are: National strategy against HIV, National strategy for youth and National strategy for improving the position of women and improving gender equality.
25. National strategy for youth says: “Sexual orientation can sometimes lead young people to a sensitive and vulnerable position. There are cases of discrimination and various forms of violence against young people who are of a different sexual orientation than heterosexual”. Also, the Action plan within this strategy provides some measures related to improving the position of young gays and lesbians but there is no information about these activities and even if these activities are implemented, LGBT NGOs do not participate in that process.

26. In last ten years, there has been significant effort in improving the Serbian Anti-Discrimination Law, due to the European Integration process that Serbia has entered. This might be identified as a reason for adopting progressive legislation by the Serbian Parliament regardless of the high level of homophobia in society. .

B. Findings

B.1. Overall legal framework

27. Serbia ratified most of the international human rights documents and conventions, including the International Covenant on Civil and Political Rights and European Convention on Human Rights. The Constitution of the Republic of Serbia defines the right of every individual to equal legal protection, free of discrimination, but does not specifically address sexual orientation as one of the basis for prohibition of discrimination:

Prohibition of discrimination: Article 21

28. “All are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.”
29. Also, The Constitution of the Republic of Serbia prescribes protection of human and minority rights:

Protection of human and minority rights and freedoms: Article 22

30. “Everyone shall have the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, they shall also have the right to elimination of consequences arising from the violation. The citizens shall have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution.”
31. The following rights are also guaranteed by The Constitution of the Republic of Serbia: dignity and free development of individuals, right to life, inviolability of physical and mental integrity, right to freedom and security and right to a fair trial. Also, The Constitution guarantees directly to implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws.
32. It is interesting that the year 2005 can be marked as a turning point in legislation since during this period of time as many as four legislations have been passed into force – all of which explicitly contain discrimination prohibition on the ground of sexual orientation. These are: The Law on Higher Education, The Law on Public Information, The Law on Employment and The Law on Broadcasting.
33. Through accepting the new Penal Code¹, which came into force on 1 January 2006, Serbia fulfilled the condition regarding the same age of consent for all sexual relationships and complete decriminalisation of a voluntary homosexual relationship – homosexuality was decriminalised in 1994. The whole term and criminal act called “unnatural fornication was removed in 2006.

¹Penal Code, Official Gazette, 85/05, 88/05, 107/05, 72/09.

34. By 2009, the Serbian Parliament adopted four laws, which specifically ban discrimination based on sexual orientation: Labour Law², Law on Higher Education³, two media laws: Law on Public Information⁴ and Law on Broadcasting⁵. Unfortunately, these laws are not adequately implemented in practice. The poor implementation is furthered by the low readiness of the LGBT population to report cases of violence and discrimination, because of fear of further victimisation by the institutions. In March 2009, the Serbian Parliament finally adopted the comprehensive Anti-Discrimination Law⁶, after eight years when the first draft of this law had been made. Article 21 of the law specifically bans discrimination based on sexual orientation and allows the right to privacy, as well as free expression of sexual orientation:

Discrimination on the grounds of sexual orientation: Article 21

35. "Sexual orientation shall be a private matter, and no one may be called to publicly declare his/her sexual orientation. Everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden."
36. The election of a Commissioner for Protection from Discrimination on 5 May 2010, as well as the implementation of the anti-discrimination law in the forthcoming period (as of 2010) is perceived to be a huge challenge for both the judicial institutions in Serbia, LGBT organisations and population and non-governmental sector in general.
37. The Penal Code does not recognise hate crime as a criminal offence, and even when LGBT people do report violence, proceeding with it in court is very difficult, both due to homophobic attitudes and no proper implementation of the laws and international standards.
38. The situation for transgender persons is complex due to the lack of legislation regarding legal changes of a gender marker.. Due to the lack of legislation on the matter, transgender persons depend on the goodwill of officials who are responsible for changing the documents in Serbian municipalities.

B.2. Freedom of assembly and association

39. According to the Serbian Law on assembly⁷, there is no free for organising an assembly and application for maintenance of the public meeting may be submitted any individual or organisation.
40. Also, Constitution of the Republic of Serbia⁸ prescribes that all citizens may assemble freely and that assembly held indoors shall not be subjected to permission or registration. In accordance with the relevant laws, gatherings, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law. The Constitution says that freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.

2 *Labour Law*, Official Gazette, 24/05, 61/05.

3 *Law on Higher Education*, Official Gazette, 76/05.

4 *Law on Public Information*, Official Gazette, 43/03, 61/05.

5 *Law on Broadcasting*, Official Gazette, 42/02, 97/04, 76/05, 79/05.

6 *The Law on the Prohibition of Discrimination*, Official Gazette 22/09.

7 *Law on Assembly*, Official Gazette 51/92, 53/93, 67/93, 48/94.

8 Article 54, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

41. The Law on association of citizens⁹ was adopted in 2009. According to this law, every association is established and organised freely and independently in achieving their goals. Currently, in Serbia, there are about 10 organisations and initiatives that deal with LGBT human rights and work on improving the position of LGBT population.
42. Eight years after the first, 2001, Belgrade Pride Parade, where LGBT people were brutally beaten up, Serbian LGBT organisations decided to organise the second one on 20 September 2009¹⁰.
43. The Serbian Prime Minister Mirko Cvetkovic, only 24 hours before the event, presented the members of Belgrade Pride 2009 Organising Committee, an official decree signed by the Head of Serbian Police, Milorad Veljovic, which states that the law enforcement bodies of the Republic of Serbia are not able to ensure the Constitutional right for a peaceful assembly.. By this decision, also, Police Directorate of the Ministry of Interior ordered the organisers to move the event from the centre of Belgrade to a different location situated far away from the city centre.
44. There is no other provision in the Law on Assembly that gives the police authority to 'change the location' of a public assembly. The Law defines the mandate of the police in respect of public assemblies in an exhaustive manner. The Articles 4 and 6 set out the obligation of the organisers of a public assembly to report the assembly to the police, while the Article 14 allows the police to disperse an assembly that was reported. The Article 9 authorises the police to temporarily ban an assembly which purpose is violent overthrow of the constitutional order, the disruption of the territorial integrity and independence of the Republic of Serbia, the violation of constitutionally guaranteed human and civil rights and freedoms, and the instigation and promotion of national, racial and religious hostility and hatred. Whereas Article 10 stipulates that only a court can issue a permanent ban of such an assembly, and provides, in that regard for a special, urgent judicial procedure. Article 11 authorises the police to ban an assembly for the purpose of preventing a disruption of traffic, a threat to public health, morals or the safety of people or property, and to do so without a special court procedure. Article 12 authorises competent state organs to disperse an assembly as it is taking place, if it appears that the assembly runs afoul of the Articles 9 or 11 of the Law.
45. Five members of the former Organising Committee of Belgrade Pride 2009 filed a complaint with the Constitutional Court on 19 October, because of the ban of Belgrade Pride and on 31 December, the application was also submitted to the European Court of Human Rights in Strasbourg¹¹.

B.3. Freedom of expression

46. Freedom of expression is guaranteed by Constitution of the Republic of Serbia¹². Article 46 says that *'The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner'*.

9 Law on association of citizens, Official Gazette 51/09.

10 <http://www.belgradepride.rs/>

11 This is the first application in Strasbourg against Serbia under Article 10, Article 11, Article 13 and Article 14, Case number 5591/10 .

12 Article 46, Constitution of the Republic of Serbia, Official Gazette 98/06 .

47. Also, the Anti-Discrimination Law¹³ regulates the general prohibition of discrimination, and article 21 says that '*Everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden.*'
48. Until February 2009, there was no significant state or private interference with LGBT activities. Nevertheless, one of the Serbian organisations for promoting LGBT human rights, Gay Straight Alliance, rented the Media Centre for 26 February 2009 to present the report on the state of discrimination on LGBT people in Serbia in 2008 entitled "This is our country". However, two days before the scheduled press conference, the organisers received a call from the management of Sava Center to hear that they cancelled the reservation 'because they didn't like the organisers.'
49. After receiving severe criticism from the public media, both Director of Sava Congress Centre Dragan Vucicevic and Belgrade Mayor Dragan Djilas apologised for their behaviour, according to the Serbian media. At the end, five members of GSA brought a charge against Sava Congress Centre because of direct discrimination, violation of human dignity as well as equal right to access to all public places.

B.4. Hate crime - Penal Code

50. Through accepting the new Penal Code¹⁴, which came into force on 1 January 2006, Serbia fulfilled the condition regarding the same age of consent for all sexual relationships. A complete decriminalisation of consensual homosexual relationships happened in 1994. The Penal Code does not recognise hate crime as a criminal offence but allows public prosecution of people that threaten persons and organisations because of their work for equality of citizens. Hate speech is prohibited only by the Law on Public Information¹⁵ and Law on Broadcasting¹⁶
51. Also, when it comes to informing the relatives of the prisoners about their health, the law does not differentiate between LGBT persons and the others, Article 105:
52. About serious threat to health or life of convicted person, or of his move in the prison hospital or other medical institution, the Department will immediately inform his/her spouse, children, adopted child or a person that the convicted person live with in another kind of marriage or a permanent community and if there is no such person then the Department will inform adoptive parent, brothers, sisters or relatives of the prisoner.
53. The Penal Code is the legal instrument that enables around fifty offences to be applied to most of the situations concerning violence against LGBTTIQ individuals. However, some forms of emotional and social violence are not fully regulated or sanctioned under the law (avoidance, ridiculing, stereotyping, judging, provoking, rejecting, degrading, ignoring, negation of sexual orientation different from heterosexual, daily saturating with negative stereotypes of LGBT people by the media, friends, religion, family) which does not represent violent manifestations of homophobia/transphobia or social and psychological violence per se.
54. The Penal Code¹⁷ with its recent changes allows public prosecution of persons that threaten persons and organisations because of their work for equality of citizens" and

13 Article 21, *The Law on the Prohibition of Discrimination*, Official Gazette 22/09.

14 *Penal Code*, Official Gazette, 85/05, 88/05, 107/05, 72/09.

15 *Law on Public Information*, Official Gazette, 43/2003, 61/2005.

16 *Law on Broadcasting*, Official Gazette, 42/2002, 97/2004, 76/2005, 79/2005.

17 Article 387, *The Penal Code*, Official Gazette 85/05, 88/05, 107/05, 72/09

according to this law, racial and other discrimination are a criminal offence, but sexual orientation is not particularly mentioned:

Racial and other discrimination: Article 387th

55. "Who violates basic human rights on grounds of race, colour, nationality, ethnic origin or other personal property and freedoms guaranteed by the generally accepted rules of international law and international treaties ratified by SCG shall be punished by imprisonment from six months to five years."
56. The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organisations or individuals due to their commitment for equality of people. Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished by imprisonment of three months to three years.
57. In August 2009, the Penal Code changed with new provisions in Article 387: "*Whoever spreads or otherwise make publicly available texts, images or any other representation of ideas or theories advocated or incites hatred, discrimination or violence against any person or group of persons based on race, colour, religion, nationality, ethnic origin or other personal property, shall be punished with imprisonment from three months to three years.*" and "*Whoever publicly threatened that, against a person or group of persons because of membership in a particular race, colour, religion, nationality, ethnic origin or for other personal characteristics, make the offence punishable by imprisonment for more than four years in prison, shall be punished with imprisonment from three months to three years..*" In December 2009, the Penal Code changed again and since then it forbids violent behaviour at sporting events or public meetings: *Who physically attack or physically charged with participants at sporting event or public assembly...shall be punished with imprisonment from six months to five years and a fine.*
58. Physical assaults are very often targeted against LGBT persons. Perpetrators are often family members, neighbours, or co-workers.
59. The first criminal case on the basis of sexual orientation:
60. On 19 September 2008, a group of 10 people attacked and injured four participants of the Belgrade Queer Festival¹⁸ and this resulted in grave bodily injury of one person and three of them were light injured. Police arrested two alleged perpetrators. On 22 September 2008, the Belgrade Queer collective sentenced attack and asked the government to apply rule of law against homophobic attacks.
61. On 29 May 2009, the district prosecutor dismissed the allegations of discrimination, which is in the name of victims of attacks launched Labris – lesbian human rights organisation¹⁹, on the basis that there is no evidence that the attack occurred on "racial or other discrimination or "violation of equality" as stated in the Articles 387 and 128 of the Penal Code²⁰. After that, Labris – organisation for lesbian human rights continued pushing the criminal charges against these persons by starting a private lawsuit within a lawfully determined period of time. This case is still going on and we are waiting for the next court hearing.

18 Queer Beograd, www.queerbeograd.org/, accessed 23 September 2010.

19 Labris, www.labris.org.rs/, accessed 23 September 2010.

20 See Annex I: Presentation of Case Law.

62. Transgender people are even more vulnerable and hate and violence against them resulted in the murder of one transsexual women, Minja Kočiš, in January 2009²¹. In 2009, the last hearing in the case of murder of Minje Kočiš was held on 10 December 2009 at 10 a.m. in the District Court in Belgrade. Besides the panel of five judges, presided by judge Rastko Popović, the hearing was attended by the attorney representing the family of Minja Kočiš, Deputy District Prosecutor, defendants Mihajlović and Radisavljević, defendants' attorneys, representatives of non-governmental organisations, Anti-Trafficking Centre, Lawyers' Committee for Human Rights and Gay Straight Alliance, as well as the journalists from the news agencies Beta and Tanjug. At this hearing, the first accused Ivica Mihajlović confessed that he had murdered Minja Kočiš.

B.5. Family issues

63. It is important to mention the Law on execution of criminal sanctions, Article 78 which does not mention sexual orientation or gender identity is neutral related to visits to see prisoners:

64. A convicted person has the right to be visited by a spouse, child, adopted child, parent, adoptive parent and other relatives in a straight line and side line to the fourth degree of kinship:

- once a week - in a Bureau or Department of the open type;
- twice a month - in a Bureau or Department of semi-open type;
- once a month - in a Bureau or Department with a special security.

65. Head Office can also approve visits of prisoners to other persons.

66. Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples. Serbian Constitution explicitly says that²²:

67. *'Marriage shall be entered into based on the free consent of man and woman before the state body. Contracting, duration or dissolution of marriage shall be based on the equality of man and woman.'* Family Law²³ also defines marriage and common-law marriage as cohabitation between a man and a woman, governed by statute:

Marriage: Article 3

- Marriage is community life between women and men regulated by the law.
- Marriage shall be entered into only on the basis of free consent of the intending spouses.
- Spouses have equal rights.

21 'Minja Kocis (39), was found dead 18 January 2009 in a rented apartment in the street 88 Filip Filipovic in Belgrade. Her body found by a friend of the apartment owners who came to take her rent. Minja was lying on the stomach in the living room, on the floor beside the bed. The flustered man immediately informed the police about the murder. On 21 January 2009, the police said that they arrested two suspects for the murder of the transsexual woman Minja Kocsis, who was found dead three days earlier. The police arrested Ivica Mihajlovic (30) from Vladicin Han, who was already on the run for murder, and Novica Radisavljević from Pozarevac, which due to a murder earlier, served 15 years in the Nis prison.' Gay straight alliance, Report on discrimination against LGBT people, 2009.

22 Article 62, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

23 Article 3, Article 4, *Family Law*, Official Gazette 18/05.

Extramarital community: Article 4

- Extramarital community is permanent community between women and men, among whom there are no barriers (common-law partners).
 - Extramarital partners have rights and responsibilities of spouses under the conditions stipulated in this Law.
68. The consequences are that same-sex partners in Serbia have no right to subsistence and maintenance, the right to jointly owned property, the occupancy right, the right to inherit a part of jointly owned property from the deceased partner, the right to obtain information about the health condition of the sick partner and to visit him/her in the healthcare institutions.
69. In 2005, Belgrade Centre for Human Rights has already submitted a proposal to Constitutional Court for assessing the constitutionality of the definition of common-law marriage, but the Constitutional Court has not yet decided on this issue and this case is still pending.
70. *In 2008, Labris legal council has been contacted by a man, who had an unpleasant experience of being insulted and discriminated against in the embassies in Belgrade, while he was being interviewed for applying for a visa. He had stated as he reason for applying for a visa his wish to start a family with his long-term partner, who is the resident of the State. The embassy official asked him a few unpleasant, discriminatory questions regarding his sex life. The same man has contacted Labris one more time, to notify us about the visa procedure. He has not contacted Labris since, so that we do not have information whether the embassy official has been reported for homophobia.*
71. There are no relevant statistics and no cases but it is obvious that transgender persons are not allowed to marry in accordance with the rules pertaining to their preferred gender as well as transgender persons are required to divorce for a legal change of gender or name.
72. When it comes to adoption, Family Law prescribes²⁴ that adoption is allowed by partners in marriage or in common-law marriage which means that same-sex partners are not allowed to adopt children jointly, despite the fact that there is no explicit prohibition of adoption by LGBT people individually. A single parent is allowed to adopt²⁵ only under special circumstances and it must be approved by Ministry of Labour and Social Policy.
73. Serbian Parliament has adopted a Law on the treatment of biomedical assisted fertility procedures fertilisation. According to this Act²⁶ the right to treatment of biomedical assisted fertility procedures fertilisation is granted only to partners in marriage and, under special circumstances this is also allowed to single mothers but it must be approved by the Ministry of Labour, Employment, and Social Affairs and the Ministry of Health. The Law came into the force on 1 January 2010.

B.6. Asylum and refugee issues

74. Serbian Parliament adopted Law on Asylum two years ago and this Act does not explicitly mention sexual orientation or gender identity²⁷ as forbidden grounds of discrimination. However, according to this Act it is forbidden to expel a person against her/his will

²⁴ Article 5, *Family Law*, Official Gazette 18/05.

²⁵ Article 101, *Family Law*, Official Gazette 18/05.

²⁶ Article 26, *Law on the treatment of biomedical assisted fertility procedures fertilisation*, Official Gazette 72/09.

²⁷ Article 6, *Law on Asylum*, Official Gazette 109/07.

somewhere where her/his rights can be violated on the basis of race, sex, language, religion, nationality, belonging to certain social group or political attitudes. We can say that, in Serbian legal system, sexual orientation or gender identity is not recognised as a ground for obtaining asylum and/or subsidiary protection. The Asylum Protection Centre is the organisation that was founded in last quarter of the year 2007 and the number of asylum seekers is small so there are no data that anyone ever expressed intention to seek asylum because of violation of human rights based on sexual orientation or gender identity. Here, it should be mentioned that Serbia is State Party to the 1951 Convention Relating to the Status of Refugees. (hereafter: the Geneva Convention)

75. The Geneva Convention defines a refugee as any person 'who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to fear is unwilling, to avail himself of the protection of that country - or return to it'. Since sexual orientation and/or gender identity are not explicitly stated as grounds eligible for applying for a refugee status, LGBT applicants have based their claims using two other grounds of the Convention: "particular social group" and "political opinion" grounds. The most important and most frequently argued ground in this regard is membership in a "particular social group".

B.7. Social security, social care and insurance

76. Serbian Constitution prescribes that 'Citizens and families that require welfare for the purpose of overcoming social and existential difficulties and creating conditions to provide subsistence, shall have the right to social protection the provision of which is based on social justice, humanity and respect of human dignity.'²⁸
77. When it comes to Pension insurance, Serbian Constitution says that the Republic of Serbia shall see to economic security of the pensioners²⁹ and according to the Law on Pension and Disability Insurance³⁰, the right to family pension can make family members – parents, children and spouse.
78. Because of defining marriage and common-law marriage as partnership between a man and a woman and because of not recognising same sex partnership at all – it is obviously that Serbian legal system does not have all necessary legislative, administrative and other measures that ensure equal access, without discrimination on the basis of sexual orientation or gender identity to social security and other social protection measures, parental leave, unemployment benefits, health insurance or care or benefits, family benefits, funeral benefits.
79. Unlike the existing Law on social protection and ensuring social security of citizens from 2005 ³¹, a new draft Law on social protection explicitly mentions sexual orientation as one of forbidden grounds of discrimination:

The principle of non-discrimination: Article 25

80. "Prohibited direct and indirect discrimination of users of social services on the basis of race, gender, age, nationality, social origin, sexual orientation, religion, political or other

²⁸ Article 69, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

²⁹ Article 70, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

³⁰ Articles 27 and 28, *Law on Pension and Disability Insurance*, Official Gazette 34/03.

³¹ *Law on social protection and ensuring social security of citizens*, Official Gazette 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/2001, 84/2004, 101/2005.

affiliation, financial status, culture, language, disability, the nature of social vulnerability, or other personal property.”

81. **Education**

82. According to the Constitution of the Republic of Serbia everyone shall have the right to education³²

83. The Anti-Discrimination Law³³ prescribes prohibition of discrimination in the sphere of education and professional training:

Discrimination in the sphere of education and professional training: Article 19

84. Everyone shall have the right to pre-school, primary school, secondary school and higher education and professional training under equal circumstances, in accordance with the law.

85. It is forbidden to obstruct or prevent entry into an educational institution to an individual or a group of persons on the grounds of his/her or their personal characteristics, or to exclude them from these institutions, to obstruct or prevent their attendance of classes and participation in other educational activities, to categorise pupils on the basis of personal characteristics, to maltreat them and unwarrantedly differentiate among them in other ways, and to treat them in an unequal manner.

86. It is forbidden to discriminate against educational institutions that operate in accordance with the law and other regulations, and against persons who use or have used the services of these institutions in accordance with the law.

87. Law on basis of the educational system³⁴ prescribes general principles of educational system, mentioning „other grounds“ of discrimination:

Article 3

88. The system of education must provide for all children, students and adults equal right and access to education without discrimination and separation based on gender, social, cultural, ethnic, religious or other affiliation, place of residence or domicile, financial or health conditions, difficulties and obstacles in the development and disability, as well as other grounds

89. Also, the same Law, in Article 4, prescribes several goals of educational system such as:

90. “Developing skills for the role of a responsible citizen, to live in orderly and humane democratic society based on respect for human and civil rights, the right to diversity and concern for others, as well as the basic values of justice, truth, freedom, honesty and personal responsibility, development and respect for racial, ethnic, cultural, linguistic, religious, gender, sex and age of equality, tolerance and respect for diversity.”

91. The Law on higher education is one of the Serbian laws that explicitly prescribe prohibition of discrimination based on sexual orientation³⁵ saying that '*All those that have previously*

32 Article 71, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

33 Article 19, *Law on the Prohibition of Discrimination*, Official Gazette 22/09.

34 *Law on basis of educational system*, Official Gazette 72/09.

35 Article 8, *Law on higher education*, Official Gazette 76/05.

*received secondary school education, regardless of their race, colour of skin, sex, **sexual orientation**, ethnic, national or social background, language, religion, political or some other affiliation, the status acquired by their birth, sensory or motor disability or property status are entitled to receiving higher education.'*

92. The principles of higher education (Article 4) quote that the higher education activities are based, among others, on the principles of: respecting the human rights and civil liberties, including a ban on all forms of discrimination; the acknowledgment of the European and national tradition in humanistic and democratic values; academic liberties; and openness to the public and citizens.
93. A student, according to Article 86, is entitled to the following: diversity and protection from discrimination, equal conditions for studying for all students and self – organisation and expression of his/her own opinion.
94. There is a lack of legislation related to transgender/transsexual issues, however, in practice, it is possible to start process of gender reassignment treatment before age of 18, but only in the terms of hormone therapy, not surgery. There are no available data on the impact that the transition has on general well being of the transgender person within the education system,.

B.8. Employment

95. The Constitution of the Republic of Serbia³⁶ guarantees the right to work:

Right to work: Article 60

96. “Right to work shall be guaranteed in accordance with the law. Everyone shall have the right to choose his occupation freely. All work places shall be available to everyone under equal conditions. Everyone shall have the right to respect of his person at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly interval for rest, paid annual holiday, fair remuneration for work done and legal protection in case of termination of working relations. No person may forgo these rights. Women, young and disabled persons shall be provided with special protection at work and special work conditions in accordance with the law.”
97. The Law on the Prohibition of Discrimination³⁷ also says:

Discrimination in the sphere of labour: Article 16

98. “It is forbidden to exercise discrimination in the sphere of labour; that is to say, to violate the principle of equal opportunity for gaining employment or equal conditions for enjoying all the rights pertaining to the sphere of labour, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from unemployment.

³⁶ Article 60, I, Official Gazette 98/06.

³⁷ Article 16, *Law on the Prohibition of Discrimination*, Official Gazette 22/09.

99. The right to protection from discrimination referred to in paragraph 1 of this Article shall be enjoyed by a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever.
100. Different treatment, exclusion or giving priority on account of the specific character of a job, for which an individual's personal characteristic constitutes a genuine and decisive precondition for performing the said job, if the objective to be achieved is justified, shall not be considered to constitute discrimination, nor shall undertaking protective measures towards certain categories of persons referred to in paragraph 2 of this Article (women, pregnant women, women who have recently given birth, parents, underage persons, disabled persons and the like) be considered to constitute discrimination.”
101. The Labour Law³⁸ particularly Article 18 refers to prohibition of both, direct and indirect discrimination, including sexual orientation³⁹, and gives extensive definition of discrimination.
102. Article 19 of the Labour Law explains that the *direct discrimination* includes any action prompted by some elements of Article 18 hereof, by which a person seeking employment, as well as an employed person, is placed in the more disadvantageous position in relation to the other person in the similar situation. *Indirect discrimination*, in accordance with this law, exists when a specific provision, criterion or practice, which seems neutral, puts or could put a person seeking employment, as well as an employed person, into a more disadvantageous position than other persons because of his/her specific characteristic, status, commitment or conviction from Article 18 hereof.
103. Discrimination based on the sexual orientation is prohibited when criteria for employment and candidate selection for a particular work, work conditions and all work rights, education, trainings and specialisations, promotions, termination of the work contract are concerned. The regulations possibly found within a work contract where discrimination based on sexual orientation is stated as invalid and null. In cases of discrimination in the sphere of labour, according to Articles 18 and 21, a person who is seeking employment as well as employees, can initiate proceedings before the competent court. Civil society organisations do not have right to be a party in this process. Also, the Ombudsman is empowered to monitor only work of state institutions and administration but not empowered to monitor work of President of the Republic, Government of the Republic of Serbia, national Assembly, Constitutional Court, Courts and Public prosecutors.
104. According to Law on the prohibition of discrimination, it is, also, forbidden to exercise discrimination in the sphere of labour (Article 16). A person who considers him/herself discriminated against shall lodge a complaint to the Commissioner for equality as well as an organisation engaged in the protection of human rights or another person may lodge a complaint on behalf of, and with the agreement of, the person whose rights have been violated. The Commissioner shall give his/her opinion on whether there has been a violation of the provisions of the Law on the prohibition of discrimination within 90 days of the day of receiving a complaint, of which he/she shall inform the person who submitted the

³⁸ Articles 18, 19, 20, 21, 22, *Labour Law*, Official Gazette 24/05.

³⁹ Article 18 of the *Labour Law*, prohibits any direct or indirect form of discrimination of the persons seeking employment, on grounds of their sex, birth, language, race, colour of skin, age, pregnancy and health condition or disability, national affiliation, religious affiliation, marital status, family obligations, sexual orientation, political or other affiliation, social background, property status, membership in political organisations, trade unions or some other personal characteristic.

complaint and the person against whom the complaint was submitted. If he/she decides that there has been a violation of the provisions of the law, the Commissioner shall issue a recommendation to the person against whom the complaint was submitted, suggesting a way of redressing the violation in question. If the person to whom a recommendation is addressed fails to act upon it, that is, if he/she fails to redress the violation in question, the Commissioner shall caution him/her.

105. Should the person fail to redress the violation in question within 30 days of having been cautioned, the Commissioner may inform the public about it. The measure of caution shall be issued by passing a decision against which it is not allowed to lodge a complaint. The provisions of the law regulating general administrative proceedings shall apply accordingly to the procedure involving the Commissioner (Article 40).
106. Law on state officials, in Article 7, prescribes following:
107. Article 7. It is forbidden to privilege or denial a civil servant in his rights or duties because of race, religion, sex, nationality or political affiliation or other personal characteristics.

B.9. Housing

108. Since the Serbian legal system does not recognise marriage or any alternative registration scheme open to same-sex couples, discrimination of same-sex couples exist when it comes to housing. The Constitution of the Republic of Serbia defines right to property:

Right to property: Article 58

109. "Peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed. Right of property may be revoked or restricted only in public interest established by the law and with compensation which can not be less than market value. The law may restrict the manner of using the property. Seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law."
110. In the terms of housing it is important to mention that the Housing Act also does not recognise LGBT human rights at all. According to Housing Act⁴⁰ in the case of occupancy right holder's death, members of a household, who lived with the lessee in the same apartment, continue to use the apartment, with the lease agreement concluded by the third party. Also, if in the apartment, in the case of death of the lessee, there are no members of a household renters, new lease agreement concludes a person who has ceased to be a member of a household, lessee, or person that was a member of a household, the previous tenant - if person continued living in the same apartment. Under the tenant household member of the family home, according to this law, can be considered to be: spouse, child (born in wedlock or out of wedlock, adopted or step child), parents, renters and his spouse.
111. Serbian legal system does not provide protection from eviction, including the right to resettlement without discrimination, on the basis of sexual orientation or gender identity. Moreover Serbian legislation does not ensure equal rights to land, home ownership and inheritance without discrimination on grounds of sexual orientation and/or gender identity.

40 Article 9, *Housing Act*, Official Gazette 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01.

B.10. Health care

112. According to the Serbian Constitution⁴¹, everyone shall have the right to protection of their mental and physical health.
113. The basic health care rights and policies are regulated by Health Protection Law⁴², and according to the equality principle (Article 20), health care should be provided without any kind of discrimination, on grounds of race, sex, age, nationality, social background, religion, political or other beliefs, economic status, culture, language, health conditions, psychical or bodily disability. When it comes to transgender persons and health care, gender confirmation treatment (includes hormone therapy and often surgery to bring the sex characteristics of the body more in line with the gender identity) is not covered by health insurance.
114. Also, related to same-sex partners, all health care rights are guaranteed only to family members. Family Law defines who are members of family and does not recognise same-sex partners at all, from which it follows that same-sex partners are not recognised as next of kin.
115. The disclosure of confidential information of medical records is considered as a criminal offence⁴³. However, occasionally some medical professionals do not act professionally and ethically towards LGBT persons and their personal information⁴⁴.
116. On 17th May 2008, the International Day Against Homophobia and Transphobia, and within the „Are you homophobic?“ campaign, Labris - lesbian human right organization addressed the Serbian Association of Medical Doctors, as well as to the Serbian Medical Chamber and the future Minister of Health, requesting that they confirm the position that homosexuality is not a disease immediately upon accepting the office. A letter from the Psychiatric Section of the Serbian Association of Medical Doctors, send to Labris - lesbian human rights organization upon request that this domestic institution confirm the official position the World Health Organization has held for 18 years, stated that „homosexuality is not a disease.“ The letter was sent after three years of refusing to acknowledge what has been the official attitude of the World health Organization for 18 years.
117. According to Law on the prohibition of discrimination, it is forbidden to discriminate against an individual or a group of persons on the grounds of his/her or their health, and to discriminate against their family members (Article 27) and this provision protects persons with HIV. Also, in 2006, the Serbian Institute for Blood Transfusion altered its questionnaire for potential blood donors after Labris – the lesbian human rights organisation launched protests against what it said was discrimination against homosexual women. Labris protested the Institute's practice of rejecting donors who affirmatively answered the question: "Have you ever had sexual relations with a person of the same gender?" As a result of the protest, a new questionnaire was drafted, without the contested question. Still, there is a list of categories number „0041“ named „Highly risky groups: gay, bisexual, promiscuous...“ . This can be seen as discrimination based on sexual orientation which results in excluding gay men from donating blood.

B.11. Access to goods and services

41 Article 68, *Constitution of the Republic of Serbia*, Official Gazette 98/06.

42 *Health Protection Law*, Official Gazette, 107/05.

43 Article 369. *Criminal Code*, Official Gazette, 85/05.

44 *Advocacy for LGBT Friendly Care Providers' Policy*, Gayten LGBT Report, Belgrade, 2006.

118. The Law on Prohibition of Discrimination⁴⁵ regulates discrimination in the provision of public services:

***Discrimination in the provision of public services and in the use of premises and spaces:
Article 17***

119. "Discrimination in the provision of public services shall be considered to occur if a legal or physical entity, within the framework of its/his/her activities or profession, refuses to provide a service on the grounds of a personal characteristic of an individual or a group of persons, or if the said entity, in order to provide the service in question, requires the fulfilment of some condition that is not required of other individuals or group of persons, or if the said entity unwarrantedly gives priority to another individual or a group of persons when it comes to providing a service.
120. Everyone shall have the right to equal access to objects in public use (objects where the head offices of public administration organs are located, objects used in the sphere of education, health care, social welfare, culture, sports, tourism, objects used for the purpose of environmental protection, protection against natural disasters and the like), as well as public spaces (parks, squares, streets, pedestrian crossings and other public transport routes and the like), in accordance with the law."
121. Law on protection of consumers⁴⁶ prescribes:
122. "Article 48: It is prohibited to advertise content that discriminates on basis of race, gender or ethnicity, offends the dignity, religious or political beliefs of consumers, encourage violence or content that is detrimental to the safety and health of consumers or the environment, in accordance with the law.!
123. LGBT people are discriminated in relation to goods and services, however, often it goes unreported and invisible. Apart from the LGBT persons, LGBT organisations, as well, are often the victims of indirect discrimination in access to goods and services. During the implementation of its activities, organisations sometimes face the difficulty of the work – in renting billboards, mini buses, spaces.

B.12. Media

124. Media laws were first in Serbian legislation which recognise the right to freedom from discrimination on the basis of sexual orientation, actually forbid hate speech based on sexual orientation. These laws are the Law on Broadcasting⁴⁷ and Law on Public Information⁴⁸ and both of these laws prescribe suppression of hate speech based on sexual orientation. The Criminal Code does not recognise hate speech as a criminal act.
125. In August 2009, the Penal Code was amended and new provisions were introduced in Article 387: "*Whoever spreads or otherwise makes publicly available texts, images or any other representation of ideas or theories advocated or incites hatred, discrimination or violence against any person or group of persons based on race, colour, religion, nationality, ethnic origin or other personal property, shall be punished with imprisonment from three months to three years.*"

45 Article 17, *Law on the Prohibition of Discrimination*, Official Gazette 22/09.

46 *Law on protection of consumers*, Official Gazzete 79/05.

47 *Law on Broadcasting*, Official Gazette 42/2002, 97/2004, 76/2005, 79/2005.

48 *Law on Public Information*, Official Gazette, 43/2003, 61/2005.

126. Hate speech is explicitly forbidden by the Anti-Discrimination Law, Article 11⁴⁹:
127. "It is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways."
128. According to the Law on public information⁵⁰, it is unlawful to publish ideas, information or opinion which promotes discrimination, hate or violence against a person, or a group of persons, only because of their sexual orientation regardless whether a criminal offence was committed by such publishing.
129. A legal motion can be put into force because of the violation of hate speech prohibition according to Article 38. The law suit is submitted by an individual who is a member of the group and is personally affected by the information from Article 38. Such an individual can file a complaint against the information author and the editor-in-chief of the public media publishing the information by which prohibition of re-emitting can be demanded with the accused bearing of trial expenses. Any registered organisation and group that aims to protect the freedom and human rights and liberties can file a complaint against the author or the editor-in-chief, as well as an organisation that aims to protect the interests of groups from Article 38. Should information from Article 38 personally relate to a particular individual, an organisation for the protection of the certain groups can file a complaint only with a prior consent of the individual such information relates to. Lawsuits will use the regulations from the Act that define the lawsuit process. Problems can only occur if, introducing into the nature of a punishable act, the obligatory element of doer's intention to support discrimination, hatred or violence against an individual or a group of individuals on the basis of their sexual orientation.
130. When there is no such intention, acquittal is obligatory according to Article 40 which states that there is no violation of hate speech should the information from Article 38 be a comprising part of a scientific or journalist text, and is published without the intention from Article 39 of this Act. This is especially the case if such information is part of an objective journalist report, as well as there is intention for critical display of discrimination, hatred or violence against an individuals or group of individuals on the grounds of their sexual orientation or the occurrences that represent or can represent support of such a behaviour. In what way and by which criteria the judging of existing or lacking this intention is a matter for judicial practice but it is certain that the entire idea of sanctioning hate speech has rather lost its efficiency should the prosecutor have to prove the existence of such an intention too with the doer who, however, always has the right to defend him/herself using the argument of an objective journalist report.
131. In the terms of hate speech it is important to mention that Article 39 of the Public Information Act prescribes contestant civil procedure as a procedure for achieving satisfaction for the actions contrary to the prohibition of hate speech from Article 38 of the Act. Article 38 specifically provides that certain modes of hate speech do not have to amount to a crime in order to be justifiable. Crimes directly connected to hate speech from the Serbian Criminal Code are: incitement of national, ethnic and religious hate from Article 317 of the SCC and incitement to genocide and war crimes from Article 375 of the SCC. Hate speech could be categorised under the norm of Article 128 of the SCC on breaches of equality, although it is hard to believe that Serbian courts would interpret this provision in such manner despite of the plausible legal grounds for such interpretation. It should be noted that Article 128 is the sole provision suitable for criminal prosecution of the discriminatory acts on the grounds of sexual orientation (Article 317 of the SCC is confined

49 Article 11, *Law on the Prohibition of Discrimination*, Official Gazette 22/09.

50 Article 38, *Law on Public Information*, Official Gazette, 43/2003, 61/2005.

within the discriminatory grounds based in nationality, ethnicity and religion, while Article 375 adds racial grounds with respect to incitement to genocide and protected persons under the Geneva Conventions regarding incitement to war crimes).

132. The Serbian legal system is extremely scribo-centric, i.e. it relies solely on the written rules proscribed by law. This is especially true for criminal law where the rule *nullum crimen sine lege stricta scripta* is applied in the strictest possible way. In the Serbian legal system, jurisprudence has no effect on the source of law, and the practice of higher courts does not oblige lower courts to follow it. As a consequence, it cannot be said that any one standard method exists, developed by the courts or any other judicial or extra-judicial body, for the establishment of intent in Serbian criminal law. Obviously, this does not mean that “free judicial conviction” on the basis of which courts decide the cases, is arbitrary. Standards of proof are applied in every particular case and the ways of establishing intent for every particular crime would depend upon the objective elements of that crime and other circumstances surrounding that crime. Bearing this in mind, it cannot be said that hate speech in Serbian law is any different to other incriminated behaviour. What would be the circumstances in which a court would take into consideration in establishing discriminatory intent in every particular case is at court’s discretion.
133. Until now, there is only one court sentence for hate speech in printed media, but it does not concern sexual orientation or gender identity.
134. According to Law on Broadcasting⁵¹, Radio Broadcasting Agency sees that programmes that encourage discrimination, hatred or violence against people or groups of people because of their different political affiliations or their belonging or non – belonging to a specific race, religion, nation, ethnic group, sex or sexual orientation are not broadcast.
135. General programme standards described in Article 68 hold all broadcasters in the areas of their programmes responsible for keeping the international and national standards when the programme content is concerned, to provide quality programme production and broadcasting both technically and content wise; they do not broadcast programs which contents emphasise and support violence, or other aspects of criminal behaviour. Special liabilities when producing and broadcasting news programmes are contained under Article 79 that holds public radio broadcasting services responsible for preventing any form of hostility or hatred regarding sexual orientation when producing and broadcasting news programmes.
136. According to the Radio Broadcasting Law, Labris has submitted, during 2006 and 2007, several complaints on hate speech in TV Shows. Controversial shows have been broadcast on two TV stations “Pink” and “Radio Television Serbia 1”. Guest speakers in these shows gave very homophobic statements against lesbians and gay persons in general, and very sexist remarks about women, as well. Those TV stations are well-known in Serbia, especially TV “Pink” for their shows, which demonstrate offensive and discriminatory language and dialogue⁵².
137. Since there was no response from the Radio Broadcasting Agency (RRA) for more than one year, Labris addressed the Republican Ombudsman Office on this matter. After their intervention, RRA brought the decision at the beginning of this year, on three complaints on

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

52 In November 2005 Labris submitted first complaint to the Republic Radio-Broadcasting Agency (RRA). based on hate speech in Piramida show broadcasted on TV Pink on 16 October 2005. The show manifested hate speech against persons of different sexual orientation which violated the Article 21 on Broadcasting Law. The Republic Radio-Broadcasting Agency had considered the complaint and concluded that certain statements were discriminative against same-sex oriented persons and that TV Pink violated the Law. At that time, TV Pink wasn’t formally a broadcaster, so the Agency could not pronounce the expected sentence. This was the first case that one state institution declared certain broadcasted statements as a hate speech against the LGBT population.

hate speech. The judgment was a dismissal verdict saying that the complaints were baseless and there was no hate speech in those controversial TV shows.

B.13. Transgender issues

138. In the last ten years, about 120 people in Serbia have undergone gender reassignment treatment. In Serbia, there is no law that regulates gender reassignment, however, there is no law that prohibits it. Serbian legislative does not mention or recognise any part of gender confirming treatment.
139. In Serbia, gender reassignment surgeries have been performed since 1989.
140. Anti-Discrimination Law is the first Serbian Act that actually recognises discrimination on the grounds of 'gender or gender change' :

Discrimination on the grounds of gender: Article 20

141. Discrimination shall be considered to occur in the case of conduct contrary to the principle of the equality of the genders; that is to say, the principle of observing the equal rights and freedoms of women and men in the political, economic, cultural and other aspects of public, professional, private and family life.
142. It is forbidden to deny rights or to grant privileges, be it publicly or covertly, pertaining to gender or gender change. It is forbidden to practise physical violence, exploitation, express hatred, disparagement, blackmail and harassment pertaining to gender, as well as to publicly advocate, support and practise conduct in keeping with prejudices, customs and other social models of behaviour based on the idea of gender inferiority or superiority; that is, the stereotyped roles of the genders.
143. Still, there is no legislation which specifically addresses the procedure of legal gender marker change as well as access to transgender related health-care. This process is arranged through medical policies, and a court decision is not required for one to undergo gender confirming treatment, a part of the medical policies is the approval by a commission of psychiatrists prior to the start of gender confirming treatment(s). Minimum duration of psychological evaluation of transgender persons is one year and usually it lasts two years. The price of one psychological session is 30 Euros and sometimes, depending on estimation of the expert, a person has only one session with the psychiatrist, and sometimes there is a need for numerous sessions. Also, there is an option for transgender persons to obtain psychological approval in state hospitals, for free, but this procedure lasts very long and people are forced to wait for available term even for months. Still, many issues lack clear polices; some of them include the change of the name, identification number, parental rights accessed through new personhood status, and rights to social and health care. Because of lack of legislation and recognition before the law, transgender persons in Serbia are not allowed to get state-funding for gender transforming hormone treatments.
144. There is no legislation on family law issues that regulates the situation of transgender persons as well as there is no legislation that provides any rights for the partners of transgender persons.
145. In Serbia, the hormones can be purchased in most private pharmacies without prescription and required dose of hormones for one month costs 10 Euros (the average income in

Serbia is 350 Euros per month). Male to Female gender reassignment surgery costs 3,000 Euros and Female to Male 10,000 Euros.

146. Within Gayten LGBT Centre for promotion sexual minorities rights, since 2006, a group exists that offers peer support and counselling services for transgender persons.
147. Transgender people are reportedly often fired from their jobs when undergoing gender reassignment procedures. Except health-care issues, unemployment is extremely high amongst transgender people in Serbia. Moreover, transgender persons cannot afford hormone treatment and gender confirming procedures so they are often in the transition process for a long time. There are cases where people are in the transition process for five years. Because of that, some of them, especially transwomen, decide to become sex workers which makes them even more vulnerable, bearing in mind that according to existing laws in Serbia, prostitution is still criminalised. There are no available data about the precise number of unemployed transgender persons.

B.14. Intersex issues

148. There is absolutely no legislative in the Serbian legal system regarding intersex people. While we can document numerous cases of discrimination and violence against lesbians, gays, bisexual and transgender people⁵³ – there are no data and official information or statistics about the position of intersex persons. We can say that there is a huge ignorance and lack of basic information about this minority group among representatives of institutions and even doctors and medical workers in Serbia.

B.15. Miscellaneous

149. Regarding the position of LGBT population in Serbia, a very serious problem is prosecution and the judiciary system – while the police, more or less, are doing their job, when it comes to Serbian courts – LGBT people are often faced with the rejected charges against representatives of right-wing, fascist organisations and perpetrators in general. Hate crimes against LGBT people are not recognised as hate crimes but usually as misdemeanours in judicial proceedings.

B.16. Good practice

Blood donor questionnaire: behaviour not groups

150. After the action of protest, organised by Labris – lesbian human rights organisation, Serbian Blood Transfusion Institute, changed the discriminative blood donor questionnaire on 1 January 2007. Contrary to the old version, the new questionnaire does not stress importance of the risk *groups* but understands risk *behaviour*. Instead of the problematic question 'have you ever had a sexual intercourse with a person of the same sex?', the new questionnaire has an entire set of questions regarding the possible risk behaviour of potential blood donors. The action directed to change the questionnaire was initiated by a failed attempt of several lesbians to voluntarily give blood in May 2006. They were refused only because they had had sexual intercourse with a person of the same sex.

53 See Annual Report *Gay Straight Alliance*, 2009, Gay Bashing Map, www.gsa.org.rs/cms-run/index.php?option=com_content&view=article&id=2028:godisnji-izvestaj-2009&catid=50:godisnji-izvestaji&Itemid=69, accessed 23 September 2010.

Eurovision song contest, Belgrade 2008

151. After numerous threats through Serbian printed and electronic media, made by Serbian fascists groups – Serbian LGBT organisations demanded adequate protection for all Eurovision visitors but especially for gay men since they were targeted by ultra-right organisations. Police officials, festival organisers and the President of Serbia gave the guarantee for the safety of delegations, press and gay fans of the Eurovision contest in Belgrade. Announced homophobic violence on the streets of Belgrade did not happen and the Serbian police forces were successful in protection of visitors.

Apologies of the main editors from the daily papers "Politika" and "Blic"

152. During 2008, Labris responded on the hate speech towards LGBT persons in the Serbian media. The first Labris' reaction was on an article titled "Monkey business", published on 28 May 2008, in a daily paper "Politika". In this article, the author journalist wrote down offensive language against homosexual persons, comparing one of their parties as a "gathering of sin natures", and, also matched up same-sex orientation as "unnatural and something on the margin of the society". The journalist, also, compared same-sex orientation with zoophiles.
153. Afterwards Labris addressed the main editor of "Politika" paper on this controversial article according to the Public Information Law. The result was an editor's apology; published in the "Politika's" editorial saying that the author of the controversial piece of writing and the "Politika" paper regret for the damage the article caused.
154. The following hate speech case happened on 26 September 2008, in the daily paper "Blic". The notorious article called "Perversion" focused on the school visit of the British actor Ian McKellen and his lectures on tolerance and homophobia held within UK schools. The journalist commented on his homosexuality, relating to the possibility for "recruiting new army of young victims in homosexual and more and more paedophilic culture". The alarming point was the fact that journalist related sexual orientations other than heterosexual to child abuse, and more over, compared lesbian and gay persons with paedophiles.
155. Labris addressed the main editor of the "Blic" paper regarding hate speech in the aforementioned article, and after that, the editor apologised to the lesbian and gay community.

Encouraging responses of the state institutions –Ministry of Human and Minority rights and Republican Ombudsman – on hate crimes and discrimination against LGBT persons

156. Even though the Ministry of Human and Minority Rights was established in September 2008, LGBT activists and other human rights NGOs have had huge support in numerous events. The Ministry has criticised and condemned all actions and violence targeted towards LGBT people and LGBT human rights defenders. Also, The Ministry of human and minority rights has collaborated with the NGOs on drafting the Anti-Discrimination Law. They accepted, during the drafting process, NGOs' suggestions and recommendations regarding the Law.
157. The Ombudsman Office has been established in 2007 and from the beginning has been actively supporting NGO's in Serbia, sending the statements to the relevant institutions regarding discrimination and homophobia. In addition, The Ombudsman Office has created a very good professional relationship with NGOs and LGBT activists.

The first-ever court decision punishing threats against gay activist

158. On 23 December 2008, the NGO Gay Straight Alliance (GSA) issued a statement welcoming the first-ever court decision punishing threats against members of the gay community. The Belgrade city magistrate Snezana Aleksic fined B.P. from suburban Rusan 10,000 dinars (approximately \$180) for sending numerous text message threats to GSA activist L.P. in April. GSA, however, criticised the police department in the Palilula district of Belgrade for its unwillingness to accept a complaint from L.P. and also highlighted that police in the city's New Belgrade district had yet to investigate threats against GSA head Boris Milicevic reported by the group in October.

Annex I: Presentation of Case Law

The first criminal case on the basis of sexual orientation

Case title	Queer Belgrade Festival
Decision date	29 May 2009
Reference details (type and title of court/body; in original language and English (official translation if possible))	Okružni sud, District Court, Belgrade
Key facts of the case (max. 500 chars)	On Friday night, 19 September 2008, a group of ten perpetrators brutally attacked and hurt four participants of the Belgrade Queer Festival. Two of them were foreigners, one from Russia, and another from the USA. The attack happened in the central part of the Belgrade. The injured persons have been taken care of at the Emergency Medical Center. Thanks to the quick response of the police, which guarded the event, two perpetrators have been taken into police custody soon after the attack.
Main reasoning/argumentation (max. 500 chars)	According to the Serbian Criminal Code, Labris brought criminal charges for the criminal offence "Racial and other discrimination". This case was the first one in Serbia on this issue and this judgment was supposed to contribute in establishing the jurisprudence on discrimination cases on violence against LGBT persons, but the Court dismissed this charges.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	This homophobic attack was a violation of the right to physical and psychological integrity, right to sexual orientation, right to freedom of movement and freedom of peaceful assembly. Labris hired a litigation lawyer who brought criminal charges against several perpetrators who have attacked participants of the Festival. This is a very important criminal case related to sexual orientation of LGBT persons who survived violence. Afterwards, it was found out that the perpetrators were young men from a pro-fascist organisation named "Obraz".
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The district prosecutor dismissed the allegations of discrimination, which is in the name of victims of attacks launched Labris, on the basis that there is no evidence that the attack occurred on "racial or other discrimination or "violation of equality" as stated in the Articles 387 and 128 of the Penal Code.

Annex II: Statistics

	2005	2006	2007	2008	2009
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment,	1 - Media	1 - Health	4 - Media		1 - Goods and services 1 - Media

education, housing, goods, and services, etc).					
Total complaints of discrimination on the ground of sex/gender identity (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
Total finding of Discrimination confirmed on the grounds of sexual orientation (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		1 – Health 1 - Media			
Total finding of Discrimination confirmed on the grounds of sex/gender identity (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
National number of sanctions/compensation payments issued (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		1 – Health 1 - Media			
National range of sanctions/compensation payments (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).		Media - Public warning/Public Advisory/Temporary or permanent revocation of licenses for broadcasting			

	2005	2006	2007	2008	2009
Number of court cases raised where the right to housing of LGBT people (for example, denial of selling or renting to a person, or not lending financial support to purchase housing) has been violated due to homophobic/transphobic motivations	0	0	0	0	0
Number of convictions regarding the violation of the right to housing due to homophobic/transphobic motivations	0	0	0	0	0

Annex II: Statistics

	2005	2006	2007	2008	2009
Number of cases where LGBT people have been deprived of the right to access goods and services due to homophobic/transphobic motivations?	0	0	0	0	0
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?	0	0	0	0	0
Range of sanctions issued for the violation of the right to access to goods and services due to homophobic/transphobic motivations?	-	-	-	-	-

	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived of the right to access to health care facilities due to homophobic motivations?	0	0	0	0	0
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?	0	0	0	0	0
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?	0	0	0	0	0
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?	0	0	0	0	0
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?	-	-	-	-	-
Number of persons receiving gender-confirming treatment	-	-	-	-	-

Annex II: Statistics

	2005	2006	2007	2008	2009
Number of court cases regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.	0	0	0	0	0
Number of convictions of media by 'soft-law' institutions,	0	0	0	0	0

such as a media council					
Number of convictions regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/ the gender identity of the applicant	-	-	-	-	-
Number of persons who changed their gender/sex in your country under the applicable legislation (if relevant split between transgender/intersex applicants)	-	-	-	-	-