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General situation of LGBTI people

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons in Western Balkans (Serbia, Montenegro, Macedonia, Bosnia and Herzegovina, Albania, Kosovo) are living in an environment, characterised by strong homo and transphobia, discrimination and violence. In such circumstances, the everyday life experiences of LGBTI people are marked by fear and invisibility, within private as well as public spheres, exposed to pressure of secrecy, job discrimination, and social isolation. Surveys have shown that acceptance in society is low and prejudice high towards LGBTI persons

Violence and discrimination against LGBTI persons are widespread in the region and it is connected to the violence still affecting women, ethnic minorities and political opponents since the West Balkan war/conflicts. Recent hate crime research done in countries in the region have disclosed that 70 - 80% of LGBTI persons have been victims of physical and/or psychological violence but only 10 - 15% of the victims have decided to report attacks. Levels of unreported violence and discrimination remain high,

due to insufficient trust in the justice system. Hate speech against LGBTI persons is also widespread across the Western Balkans countries, and it is not uncommon that politicians and other state representatives despite existing anti-discrimination legislation often use discriminatory speech against LGBTI persons. The European Parliament in a report 2013 noted "with concern" that LGBT-rights activists and human rights activists who stress the importance of dealing with the past are regular targets of hate speech, threats and physical attacks.

Freedom of assembly by the LGBTI community is continuously being contested in Western Balkans countries. The Pride Parade turned violent in Belgrade in 2010 and was subsequently banned three years in a row, only to take place in September 2014, after the Constitutional Court in 2013 ruled that the 2011 Pride ban was unconstitutional. The Pride Parade in Montenegro in 2013 was subjected by severe threats and incidents but could be held, while the Pride Parade in Macedonia in 2014 had to be cancelled due to threats. There were also attacks on public LGBTI events in Sarajevo, Bosnia-Herzegovina, in 2013, and attacks on an LGBTI centre in Skopje, Macedonia, in 2013 and 2014.

Legal and human rights instruments

Constitutional provisions and legal framework

Same-sex sexual acts Legal	Prohibition of all forms of discrimination based on sexual orientation or gender identity	Prohibition of discrimination in employment based on sexual orientation	Hate crime legislation - sexual orientation /gender identity aggravating circumstance
Albania (1995), Bosnia and Herzegovina (1998-2001) ¹ , Kosovo (1994), FYR Macedonia (1996), Montenegro (1977), Serbia (1994).	Albania (2010), Bosnia and Herzegovina (2009), Kosovo (2008), Montenegro (2010), Serbia (2009)	FYR Macedonia (2005)	Albania (2013), Bosnia-Herzegovina (2013)**, Montenegro (2013), Serbia (2013)

Reference: ILGA, 2014, OSCE/ODIHR 2014

¹The three parts decriminalised homosexuality in three different years, by enacting a new Criminal Code that introduced an equal age of consent: Federation of B&H (1998), Republika Srpska (2000), Brcko District (2001)

** Only regarding bias-motivated violence and not hate speech

Western Balkans countries have decriminalised same-sex sexual acts since the independence declarations. The work towards harmonisation with EU standards and the negotiations of becoming EU-members have encouraged the development. Most countries now have adequate national legal frameworks for the protection against discrimination of LGBTI persons, only with Macedonia still far behind in this respect. However, these laws are not adequately implemented. Although circumstances vary by country, generally governmental institutions remain uncommitted to improving the institutional and legal mechanisms that protect minority rights in general and LGBTI persons' human rights in particular. Politics are still influenced by religious and nationalistic tendencies. According to women's, LGBTI and other human rights advocates, the nationalistic movements are one of the obstacles that prevent a more progressive development.

Positive steps have however been made in Albania and Montenegro where Criminal Code was amended to punish hate speech. Albania's elected government in 2014 has taken considerate steps towards a number of legislative reforms regarding LGBTI rights. In Montenegro, the government in 2014 adopted a "five-year Strategy for improving the quality of life of LGBT persons", in line with negotiations to join the European Union.

In contrast, hate speech still remains unregulated in Bosnia and Herzegovina, Macedonia and Kosovo. Hate crime still remains to be introduced as an aggravating circumstance in Bosnia and Herzegovina and Macedonia, while in other countries implementation of hate crime provisions in the laws remains limited or non-existent.

Same-sex couples are completely invisible in Western Balkans countries legislation and other measures. Problems faced by same-sex couples are ignored by the states as though same-sex couples do not exist, leaving such couples in a discriminatory position compared to different-sex couples (both married and unmarried) in respect to social security, health insurance, pension, inheritance, parenting, etc.

Gender Identity Laws do not exist in Western Balkan countries. Even though gender reassignment procedures are allowed, it is completely unregulated by law, making legal recognition of the sex change highly variable, uncertain, depending on arbitrary decisions and variable procedures by relevant officials, which often take a great deal of time and involve different kinds of humiliation and abuse.

Regional/international human rights instruments

Western Balkans countries have ratified most of the international human rights conventions. The process of EU accession has proven positive for the legislation on sexual orientation and gender identity or expression, and for the LGBTI communities in Western Balkans countries. The European Parliament is including observations and recommendations regarding LGBTI rights in its annual country reports. Both EU and the Council of Europe are monitoring the situation of LGBTI rights in Western Balkan. Furthermore the Universal Periodic reviews (UPRs) is an instrument to engage governments in dialogue on LGBTI rights.

The Organisation for Security and Co-operation in Europe, OSCE, has a potential for raising issues on LGBTI rights. The International Lesbian and Gay Association (ILGA) Europe notes that "the OSCE's relevance to LGBT rights has increased in the past year as the OSCE has taken on an expanded mandate in the area of tolerance and non-discrimination". In 2009, The 17th Ministerial Council of OSCE adopted a decision on combating hate crime which included sexual orientation and gender identity in the definition of hate crimes, acknowledging that hate crimes are criminal offences committed with a bias motive. Following that, OSCE includes reports on crimes motivated by bias against LGBT people in its annual reports on hate crimes. Serbia is the only country of the western Balkan countries to report on LGBTI biased motivated hate crimes to the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

With a strong position in European countries and in EU, ILGA Europe is an important regional actor. It has a number of member organisations from Western Balkan countries. ILGA Europe produces annual monitoring reports on LGBT rights in all European

countries, and has also supported a regional cooperation project with a number of organisations on Western Balkans. However, the role and capacities of national LGBTI organisations in the Western Balkans are still in need of development, particularly in monitoring the implementation of legislation and policies, and advocacy efforts towards national and EU institutions.

Sexual and Reproductive Health and Rights and HIV/AIDS

LGBTI people in Western Balkans countries do not have access to adequate health protection. There are either none or very little training for health professionals and there is lack of relevant information in medical text books about sexual orientation and gender identity.

In all Western Balkan countries, there is still forced sterilisation when going through gender reassignment processes which constitutes abuse, as well as abusive and humiliating procedures when trying to prove one's gender, including forensic examinations, observations and measurements of genitalia.

When it comes to HIV/AIDS, the situation in the different countries varies to some degree. Generally knowledge of HIV/AIDS and STI is low. Apart from lack of knowledge, factors influencing MSM's risk for infection include low risk perception, inconsistent condom use, and reluctance to access services, and not at least, discrimination. UNAIDS reports indicate that Men who have sex With Men are a group at high risk of contracting HIV, and that there is an increasing trend of newly diagnosed HIV infections in this group. There is a fear that without external support, discriminated groups will fall behind in prevention programmes. Outreach efforts and adequate access to health care services continue to be of great importance in HIV/AIDS treatment and prevention.

Across Western Balkan countries persons with HIV/AIDS face high levels of stigmatisation by health care professionals, as well as by the general society. Further sensitisation of health care professionals is needed, as well as increasing capacities of CSOs and other organisations that offer free counselling and testing.

Civil society organisations and institutions active in the LGBTI field

Throughout the Western Balkan countries, freedom of association is enforced, and LGBTI organisations are able to operate legally. However, these organisations, the events organised and the individual activists in the organisations are often faced with threats and violent attacks. In many cases, there have been a lack of protection from the state and in the past years the attacks have been very violent or included extremely violent threats. This makes the work of the LGBTI organisations risky and difficult.

Challenges and opportunities in securing LGBTI rights in the region of Western Balkans are similar, and although experience and successes in different countries of the Western Balkan might differ, regional cooperation among national LGBTI organisations has been strong and has provided significant opportunities and positive results in terms of advocacy, knowledge and best practice sharing and joint campaigning.

With further development of regional cooperation among national LGBTI organisations in Western Balkan, a stable and continuous platform for networking and leveraging (inter) regional cooperation could be secured. Building and implementing strategic approach towards a unified, streamlined approach to engaging with the instruments of EU accession could be one approach to take.

Well-established Western Balkans LGBTI organisations that work both regionally and nationally are:

Labris, Belgrade, Serbia, <http://labris.org.rs>

Qesh, Prishtina, Kosovo, <http://www.qeshkosova.org/>

LGBT Forum Progress, Podgorica, Montenegro

Pink Embassy, Tirana, Albania, <http://www.pinkembassy.al/>

Aleanca LGBT, Tirana, Albania, <http://www.aleancalgbt.org>

Sarajevo Open Centre, Sarajevo, Bosnia and Herzegovina, <http://www.soc.ba>

Other LGBTI organisations that are focused on national work are:

Gayten LGBT, Belgrade, Serbia

Queeria, Belgrade, Serbia

GLIC, Belgrade, Serbia

Gay Straight Alliance, Belgrade, Serbia

IDAHO, Belgrade, Serbia

Belgrade Pride, Belgrade, Serbia

GOOSI, Belgrade, Serbia

Rainbow, Šabac, Serbia

Come Out, Novi Sad, Serbia

Novi Sad Lesbian Organisation, Novi Sad, Serbia

Okvir, Sarajevo, Bosnia and Herzegovina

BUKA, Banjaluka, Bosnia and Herzegovina

Queer Montenegro, Podgorica, Montenegro

OMSA, Tirana, Albania

Subversive Front, Skopje, Macedonia

LGBT United, Skopje, Macedonia

Coalition for Sexual and Health Rights of Marginalised Communities, Skopje, Macedonia

CEL, Pristina, Kosovo

What Sweden can do? – 10 questions to discuss

Within the broader context of support to democracy, human rights and gender equality in Western Balkan, Sweden has a great opportunity to include issues related to the rights of LGBTI persons and their access to justice. The Swedish strategy for Western Balkans, among other things, aims at the delivery of higher quality public services, based on principles of non-discrimination and equal rights and with less corruption; More efficient judicial systems that guarantee the right to a fair trial and include a developed sentencing system in accordance with European standards; a reduction in gender-based violence, hate crimes and human trafficking; a more democratic and effective police and a stronger and more plu-

ralistic civil society. The strategy specifically mentions LGBTI rights as a focus area.

When addressing LGBTI in non-supportive government context such is the situation in some parts of Western Balkans, it is important to consult LGBTI organisations in the region to make sure not to overrule their agenda. Questions to discuss:

- Could Sweden do more to stay updated on the legal and security situation and the judgements and priorities of the LGBTI movement?
- Could Sweden do more to offer protection to activists, attend court cases and contribute to protection of organisations under threat?
- Could Sweden do more to support the efforts to promote legal reform processes that would regulate e.g. same-sex unions and sex reassignment procedures, or adoptions of hate-crime legislations?
- Could Sweden do more to support the governments to adhere to an effective implementation of existing legislation regarding anti-discrimination and hate-crimes?
- Could Sweden do more to support the judiciary to better defend human rights of LGBTI persons and activists and the police force to work non-discriminatory?
- Could Sweden do more to support LGBTI reporting in Universal Periodic Reviews (UPR), or reporting to OSCE and Council of Europe, e.g. regarding the government's collection of data of hate crimes?
- Could Sweden do more to support establishment and functioning of regional cooperation platforms for LGBTI organisations? For example facilitation of communication and contacts between LGBTI organisations at national, regional and international levels?
- Could Sweden do more to support development of the organisational capacities of LGBTI organisations so that their effectiveness and networking can be improved?



The Swedish Strategy for Western Balkans aims at working with a reduction in gender-based violence, hate crimes and human trafficking. LGBTI persons are a group that is highly affected by this but not always included in efforts by national plans or CSOs working on gender based violence.

- Could Sweden do more to promote inclusion of LGBTI persons in the supported initiatives combatting gender-based violence and human trafficking?

Presently, discrimination within several sectors, labour market included, is a factor that strongly contributes to the marginalisation of LGBTI persons, and puts them at risk of poverty and exclusion of democratic processes. They often have obstacles in accessing civil/ political as well as social/economic rights. The process of EU accession has proven positive for enhancing some rights and strengthening the LGBTI communities in Western Balkans coun-

tries. Building regional networks between the Balkan LGBTI organisations could strengthen the voice of civil society and be an effective tool to holding the governments accountable to their commitments.

- Could Sweden do more to use the processes of EU accession processes to monitor commitments made regarding non-discrimination and LGBTI rights?

For further advice on dialogue regarding LGBT issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). More specific advice and support measures, as well as contact information to mentioned groups, can also be provide through ILGA or RFSL, should the Embassy wish for a dialogue. Also refer to the [EU tools](#) and guidelines in the reference list.

References

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[UNAIDS: 2014. Country reports](#) Serbia, Montenegro, Macedonia, Bosnia and Herzegovina, Albania, Kosovo

The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.