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„Who Fights for Queer Rights?”

- Using Yogyakarta Principles to Assess Compliance of the State of Serbia with the International Human Rights Standards in Relation to the Rights of Queer People -“

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This paper is done with loving dedication to:

the women in my life who thought me how to be strong:

my late grandmother Dušica Ćendić,

my grandmother Gordana Erić Raković,

my mother Danijela Planojević,

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List of Abbreviations

BCHR	Belgrade Center for Human Rights
CCS	Constitutional Court of Serbia
CEDAW	Convention for the Elimination of all forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFR	Charter on Fundamental Rights of the European Union
CHR	Council of Europe Commissioner for Human Rights
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	Committee on the Rights of the Child
CRPC	Crisis Response and Policy Centre
CSO	Civil Society Organization
C&P rights	Civil and political rights
DSZ	Association Da se Zna!
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court for Human Rights
EP	European Parliament
ERA	LGBTI Equal Rights Association for Western Balkans and Turkey
ESC	European Social Charter
ESC rights	Economic, social, and cultural human rights
EU	European Union
EUCOM	European Commission
FRA	European Union Fundamental Rights Agency
HRW	Human Rights Watch

ICJ	International Commission of Jurists
IGO	Inter-governmental organization
IHRL	International Human Rights Law
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ISHR	International Service for Human Rights
LGBTI	Lesbian, Gay, Bisexual, Trans, and Intersex
LGBT+	Lesbian, Gay, Bisexual, Trans, and other Identities
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PIC	Pride Info Center (Prajd Info Centar)
SNS	Serbian Progressive Party (Srpska Napredna Stranka)
SOGI	Sexual Orientation and Gender Identity
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Committee
YiHR	Youth Initiative for Human Rights
YP	Yogyakarta Principles
YP+10	Yogyakarta Principles Plus 10

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Who Fights for Queer Rights?

- Using Yogyakarta Principles to Assess Compliance of the State of Serbia with the International Human Rights Standards in Relation to the Rights of Queer People -

1. Introduction

1.1. Rationale

The idea that all human beings are born free and equal in dignity and rights is indispensable to the efforts of achieving peace, justice, and freedom in the world. Although this idea is decidedly unambiguous, the notion of human rights that is deduced from it requires categorical formulations as well as explicit provisions to serve as its protection.

In this regard, the body of international human rights law (IHRL) serves as the most comprehensive, extensive, and effective compilation of regulations that prescribe obligations to all States of the world that accede to various organizations serving such a purpose. Furthermore, *all* human beings are entitled to *all* human rights, and considering that human rights of certain groups of persons are at higher risk of being interfered with or violated, at specific historical, cultural, or political contexts, the clear need for distinctive protective measures for those groups of persons becomes apparent.

At present, human rights of people of diverse sexual orientations, gender identities and expressions, and sex characteristics (i.e. SOGIESC personal traits), collectively referred to as queer people, are endangered, although in different manner and to different extent, within different States of the world.

1.2. Aim and Structure

Following the rationale detailed above, the present paper will investigate *to what extent the State of Serbia complies with the international human rights standards in relation to the rights of queer people*. For this purpose *the comparative analysis* between the IHRL standards and Serbia's efforts to implement and uphold them will be conducted in Section 4 of this paper. Before that, the standards of the IHRL set upon at different levels, relevant to the geo-political context of the State, coupled with the involvement of Serbia with the corresponding international organizations will be assessed in Section 2. However, only *Yogyakarta Principles* (Section 2.6) will be utilized as a primary tool for the main analysis of Serbia's compliance. The reason for this will be presented in more detail in Section 4.

It is important to note that the scope of the analysis, and consequently the finding that emerge, are limited to the moment in which the analysis is done, namely the moment of writing of this paper. In line with this, the findings will be interpreted as a reflection of the state of matters current to this paper. Moreover, for the purposes of easier reference to Serbia's legislative framework as it is at present during the central analysis, the legal overview will be given in Section 3.1. Furthermore, if the findings that emerge from the analysis are to be properly interpreted and comprehended, an overview of historical, political, and cultural contexts needs to be presented beforehand, and this will be done in Section 3.2.

As mentioned above, elaboration on the methodological framework, followed by the analysis will be done in Section 4 where the emerging findings will be interpreted in the final part of that Section. Lastly, Section 5 will provide concluding remarks and considerations of what the findings of the analysis, and the attempt at answering the question set upon above, could mean in the larger context of human rights of queer people.

1.3. Terminology

With the aims of avoiding terminological ambiguity about the terms that relate to queer people, the term meanings as they will be used throughout this paper will briefly be presented, separated in three categories for structural clarity.

The first category relates to the personal characteristics that differentiate queer people from the norm and sets them apart as a unique group which is in need of distinctive protection of human rights. These personal characteristics relate to: diversity of *sexual orientations*, different from heterosexual; diversity of *gender identities and expressions*, different from normative identities and expressions; and diversity of *sex characteristics* from binary male or female genital and/or reproductive characteristics, and/or chromosomal variations. These personal traits are collectively referred to as SOGIESC personal traits, or as SOGI personal traits, where gender expression and sex characteristics are not included.

The second category includes the terms used to refer to specific individuals possessing one or more personal traits detailed in the previous text. In relation to sexual orientation, queer persons can be *gay*, *lesbian*, *bisexual*, *asexual*, or *pansexual*, and sometimes by other terms, specific to cultural contexts. In relation to gender identity, queer persons can be *transgender* or *transsexual*, but can also have other *trans* identities that they define through self-identification. In relation to gender expression that does not conform to traditional binary differentiation of genders to men and women queer persons can be *gender neutral*, *gender fluid*, *gender queer*, or *gender non-conforming*. Lastly, in relation to possessing sex characteristics, people with such characteristics that do not conform to stereotypical (medical) definition of male or female are *intersex* persons.

The third category consists of terms that are used to refer to all persons with diverse SOGIESC personal traits, where the most commonly used are *LGBT*, *LGBTIQ*, *LGBT+*, and *queer*. Although these terms are often used interchangeably, they often do not express the same level of diversity in identities emerging from diversity of SOGIESC personal traits, and therefore can lead to uncertainty in understanding to people of which traits they

refer to. To avoid this problem, term queer will be used throughout the paper, with the exception of instances where direct reference is being made to the sources using other terms.

2. International Human Rights Standards

Ever since the introduction of human rights into the international legal system that started with the Universal Declaration of Human Rights (UDHR)¹ in 1948 by the United Nations (UN), principles of universality, interdependence, interrelation, and indivisibility which relate to all human rights have been upheld to the utmost ability of the international actors. As mentioned in the introduction, specific groups of persons have been identified as specifically vulnerable to violations and denial of human rights entitled to all, due to their personal traits or unique contexts in which they operate. Consequently, these groups are in need of a tailored protection system from heightened risk of violations of human rights, and such is the case with the protection of the rights of queer people.

In this section, the relevant IHRL that is most relevant to the geopolitical context of the State of Serbia will be assessed, with particular reference to body of norms that specifically address the issues queer people face. Accordingly, this section will cover: the UN; the Council of Europe (CoE); the European Union (EU); and the Organization for Cooperation and Security in Europe (OSCE). In addition, other important actors such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), and LGBTI Equal Rights Association for Western Balkans and Turkey (ERA) and the role they have within the IHRL will be mentioned. This assessment will be conducted with the accompanying reflections on the relation and involvement of the State of Serbia, its citizens, and civil society organizations (CSOs) to these individual bodies, in each separate segment. Finally, after the aforementioned bodies are reviewed, the last segment of this

¹ United Nations General Assembly Resolution 227 (III), 10 December 1948.

section will serve as an overview of the Yogyakarta Principles (YP)² and Yogyakarta Principles plus 10 (YP+10)³ issued by the International Commission of Jurists (ICJ), owing to the notable importance these two documents have for the rights of queer people from the perspective of international human rights standards.

2.1 United Nations

Recent developments in the UN charter and treaty based bodies' efforts to enforce Human Rights in relation to queer people have produced a solid body of protective measures against violations of Human Rights and discrimination of people with diverse SOGIESC personal traits, most notably in the last 15 years. Even in 1994, the Human Rights Committee (UNHRC) confirmed the States' obligation to protect individuals from discrimination on the basis of their sexual orientation, in the case of *Toonen v. Australia*.⁴ Similarly, the interpretation of 'other status' in anti-discrimination provisions of treaties that list the grounds on which discrimination is prohibited has been largely interpreted as to include sexual orientation and gender identity, as seen in UN Committee on Economic, Social, and Cultural Rights (CESCR) General comment No. 10 of 2009,⁵ or in some cases make specific references to gender identity, as for instance in the General comment No. 27

² International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: <https://www.refworld.org/docid/48244e602.html> (accessed: 7 July 2020).

³ International Commission of Jurists (ICJ), *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, 10 November 2017, available at: <https://www.refworld.org/docid/5c5d4e2e4.html> (accessed: 7 July 2020).

⁴ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (UNHRC), 4 April 1994.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20.

and General comment No. 28 of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) Committee of 2010.⁶

Similarly, the Human Rights Council (HRC) recognized the importance and severity of violations that queer people face throughout the world on multiple occasions, most notably in 2011 when, for the first time, the High Commissioner for Human Rights (HCHR) was requested to produce a report, documenting anti-discriminatory laws and practices in the world relating to people with diverse SOGI personal traits.⁷ This report, presented at the 19th session of the HRC, reconfirmed the universality, equality, and non-discrimination principles of Human Rights, set out the most concerning issues faced by queer people, and provided recommendations to Member States and to HRC.⁸ Furthermore, by a Resolution 32/2 adopted in 2016,⁹ HRC created the mandate for the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IESOGI), solidifying UN's efforts in protecting the rights of queer people. In 2019, the mandate of the IESOGI has been extended to three more years.¹⁰ Also in the same year, a report that would deal with discrimination of intersex persons in sport has been requested of the HCHR,¹¹ showing a continuation of HRC's efforts in addressing pressing issues related to queer people.

⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27; UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28.

⁷ UN Human Rights Council, *Human rights, sexual orientation and gender identity: resolution* / adopted by the Human Rights Council, 14 July 2011, A/HRC/RES/17/19.

⁸ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November 2011, A/HRC/19/41.

⁹ UN Human Rights Council, *Protection against violence and discrimination based on sexual orientation and gender identity: resolution* / adopted by the Human Rights Council, 15 July 2016, A/HRC/RES/32/2.

¹⁰ UN Human Rights Council, *Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, 12 July 2019, A/HRC/RES/41/18.

¹¹ UN Human Rights Council, *Elimination of discrimination against women and girls in sport*, 21 March 2019, A/HRC/RES/40/05.

Another important procedure that is utilized in the efforts of the UN to improve the enjoyment of queer people is the Universal Periodic Review (UPR), in which Member States are reviewed on the state of fulfilling their obligations in regards to Human Rights, and given recommendations by other Member States for the improvement of their efforts.¹² The importance of this mechanism for the rights of queer people can be seen in the increase of recommendations in regards to sexual orientation and gender identity from the First Cycle (n=502) to the Second Cycle (n=958), and the increase in the number of these recommendations that were supported in the First Cycle (n=182, 36% of the total) and the Second Cycle (n=346, 36.1%), although the ratio of total recommendations and supported recommendations remained the same.¹³

In regards to the State of Serbia as a Member State of the UN, most of the major UN Human Rights treaties are in effect, due to their ratification status.¹⁴ Owing to this, the State of Serbia is under the obligation to respect, promote, and fulfill all Human Rights standards, including those relating to queer people, set forth by UN and its mechanisms, as well as to regularly submit reports to the UN treaty monitoring bodies. Moreover, citizens of Serbia are entitled to file individual complaints to all UN Committees, except CECSR

¹² More information available at: OHCHR, *Basic facts about the UPR*, <https://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> (accessed: 21 July 2020).

¹³ This information is arrived at by the analysis from data available at: [https://upr-info-database.uwazi.io/en/library/?q=\(allAggregations:!f,from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,unpublished:!f\)](https://upr-info-database.uwazi.io/en/library/?q=(allAggregations:!f,from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,unpublished:!f))

¹⁴ Serbia has ratified: The International Covenant on Civil and Political Rights, and two protocols to the Covenant; International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Elimination of Discrimination against Women and Protocol to this Convention; the Convention on the Rights of the Child and two protocols thereto (on the participation of children in armed conflict and the sale of children, child prostitution and child pornography); the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol thereto; the Convention on the Rights of the Persons with Disabilities, and the Protocol to this Convention; and the Convention for the Protection of All Persons from Enforced Disappearance, with the exception of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, to which it is signatory; More information available at: OHCHR, *Ratification Status for Serbia*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN (accessed: 21 July 2020).

and Committee on the Rights of the Child (CRC), seeing as the State of Serbia has not ratified the appropriate Protocols to these Conventions.¹⁵

Furthermore, the State of Serbia is a part of the UPR process. During the last cycle (Cycle 2, 2013-2016), Serbia received 14 recommendations specifically relating to sexual orientation and gender identity, all of which were supported, and 9 such recommendations during the current cycle (Cycle 3, 2017-2021), which were all supported as well. This marked an improvement compared to the first cycle (Cycle 1, 2008-2012), in which 2 recommendations received in relation to sexual orientation and gender identity were only noted.¹⁶

2.2 Council of Europe

Even more so than the UN, the CoE has been devoted to solidifying the protective system in regards to queer people in the recent past. The most important Human Rights agreements to which all Member States are obligated, the *European Convention for the protection of Human Rights and Fundamental Freedoms* (ECHR),¹⁷ and the *European Social Charter* (ESC)¹⁸ are both understood to cover the protection of the rights of queer people, as reinforced by the *Recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity* by the CoE Committee of Ministers of

¹⁵ Beogradski centar za ljudska prava, *Ljudska prava u Srbiji 2019: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2020, p. 31, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2019.pdf> (accessed: 25 Jul 2020).

¹⁶ This information is available at: UPR Info, [https://upr-info-database.uwazi.io/en/library/?q=\(allAggregations:!f,filters:\(issues:\(values:!\(%276e415998-2b91-42a8-94a5-a21859de6cdd%27\)\),state_under_review:\(values:!\(ixiq18ibzas\)\)\),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:!\(%275d8ce04361cde0408222e9a8%27\),unpublished:!f\)](https://upr-info-database.uwazi.io/en/library/?q=(allAggregations:!f,filters:(issues:(values:!(%276e415998-2b91-42a8-94a5-a21859de6cdd%27)),state_under_review:(values:!(ixiq18ibzas))),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:!(%275d8ce04361cde0408222e9a8%27),unpublished:!f)) (accessed: 25 Jul 2020).

¹⁷ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

¹⁸ Council of Europe, *European Social Charter*, 18 October 1961, ETS 35.

2010,¹⁹ which prompted the Parliamentary Assembly of the CoE (PACE) to adopt a Resolution,²⁰ as well as a set of recommendations²¹ in regards to discrimination on the basis of sexual orientation and gender identity, in the same year. Similar recommendations have been issued by the CoE Parliamentary Assembly as early as 1981 in regards to homosexuals,²² and 1989 in regards to transsexuals.²³ In addition to this, the rulings of the European Court for Human Rights (ECtHR) have produced an extensive body of case law regulating issues of importance to the respect of rights of people with diverse SOGIESC personal traits.²⁴ Given that all Member States of the CoE are under obligation to implement the judgments of the ECtHR into domestic legislation, this serves as paramount source of protection for rights of queer people.

The efforts of the CoE are also reflected in the workings of the Commissioner for Human Rights (CHR) such are the recent Issue Paper on intersex people,²⁵ or reports with a country specific approach,²⁶ serving as a valuable set of information of issues, standards, and recommendations, to which any State or other actor can refer to in aims of improving the status of queer people. Reports such as these, in combination with the legislative provisions of CoE, and relevant case law of the ECtHR that set out the standards of IHRL will be extensively referred to when the State of Serbia's efforts in providing for the rights of queer people is examined.

¹⁹ Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010, CM/Rec(2010)5.

²⁰ Council of Europe: PACE, *Discrimination on the basis of sexual orientation and gender identity*, 29 April 2010, Resolution 1728.

²¹ Council of Europe: PACE, *Discrimination on the basis of sexual orientation and gender identity*, 29 April 2010, Recommendation 1915.

²² Council of Europe: PACE, *Discrimination against homosexuals*, 1 October 1981, Recommendation 924.

²³ Council of Europe: PACE, *Condition of transsexuals*, 29 September 1989, Recommendation 1117.

²⁴ Council of Europe: ECtHR, *Factsheet - Sexual orientation issues*, July 2020, available at: https://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf (accessed: 27 Jul 2020); Council of Europe: ECtHR, *Factsheet - Gender Identity Issues*, July 2020, available at: https://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf (accessed: 27 Jul 2020);

²⁵ Council of Europe: Commissioner for Human Rights, *Human Rights and Intersex People: Issue Paper*, Strasbourg, Commissioner for Human Rights, May 2015.

²⁶ Council of Europe: Commissioner for Human Rights, *Discrimination on grounds of sexual orientation and gender identity in Europe 2nd edition*, Strasbourg, Commissioner for Human Rights, November 2014.

Lastly, it is important to note that, the State of Serbia, since becoming a Member State of CoE in April of 2004, has ratified 83 and signed 8 of the CoE treaties, with most important of which being the previously mentioned ESC, revised version of which Serbia ratified in 2009,²⁷ and ECHR in 2004, upon accession as the State Union of Serbia and Montenegro.²⁸ Additionally, Serbian citizens are not entitled to file collective complaints to the European Committee of Social Rights (ECSC), due to the lack of agreement to such complaints.²⁹ However, Serbian nationals are able to file applications with the ECtHR.³⁰

2.3 European Union

The legal framework of the EU regarding the rights of queer people is in most parts attuned to the specific issues people with a variety in SOGIESC personal traits face. However, the regulations of some specific issues differ greatly from one Member State to the other, including regulations on same-sex marriage and civil unions, same-sex couple adoption, and regulations on legal gender recognition, as do the general attitudes of the general population of Member States towards discrimination and unequal treatment of the people with variety of SOGIESC personal traits.³¹ Nevertheless, the guiding EU documents make explicit the protection against discrimination on basis of sexual orientation. In this regard, the Treaty on the Functioning of the European Union (TFEU)³² specifically includes sexual orientation in Article 10 and Article 19 as personal traits protected against discrimination,³³ and the Charter on Fundamental Rights of the European Union (CFR)³⁴ in

²⁷ Međunarodni ugovori, Službeni glasnik RS, br. 19/2009.

²⁸ More information available at: Council of Europe, *Statistics on signatures and ratifications : Serbia*, <https://www.coe.int/en/web/conventions/search-on-states/-/conventions/chartStats/SAM> (accessed: 27 Jul 2020).

²⁹ Beogradski centar za ljudska prava, 2020, p. 33.

³⁰ *Ibid.*, p. 34.

³¹ R. Shreeves, *The rights of LGBTI people in the European Union*, European Union, European Parliamentary Research Service, 2019.

³² European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01, available at: <https://www.refworld.org/docid/4b179f222.html> (accessed: 30 July 2020).

³³ *Ibid.*, Article 10 and Article 19.

Article 21 lists sexual orientation as well³⁵ which, under the Lisbon Treaty of 2009,³⁶ is the first international legally binding human rights Charter to specifically provide protection against discrimination on the basis of sexual orientation.³⁷

In addition to these guiding EU documents, the Council of the European Union (the Council, hereof) issued a Directive in 2000 dealing with employment equality³⁸ which included sexual orientation as protected grounds, adopted guidelines to promote and protect the enjoyment of all human rights LGBTI persons in 2013,³⁹ as well as a directive with the European Parliament (EP) establishing minimum standards on the rights, support and protection of victims of crime, including all SOGIESC personal traits in the list of protected grounds.⁴⁰ However, some of the further advancements in the protection of discrimination based on SOGIESC personal traits have been blocked by the Council, such as the Proposal to extend the prohibition of discrimination on the grounds of religion or belief, disability, age or sexual orientation to the fields of social protection⁴¹ has been blocked by the Council

³⁴ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <https://www.refworld.org/docid/3ae6b3b70.html> (accessed: 30 July 2020).

³⁵ *Ibid.*, Article 21.

³⁶ Official Journal of the European Union, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007, p. 1–271, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596124406317&uri=CELEX:12007L/TXT> (accessed: 30 July 2020).

³⁷ R. Shreeves, 2019, p. 3.

³⁸ Official Journal of the European Union, *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, OJ L 303, 2.12.2000, p. 16–22, available at: <https://eur-lex.europa.eu/eli/dir/2000/78/oj> (accessed: 30 July 2020).

³⁹ Council of the European Union, *Draft Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) Persons*, Brussels, 13 June 2013, 11153/13, available at: <https://data.consilium.europa.eu/doc/document/ST-11153-2013-INIT/en/pdf> (accessed: 30 July 2020).

⁴⁰ Official Journal of the European Union, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, OJ L 315, 14.11.2012, p. 57–73, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596126064740&uri=CELEX:32012L0029> (accessed: 30 July 2020).

⁴¹ European Parliament, *Briefing Note: Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, Brussels, European Parliament, 2009, PE 410.670.

since 2009.⁴² Adding to this, the case law of the Court of Justice of the European Union (CJEU) provides protection against discrimination, mostly on the grounds of sexual orientation, and in some cases against discrimination due to ‘gender reassignment’ understanding it as discrimination based on gender, including trans persons who underwent surgical procedures, but not other trans states.⁴³ Similarly, individual Member States sometimes include cases of transphobia in Court decisions as cases of discrimination based on gender, and some consider it discrimination based on sex, while others do not consider it at all⁴⁴ leaving the legal protection of trans persons in the EU inconsistent and non-standardized.

As supposed to this, the EP has had a paramount impact in the furthering the protection of queer people in the EU, and in regards to setting the international human rights protective standards, most notably with its Resolution of 14 March 2017 on equality between women and men in the European Union in 2014-2015⁴⁵, and the Resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024)⁴⁶ for their identification of harmful practices towards queer people in the EU of all SOGIESC differences. With these resolutions, the European Commission (EC) have been called “to revise the current EU Framework Decision ... in order to include ... incitement to hatred on grounds of sexual orientation, gender identity and sex characteristics”,⁴⁷ and to “ensure that LGBTI rights are given priority in its work programme for 2019-2024”,⁴⁸ as well as Member States “to include the grounds of gender identity and sex characteristics within

⁴² European Parliament, ‘Anti-discrimination Directive’, [web page] available at: <https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-anti-discrimination-directive> (accessed: 30 July 2020).

⁴³ R. Shreeves, 2019, p. 4.

⁴⁴ *Ibid.*, p. 4.

⁴⁵ Official Journal of the European Union, *European Parliament resolution of 14 March 2017 on equality between women and men in the European Union in 2014-2015 (2016/2249(INI))*, OJ C 263, 25 July 2018, p. 49–63, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596205069594&uri=CELEX:52017IP0073> (accessed: 30 July 2020).

⁴⁶ European Parliament, *European Parliament resolution on the future of the LGBTI List of Actions (2019-2024) (2019/2573(RSP))*, 14 February 2019, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0129_EN.pdf (accessed: 30 July 2020).

⁴⁷ Official Journal of the European Union, 2017, Para. 38.

⁴⁸ European Parliament, 2019, Para. 3.

their gender equality legislation when implementing EU gender equality directives”,⁴⁹ but also remind that “8 Member States require sterilisation and 18 Member States require a mental health diagnosis in order to access legal gender recognition”.⁵⁰ Taking into account that it is still unclear whether intersex people are implicitly protected by the EU’s anti-discriminatory legal framework,⁵¹ but also the fact that legal protection of intersex and trans persons is underdeveloped in the frameworks of the UN and CoE as well, the efforts of the EP can be considered as exemplary when it comes to the identification of persistent and contemporary issues regarding the protection of human rights of queer people.

In regards to Serbia, the legal framework of the EU does not directly apply to this State, as it is not still a Member State. However, because of Serbia’s status as a Candidate State, which was acquired in March of 2012,⁵² it has incentives to adjust its national law in accordance with the EU law, as well as to accommodate with the standards set by the Union, including those of enjoyment of the human rights of queer people. Moreover, the State of Serbia is under scrutiny during the reporting and assessment processes, as for example in the EC’s State Reports within the EU Enlargement Policy⁵³. Similarly, Serbia was included in the European Union Fundamental Rights Agency’s (FRA) survey on the equality of LGBTI persons,⁵⁴ largest of its kind, due to its status as a Candidate State. This survey showed that, even though there is “*a long way to go for LGBTI equality*”, as the title suggests, Serbia is behind the EU standards in respect to almost all questions of equality of queer people. Reports and studies like these will be considered in more depth in the

⁴⁹ Official Journal of the European Union, 2017, Para. 40.

⁵⁰ European Parliament, 2019, Para. 11.

⁵¹ R. Shreeves, 2019, p. 4.

⁵² For more information, see: Ministry of Foreign Affairs of Republic of Serbia, ‘*Chronology of relations between the Republic of Serbia and the European Union*’, [web page] available at: <http://www.mfa.gov.rs/en/foreign-policy/eu/political-relations-between-the-republic-of-serbia-and-the-european-union/12452-chronology-of-relations-between-the-republic-of-serbia-and-the-european-union> (accessed: 30 July 2020).

⁵³ European Commission, *Commission Staff Working Document: Serbia 2019 Report*, Brussels, European Commission, 2019, COM (2019) 260 final.

⁵⁴ European Union Agency for Fundamental Rights, *EU-LGBTI II: A long way to go for LGBTI equality*, Luxembourg, Publications Office of the European Union, 2020, available at: <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results> (accessed: 30 July 2020).

analytical part of this paper, when Serbia's overall compliance with international standards, including those of the EU, in relation to the rights of queer people, is considered.

2.4 OSCE

The OSCE, as the inter-governmental organization (IGO) which counts 57 participating States enjoying equal status that make decisions by consensus on a political, rather than legally binding basis, with the scope of its activities focused on Europe, has its significance for being the first regional security organization to include human dimension in its mandate.⁵⁵ With initiatives from participating states, such is the COC Netherlands intervention in 2007,⁵⁶ and overall decisions, such is the Decision of the Ministerial Council of the OSCE in 2009 that acknowledging the severity of hate crimes as criminal offences,⁵⁷ advanced the protective system for the victims of violence and discrimination, including that conducted on the basis of prejudice and hatred towards people of diverse SOGIESC personal traits. In this regard, of significance is the Office for Democratic Institutions and Human Rights (ODIHR), for their extensive work on legislative protection and records keeping of hate crimes and initiative to collect reports from participating States and relevant CSOs on hate incited crimes.⁵⁸

⁵⁵ For more information, see: OSCE, '*Who we are*', [web page], available at: <https://www.osce.org/whatistheosce> (accessed: 30 July 2020); and for its significance to the rights of queer people, see: ILGA-Europe, '*OSCE and LGBT rights*', [web page], available at: <https://www.ilga-europe.org/resources/guide-european-institutions/osce/lgbti-rights> (accessed: 30 July 2020).

⁵⁶ Cultuur en Ontspannings Centrum (C.O.C.), *Intervention on the "Equal recognition and treatment of LGBT people within OSCE programs"*, Warsaw, Organization for Security and Co-operation in Europe, 25 September 2007, available at: <https://www.osce.org/files/f/documents/4/4/27041.pdf> (accessed: 1 August 2020).

⁵⁷ OSCE Ministerial Council, *Decision No. 9/09 on combating hate crimes*, Athens, Organization for Security and Co-operation in Europe, 4 December 2009, available at: <https://www.osce.org/files/f/documents/d/9/40695.pdf> (accessed: 1 August 2020).

⁵⁸ For more information, see: OSCE, '*OSCE Office for Democratic Institutions and Human Rights*', [web page], available at: <https://www.osce.org/odihr> (accessed: 1 August 2020).

The State of Serbia, as one of the participating States, but also by hosting the OSCE Mission to Serbia,⁵⁹ has had valuable contributions from this organization in regards to regulating hate crimes and implementing such legislations, and by that improving the protective system of the State in relation to queer people as well. These contributions are reflected in the reports, which include the analysis of impacts of security sector reforms on LGBT people from 2011⁶⁰ and 2016,⁶¹ as well as with compiling guidelines for prosecution of hate crimes in Serbia, in 2018,⁶² and continuous capacity building efforts for Serbian Government institutions and CSOs. Moreover, the OSCE took active part in assessing the Law on Prohibition of Discrimination⁶³ during its draft version.⁶⁴

The aforementioned documents will be utilized when the legal and social frameworks of Serbia, as they relate to queer people, are presented in Section 3 of this paper. In addition to this, the OSCE standards will be used when Serbia's compliance to international standards are assessed in Section 4, mostly in regards to regulation of hate crimes, and general efforts for providing for safety and security of queer people within the State.

⁵⁹ For more information, see: OSCE, 'OSCE Mission to Serbia', [web page], available at: <https://www.osce.org/mission-to-serbia> (accessed: 1 August 2020).

⁶⁰ S. Đurđević-Lukić (ed.), *LGBT PEOPLE AND SECURITY SECTOR REFORM in the Republic of Serbia*, Belgrade, Organization for Security and Cooperation in Europe OSCE Mission in Serbia, 2011, available at: <http://www.publicpolicy.rs/publikacije/cddd7a3f395d923e21a917e70d457cb32ce539c9.pdf> (accessed: 1 August 2020).

⁶¹ S. Đurđević-Lukić and T. Jakobi (eds.), *HOW DOES THE SECURITY SECTOR REFORM AFFECT HUMAN SECURITY IN SERBIA: Reassessing the Impact of Security Sector Reform on LGBT People*, Beograd, Organization for Security and Co-operation in Europe, Mission to Serbia Public Policy Research Centre, 2016, available at: <https://www.osce.org/files/f/documents/5/0/292036.pdf> (accessed 1 August 2020).

⁶² T. Mirović, J. Kiurski, M. Antonijević, J. Jokanović, *Smernice za krivično gonjenje ZLOČINA IZ MRŽNJE u Republici Srbiji*, Beograd, Organizacija za evropsku bezbednost i saradnju Misija u Srbiji, 2018.

⁶³ Zakon o zabrani diskriminacije, Službeni glasnik RS, br. 22/2009.

⁶⁴ OSCE, *OSCE/ODIHR Comments on the Draft Law on Prohibition of Discrimination Law of the Republic of Serbia*, Warsaw, Organization for Security and Co-operation in Europe, 19 March 2009, available at: https://www.legislationline.org/download/id/2682/file/Comments%20on%20draft%20law%20on%20prohibition%20of%20discrimination_19March09.pdf (accessed: 1 August 2020).

2.5 Other Stakeholders

Besides the international and regional bodies described in previous segments, other stakeholders have had an important part in promoting for and showing efforts in improving the status of queer people in Serbian society and by that allowing for the reduction of human rights violations this group experiences, and in turn ensuring that the State of Serbia continuously takes effort in complying with the IHRL standards in relation to the rights of queer people. These actors include: international and regional organizations, such as ILGA and ERA; as well as national CSOs that deal with human rights issues, such as Belgrade Center for Human Rights (BCHR) and Youth Initiative for Human Rights (YiHR), as well as NGOs that specifically deal with different aspects of queer people's lives, such as Labris, Geten, Association Duga, XY Spectrum, Belgrade Pride, and the Association Da se Zna! (DSZ), which have been the most important force of change in Serbia in regards to the rights of queer people during the last three decades, as will be apparent in the later Sections of this paper.

These civil society actors with individual initiatives, but also by working together in joint forces, often mutually supported in cooperation, and funded by institutions, and international organizations, are involved in a wide variety of actions and activities that include the organization of Belgrade Pride Parade, awareness raising campaigns, advocacy for State protection, informing and reporting to higher instances of international bodies, and often providing legal and psychological support to queer victims of violence and abuse, all of which greatly impacts the position of queer people and levels to the respect of their rights. Some of these efforts and activities will be mentioned, in Section 3 of this paper, when legal and cultural framework of the State of Serbia in relation to queer people is presented.

2.6 Yogyakarta Principles

The YP and YP+10 documents draw their provisions from, and depend on, the existing body of standards in relation to IHRL. Because of the importance that these two documents have in facilitating the application of these standards, making specific reference to basic human rights in the context of the SOGIESC characteristics, and because they provide recommendations, not only to States, but to those international actors who determine and compile the body of IHRL as well on how best to approach the human rights issues of queer people, they will be assessed in detail, after the set of IHRL standards of individual organizations in relation to queer people has been reviewed in the text above.

The first YP document is a broad and extensive set of principles and recommendations relating to SOGI personal characteristics from 2007, tailored for a wide range of social contexts and stages of respect for queer rights,⁶⁵ referring to the body of IHRL that was relevant at the time, and it was created as a combined effort of the ICJ and the International Service for Human Rights (ISHR).⁶⁶ Recognizing the extent and omnipresence of the discrimination, prejudice, violence, exclusion, stigmatization, and harassment of the people based on their SOGI characteristics, the document refers to: rights to universal enjoyment of human rights, non-discrimination and recognition before the law (Principles 1-3); rights to liberty and personal security (Principles 4-11); economic, social and cultural rights (Principles 12-18); rights to expression, opinion and association (Principles 19-21); freedom of movement and asylum (Principles 22-23); rights of participation in cultural and family life (Principles 24-26); rights of human rights defenders (Principle 27); rights of redress and accountability (Principles 28-29); but also establishes

⁶⁵ As an example of the wide range of difference queer rights can be respected in different States even today, see: ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019: Global Legislation Overview Update*, Geneva, ILGA, 2019, available at: https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2019.pdf (accessed 1 August 2020).

⁶⁶ International Commission of Jurists (ICJ), 2007, p. 6-7.

16 additional recommendations to international and national human rights institutions, UN treaty bodies, their agencies and special procedures, as well as to other stakeholders.⁶⁷

Each of these principles contains a number of obligations that should be applied by all States, and should follow, if they are to uphold any given principle. Some of those obligations are of a general nature, as is, for example, obligation D. of the Principle 2 of the Right to equality and non-discrimination, which reads:

*“ [States shall] ...take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory”*⁶⁸

while other obligations are concrete, measurable, and directly call for action, as is the obligation E. of the Principle 6 of the Right to privacy, which states that:

*„[States shall] ...release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity”*⁶⁹

Additional 16 recommendations, as was mentioned before, directly address stakeholders other than States, most of them giving directives at which areas of their jurisdiction these Principles could be best applied⁷⁰.

A supplementary document to YP, the YP+10, issued ten years after the original 29 Principles were established, recalls that it was previously recognized that aforementioned Principles are to be revised and leveled with the emerging IHRL standards,

⁶⁷ *Ibid.*, p. 10-33.

⁶⁸ *Ibid.*, p. 11.

⁶⁹ *Ibid.*, p. 14.

⁷⁰ *Ibid.*, p. 32-33.

if they are to be adapted to contemporary social contexts and lived experiences of queer people. Hence, the additional 10 Principles were formulated, and the previous Principles were enriched with a total of 56 new State obligations, and 2 additional Recommendations.⁷¹ Most notably, referring to gender expression and sex characteristics as personal characteristics that serve as a basis for heightened risk of human rights issues, stressing that also the previously established Principles apply to violations on these bases,⁷² the YP+10 further acknowledged that people with different SOGIESC characteristics face specific issues and require specific protection.⁷³

Furthermore, YP+10 expanded the set of Principles to correspond to the expansion of IHRL norms and global context, such are the Principles 34-38 that address the right to protection from poverty, the right to sanitation, the right to the enjoyment of human rights in relation to information and communication technologies, the right to truth, and the right to practice, protect, preserve and receive cultural diversity.⁷⁴ With such extensions, these two documents serve as the most comprehensive guide to States and other stakeholders in relation to the respect, protection, and fulfillment of human rights related to queer people.

Lastly, it is worth noting that YP and YP+10 as such are not legally binding documents. As is sometimes the case with international agreements and efforts, it is up to the will of the political powers of individual States whether they are to uphold such provisions. Nevertheless, as these two documents are referring to the rights otherwise provided for in other international legal documents that States in fact are legally obligated to respect, when considering such obligations that the State of Serbia has towards its citizens of queer personal characteristics, these two documents will be utilized as a frameworks for the assessment of these obligations. Because of this meticulous division of rights into principles, and because of the identification of specific State obligations that are incorporated within each principle, using them as guidelines for the comparative analysis

⁷¹ International Commission of Jurists (ICJ), 2017.

⁷² *Ibid.*, p. 4-5.

⁷³ *Ibid.*, p. 7.

⁷⁴ *Ibid.*, p. 12-17.

that is central to this paper, and will be done within Section 5, will result in findings that are of detailed and comprehensive nature.

3. Queer People in the State of Serbia

Before any consideration of the levels of compliance the State of Serbia has achieved regarding the IHRL standards in relation to the rights of queer people is possible, the overview of the historical, social, cultural, and political contexts relevant to this question need to be presented. Similarly, the legal framework within which queer citizens of Serbia operate, in the sense of the laws and regulations that already exist that serve to protect their rights, should to be examined, coupled with the inquiry of the practical application and utilization of that framework, and this will be the focus of the present Section.

3.1. Legal Framework

What follows is the analysis of the current legal protective system of the State of Serbia, coupled with the reflection on the practice and adequacy of its application. This will serve as the starting ground for the attempt in answering the central question of this paper, namely the extent to which the State of Serbia complies with the IHRL standards in regard to the rights of queer people. Considering that the comprehensive comparative analysis will be done further in the text, only the existing legal components will be scrutinized here, and their strengths and shortcomings outlined, without the reflection on the laws that should exist as a part of Serbia's legal system, if the said standards are to be achieved.

3.1.1. The Constitution

The highest legal authority, the Constitution of the Republic of Serbia,⁷⁵ prohibits any form of discrimination, regardless of any and all personal characteristics, guarantees equal recognition before the law without discrimination, and confirms that before the Constitution and the law, all are equal.⁷⁶ Although SOGIESC differences are not explicitly listed as potential basis of discrimination, as are, for example, race, religion, culture, or language, sexual orientation is understood to be covered as protected grounds by the Constitution, as reflected in the Constitutional Court of Serbia (CCS) decision Už – 1918/2009 of 2011.⁷⁷ Furthermore, the Constitution recognizes the authority of the (ratified) IHRL standards in the Article 18 paragraph 2, which states that:

*“The Constitution guarantees, and as such, directly applies, human and minority rights guaranteed by generally accepted rules of international law, ratified by international treaties and laws. The law may prescribe the manner of exercising these rights only if it is explicitly provided by the Constitution or if it is necessary for the exercise of a particular right due to its nature, whereby the law must not in any case affect the essence of the guaranteed right.”*⁷⁸

This Article not only obligates the State to apply these standards, but places them above individual laws in the hierarchy of legal authority of the State. Additionally, in the paragraph 3 of the Article 18, the authority of the international institutions that oversee the implementation of human and minority rights is recognized, and it is stated that provisions, which are to be interpreted in favor of advancing the values of democratic society, should be in accordance to the norms and practices established by these institutions.⁷⁹ As a consequence of this Article, the obligations that the State of Serbia has from the ratified

⁷⁵ Ustav Republike Srbije, Službeni glasnik RS, br. 98/2006.

⁷⁶ *Ibid.*, Article 21.

⁷⁷ Odluka o usvajanju, Už 1918/2009, Službeni glasnik RS, br. 8/2012.

⁷⁸ *Ibid.*, Article 18, para. 2. Translation provided by the author of this paper.

⁷⁹ *Ibid.*, Article 18, para. 2.

international agreements dealing with human and minority rights are further strengthened by its Constitution.

Having reflected upon the body of IHRL the State of Serbia is bound by in Section 2, the next step to be taken, when searching for legislations that are a part of a protective system for queer people, would be to consider individual national laws, the most important ones being the Law on Prohibition of Discrimination,⁸⁰ the Law on Gender Equality,⁸¹ other laws that have specific fields of regulation but contain one or more anti-discriminatory clause, and the Criminal Code⁸² which established the criminal act category of *hate crimes* in 2012.⁸³

3.1.2. The Law on Prohibition of Discrimination

The Law on Prohibition of Discrimination, besides regulating the general prohibition of discrimination, distinguishes different forms and potential instances of unequal treatment and, more importantly, establishes specific procedures for the protection against discrimination. This Law specifically prohibits any discrimination based on sexual orientation in the Article 21, stating that this personal characteristic is '*a matter of privacy*', and that while no person can be called upon to publicly declare their sexual orientation, any person has the right to do so.⁸⁴ Furthermore, this Law includes '*sex change*' as a basis on which no person can be denied of their rights, in the Article 20, which specifically regulates discrimination based on sex.⁸⁵ Although using outdated vocabulary, this provision remains one of the few instances where transgender people are specifically recognised, albeit only those who underwent the sex confirmation surgical procedures.

⁸⁰ Zakon o zabrani diskriminacije, 2009.

⁸¹ Zakon o ravnopravnosti polova, Službeni glasnik RS, br. 104/2009.

⁸² Krivični zakonik, Službeni glasnik RS, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

⁸³ *Ibid.*, Article 54a.

⁸⁴ Zakon o zabrani diskriminacije, 2009, Article 21.

⁸⁵ *Ibid.*, Article 20.

Special importance for this paper's context are Article 5 which includes 'hates speech' as a form of discrimination,⁸⁶ and Article 11 that defines hates speech more closely, identifying it as:

„...expressing ideas, information and opinions that encourage discrimination, hatred or violence against a person or group of persons due to their personal traits, in public media and other publications, at gatherings and places accessible to the public, by writing and displaying messages or symbols, or otherwise.“⁸⁷

Similarly important is the Article 13, where 'severe forms of discrimination' are identified, which include: provoking and encouraging inequality; hatred and intolerance on the basis of sexual orientation; but also on the basis of gender identity; as well as other personal characteristics; discrimination conducted by, or in the proceedings in front of, public authorities; slavery, human trafficking, apartheid, genocide, ethnic cleansing and their propaganda; discrimination of persons on the basis of two or more personal characteristics (intersectional discrimination); discrimination that has been committed repeatedly, or over a prolonged period of time; discrimination that leads to severe consequences; and promotion of discrimination through the media.⁸⁸

In addition to this, the Law on Prohibition of Discrimination establishes an independent body of the Commissioner for the Protection of Equality (Commissioner, hereafter), who is authorised to receive complaints from citizens; issue opinions and measures to be taken in order for discriminatory practices to be terminated; issue warnings if such measures are ignored; inform the public about the most frequent or most severe instances of discrimination; give recommendations to government bodies and institutions; but also to file misdemeanor charges for violation of the rights regulated by this law.⁸⁹ The

⁸⁶ *Ibid.*, Article 5.

⁸⁷ *Ibid.*, Article 13. Translation provided by the author of this paper.

⁸⁸ *Ibid.*, Article 13.

⁸⁹ *Ibid.*, Articles 28-34.

Commissioner serves as a mediatory point between the citizens and the law, and as such contributes to the efforts of achieving equality for queer people in Serbia. Additionally, the Commissioner maintains cooperation with international actors, including UN agencies, OSCE, and independent bodies of CoE, with aims of assimilating international standards of equality protection within the Serbian legal system.⁹⁰

Besides the Law on Prohibition of Discrimination, which has a general application, there are four anti-discrimination laws with a specific application, one of which is the Law on Gender Equality of 2009.⁹¹ In addition to these, there exists a number of other laws with one or more anti-discrimination provisions, sixteen of which have a noteworthy significance in establishing the legal protection against discrimination.⁹² What follows is the assessment of these legal instruments.

3.1.3. The Law on Gender Equality

In regards to the adequacy of the protection against discrimination for queer people the Law on Gender Equality provides, important are the following provisions. This law regulates, as Article 1 states:

*„...the creation of equal opportunities for exercising rights and obligations,
the acts of taking special measures to prevent and eliminate discrimination*

⁹⁰ Poverenik za zaštitu ravnopravnosti, *Skraceni redovan godišnji izveštaj poverenika za zaštitu ravnopravnosti za 2019. godinu*, Beograd, Poverenik za zaštitu ravnopravnosti, 2020, p. 83-86, available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/05/Poverenik-skraceni-redovni-godisnji-izvestaj-2019-za-sajt.pdf> (accessed: 26 July 2020).

⁹¹ Zakon o ravnopravnosti polova, Službeni glasnik RS, br. 104/2009;

The other three being: *Law on Protection of Freedoms and Rights of National Minorities*, Službeni list SRJ, br. 11/2002, Službeni list SCG, br. 1/2003 - Ustavna povelja i Službeni glasnik RS, br. 72/2009 - dr. zakon, 97/2013 - odluka US i 47/2018; *Law on Prevention of Discrimination against Persons with Disabilities*, Službeni glasnik RS, br. 33/2006, 13/2016.; and *Law on Professional Rehabilitation and Employment of Persons with Disabilities*, Službeni glasnik RS, br. 36/2009, 32/2013.

⁹² B. Janković and I. Krstić, *Priručnik za sprovođenje antidiskriminacionih propisa: kako prepoznati slučajeve diskriminacije pred organima javne vlasti*, Beograd, Poverenik za zaštitu ravnopravnosti, 2018, p. 32-40.

based on sex and gender, and the procedure of legal protection of persons exposed to discrimination. “⁹³

Next, Article 10 provides definitions of sex and gender, noting that sex refers to

„...biological characteristics of a person“

whereas gender denotes:

„...socially established roles, as well as positions and statuses of women and men in public and private life, and from which, due to social, cultural and historical differences, discrimination based on biologically belonging to certain sex arises. “⁹⁴

Taking into account these two Articles, it is crucial to note that the title of this law in Serbian language uses the word for sex, although it is officially translated as the Law on Gender Equality.⁹⁵ Furthermore, after establishing this terminological difference in Article 10, it continues to refer to sex throughout the text, with no single mention of gender, other than in the two Articles mentioned above⁹⁶ and the reasons for this are evident from the outlined definition, which omits the deeply felt personal identifications with a certain gender, and disables self-determination by depending on the socially, culturally, and historically determined differences. As such, the recognition of persons whose gender does not match their sex assigned at birth (trans persons) is absent, due to a presumption of the correlation between the biological sex and the socially established (gender) roles. Absent is also the recognition of persons whose biological characteristics do not clearly belong to one of the two socially constructed categories of sex, and consequently, intersex persons fall outside the scope of its application. Due to these limitations, this law, besides being

⁹³ Službeni glasnik RS, br. 104/2009, Article 1. Translation provided by the author of this paper.

⁹⁴ *Ibid.*, Article 10. Translation provided by the author of this paper.

⁹⁵ Pravno Informacioni Sistem Republike Srbije, *Legal Acts in English*, [website] <http://www.propisi.pravno-informacioni-sistem.rs/?lang=en> (accessed: 16 July 2020).

⁹⁶ In Serbian, the word *pol* is used to denote sex, while the word *rod* is used to denote gender.

theoretically and practically outdated, fails to provide adequate protection for all persons who suffer discrimination, either based on their gender, or based on their sex.

Reflecting upon the Law on Gender Equality in the context of the research question of this paper, important is also Paragraph 2 of the Article 2 which states that:

„ ...gender equality is guaranteed, in accordance with the generally accepted rules of international law, ratified international treaties, the Constitution and laws. “⁹⁷

To what extent this Law is in accordance with the generally accepted rules of IHRL and relevant ratified international treaties will be reviewed in the final chapters of this paper, when the general compliance of the State of Serbia with IHRL standards in relation to queer people is analysed. Noting that there are other laws with one or more anti-discriminatory provisions, what follows is the assessment of their ability to provide for and protect the rights of queer people in Serbia.

3.1.4. Anti-discriminatory Provisions in Other Laws

It is the case of that most of the laws that regulate discriminatory acts that are based on personal characteristics list those characteristics, after which the phrase ‘*and other*’ is added. As we have seen in the previous section, the UDHR and the Constitution of Republic of Serbia, as well as many international agreements, are interpreted in such a way that SOGIESC personal traits are understood as ‘*other bases*’ on which discrimination is prohibited.⁹⁸ Nevertheless, the sophistication of legal provisions sanctioning discrimination is reflected by the clarity and unequivocal nature of their formulations, as well as by the independence from other legal interpretative instruments. In that sense, the laws that explicitly include SOGIESC differences in the list of personal characteristics on which

⁹⁷ Službeni glasnik RS, br. 104/2009, Article 2(2). Translation provided by the author of this paper.

⁹⁸ See: Section 2.

basis discrimination is prohibited, and subsequently do not rely on case laws and additional guidelines, are considered to be more adequate in serving as a protective measure of the rights of queer people.

Out of the other laws that contain one or more anti-discriminatory provisions, which regulate either specific parts of the population or specific spheres of public life, the Commissioner highlights sixteen such laws⁹⁹ as particularly important in combating discriminatory practices.¹⁰⁰ Below is the chart showing the number of these laws highlighted by the Commissioner, separated by a way in which they relate to SOGIESC personal properties in their anti-discriminatory provisions.

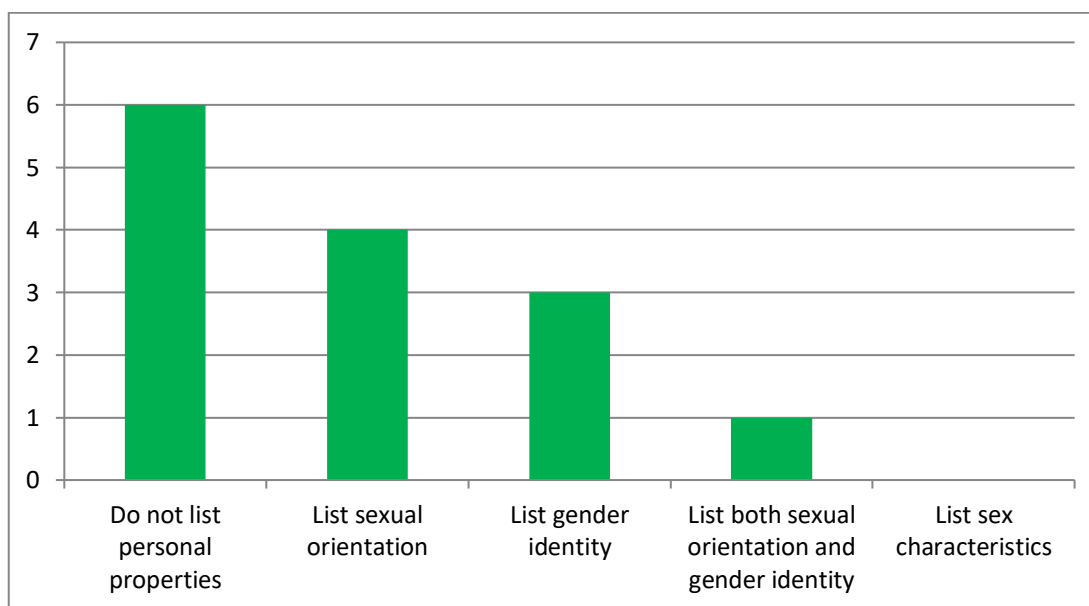


Figure1. Sixteen highlighted laws separated by a manner in which they relate to SOGIESC personal properties

⁹⁹ These highlighted laws include: Labor Law, Law on Employment and Unemployment Insurance, Law on Volunteering, Law on Health Care, Law on Protection of Persons with Mental Disabilities, Law on Social Protection, Law on Fundamentals of the Education System, Law on Primary Education, Law on Secondary Education, Law on Higher Education, Law on Public Information and Media, Law on Free Access to Information of Public Importance, Law on Public Media Services, Law on Advertising, Law on Sports, and Law on Youth.

¹⁰⁰ B. Janković and I. Krstić, 2018, p. 32-41.

As seen from the chart above, and by further examining the anti-discriminatory provisions of these laws, we can determine that 6 contain a general provision that refers to the principle of non-discrimination '*in accordance with the law*'.¹⁰¹ Of the remaining 10, only 4 of these provisions explicitly list sexual orientation as the grounds on which discrimination is prohibited.¹⁰² It is important to note that only one of these laws uses the Serbian equivalent translation for the sexual orientation (*seksualna orijentacija*),¹⁰³ whereas the other three use the outdated phrase that would translate to English as sexual self-determination (*sexualno opredeljenje*), highlighting the necessity of their amendment. Furthermore, only 3 provisions list gender identity as a personal characteristic that is protected from being the basis for discrimination,¹⁰⁴ with only one of those properly phrasing it gender '*identity*',¹⁰⁵ and the other two referring to '*gender and sex equality*'¹⁰⁶ and '*gender belonging*'.¹⁰⁷ None of these legal provisions list sex characteristics as a grounds that is protected from discrimination, leaving intersex people with no explicitly formulated protection against discrimination in the Serbian legal system.

These variations in the way anti-discrimination provisions are regulated, coupled with the use of ambiguous and inconsistent terminology result in an equally inconsistent manner in which these legislations are implemented and used. Furthermore, parts of the queer population remain invisible under the legal framework. The practical application of these legislations that should serve as a protection against discrimination for queer people will be discussed in more detail in Section 4, during the central analysis.

¹⁰¹These are: Law on Employment and Unemployment Insurance; Law on Volunteering; Law on Fundamentals of the Education System; Law on Primary Education; Law on Higher Education; and Law on Public Information and Media.

¹⁰² These are: Labor Law; Law on Health Care; Law on Advertising; and Law on Youth.

¹⁰³ Which is: Law on Youth.

¹⁰⁴ These are: Law on Secondary Education; Law on Advertising; and Law on Youth.

¹⁰⁵ This is: Law on Youth.

¹⁰⁶ This is: Law on Secondary Education.

¹⁰⁷ This is: Law on Advertising.

3.1.5. Criminal Code

The amendments to the Criminal Code of Serbia made in 2012¹⁰⁸ introduced *hate crimes* as distinct category of criminal acts which are characterized by hatred as motivation for their doing.¹⁰⁹ Article 54a of the Criminal Code identifies this feature as a mandatory aggravating circumstance to be taken into account when determining the sentence for such crimes, and sets the scope for its application to all criminal acts regulated by the Code, except in the cases where hatred is prescribed as a main feature of the criminal deed.¹¹⁰ This is the only mandatory aggravating circumstance, which differentiates it from other aggravating and mitigating circumstances regulated by the Criminal Code of Serbia.¹¹¹ Moreover, the Article includes an exhaustive list of personal characteristics the hatred of the perpetrators could be induced by, and besides race, religion, sex, and ethnical or national affiliation, includes sexual orientation and gender identity.

In regards to the list of personal traits included in this Article, it should be mentioned that the reason this list is exhaustive and contains less items than, for instance, the Law on Prohibition of Discrimination, is that these characteristics are understood to be fundamental aspects of a person's identity, as well as that they represent a part of a collective identity of a group.¹¹² The inclusion of sexual orientation and gender identity in this list signifies the willingness of legislators to provide protection to queer people in Serbia, and it marked a big advancement in the betterment of this groups status in this State.

Regarding the conceptualization of two personal traits most relevant to queer people, it is of great significance that, in this Article, the appropriate terminology is used, properly denoting *gender identity* (rodni identitet). This terminological accuracy makes a

¹⁰⁸ Zakon o izmenama I dopunama Krivičnog zakonika, Službeni glasnik RS, br. 121/2012.

¹⁰⁹ Krivični zakonik, Službeni glasnik RS, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

¹¹⁰ Krivični zakonik., Article 54a.

¹¹¹ M. Vasić and T. Blagojević (eds.), *Procesuiranje zločina iz mržnje I govora mržnje u pravu Srbije I evropski standardi*, Beograd, Komitet pravnika za ljudska prava YUCOM, 2018, p. 13.

¹¹² T. Mirović, J. Kiurski, M. Antonijević, et al., *Smernice za krivično gonjenje zločina iz mržnje u Republici Srbiji*, Beograd, OEBS Misija u Srbiji, 2018, p. 16.

substantial difference to provisions where gender is mentioned in other manner, because a distinction can be made between passively received social roles, as is the case within the previously discussed Law on Gender Equality, and personal perception of the individuals as it relates to their feelings of gender.¹¹³ Therefore, the proper use of the concept of gender made the inclusion of trans persons possible in the scope of this Article's application, regardless of the fact whether or not they went through the sex confirmation surgical procedures.

Concerning the scope of application of provision made in Article 54a, it is noteworthy that the text is interpreted in such a manner that any personal trait listed in it can be in actuality descriptive of the victim, or it can be only assumed by the perpetrator.¹¹⁴ In respect of this, protected are the persons who do not possess the personal trait implied by the perpetrator of a criminal act, which means that, when applied to hate crimes directed at queer people, the victims do not necessarily have to be queer, but rather, they can be persons that the perpetrator assumed to be belonging to this group. Similarly, this protection relates to the victims who have real or assumed connections to people that belong to the group which have one or more personal characteristic listed in this Article as well,¹¹⁵ thereby providing protection to friends, family members, and allies of the people belonging to the groups in question, including queer population, if they are targeted for this proximity.

In the time frame of nearly five years since the Law on Amendments to the Criminal Code¹¹⁶ that introduced Article 54a came into power, that is from 2013 to mid 2018, this article was not once considered in a case prosecuted by Serbian judiciary,¹¹⁷ which reflects the fact that the responsible authorities did not adequately engage with the criminal acts

¹¹³ *Ibid.*, p. 18.

¹¹⁴ *Ibid.*, p. 8.

¹¹⁵ *Ibid.*, p. 16.

¹¹⁶ Zakon o izmenama I dopunama Krivičnog zakonika, Službeni glasnik RS, br. 121/2012.

¹¹⁷ M. Vasić and T. Blagojević (eds.), 2018, p. 13.

that contain hate as a primary motivation of their realization.¹¹⁸ The first case that included Article 54a in indictment was concluded in 2018, and it concerned a hate crime incited by hatred on the basis of sexual orientation.¹¹⁹ It remains the only closed case that utilized this provision to date.

When considering the manner in which the State of Serbia regulates hate crimes, that is, as an aggravating circumstance to other criminal deeds, a distinction has to be made between this category of criminal acts and the category of criminal acts that contain elements of hate, as well as between hate crimes and hate speech. In addition to completing the legal overview of the protective system for queer people existent in the State of Serbia, such distinctions will be beneficial when the application of this protective system is reviewed in the last segment of this section.

In the light of the first distinction, Article 54a specifically excludes criminal acts that contain elements of hate in its formulation, most important of which, in the sense of present research, are regulated by Article 387 of the Criminal Code.¹²⁰ This Article incriminates particular forms of discrimination, such as propagating or spreading discriminatory ideas, persecution of organizations or individuals that act to protect the rights of others, but also the violation of basic human rights and freedoms guaranteed by generally accepted rules of international law and ratified international treaties due to the differences in “*race, skin color, religion, nationality, ethnic origin or other personal traits*”.¹²¹ Taking into account that this Article primarily incriminates discrimination based on racial grounds, it is noteworthy that it includes ‘*other personal traits*’ in its formulation, and as a result can have significance in the protection of queer people. In essence, the principal difference between criminal acts regulated in Article 387 and hate crimes is that, in the former, hate is understood to be a consequence of a crime, rather than the primary

¹¹⁸ T. Mirović, J. Kiurski, M. Antonijević, et al., 2018, p. 33.

¹¹⁹ P. Živić, ‘*Dug put do prve presude za zločin iz mržnje*’, [web page], 7 November 2018, available at: <https://www.bbc.com/serbian/lat/srbija-46126520> (accessed 25 July 2020).

¹²⁰ Krivični zakonik, Article 387.

¹²¹ *Ibid.*, Article 387.

motivation, as is the case with crimes understood in the sense of Article 54a.¹²² In addition, the existence of a consequence is not required when considering crimes provisioned in the Article 387, as opposed to it being of great importance to criminal acts in which aggravating circumstance described in Article 54a has to be taken into account.¹²³

The second important distinction is reflected in the way Serbian legal system discerns between hate crimes and hate speech. As was previously noted, hate speech is regulated in the Law on Prohibition of Discrimination in Articles 5 and 11,¹²⁴ as well as in the Law on Public Information and Media.¹²⁵ In contrast to that, hate speech is not explicitly defined in the Criminal Code of Serbia. Rather it represents the act necessary for the commission of criminal offenses described in certain Articles, as are those listed in Article 387.¹²⁶ As a result, hate speech cannot be considered a hate crime in the sense of Article 54a, as hate as such is understood to be a consequence of the criminal act, rather than its motivation.¹²⁷ Despite the existence of different definitions of hate speech mentioned in the previous section, and due to the legislative framework of Serbia being as presently described, further use of these concepts will reflect the differentiation integral to the legal system of Serbia. The questions of the equation between Serbia's legislative provisions regarding hate speech with the IHRL standards will be addressed in the further sections of this paper.

Having reflected upon the existing legislative protective system included in the Criminal Code which can be utilized in the protection of the rights and liberties of queer people in Serbia, while also recalling Constitutional provisions, and anti-discrimination framework discussed above, in order to complete the assessment of this protection the examination of its practical application and the adequacy of its utilization should to be

¹²² T. Mirović, J. Kiurski, M. Antonijević, et al., 2018, p. 19.

¹²³ *Ibid.*, p. 23.

¹²⁴ Zakon o zabrani diskriminacije, Article 5 and Article 13.

¹²⁵ Službeni glasnik RS, br. 83/2014, 58/2015, 12/2016.

¹²⁶ Krivični zakonik, Article 387.

¹²⁷ T. Mirović, J. Kiurski, M. Antonijević, et al., 2018, p. 23-25.

conducted, and this examination will be central to the analysis done in Section 4, after the cultural framework of the State is considered.

3.2. Cultural Framework

Starting with a premise that the acceptance of queer people as an integral part of a society, and their full enjoyment of human rights as a result, does not occur without the previous commitment of this group at demanding for their rights in any context,¹²⁸ the focus of the next part of this paper will be directed at the particularity of the civil rights movement aimed at the betterment of the status of queer people in Serbia. By taking a look into the history of this movement, its achievements, and the socio-political circumstances that surrounded the changes made within the State in relation to queer people, the main obstacles and primary change-makers will be identified which can help to contextualize the question at hand, and map out the necessary conditions required for the goal of equality of queer people to be achieved, and IHRL standards met. Having in mind that the primary research question of this paper is to assess the compliance of the State of Serbia with IHRL standards at present, the results of this inquiry will provide valuable insights in understanding the emerging findings in a wider context.

3.2.1. Historical Overview (before 2000)

Although very eventful, the history of the queer liberation movement in Serbia is fairly short, and it begins amidst the biggest turmoil the Balkan region has seen since the end of the Second World War, namely, during the breakup of the Socialist Federative Republic of Yugoslavia (Yugoslavia hereafter) and the civil wars that were raging during

¹²⁸ This is also true for the global queer rights movement, evident from the lack of protective provisions and minimal focus on the vulnerability of this social group before the Stonewall Riots of 1969 in the sense of international and national protection.

the 90s of the 20th century. Even though small groups of people wanting to advocate for the rights of people with diverse in SOGIESC personal traits existed during the last decade of the previous century, the numerous armed conflicts occurring in Yugoslavia and its successor States made such advocacy strenuous. Due to the fact that the fundamental human rights of the people of entire nation and whole minority groups were being endangered and excessively violated, queer activists of that time were devoted to anti-fashist efforts and advocacy for peace, besides fighting for equal rights of queer people.¹²⁹

It is possible to identify the exact moment of the formation of the first groups of gay and lesbian persons for the aims of improving their status as citizens in Serbia as October of 1990.¹³⁰ A handful of gays and lesbians gathered in Belgrade, prompted by the letters received from the Slovenian queer activists, and for the first two years worked on the establishment of *Arkadija*, an informal group that would be remembered as the first queer organization in Serbia.¹³¹ Before that time, and largely during the 90s, queer people existed in Yugoslavia largely unnoticed and not many sources attesting to the issues they faced exist today. The reasons for this invisibility can presumably be explained by the supposition that SOGIESC personal traits had less impact in constituting personal identities as opposed to the social roles people assumed, in addition to the regional and provincial origination, coupled with the mandatory Yugoslavian communist national identity.¹³² In regards to the legal visibility, sodomy (the sexual intercourse between men) was criminalized in the legislature of Yugoslavia by Article 110 of the Criminal Code,¹³³ and no other mentions of people with diverse SOGIESC personal traits were present in the legal

¹²⁹ D. Nebrigić, 'Arkadija, gej-lezbejski lobi, 1990-1995', in Lj. Živković (ed.) *Prvo je stiglo jedno pismo: Petnaest godina lezbejskog i gej aktivizma u Srbiji i Crnoj Gori*, Beograd, Labris - organizacija za lezbejska ljudska prava, 2005, p. 11, adapted from: Evropsko udruženje mladih Srbije, 'Kampanja protiv homofobije', Beograd, Gay lobby, 1998.

¹³⁰ L. Mladenović, 'Kako je počelo organizovanje lezbejki i homosksualaca u Beogradu', in Lj. Živković (ed.) *Prvo je stiglo jedno pismo: Petnaest godina lezbejskog i gej aktivizma u Srbiji i Crnoj Gori*, Beograd, Labris - organizacija za lezbejska ljudska prava, 2005, p. 7.

¹³¹ *Ibid.*, p. 7.

¹³² Optimist, 'Homoseksualnost u SFRJ', [web page], 1 September 2013, available at: <https://www.optimist.rs/homoseksualnost-u-sfrj/> (accessed 25 July 2020).

¹³³ D. Nebrigić, 2005, p. 11.

system of the Yugoslavian State, including those that would regulate prohibition of discrimination, not to mention same sex partnerships, marriage, adoption, or sex confirmation procedures.

Regarding the social perception of the practices of same-sex relationships, they were regarded as deviant and degenerate, and the issues queer people faced in the Serbian society received no sympathy from the public.¹³⁴ In most parts, gay and lesbian persons were regarded as non-existent in Yugoslavia, rare at best, and this notion is reflected in the writings of Lepa Mladenović, one of the first lesbian activists in Serbia, when she wrote about the beginnings of gay and lesbian organizing:

*“Most of us have never seen each other before in one place - so many **of us** in our city! Ah, how that was exciting, we are not the only ones! I saw them in the pictures, in books, in New York, but not in Belgrade. Yes, these are important elevations in the maps of our longing! In the history of the city! In the textbooks about social movements. For the first time: four lesbians are confabulating in a public place.”*¹³⁵

Up until the beginning of the new millennium, queer activists struggled to raise their visibility and make their demands heard, mostly through the media, printed literature, and educational talks, but regardless of the fact that homosexuality was officially decriminalized in 1994 by the annulment of the Article 110 of the Criminal Code¹³⁶ mentioned above, these struggles were met with harsh opposition from both state authorities and society as a whole. This opposition culminated with the violent murder of Dejan Nebrigić, one of the founders of *Arkadija* and the most outspoken advocate for queer rights at that time, in 1999, with the circumstances surrounding his murder

¹³⁴ *Ibid.*, p. 15 – 21.

¹³⁵ L. Mladenović, 2005, p. 7. Translation provided by the author of this paper.

¹³⁶ Zakona o izmenama i dopunama Krivičnog zakona Republike Srbije, Službeni glasnik RS, br. 47/1994.

suggesting that it was committed as direct response to his activism.¹³⁷ Similarly indicative is the violence that occurred during the first attempt of organizing of the Pride Parade in 2001,¹³⁸ and this will be presented in more details in the segment than follows.

This brief glance at the origins of the advocacy for queer rights in Yugoslavia is of great importance when we look at the status of respect, protection, and promotion of queer rights in Serbia today, and the way the society as a whole approaches people with differences in SOGIESC personal traits. As was noted above, knowing the origins of the fight for the equality of queer people, and the specific contexts surrounding this fight can be of assistance when assessing the status of compliance of a State with IHRL standards today.

3.2.2. Developments in the Status of Queer People (2000-2013)

The most reflective examples of the Serbia's participation in the promotion of equality and protection of human rights in relation to queer people are the numerous failed attempts, and subsequent successes, in organization of the Pride Parade,¹³⁹ seeing that this annual event is one of the most important ways the rights of the queer people are realized,¹⁴⁰ as it requires the protection of the right to peaceful assembly, right to state protection, right to freedom of speech, and numerous others. Moreover, since the introduction of the previously mentioned Law on Prohibition of Discrimination in 2009 and Article 54a to the Criminal Code in 2012, measurable and quantifiable indicators of the fulfillment of the rights of queer people can be identified and tracked at different points in

¹³⁷ Canada: Immigration and Refugee Board of Canada, *Yugoslavia: The treatment of homosexuals and the state protection available to them (January 2000 - December 2000)*, 11 December 2000, available at: <https://www.refworld.org/docid/3df4bec820.html> [accessed 18 July 2020].

¹³⁸ Beogradski centar za ljudska prava, *Ljudska prava u Jugoslaviji 2001. Pravo, praksa i pravna svest u Saveznoj Republici Jugoslaviji I međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2002, p. 284-286, available at: <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/ljudska-prava-u-jugoslaviji-2001.pdf> (accessed 18 Jul 2020).

¹³⁹ For a chronology of Pride Parade in Serbia, see: Parada, 'History', [web page], <http://parada.rs/en/history-2/> (accessed 18 Jul 2020).

¹⁴⁰ A. Stojaković (ed.), *PARADA ponosa i LGBT populacija*, Beograd, Centar za Kvir Studije, 2014, p. 160.

time. Because the analysis of the effectiveness of the Article 54a that was conducted in the previous segment, the focus of this segment will be the changes in the trends in discriminatory practices towards queer people, coupled with the overall attitudes of the general population and self-assessed position of queer people, in addition to the reflections on the circumstances surrounding the Pride Parade during the last two decades.

Following the events of the 5th October of 2000, when the oppressive rule of Slobodan Milošević has ended as a result of long lasting riots and demonstrations of Serbian citizens, and subsequent rise to power of more democratic and Europe-oriented political parties, the general impression of the Serbian people was that the rule of law and respect of rights was finally accessible. Following such logic, queer activists attempted to organize the Pride Parade in 2001, and despite registering the event with the authorities and warning them about the potential security risks, the police was unable to prevent, or properly respond to the reactive violence that ensued on the streets of Belgrade.¹⁴¹ During the conflict, 6 citizens and 8 police officers sustained minor bodily injuries, while 2 police officers sustained severe bodily injuries. Misdemeanor charges were filed against 48 persons, of which 38 adults and 10 minors, as well as criminal charges against 3 persons for disabling police officers in doing their duty. It is reported that the police was unprepared and inefficient in protecting the assembled citizens, and reacted to violence only when they themselves felt endangered.¹⁴² Important are the fact that 22 of 48 misdemeanor charges were dropped,¹⁴³ and the reported comments made by the police officer present at the event, included “*they got what they deserve*”, “*why would we protect them*”, and “*we did not come to protect them, but the ordinary people*”.¹⁴⁴

The period between 2002 and 2009 was marked with inconsistent efforts and incongruous attitudes from the Government of the time, as well as from the Serbian society

¹⁴¹ Beogradski centar za ljudska prava, 2002, p. 284-286.

¹⁴² *Ibid.* p. 284-286.

¹⁴³ *Ibid.* p. 284-286.

¹⁴⁴ B92, ‘RAZBIJANJE GAY PARADE’, [web page], 30 Jun 2001, <https://www.b92.net/specijal/gay-parada/gay-saop.shtml> (accessed 18 Jul 2020).

as a whole. On one hand, newly adopted laws included the prohibition of hate speech and discrimination based on sexual orientation, including Labor Law,¹⁴⁵ and Law on Public Information and Media,¹⁴⁶ as well as Law on Personal Data Protection¹⁴⁷ which included information about sexual life as particularly sensitive information in Article 16.¹⁴⁸ On the other hand, attacks on queer people remained frequent, and police protection and reactions from State officials continued to be inadequate and infrequently of a discriminatory nature.¹⁴⁹ Similarly, discriminatory question in the questionnaire for voluntary blood donation which asked about sexual orientation of donors was changed by the Blood Transfusion Institute on the initiative of the Coalition against discrimination¹⁵⁰ to refer to risky behaviors for contracting sexually transmitting diseases, rather than to sexual orientation in 2007,¹⁵¹ while at the same time Serbian Medical Association refused to publicly declare that homosexuality is not a disorder for years,¹⁵² finally doing so in 2008,¹⁵³ almost 20 years after the official decision of the World Health Organization to exclude homosexuality from the list of disorders.¹⁵⁴

¹⁴⁵ Zakon o radu, Službeni glasnik RS, br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – o. US, 113/2017 i 95/2018.

¹⁴⁶ Zakon o javnom informisanju I medijima, Službeni glasnik RS, br. 83/2014, 58/2015 i 12/2016.

¹⁴⁷ Zakon o zaštiti podataka o ličnosti, Službeni glasnik RS, 94/2008, 104/2009 –dr. zakon, 68/2012, 87/2018 –dr. zakon.

¹⁴⁸ This Law was annulled in 2018, and the new Law on Personal Data Protection was adopted, in which the processing of information about sexual orientation is specially regulated in Articles 17 and 18; Zakon o zaštiti podataka o ličnosti, Službeni glasnik RS, br. 87/2018.

¹⁴⁹ Gej Strejt Alijansa, 'Ovo je zemlja za nas: Izveštaj o stanju ljudskih prava LGBT osoba u Srbiji u 2008 godini', Beograd, Gej Strejt Alijansa, 2008, p. 24-35.

¹⁵⁰ CHRIS, 'Saopštenje za javnost Koalicije protiv diskriminacije', [web page], 12 July 2007, <https://chris-network.org/2007/07/saopstenje-za-javnost-koalicije-protiv-diskriminacije/> (accessed: 19 Jul 2020).

¹⁵¹ Labris, 'Promena diskriminatornog upitnika za davanje krvi', [web page], <http://arhiv2012.labris.org.rs/labris/aktivnosti/saopstenja/1604-promena-diskriminatornog-upitnika-za-davanje-krvi.html> (accessed: 19 Jul 2020).

¹⁵² Labris, 'Odgovor Srpskog lekarskog društva', [web page], <http://arhiv2012.labris.org.rs/labris/aktivnosti/saopstenja/123-odgovor-srpskog-lekarskog-društva.html> (accessed: 19 Jul 2020).

¹⁵³ Gej Strejt Alijansa, 'Ministarstvo zdravlja: Homoseksualnost nije bolest a Miroljub Petrović nema dozvolu za rad', [web page], 20 September 2010, <http://gsa.org.rs/2010/09/ministarstvo-zdravlja-homoseksualnost-nije-bolest-a-miroljub-petrovic-nema-dozvolu-za-rad/> (accessed: 19 Jul 2020).

¹⁵⁴ Psychology Today, 'When Homosexuality Stopped Being a Mental Disorder', [web blog], 18 September 2015, <https://www.psychologytoday.com/us/blog/hidden-and-secret/201509/when-homosexuality-stopped-being-mental-disorder> (accessed: 19 Jul 2020).

This discrepancy in State efforts culminated in 2009 when, in the same year, The Law on Prohibition of Discrimination was adopted,¹⁵⁵ which included people with different sexual orientation as a protected group, but the Pride Parade was forbidden from occurring.¹⁵⁶ Regardless of the fact that the organizers collaborated with police officials for months leading up to the supposed event date, and that the risk assessment was conducted with the assistance of security experts, who judged the manifestation as a high risk event but tenable with adequate security measures, the Ministry of Internal Affairs informed the organizers 24 hours before the event that it cannot guarantee the safety of the participants, and therefore bans the Pride from occurring.¹⁵⁷ This decision was deemed as unconstitutional by the Constitutional Court in 2011.¹⁵⁸ Furthermore, appropriate measures were not taken in response to public threats to the organizers and queer people in general, with the Acting Public Prosecutor, falsely stating that the Prosecution cannot react to articles in the media, but can only take appropriate steps if there would be consequences of such threats.¹⁵⁹ Similarly, reactions were absent to the threats by one of the ultra-nationalist organizations that they would obtain and publish photographs of the event participants in order for parents to recognize, and ‘*protect their children from sexually deviant persons*’, despite these intended actions containing elements of at least five criminal acts regulated by the Criminal Code.¹⁶⁰ One of the positive outcomes of these events was the announcement of the initiative from the Ministry of Justice and Public Prosecutor for all far-right groups that propagate violence to be banned.¹⁶¹ One such organization ‘*Patriotic movement*

¹⁵⁵ Zakon o zabrani diskriminacije, Službeni glasnik RS, br. 22/2009.

¹⁵⁶ Beogradski centar za ljudska prava, *Ljudska prava u Srbiji 2009: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2010, p. 320-322, <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/ljudska-prava-u-srbiji-2009.pdf> (accessed: 19 Jul 2020).

¹⁵⁷ *Ibid.*, p. 321.

¹⁵⁸ Odluka o usvajanju, UŽ 1918/2009, Službeni glasnik RS, br. 8/2012.

¹⁵⁹ Beogradski centar za ljudska prava, 2010, p. 320.

¹⁶⁰ *Ibid.*, p.320-321.

¹⁶¹ *Ibid.*, p.322-323.

Obraz, known for organizing violent attacks toward queer people in the past, was banned in by the decision of CCS in 2012.¹⁶²

During the following four years, in the period between 2010 and 2013, the State response to the protection of the rights of queer people was similarly inconsistent, although the beginning of the new decade saw certain improvements in the status of queer people with a recorded growth during the second half of the decade. The State protection that was denied to the organizers of Pride Parade in 2009 was realized in 2010,¹⁶³ even though social conditions were identical. Numerous threats to the organizers of the Parade were published in traditional and social media, a number of anti-queer graffiti appeared in Belgrade, and coordinated cyber attacks were directed at web pages of the organizations involved.¹⁶⁴ Contrademonstrations were organized a day before, with participants demanding that the event be banned.¹⁶⁵ The Parade itself, which included around 1000 participants, who were protected by heavy police forces, passed without a single injury, and after it was done, police cars transported participants to safe locations.¹⁶⁶ However, nearly 6000 demonstrators gathered at different places around Belgrade, causing disorder, destroying public property, and attacking police officers, provoking conflict that lasted for nearly 7 hours. During the riots 150 people were injured, of which 130 police officers, and during the clash, and in the night that followed, 249 people were arrested, including 54 minors, of which 131 adults remained in custody.¹⁶⁷ These incidents impacted the decision of the State officials to prohibit Pride Parade for three consecutive years, that is from 2011

¹⁶² Ustavni Sud, 'Ustavni sud doneo odluku o zabrani rada Udruženja građana "Otačastveni pokret Obraz"' [web page], 12 Jun 2012, http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101638/ustavni-sud-doneo-odluku-o-zabrani-rada-udruzenja-graana-otacastveni-pokret-obraz?_qs=obraz (accessed: 19 Jul 2020).

¹⁶³ Beogradski centar za ljudska prava, *Ljudska prava u Srbiji 2010: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2011, p. 308-316, available at: <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/ljudska-prava-u-srbiji-2010-.pdf> (accessed: 21 Jul 2020).

¹⁶⁴ *Ibid.*, p. 310-311.

¹⁶⁵ *Ibid.*, p. 311.

¹⁶⁶ *Ibid.*, p. 312.

¹⁶⁷ *Ibid.*, p. 313.

to 2013,¹⁶⁸ and by that failed to ensure the enjoyment and full realization of rights to queer people.

Interesting are also the statements of the politicians before the events of 2010, who often stated that the realization of the Parade is „*something that is expected of Serbia on the road to Euro-integration*“,¹⁶⁹ reflecting the declarative nature of the State towards the rights of queer people. When cost-benefits analysis prevailed in favour of not allowing Pride Parade to occur, it is obvious that the importance of fulfilling State obligations towards human rights of its citizens was not high on the list of its priorities. Nevertheless, during the period of these three years some important provisions were set in place, including the previously scrutinized Article 54a of the Criminal Code in 2012.¹⁷⁰ Additionally, the first verdict for the hate speech against queer population was rendered against an online portal in 2011,¹⁷¹ and judged a member of the Parliament as guilty for charges of the severe form of discrimination against the LGBT population,¹⁷² in accordance to four Articles of the Law on Prohibition of Discrimination.¹⁷³ In addition to this, the Constitutional Court reached a decision in 2013 that the organizers of the Pride Parade were denied the right to an effective legal remedy, but did not recognize the violation of the right to peaceful assembly.¹⁷⁴ These milestones could be attributed to the heightened activity and visibility of queer organizations of the civil society, which also contributed to the improvement of position of queer people in Serbian society, albeit only in more urban places, leaving queer people in rural places at

¹⁶⁸ Parada, 'History', [web page], <http://parada.rs/en/history-2/> (accessed 18 Jul 2020).

¹⁶⁹ Beogradski centar za ljudska prava, 2010, p. 309.

¹⁷⁰ Krivični zakonik, Article 387.

¹⁷¹ Beogradski centar za ljudska prava, *Ljudska prava u Srbiji 2011: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2012, p. 253, available at: <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/ljudska-prava-u-srbiji-2011.pdf> (accessed: 21 Jul 2020).

¹⁷² *Ibid.*, p. 253.

¹⁷³ Zakon o zabrani diskriminacije, 2009.

¹⁷⁴ Beogradski centar za ljudska prava, *Ljudska prava u Srbiji 2013: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2014, p. 202, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/04/Ljudska-prava-u-Srbiji-2013.pdf> (accessed: 21 Jul 2020).

heightened risk of discrimination and rights violations.¹⁷⁵ The problem of at risk status of queer people in rural places and smaller cities in Serbia remains to this day.

3.2.3. Current Issues (2014-2020)

With the change in the ruling parties and the composition of the Parliament after the elections in 2014, when Serbian Progressive Party (SNS) effectively came into power,¹⁷⁶ the State approach to handling the demands of queer persons for equal rights drastically changed, albeit mostly only declaratively. This change in the official State attitude was strengthened in 2016 when the Minister of State Administration and Local Self-Government of the time, Ana Brnabić, was outed as lesbian by the acting Prime Minister Aleksandar Vučić.¹⁷⁷ When Vučić became the President in 2017,¹⁷⁸ Brnabić stepped in as Prime Minister, becoming the first openly queer person occupying a high State position in Serbia.¹⁷⁹ The initial enthusiasm of queer people, who believed that Brnabić's enactment would improve the social status and legal protection of queer people waned over time, after her constant reminding in the public discourse that she “...is not an LGBT Prime Minister, but a Prime Minister who is LGBT”,¹⁸⁰ and this dissatisfaction culminated with an open letter signed by more than 600 queer persons in July of 2020,¹⁸¹ in which Brnabić was

¹⁷⁵ Beogradski centar za ljudska prava, 2012, p. 250-251.

¹⁷⁶ N1, 'Izbori 2014: Najniža izlaznost u istoriji, ubedljiva pobeda SNS, Vučić premijer', [web page], 11 May 2020, <http://rs.n1info.com/Izbori-2020/a608844/Izbori-2014-Najniza-izlaznost-u-istoriji-ubedljiva-pobeda-SNS-Vucic-premijer.html> (accessed: 22 Jul 2020).

¹⁷⁷ B. Milićević, 'Zašto je prva gej ministarka (ne)važna za „drugu“ Srbiju', [web page], 13 August 2016, <https://www.danas.rs/dijalog/zasto-je-prva-gej-ministarka-nevazna-za-drugu-srbiju/> (accessed: 22 Jul 2020).

¹⁷⁸ N1, 'Srbija dobila novog predsednika', [web page], 2 April 2017, <http://rs.n1info.com/Vesti/a239330/Izbiri-za-predsednika-Srbije.html> (accessed: 22 Jul 2020).

¹⁷⁹ CROL, 'Ana Brnabić postala je prva žena i prva lezbijka na čelu srpske vlade [VIDEO]', [web page], 15 Jun 2017, <https://www.crol.hr/index.php/vijesti/8674-ana-brnabic-postala-je-prva-zena-i-prva-lezbijka-na-celu-srpske-vlade?rCH=2> (accessed: 22 Jul 2020).

¹⁸⁰ I. Mastilović Jasnić, 'INTERVJU Ana Brnabić: Ja nisam LGBT premijerka, nego premijerka koja je LGBT', [web page], 16 September 2019, <https://www.blic.rs/vesti/politika/intervju-ana-brnabic-ja-nisam-lgbt-premijerka-nego-premijerka-koja-je-lgbt/9wmvejv> (accessed: 22 Jul 2020).

¹⁸¹ Da se zna, 'Drugarice lažljivice – Otvoreno pismo Ani Brnabić', [web page], 13 July 2020, http://blog.dasezna.lgbt/2020/07/13/dugarice-lazljivice-otvoreno-pismo-ani-brnabic/?fbclid=IwAROrNVKA-FPAKDSiVZNF-ISfG4OUzpUOMmZCDhclL54HIFA-p4-nEM_AFPk (accessed: 22 Jul 2020).

accused of “*doing nothing for LGBT people in Serbia*”,¹⁸² all while enjoying the privileges provided by her positions, such as *de facto* living in a civil partnership with another woman with whom she is raising a child, something that is not legally possible for any queer person in Serbia.¹⁸³

Nevertheless, the ruling Government took necessary measures to ensure that the obligations the State has in relation to the rights of queer people are seemingly complied with, which is reflected in the fact that, since 2014, the Pride Parade has been occurring without incident for 6 consecutive years.¹⁸⁴ After the events occurring in the first half of the previous decade, detailed above, the realization of Pride Parades allowed queer activists to advocate for other legal provisions, as well as for the adequate application of the already existing ones. With the primary goals of the queer civil society directed at enabling Pride to occur in the years before 2014, the main focus of queer organizations in the years that followed was directed at advocating for more adequate protection against all forms of violence, better sanctioning of discrimination, and legal recognition of the procedures and improvement in health services for trans and intersex persons.¹⁸⁵ Moreover, a number of important studies were conducted in this time frame, which will be presented in the following text.

A highly informative study of an exploratory nature was carried out by the Center for Queer Studies (CKS) in the beginning of 2014,¹⁸⁶ only a few months before the first successful Pride in this consecutive successes in realization occurred, giving insight into the assessment of queer people in regards to their status in society at this turn-around point in time. The study included 416 participants who identified as part of the LGBTTIQ group,¹⁸⁷

¹⁸² *Ibid.*

¹⁸³ BBC NEWS, ‘*Ana Brnabić: Porodila se partnerka srpske predsednice Vlade*’, [web page], 21 February 2019, <https://www.bbc.com/serbian/lat/srbija-47316071> (accessed: 22 Jul 2020).

¹⁸⁴ Parada, ‘*History*’, [web page], <http://parada.rs/en/history-2/> (accessed 18 Jul 2020).

¹⁸⁵ These aims are reflected in the official demands of the organizing committee of Belgrade Pride. For more information, see: <http://parada.rs/>.

¹⁸⁶ A. Stojaković (ed.), 2014.

¹⁸⁷ *Ibid.*, p. 14, p. 206.

and its main aim was to understand the overall tendencies in the attitudes of members of the queer population regarding Pride Parade, queer activism, and their everyday life.¹⁸⁸

The most insightful finding of this study was that queer people had ambivalent and conflicting opinions about the significance of Pride as a tool for the betterment of their status in society. Asked directly whether they support Pride to be held, 67% of the participants answered affirmatively, of which 43% chose clear 'yes' as an answer and 57% chose '*yes, but not in the form it is conceptualized today*'.¹⁸⁹ Furthermore, a significant number of participants were against Pride to be held (26%), with a portion of them not being certain (7%).¹⁹⁰

In respect to the poll of participants who support Pride in principle, '*but not in the form it is conceptualized today*' (38% in total),¹⁹¹ when asked to explain in more detail their attitude in an open-ended question, the most common elaborations were that: '*the citizens and the political elite should be first sensitized about the LGBT population, and only after that go to the streets*' (14%); '*the safety is not guaranteed*' (14%); they are '*not satisfied with motives and efforts of the previous organizers*' (11%) with a similar reason reported being that '*the organization includes a small portion of the community whose work is not transparent*' (9%); but also that Pride '*should have a clear political message and an emancipatory character*' (8%).¹⁹² These results reveal the perception of queer people that they would be exposed to risk to their persons if they were to exercise their rights due to the prejudice and misconceptions Serbian society as a whole harbored towards them.

Even more revealing were the answers of the participants to questions about their rights in general. When instructed to list three rights most important to them in that moment, 72% of the participants listed '*right to be treated as family (decision makers) in case of illness or death of a partner*', 50% listed '*right to have shared social insurance with*

¹⁸⁸ *Ibid.*, p. 5.

¹⁸⁹ *Ibid.*, p. 75.

¹⁹⁰ *Ibid.*, p. 75.

¹⁹¹ *Ibid.*, p. 75.

¹⁹² *Ibid.*, p. 83.

their partner', 44% listed *'right to adopt a child'*, with *'right to registered civil partnership, but not marriage'* appearing in 43% of answers (*'right to marriage'* listed merely 3% of the participants).¹⁹³ These results indicate the prevailing importance of social and economic rights to the participants of this study, in comparison to civil and political rights, including right to peaceful assembly, which were the primary concern of the queer activism up to that point, and was regarded as the main indicator of State's effort to fulfill its obligations in regard to human rights of queer people.

Lastly, important is the insight that the majority of participants listed the State as most responsible for the fact that Pride was not held for three consecutive years (83%), and nearly half of them blamed hooligans and football supporter groups (48%), but also the organizers of Pride, Police, and discord in LGBT organizations as equally responsible (37% each).¹⁹⁴ This allocation of responsibility would be echoed later in the same year, when, for the first time, Pride was held with no incidents, mostly due to the fact that heavy police forces secured the Parade itself, multiple safety parameters and check-points were established, suspicious groups of people were stopped and searched, with some being arrested far from the event, and even the movement of 'regular' citizens was disabled in close proximity of the main event.¹⁹⁵

The apparent success of the Parade in 2014 demonstrated that, with the political will of the State, and the adoption of adequate protective measures, certain rights of queer people can indeed be protected. Moreover, the fact that measures were taken in neutralizing groups and organizations that propagated violence played a crucial role in success that followed Pride Parades in the years up to this date, although it remains evident that the attitudes of these groups did not change, and are reflected in frequent, although sporadic,

¹⁹³ *Ibid.*, p. 71.

¹⁹⁴ *Ibid.*, p. 71.

¹⁹⁵ *Beogradski centar za ljudska prava, Ljudska prava u Srbiji 2014: Pravo, praksa i međunarodni standardi ljudskih prava*, Beograd, Beogradski centar za ljudska prava, 2015, p. 202-203, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2014.pdf> (accessed: 25 Jul 2020).

attacks¹⁹⁶ on the Pride Info Center (PIC).¹⁹⁷ Moreover, despite the scepticism of queer people about the significance of Pride expressed in previously detailed study,¹⁹⁸ the rise in visibility of queer people and the issues they face reflected positively on the public opinion and sensitization of public authorities, but also empowered queer people to report instances of discrimination, violence, and other issues they faced, which is reported by many sources.

In this regards, the growing trend of these positive changes can be seen from the reports of the international monitoring bodies, local CSOs and studies conducted by the independent bodies, such as the Commissioner, and the Ombudsman. As an example, only in the year of 2019 the Commissioner received 18 complaints of discrimination based on sexual orientation, and 12 complaints of discrimination based on gender identity, which constituted 4.1% of the total number of complaints received by this institution.¹⁹⁹ In addition, the Commissioner gave opinions and recommendations in 3 cases involving unequal treatment based on SOGI differences, which included hate speech, discriminatory provisions in the guidelines for donating reproductive cells and embryos, and name changing procedures following gender confirmation surgery.²⁰⁰ The Commissioner also filed 2 criminal complaints for acts that included discrimination based on SOGI characteristics in 2019.²⁰¹ Moreover, the Commissioner reports that compliance with recommendations issued by this institution aimed at the reduction of discrimination based on SOGI characteristics has improved, compared to the previous year.²⁰²

¹⁹⁶ Parada, 'Jedanaesti napad na Prajd info centar – nema odgovornih', [web page], 1 March 2020, <http://parada.rs/2020/03/01/jedanaesti-napad-na-prajd-info-centar-nema-odgovornih/> (accessed: 25 Jul 2020).

¹⁹⁷ The Pride Info Center opened during the Pride Parade in 2017 as a month-long info point about Pride. It reopened in 2018 and remains open to this date, serving primarily as a gathering place for the queer community, but also as a place where anyone who is interested can learn about queer people and queer culture. For more information, see: <http://parada.rs/prajd-info-centar/>.

¹⁹⁸ A. Stojaković (ed.), 2014.

¹⁹⁹ Poverenik za zaštitu ravnopravnosti, 2020, p. 66.

²⁰⁰ *Ibid.*, p. 67-72.

²⁰¹ *Ibid.*, p. 67.

²⁰² *Ibid.*, p. 66.

In a study from 2018 that investigated the attitudes of public authority representatives towards discrimination in Serbia,²⁰³ the Commissioner notes an increase in a percentage of correct identification of cases of discrimination based on SOGI personal traits compared to a similar study conducted in 2013, including a rise from 70% to 78% of correct identification of *'an appeal in public discourse and in the media that homosexuals should receive medical treatments because they are ill'*²⁰⁴ as a case of discrimination, and an increase from 78% to 90% of correct answers when asked if an instance of *'a University Faculty that refuses to issue a new diploma with a changed name to a person who underwent a sex confirmation procedure'*²⁰⁵ is discriminatory.

Similar trends can be found in a study that explored citizens' attitudes towards discrimination in Serbia, reported in 2019 by the Commissioner.²⁰⁶ Asked to list three most discriminated groups in Serbia, 33% of participants included the LGBT population in their answers, which marks an increase of 10%, compared to the answers to the same question in a similar study from 2016.²⁰⁷ Moreover, the average value measuring social distance that the citizens felt towards the LGBT population decreased from 2.70 in 2016 to 2.57 in 2019, a trend that is described as *'...possible to explain by the fact that one of the leading holders of power in the State is a member of this population'*.²⁰⁸ On the other hand, the same study reports a high levels of discriminatory attitudes within participants towards queer people, as demonstrated by 60% of the participants agreeing to *'having nothing against LGBT people,*

²⁰³ Poverenik za zaštitu ravnopravnosti, *Odnos predstavnika organa javne vlasti prema diskriminaciji u Srbiji*, Beograd, Poverenik za zaštitu ravnopravnosti, 2018.

²⁰⁴ *Ibid.*, p. 24; Statement in original: *'Apel u javnosti i medijima da homoseksualci treba da se leče jer su bolesni'*. Translation provided by the author of this text.

²⁰⁵ *Ibid.*, p. 24; Statement in original: *'Univerzitet koji ne želi osobi koja je promenila pol da izda diplomu sa novim imenom'*. Translation provided by the author of this text.

²⁰⁶ Poverenik za zaštitu ravnopravnosti, *Odnos građana i građanki prema diskriminaciji u Srbiji*, Beograd, Poverenik za zaštitu ravnopravnosti, 2019, available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2019/11/izvestaj-o-istrazivanju-javnog-mnjenja.pdf> (accessed: 26 July 2020).

²⁰⁷ *Ibid.*, p. 17.

²⁰⁸ *Ibid.*, p. 49.

but they should do it in their own homes’,²⁰⁹ and, more indicatively, 38% of the participants agreeing that *‘homosexuality is an illness which should be medically treated’*.²¹⁰

Other important change-makers are CSOs that, besides advocating for change, serve as independent monitoring bodies within the State, and are a valuable source of initiatives and points of reference in regard to the compliance of the State to obligations as they relate to human rights of queer persons. Information provided in these reports will be of great significance in the following Section, in which compliance of Serbia with the IHRL standards as they relate to queer people will be assessed.

4. Compliance of the State of Serbia with IHRL Standards

The main international bodies that determine and set the standards for the respect, protection, and fulfilment of human rights, and the obligations which the State of Serbia has by being a part of agreements issued by those bodies, have been presented in Section 2, which was followed by the overview of Serbia’s legal and cultural frameworks as they changed during the last three decades, but also how they remain today, in Section 3. The present part of the paper will be assessing the intersection between these bodies of information, in the effort to test the compliance of the State of Serbia with the international human rights standards, as they relate to the rights of queer people.

In the following segment, methodology for this analysis will be presented, referring to the YP and YP+10 documents as the chosen framework for structuring the assessment of this compliance, after which a comparative analysis will be conducted with the utilization of data, examples, and existing reports on Serbia’s progress and fulfilment of recommendations about relevant norms. This process will be followed by an interpretation

²⁰⁹ *Ibid.*, p. 43. Translation provided by the author of this text.

²¹⁰ *Ibid.*, p. 43. Translation provided by the author of this text.

of the main findings which emerge from the analysis, where the data will be presented both graphically and descriptively.

4.1. Methodology

For testing the compliance of Serbia with the international human rights standards as they relate to the rights of queer people, the chosen framework is reflected in the YP and YP+10 documents, being the most comprehensive index of principles and obligations of the States, which should be followed and fulfilled if the highest standards of enjoyment of human rights by queer people are to be attained. This descriptive comparative analysis is best understood by cross-reference with the YP and YP+10 documents.

During the analysis, taking into account every obligation integral to every Principle, the relevant IHRL standards to the geo-political context of Serbia will be assessed, to the extent of data available, within each of Yogyakarta Principles. For each of them, the assessment of Serbia's fulfilment of obligations listed within, will be done by the analysis of provisions and protective measures set in place, the adequacy of their application, recent efforts to improve the already existing, or implementing new ones, as well as how all these measures impact queer people and the extent to which they are able to enjoy those rights. Moreover, where possible, the efforts to follow recommendations issued by the relevant monitoring bodies, including national and international, will be presented, if those recommendations could be understood as integral to any given Principle.

All Yogyakarta Principles are integrated together, in the sense that additional obligations listed in the YP+10 that refer to the first 29 principles are included where appropriate, and the additional 9 principles set in this document are also part of the analysis. Every Principle is understood to relate to all SOGIESC personal traits, even if certain traits are not explicitly mention in the text, as was recommended in the YP+10 Preamble.

Furthermore, Serbia's efforts in attaining the standards reflected by each Principle will be assessed within the larger set of State obligations, namely: the **obligation to respect**, understood as the lack of interference of the State, as well as prohibition of acts of Government that would undermine the enjoyment of a specific right; the **obligation to protect**, understood as the State the commitment to protects queer people from the abuse and interference of their rights by non-state actors; and the **obligation to fulfil**, understood as the commitment to take positive action in order for the rights to be exercised.²¹¹ Each of these obligations will be given a descriptive value, in the range from: '**yes**' (**Y**), signifying that the obligation is fulfilled for the most part; '**to some extent**' (**TSE**), signifying that the obligation is fulfilled in part, or for the most personal traits, in some contexts and areas of private and political lives of queer people; and '**no**' (**N**), signifying that the obligation is for the most part not fulfilled); The values will be assigned for the purpose of reflecting the extent to which the State has fulfilled that obligation.

The descriptive assessment within any Principle should be understood as '**justification**' of the descriptive value given to each obligation, but also as a set of *qualitative data* as they emerge from the analysis of relevant texts and reports. Furthermore, descriptive values for the obligations for the rights integral to all Principles will be compiled, and a set of *quantitative data* will be inferred from this analysis. This data will be interpreted in the last segment of this Section.

Lastly, understanding the principles of *universality, interrelatedness, interdependence, and indivisibility* of human rights, as well as the principles of *equality and non-discrimination*, applicable to all rights, references to other related Principles will be provided for every Principle assessed, and the fulfilment of the State obligation for those Principles will be taken into account when assigning descriptive values. Understanding Principle 1 and Principle 2 as a reflection of these all-embracing principles, they will be excluded from the quantitative part of the analysis, and the corresponding obligations will

²¹¹ M. Nowak, *Introduction to the International Human Rights Regime*, Leiden, Martinus Nijhoff Publishers, 2002, p. 48-51.

not be assigned values. Instead, the interpretation of values for all other obligations will be indicative of the compliance with the obligations for these two Principles.

4.2. Comparative Analysis

Principle 1	THE RIGHT TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS
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The obligations of the State to respect and ensure the protection and fulfilment of the universal enjoyment of human rights are reflected in the State efforts in engaging with the international organizations, and ratifying relevant international agreements, which was discussed in Section 2 of this paper, as well as the placement of authority of IHRL standards and mechanisms in the Constitution of the State, as well as integration of IHRL standards in the national legislative framework, discussed in Section 3.1. Nevertheless, these obligations will also be assessed in all of the following Principles, while taking into account the interrelatedness and interdependence of all human rights, as was mentioned in the text above.

Principle 2	THE RIGHT TO EQUALITY AND NON-DISCRIMINATION
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Similar to the justification of the lack of assessment of the obligations under Principle 1 at this point in the analysis, the assessment of the obligations under Principle 2 will be conducted in the last segment of this Section.

However, with respect to the specific obligation listed under this Principle, it is important to make references to the Principles under which the right to equality and non-discrimination will be most thoroughly assessed. In this regard, criminal and legal provisions that prohibit consensual same-sex activity of persons over the age of consent will be discussed within the assessment of obligations under Principles 3, 31, and 33;

measures that prohibit discrimination on the basis of SOGIESC personal traits in the context of public and private spheres will be discussed within Principles 19, 20, 24, 25, 26, and 38; efforts in providing for the accommodations in education, employment, and access to services will be considered under Principles 15, 16, 23, and 35; HIV/AIDS status, used as a pretext to further marginalize persons of diverse SOGIESC personal traits, or prevent them from accessing goods and services, will be considered under Principles 9 and 17; and measures to address discriminatory attitudes in relation to the application of prenatal treatments and genetic modification technologies will be discussed to some extent under Principles 17 and 24.

Lastly discrimination within, and lack of access to sport to persons of diverse SOGIESC personal traits, as well as the intersectionality of multiple forms of discrimination in different areas of life, will not be considered under any Principle due to the lack of reliable information on multiple dimensions of discrimination in the context of Serbia. However, this fact will be taken into account as inadequate State efforts to provide such information, when the main findings are interpreted.

Principle 3	THE RIGHT TO RECOGNITION BEFORE THE LAW		
	Respect: Y	Protect: TSE	Fulfil: TSE

No discriminatory provisions that would explicitly prevent people with diverse SOGIESC personal traits to enjoy legal capacity in civil matters are in place. However, the civil capacity of trans persons is largely inadequately regulated, while intersex people remain legally invisible.²¹²

²¹² Beogradski centar za ljudska prava, 2020, p. 301-302; Poverenik za zaštitu ravnopravnosti, '*Poverenica o unapređenju položaja interseks osoba*', [web page], 12 July 2019, available at: <http://ravnopravnost.gov.rs/rs/poverenica-o-unapredenju-polozaja-interseks-osoba/> (accessed 8 August 2020).

The Law on birth certificates was amended in 2018 to enable change in sex marker for trans persons,²¹³ but at least a year of hormonal therapy is required, or the conduction of sex affirmation surgical procedures.²¹⁴ Furthermore, for this process to be undergone, verification from medical practitioners has to be submitted,²¹⁵ making change based on self-defined gender identity impossible. Furthermore, the Law on Gender Identity that would fully regulate trans and intersex persons' gender identities does not exist, despite a draft of it being submitted to the Parliament, as reported by ILGA.²¹⁶ Changes in documents are legislatively recognized in all contexts but inconsistent application and lack of understanding of administrative officers is reported by BCHR.²¹⁷ Furthermore, most complaints from queer people submitted to the Ombudsman were in relation to gender confirmation procedures and changes of sex markers in personal documents.²¹⁸ More consideration on this is done within Principle 31.

Social support for persons experiencing gender transitioning is available to some extent as part of the expenses of such procedures is covered by the national health insurance.²¹⁹ However, targeted programs are not in place.²²⁰

In summary, certain efforts in full legal recognition of persons with diverse SOGIESC personal traits are evident but adequate regulations of trans identities and intersex persons

²¹³ Zakon o matičnim knjigama, Sl. glasnik RS, br. 20/2009, 145/2014 i 47/2018, available at: https://www.paragraf.rs/propisi/zakon_o_maticnim_knjigama.html (accessed 8 August 2020).

²¹⁴ Pravilnik o načinu izdavanja i obrascu potvrde nadležne zdravstvene ustanove o promeni pola, Sl. glasnik RS, br. 103/2018, Article 3, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2018/103/5/reg>, (accessed 8 August 2020).

²¹⁵ *Ibid.*, Article 3, Para. 2 and 3.

²¹⁶ ILGA-Europe, *LGBTI Enlargement Review 2019*, ILGA-Europe, 2020, p. 30, available at: <https://www.lgbt-ira.org/sites/default/files/pdfdocs/Annual%20LGBTI%20Enlargement%20Review%202019.pdf> (accessed 8 August 2020).

²¹⁷ Beogradski centar za ljudska prava, 2020, p. 297-299.

²¹⁸ Zaštitnik građana, *Redovan godišnji izveštaj zaštitnika građana za 2019 godinu*, Beograd, Zaštitnik građana, 2020, p. 49, available at: <https://www.ombudsman.rs/attachments/article/6542/Redovan%20god%C5%A1nji%20izve%C5%A1taj%20Za%C5%A1tznika%20gra%C4%91ana%20za%202019.%20godinu.pdf> (accessed 8 August 2020).

²¹⁹ Beogradski centar za ljudska prava, 2020, p. 297-299.

²²⁰ *Ibid.*, p. 297-299.

are not in place. Furthermore, the application of such procedures is inconsistent and administrative officers often lack education in such matters.

Principle 4	THE RIGHT TO LIFE		
	Respect: Y	Protect: Y	Fulfil: TSE

The criminalization of sodomy was annulled in 1994.²²¹ No other provisions criminalize same-sex sexual activities, and capital punishment was never imposed for such crimes. Furthermore, no person is currently awaiting execution for crimes relating to consensual same-sex sexual activity.

No State-sponsored or condoned attacks occur on lives of persons with SOGIESC personal traits. Radical groups that were targeting organizers of Pride Parade before 2014 have been neutralized,²²² and State protection at events of high risk is adequate.²²³ However, individual cases of attacks on lives of queer people have been reported by DSZ.²²⁴ This CSO recorded 63 cases of unlawful conduct against queer people for the year 2019, 27 of which were physical attacks,²²⁵ and 12 were threats to the lives of queer persons.²²⁶ Only 46% of all incidents were reported to relevant authorities²²⁷ indicating the lack of trust in State institutions, whereby the possibility of the State to comply with the obligation to fulfil this right is diminished.

In summary, no person in Serbia is arbitrarily deprived of life based on their SOGIESC personal traits. State protection is adequate at events of high risk, but compliance with the

²²¹ ILGA World: Lucas Ramon Mendos, *State-Sponsored Homophobia 2019: Global Legislation Overview Update*, 2019, p. 42.

²²² See: Section 3.2.3 of this paper.

²²³ Beogradski centar za ljudska prava, 2020, p. 292-295.

²²⁴ M. Kovačević, and N. Planojević, *Podaci a ne zvona I praporci 3*, (unpublished version), Da se zna!, 2020.

²²⁵ *Ibid.*, p. 23.

²²⁶ *Ibid.*, p. 23.

²²⁷ *Ibid.*, p. 32.

obligation to ensure the fulfilment is lacking, especially as they relate to responding to threats to lives of queer persons.

Principle 5	THE RIGHT TO SECURITY OF THE PERSON		
	Respect: Y	Protect: TSE	Fulfil: TSE

Personal traits of queer people, with the exception of sex characteristics, may not be advanced to justify, excuse or mitigate violence under the legal framework of the State. CEDAW Committee encouraged the State to amend the Law on gender equality to be in line with the Convention in this regard, and to include all SOGIESC personal traits as protected grounds.²²⁸

Necessary legislative measures are imposed which criminalize violence and incitement to violence both in the Criminal Code²²⁹ and other laws regulating discrimination in different areas of life.²³⁰ However, SOGI personal traits are inconsistently listed, and sex characteristics are not listed in any law,²³¹ which the Ombudsman has recommended to be changed.²³²

Policing measures are taken to protect queer people from violence, most notably at events of high risk such as the Pride Parade,²³³ and places where queer people gather, such is PIC, although not always proportionately to the levels of risk.²³⁴ However, the number of queer people who experience violent attacks and harassment is high, as reported by FRA²³⁵ and

²²⁸ Committee on the Elimination of Discrimination against Women, *Concluding observations on the fourth periodic report of Serbia*, 14 March 2019, CEDAW/C/SRB/CO/4, Para. 12(b).

²²⁹ See: Section 3.1.1 of this paper.

²³⁰ See: Section 3.1.4 of this paper.

²³¹ See: Section 3 of this paper.

²³² Zaštitnik građana, 2020, p. 11.

²³³ Beogradski centar za ljudska prava, 2020, p. 292-295.

²³⁴ *Ibid.*, p. 293.

²³⁵ European Union Agency for Fundamental Rights, 2020, p. 44.

DSZ,²³⁶ and most incidents of this sort remain unreported to authorities, as mentioned within Principle 3.

In line with this, perpetration of violence based on SOGIESC characteristics is inadequately investigated, and prosecution and sentencing are rare.²³⁷ Statistical data about hate crimes is not disaggregated by personal traits of victims, as reported by ODHIR,²³⁸ and trans persons remain especially vulnerable to violence, as reported by EUCOM.²³⁹

The efforts of the Commissioner in raising awareness are noticeable and **her** recommendations are more frequently adopted.²⁴⁰ However, the persistence of such violence mentioned above serves as evidence that efforts need to be continued and improved upon.

In summary, the legislative measures that protect queer people from violations of the right to security of person are in place, with the exception of the protection for intersex people. High frequency of violent attacks attests to the need of clearer regulations, as well as more adequate application. Moreover, further State efforts in promotion of this right are required.

Principle 6	THE RIGHT TO PRIVACY		
	Respect: Y	Protect: Y	Fulfil: TSE

Legislative and administrative measures are taken to ensure the right to enjoy the private sphere regardless of SOGIESC personal traits. Consensual sexual activity of persons of the same sex who are over the age of consent is not criminalized and equal age of consent

²³⁶ Ibid., p. 48-49; M. Kovačević, and N. Planojević, 2020, p. 49-50.

²³⁷ M. Kovačević, and N. Planojević, 2020, p. 23.

²³⁸ OSCE ODIHR Hate Crime Reporting, *Serbia*, [web page], available at: <https://hatecrime.osce.org/serbia> (accessed 8 August 2020).

²³⁹ European Commission, 2019, p. 30.

²⁴⁰ Poverenik za zaštitu ravnopravnosti, 2020, p. 66.

applies to both same-sex and different-sex sexual activity.²⁴¹ Criminal and other legal provisions of general application are not applied to criminalize consensual same-sex activity of persons over the age of consent.²⁴² No person is held in detention for activities related to consensual same-sex activity or gender identity.

No laws exist that criminalize the expression of gender identity or deny the opportunity to change their bodies as means of expressing self-identified gender. However, medical procedures for gender affirmation require at least one year of hormonal therapy, as opposed to self-determination.²⁴³

Information on sexual orientation and sex are regarded as a matter of privacy under the Law on prohibition of discrimination,²⁴⁴ and are also regulated under the Law on personal data protection.²⁴⁵ The evidence of change of name or sex markers are not included in personal identification documents and do not have to be disclosed without the court order, as regulated by the Law on birth certificates.²⁴⁶

In summary, there is no criminalization of same-sex activity and no person is detained solely on the basis of SOGIESC personal traits. Information about SOGIESC traits are regarded as protected under the legislative framework. However, only the information about sexual orientation is explicitly protected and more adequate regulations on information about gender identity and sex characteristics are necessary.

²⁴¹ Zakona o izmenama i dopunama Krivičnog zakona Republike Srbije, 1994.

²⁴² Krivični zakonik, 2012.

²⁴³ Pravilnik o načinu izdavanja i obrascu potvrde nadležne zdravstvene ustanove o promeni pola, 2018.

²⁴⁴ Zakon o zabrani diskriminacije, 2009.

²⁴⁵ Zakon o zaštiti podataka o ličnosti, 2018.

²⁴⁶ Zakon o matičnim knjigama, 2018.

Principle 7	THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY
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Respect: TSE	Protect: TSE	Fulfil: TSE
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The Constitution of Serbia guarantees the freedom from arbitrary deprivation of liberty to everyone.²⁴⁷ However, no legislative provision exists that protect SOGIESC characteristics as a basis for arbitrary deprivation of liberty. Legislative measures that ensure the rights of persons under arrest are regulated in the Criminal procedure code.²⁴⁸ However, no specific protection of SOGIESC traits is explicitly mentioned and no anti-discriminatory provisions exist under this law as well. In this regard, the Ombudsman has recommended the amendments to the Law on Police,²⁴⁹ which also regulates deprivation of liberty, to include protection of discrimination based on SOGIESC personal traits.²⁵⁰

No long-term programs of awareness-raising are evident. However, four cities in Serbia have LGBT liaison officers, and a Handbook for police work in relation to LGBT people was produced in 2012.²⁵¹ The Ombudsman has recommended the establishment of more adequate educational training for the police.²⁵² No data records or statistics on arrest and detention are publicly available. However, they could be acquired through requests for access to information of public importance. BCHR reported such data without the disaggregation based on personal traits of detainees,²⁵³ and therefore no analysis is possible of how this data relates to SOGIESC personal traits.

²⁴⁷ Ustav Republike Srbije, 2006, Article 39.

²⁴⁸ Zakon o krivičnom postupku, Službeni glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 i 35/2019), Articles 68-69, available at: https://www.paragraf.rs/propisi/zakonik_o_krivicnom_postupku.html (accessed 8 August 2020).

²⁴⁹ Zakon o policiji, Službeni glasnik RS, br. 6/2016, 24/2018 i 87/2018, Articles 5 and 33, available at: https://www.paragraf.rs/propisi/zakon_o_policiji.html (accessed 8 August 2020).

²⁵⁰ Zaštitnik građana, 2020, p. 11.

²⁵¹ K. Grđan, *Priručnik za rad sa LGBT osobama*, Beograd, Labris, 2012, available at: <http://www.labris.org.rs/sites/default/files/Prirucnik%20za%20policiju.pdf> (accessed 8 August 2020).

²⁵² Zaštitnik građana, 2020, p. 47.

²⁵³ Beogradski centar za ljudska prava, 2020, p. 161.

In summary, no legislative provisions that would allow for arbitrary deprivation of liberty based on SOGIESC personal traits exist. However, no legislative measures specifically forbid such deprivation of this right, or prohibition of discrimination, despite the recommendations from the Ombudsman.

Principle 8	THE RIGHT TO A FAIR TRIAL		
	Respect: TSE	Protect: TSE	Fulfil: N

No legislative and administrative measures exist to protect queer people from discrimination during civil and criminal proceedings in the Law on civil procedures,²⁵⁴ or the Criminal procedure code.²⁵⁵ Moreover, LGBTI persons are not identified as a vulnerable group in need of free legal aid, and the Ombudsman has recommended that this be changed and brought in line with the Constitution.²⁵⁶ However, no discrimination of queer people during judicial proceedings is indicated in the examined reports.

Furthermore, no reports indicate that criminal prosecutions or civil proceedings occurred solely on the basis of SOGIESC personal traits in 2019. However, clearer legislative measures are necessary to regulate such possibility.

The Handbook on Prosecution of hate crimes in Serbia has been produced by the OSCE and the Office of the public Prosecutor in 2018.²⁵⁷ Furthermore, the Commissioner reports moderate levels of discriminatory attitudes in judiciary officers, as well as their adequate ability to recognize discrimination.²⁵⁸

²⁵⁴ Zakon o parničnom postupku, Službeni glasnik RS, br. 72/2011, 49/2013 - odluka US, 74/2013 - odluka US, 55/2014, 87/2018 i 18/2020, available at: https://www.paragraf.rs/propisi/zakon_o_parnicnom_postupku.html (accessed 8 August 2020).

²⁵⁵ Zakon o krivičnom postupku, 2019.

²⁵⁶ Zaštitnik građana, 2020, p. 48.

²⁵⁷ Mirović, T., J Kiurski, M. Antonijević, and J. Jokanović, 2018.

²⁵⁸ Poverenik za zaštitu ravnopravnosti, 2018.

In summary, discrimination on the basis of SOGIESC characteristics rarely occurs but the clearer and more adequate legislative provisions are necessary to prohibit any potential violations of the right to fair trial.

Principle 9	THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION		
	Respect: N	Protect: N	Fulfil: N

Discrimination on any ground is prohibited by Article 7 of the Law on the execution of criminal proceedings, but there is no mention of SOGIESC personal traits.²⁵⁹ There is no legislation to regulate the placement in detention of persons with diverse SOGIESC characteristics that would avoid further marginalization or risk of violence. Moreover, no protective measures that would protect detainees of heightened risk of violence on the basis of their SOGIESC personal traits are in place.

Medical care in detention is regulated in the aforementioned Law without specific reference to the needs of queer people. In this regard, the complaints of detainees to the Ombudsman were predominantly related to inadequacy of medical services.²⁶⁰ In line with this, EUCOM identifies the need for improvement of medical care in places of detention, for persons with HIV/AIDS and of diverse SOGIESC characteristics.²⁶¹

The possibility of decision regarding the place of detention appropriate to SOGIESC personal traits is not provided for in the relevant legislations. Conjugal visits to detainees are not granted on equal basis regardless of the gender of their partner, as the legal framework of the State does not recognize same-sex partnerships.²⁶² However, the Law on

²⁵⁹ Zakon o izvršenju krivičnih sankcija, Službeni glasnik RS, br. 55/2014 i 35/2019 available at: https://www.paragraf.rs/propisi/zakon_o_izvršenju_krivicnih_sankcija.html (accessed 8 August 2020).

²⁶⁰ Zaštitnik građana, 2020, p. 69.

²⁶¹ European Commission, 2019, p. 89.

²⁶² ILGA-Europe, 2020, p. 29.

criminal procedures²⁶³ prescribes that the prison managers can authorize visits by people who are not related to the detainees; however, one of the prisons is reported to allowing visits of same-sex partners of the prisoners.²⁶⁴

Independent monitoring of detention facilities is provided for, evident from the reports of the Ombudsman²⁶⁵ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²⁶⁶ However, none of these reports refer to the treatment of detainees with diverse SOGIESC personal traits. No indication of initiative for awareness-raising programs in relation to queer persons is evident.

No policies that would regulate violence, discrimination, or other harm to detainees based on SOGIESC personal traits exist, including regulation of the continuation of gender affirming treatment that started before the arrest, or medical care, and oversight of places of detention is generally inadequate.²⁶⁷

In summary, SOGIESC personal traits are not regarded as integral to the dignity of persons deprived of liberty, evident from the lack of provisions and legislation that would regulate the needs and vulnerabilities of these persons. Furthermore, the need for such respect is not recognized even by the independent institutions such is the Ombudsman.

²⁶³ Zakon o izvršenju krivičnih sankcija, 2019.

²⁶⁴ United Nations Development Programme, *Biti LGBT u istočnoj Evropi: Izveštaj za Srbiju*, online, United Nations Development Programme, 2017, p. 21, available at: <https://www.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/Inkluzija/undp-rs-bitilgbti-izvestaj.pdf> (accessed 3 August 2020).

²⁶⁵ Zaštitnik građana, 2020.

²⁶⁶ Council of Europe, *Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017*, Strasbourg, Council of Europe, 2017, available at: <https://rm.coe.int/16808b5ee7> (accessed 3 August 2020).

²⁶⁷ European Commission, 2019, p. 24.

Principle 10	THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT
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Respect: N	Protect: N	Fulfil: N
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The Ombudsman and the National Preventive Mechanism against torture (NPM) have taken measures to ensure the protection from torture, cruel, inhumane, and degrading treatment.²⁶⁸ Nevertheless, the CPT reports high number of incidents of police brutality.²⁶⁹ None of the mentioned reports specifically mention sanctions of such activity done solely on the basis of SOGIESC personal traits. No legislative measures are in place that specifically demand investigation of such acts perpetrated for reasons relating to SOGIESC personal traits. However, NPT have organized meetings with the LGBT CSOs in order to gain insight into the issues related to this group.²⁷⁰

The Ombudsman reports the lack of educational trainings for police officers and prison personnel about such acts.²⁷¹ He also reports the planned educational activities for medical staff working in psychiatric hospitals.²⁷² It is unclear whether prevention of these acts based on SOGIESC personal traits will be included.

Forced, coercive, and involuntary modification of sex characteristics is not recognized as torture, cruel, inhumane, or degrading treatment, and is not regulated by the law, leaving intersex persons unprotected from such procedures.²⁷³ On the contrary, evidence exists that doctors pressure parents of intersex children to decide on the surgical procedures, as reported by the UNDP.²⁷⁴

²⁶⁸ Nacionalni mehanizam za prevenciju torture, *Izveštaj za 2019 godinu*, Beograd, Zaštitnik građana, 2020, available at: <https://npm.rs/attachments/article/930/Godisnji%20izvestaj%20NPM%202019..pdf> (accessed 3 August 2020).

²⁶⁹ Council of Europe, 2017, p. 9.

²⁷⁰ Nacionalni mehanizam za prevenciju torture, 2020, p. 17.

²⁷¹ Zaštitnik građana, 2020, p. 47.

²⁷² *Ibid.*, p. 69.

²⁷³ United Nations Development Programme, 2017, p. 29-30.

²⁷⁴ *Ibid.*, p. 29-30.

In summary, the freedom from torture and from cruel, inhumane, or degrading treatment or punishment is regulated within legal framework in general terms, but no specific provisions explicitly prohibit such acts on the basis of SOGIESC personal traits. The education of law enforcement officers is lacking, and there is no recognition of harmful practices related to body modification of intersex persons, and forced sterilisation of trans persons as amounting to torture.

Principle 11	THE RIGHT TO PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS		
	Respect: Y	Protect: TSE	Fulfil: N

The legislative measures for protection of persons against trafficking, sale, and exploitation are set in place in Serbia, and the CoE's Group of Experts on Action against Trafficking in Human Beings (GRETA) of the CoE welcomed the continued efforts, besides giving recommendations for further improvement, in the second evaluation round.²⁷⁵ However, neither here, nor in the National Strategy for prevention of human trafficking,²⁷⁶ are queer people specifically regarded as a vulnerable group. Similarly, no such legislation criminalizes the behaviours of those vulnerable to these practices, and SOGIESC personal traits are not specifically provided for.

In summary, the efforts of the State in combating the practice of trafficking in human beings are visible, the measures are increasing and the legislation is in place. However, no specific protection of queer people is evident.

²⁷⁵ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia*, Strasbourg, Council of Europe, 2018, available at: <https://rm.coe.int/greta-2017-37-frg-srb-en/16807809fd> (accessed 2 August 2020).

²⁷⁶ Strategija prevencije i suzbijanja trgovine ljudima, posebno ženama i decom i zaštite žrtava 2017-2022, Službeni glasnik RS, 77/2017, available at: https://www.paragraf.rs/propisi/strategija_prevencije_i_suzbijanja_trgovine_ljudima_posebno_zenama_i_decom_i_zastite_zrtava_2017-2022.html (accessed 2 August 2020).

Principle 12	THE RIGHT TO WORK
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Respect: Y	Protect: TSE	Fulfil: TSE
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Discrimination based on sexual orientation is prohibited both in the Law on prohibition of discrimination, and the Labour Law.²⁷⁷ However, gender identity and expression, as well as sex characteristics are not specifically listed in any of these **legislations**.²⁷⁸

Service of queer people in the military is not prohibited, although no comprehensive data about their treatment exists.²⁷⁹

Even though some legal provisions exist to protect against the discrimination of queer people, mostly on the basis of sexual orientation, discriminatory practices occur in high numbers, and queer people are harassed in **places of work**.²⁸⁰

In summary, protective legislative measures exist for discrimination on the basis of sexual orientation in regards to the right to work, but no such protection exists for discrimination on the basis of gender identity and expression, and sex characteristics. Furthermore, queer people are often discriminated and harassed in places of work.

Principle 13	THE RIGHT TO SOCIAL SECURITY AND OTHER SOCIAL PROTECTION MEASURES
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Respect: TSE	Protect: TSE	Fulfil: N
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Discrimination is prohibited within the Law on social protection,²⁸¹ listing sexual orientation as protected grounds. However, no adequate social programs targeting queer persons exist, and no regulations for such programs exist.²⁸²

²⁷⁷ See: Section 3.1 of this paper.

²⁷⁸ *Ibid.*

²⁷⁹ United Nations Development Programme, 2017, p. 26.

²⁸⁰ Poverenik za zaštitu ravnopravnosti, 2020, p. 22 and p. 236.

Same-sex partnerships are not recognised in any form, and realization of benefits or social insurance with regards to the status of partners is impossible.²⁸³ These issues were recognized in the Strategy 2013-2018 but were not improved upon.²⁸⁴

The issues of minors who are left without homes after coming out to their parents are unregulated within the social security systems, and no specific programs are developed in this regard.²⁸⁵ However, the problem is recognized, and was included in the aforementioned Strategy.²⁸⁶

No specific programs are directed at poverty reduction of queer people, even though trans persons and queer minors are identified as endangered groups.²⁸⁷ This issue was also included in the Strategy 2013-2018.²⁸⁸

In summary, no specific programs that target and provide for the needs of persons based on SOGIESC personal traits in regards to social security and social protective measures exist. However, these problems are recognized and included in the strategic efforts of the State to alleviate discrimination.

Principle 14	THE RIGHT TO ADEQUATE STANDARD OF LIVING		
	Respect: Y	Protect: TSE	Fulfil: N

The Law on prohibition of discrimination guarantees each person equal standards of living without discrimination.²⁸⁹ Only sexual orientation is explicitly regulated by this law. No

²⁸¹ Zakon o socijalnoj zaštiti, Službeni glasnik RS, 24/2011, available at: https://www.paragraf.rs/propisi/zakon_o_socijalnoj_zastiti.html (accessed 6 August 2020).

²⁸² United Nations Development Programme, 2017, p. 8.

²⁸³ ILGA-Europe, 2020, p. 29.

²⁸⁴ Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, Službeni glasnik RS, br. 60/2013.

²⁸⁵ United Nations Development Programme, 2017, p. 24.

²⁸⁶ Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, 2013.

²⁸⁷ European Commission, 2019, p. 24

²⁸⁸ Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, 2013.

reports consulted specifically mention extensive cases of discrimination based on SOGIESC personal traits in attaining adequate standards of living.

However, no specific programs are directed to investigating the intersection of persons with diverse SOGIESC personal traits and fulfilment of this right, even though trans persons and queer minors are identified as endangered groups. Similarly, no programs exist that would help persons who cannot attain adequate standards of living due to their SOGIESC personal traits.²⁹⁰

In summary, only sexual orientation is regarded as protected grounds against discrimination in the relevant legislation, and provisions that would regulate discrimination based on gender expression and sex characteristics do not exist. There are no specific programs that would investigate and provide for the persons who cannot enjoy this right due to their SOGIESC personal traits.

Principle 15	THE RIGHT TO ADEQUATE HOUSING		
	Respect: N	Protect: N	Fulfil: TSE

No provisions exist that would protect queer people from discrimination when realizing the right to adequate housing, except the general provision in the Law on prohibition of discrimination, which lists only sexual orientation as protected grounds.²⁹¹ Furthermore, reports by EUCOM²⁹² and the Strategy 2013-2018²⁹³ identify LGBT persons, especially minors and trans persons, as vulnerable groups in relation to homelessness. No measures exist that would protect queer people from evictions on the basis of their SOGIESC personal traits.

²⁸⁹ Zakon o zabrani diskriminacije, 2009.

²⁹⁰ European Commission, 2019, p. 89.

²⁹¹ Zakon o zabrani diskriminacije, 2009.

²⁹² European Commission, 2019, p. 28.

²⁹³ Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, 2013.

Queer people do not have equal rights to land and home ownership, as same-sex partnerships are not recognized within the legal framework. Same-sex couples cannot share properties, or inherit properties of their partners.²⁹⁴

Furthermore, queer persons have been identified as a highly vulnerable group in relation to homelessness and domestic violence EUCOM.²⁹⁵ Even though this problem was included in the Strategy 2013-2018,²⁹⁶ but no social programs that would tackle this problem have been established.

Training and awareness-raising programs to relevant agencies often depend on the capacities of the CSOs. Educative trainings have been organized, showing the initial willingness of social institutions to learn about the problem.²⁹⁷

In summary, the problems of vulnerability of queer people to eviction and homelessness remains present, and same-sex couples are not provided equal rights in regards to ownership and inheritance. On the other hand, this problem is recognized by the relevant Ministry and has been included in the strategic framework, showing initial effort in dealing with the issue.

Principle 16	THE RIGHT TO EDUCATION		
	Respect: Y	Protect: TSE	Fulfil: TSE

Discrimination is prohibited on any grounds in relevant legislation regulating education system, but only the Law on higher education explicitly lists sexual orientation as protected grounds.²⁹⁸ However, the Rulebook on closer recognition criteria of forms of discrimination

²⁹⁴ ILGA-Europe, 2020, p. 29.

²⁹⁵ European Commission, 2019, p. 27.

²⁹⁶ Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, 2013.

²⁹⁷ For example, see: Asocijacija Duga, '*Programi asocijacije Duga*', [web page], available at: <http://www.asocijaciaduga.org.rs/programi-asocijacije-duga/> (accessed 9 August 2020).

²⁹⁸ See: Section 3.2 of this paper.

by employees, children, students, or third parties on the institutions of education explicitly lists SOGIESC characteristics as protected ground.²⁹⁹ Evidence suggests that discriminatory attitudes on the basis of SOGIESC personal traits remain high in institutions of education, as reported by the Commissioner, the Ombudsman, and UNDP. The Rulebook prohibits discrimination on the basis of SOGI personal traits, and includes prohibition of bullying and harassment.³⁰⁰ Instances of peer violence and discriminatory attitudes in institutions of education reported by the Ombudsman and the Commissioner attest to the fact that this problem remains.

The access to education is guaranteed to everyone without discrimination based on SOGIESC characteristics, but there are no efforts in identification of adults who suffered such discrimination in the educational system, for the purposes of providing equal opportunities.

Education is not directed to development of students' potentials to respond to persons of diverse SOGIESC personal traits. No program is specifically addressing the needs of queer students. However, some institutions of higher education are open to hosting queer related seminars, such as Queer studies.³⁰¹ Furthermore, education is not directed to development of human rights of persons of diverse SOGIESC personal traits, evidenced by discriminatory content in textbooks, as reported by the Ombudsman, Commissioner and UNDP. This issue has been identified by the Strategy 2013-2018.³⁰² Similarly, educational methods and curricula are not used to enhance the understanding of and respect for persons of diverse SOGIESC characteristics. Attempts have been made for the introduction of sexual and reproductive education in schools that would have included lessons on diversity

²⁹⁹ Pravilnik o bližim kriterijumima za prepoznavanje oblika diskriminacije od strane zaposlenog, deteta, učenika ili trećeg lica u ustanovi obrazovanja i vaspitanja, Službeni glasnik RS, br. 22/2016, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/pravilnik/2016/22/1/reg> (accessed 9 August 2020).

³⁰⁰ *Ibid.*

³⁰¹ Parada, 'Kvir studije', [web page], available at: <https://parada.rs/2020/03/05/kvir-studije/> (accessed 9 August 2020).

³⁰² Strategija za prevenciju i zaštitu od diskriminacije za period 2014-2018 godine, 2013.

in SOGIESC personal traits, but have been discontinued after resistance by the general public. No educational trainings for teachers specifically include materials for understanding diversity in SOGIESC personal traits.³⁰³

In summary, the legislative framework regulating education in Serbia prohibits discrimination, but only occasionally listing SOGIESC personal traits as protected grounds. The discriminatory attitudes towards queer people are held by the staff, students, and general population and queer people report high levels of harassment and discrimination within the educational system. This problem has been recognized, and included in the strategic framework of the State.

Principle 17	THE RIGHT TO HIGHEST ATTAINABLE STANDARD OF HEALTH
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Respect: N	Protect: N	Fulfil: N
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The health system of the State still recognizes trans states as mental health issues,³⁰⁴ despite the fact that WHO removed trans states from the list of mental and behavioral problems in 2019.³⁰⁵ The process of gender affirming does not respect the self-identification of trans persons, but require an approval from the team of doctors, including psychiatrists, as mentioned in Principle 3. Even though 60% of the costs of gender affirming medical procedures are covered by national insurance, they are often inaccessible by everyone. The lack of availability of hormonal therapy for trans persons is not adequately resolved.³⁰⁶

³⁰³ Zaštitnik građana, 2020, p. 47-48.

³⁰⁴ Beogradski centar za ljudska prava, 2020, p. 298.

³⁰⁵ *Ibid.* p. 298.

³⁰⁶ *Ibid.* p. 298.

Parents of intersex children are often pressured in making decisions about ‘sex normalizing’ procedures without being provided with appropriate information.³⁰⁷ There are no legislations or statistical data on procedures in regards to intersex children.³⁰⁸

Persons of diverse SOGIESC characteristics and those living with HIV/AIDS often face discrimination in health care facilities in many different contexts, as reported by the Commissioner. The forms for blood donation and donation of reproductive cells and embryos include discriminatory questions and are not adequately aligned with international standards.³⁰⁹ Furthermore, there is no regulated access to pre and post-exposure prophylaxis (PrEP and PEP). Instances of discriminatory behaviours have been addressed by the Commissioner.³¹⁰ The EUCOM recognizes trans and intersex persons as especially vulnerable group in regard to discrimination, and identifies problems with medical care of persons living with HIV/AIDS, especially in places of detention.³¹¹

In summary, no legislation and regulations exist that would protect the right to the highest attainable standards of health to queer people. The specific needs of trans, intersex, and persons living with HIV/AIDS are not adequately provided for in the health system of the state. Discrimination of persons with diverse SOGIESC personal traits occurs in high levels in places of medical care.

Principle 18	THE RIGHT TO PROTECTION FROM MEDICAL ABUSE
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Respect: N	Protect: N	Fulfil: N
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As with the Principle 17, no legislative or administrative measures are in place that would protect queer people from medical abuse. Furthermore, medical abuse of intersex children

³⁰⁷ United Nations Development Programme, 2017, p. 29-30.

³⁰⁸ Beogradski centar za ljudska prava, 2020, p. 301.

³⁰⁹ Poverenik za zaštitu ravnopravnosti, 2020, p. 67-72.

³¹⁰ *Ibid.*, p. 67-72.

³¹¹ European Commission, 2019, p. 89.

is known to take place,³¹² and no sanctions are imposed, and no programs exist that are aimed at ending this practice. Similarly, no provisions exist that prohibit ‘conversion’ therapies for persons of diverse sexual orientations. Trans states are still regarded as issues of mental health.³¹³

In summary, there are no visible State efforts to respect, protect, and fulfil the rights of queer people to protection from medical abuse. Despite some of these practices being known to occur, no efforts are being taken in their discontinuation.

Principle 19	THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION		
	Respect: TSE	Protect: TSE	Fulfil: TSE

The right to freedom of opinion and expression is endangered in Serbia, especially through the media.³¹⁴ Hate speech and smear campaigns are frequent occurrences,³¹⁵ and women and queer people are the most frequent targets.³¹⁶ This directly relates to the Obligation B, D, and E of this Principle. On the other hand, the propagators of hate speech have been prosecuted and sentenced more often in the past years, as well as given warnings by the Commissioner.³¹⁷

Nevertheless, the instances of censorships of and disablement of access to information to queer people by the State authorities have not been reported to take place. There have been many publications issued by queer organizations, and public events organized without state interference, most notably in PIC and during Pride Week.³¹⁸

³¹² United Nations Development Programme, 2017, p. 29-30.

³¹³ Beogradski centar za ljudska prava, 2020, p. 298.

³¹⁴ Beogradski centar za ljudska prava, 2020, p. 168-170

³¹⁵ *Ibid.*, p. 182.

³¹⁶ Poverenik za zaštitu ravnopravnosti, 2020, p. 230; Zaštitnik građana, 2020, p. 48.

³¹⁷ Poverenik za zaštitu ravnopravnosti, 2020, 67-72.

³¹⁸ Beogradski centar za ljudska prava, 2020, p. 295-297.

Taking into account that access to accurate and relevant information is not adequately provided for to the general population in Serbia, no additional discrimination occurs in regards to people of diverse SOGIESC personal traits. The information publicly available is available to everyone in the same capacity, and no restrictions are in place that would limit the access to the internet and social media.

The information about human rights, both provided for within the national and international frameworks, as well as reports submitted by the state to international bodies and mechanisms, is available and accessible both online and in printed forms,³¹⁹ and no instances of discrimination in regards to persons of diverse SOGIESC personal traits have been reported.

In regards to the recognition of specific needs and human rights situation of queer people, the relevant data is not provided by the State, and such information is often dependent on reports from national CSOs and international monitoring mechanisms. Furthermore, the State does not keep disaggregated records for each population, the fact that is noted by ODIHR in relation to hate crimes, as mentioned in Principle 5; records on prison population, as mentioned in Principle 9; or statistics on intersex children and number of sex ‘normalising’ procedures done, as mentioned in Principle 17.

In summary, the State obligations in regards to the right to freedom of opinion and expression are largely unfulfilled for the general population, including queer people. On one hand, the respect of the State for this right does not differ in regard to persons of diverse SOGIESC personal traits, but the information that concerns this population that should be provided for by the State is not available.

³¹⁹ For example: Pravno informacioni sistem Srbije, [web page], available at: <https://www.pravno-informacioni-sistem.rs/> (accessed 9 August 2020).

Principle 20	THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION
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Respect: Y	Protect: Y	Fulfil: Y
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State obligations regarding the right to freedom of peaceful assembly and association as they relate to queer people were in focus during the past decade, both for the activists and the State itself.³²⁰ The respect of this right has largely improved, as reflected by the possibility to obtain legal recognition for events such as Pride, as well as by State refraining from employing notions of public order and security to restrict them, most notably since 2014.³²¹ Furthermore, police efforts at protection against violence and harassment during high risk events have been adequately afforded to persons exercising this right in the last six years.³²² Notable is the downward trend in number of police officers protecting the Pride Parade. Moreover, the neutralization of far-right groups and associations that had been largely responsible for violence during these events in the years prior to 2014, and CCS's decision to forbid association of some of those groups can be understood as affirmative action measures in overcoming challenges that queer people have had in exercising this right.³²³

In addition to this, no discriminatory provisions that would impede associations and organizations which seek to promotion human rights of queer people are in place. Such groups can register, but also seek, receive, and use funding and other resources from any relevant source, without unjustifiable limitations.

In summary, the right to freedom of peaceful assembly and association of queer people is respected and protected by the State, and positive measures have been taken to enable its fulfilment. This has been progressively happening since 2014, and it is largely due to the efforts of the civil society that took place in the years before that.

³²⁰ See: Section 3.2 of this paper.

³²¹ *Ibid.*

³²² *Ibid.*

³²³ *Ibid.*

Principle 21	THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
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Respect: Y	Protect: N	Fulfil: N
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Everyone is entitled to the right of freedom of thought, conscience, and religion under the Constitution³²⁴, ECHR,³²⁵ and ICCPR³²⁶ without discrimination. The Constitution prohibits discrimination on the basis of religion,³²⁷ as do the Law on churches and religious communities³²⁸ and Law on prohibition of discrimination.³²⁹ This applies to persons with diverse SOGIESC characteristics in the same manner as to everyone.

Regardless, the Law on prohibition of discrimination does not regard as discriminatory the conduct of priests or religious servants that are in accordance to the beliefs, values, or goals of the Church or religious community that is entered in the register.³³⁰ Furthermore, the Law on churches and religious communities mandates that religious freedom cannot be used in such a way as to endanger the right to life, the right to health, the rights of children, the right to personal and family integrity and the right to property, nor to induce or encourage religious, national or racial intolerance,³³¹ without the provision that would prohibit discrimination based on SOGIESC characteristics. Understanding that predominant religion of population living in Serbia is Orthodox Christianity,³³² instances of refusals of certain services to queer people, including baptism and communion, would not amount to discrimination under the legal framework of Serbia.

³²⁴ Ustav Republike Srbije, 2006, Article 43.

³²⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Article 8.

³²⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 18.

³²⁷ Ustav Republike Srbije, 2006, Article 21.

³²⁸ Zakon o crkvama i verskim zajednicama, Službeni glasnik RS, br. 36/2006, Article 2, available at: https://www.paragraf.rs/propisi/zakon_o_crkvama_i_verskim_zajednicama.html (accessed 9 August 2020).

³²⁹ Zakon o zabrani diskriminacije, 2009, Article 18.

³³⁰ *Ibid.*, Article 18.

³³¹ Zakon o crkvama i verskim zajednicama, Article 3.

³³² Beogradski centar za ljudska prava, 2020, p. 112.

The issues between the right to religious freedoms and the right to the freedom from discrimination is not exclusive to the State of Serbia, and is existent in many other contexts. However, the lack of clear State position on the issue, and the lack of positive measures that would incite public debate, conversation between communities, or similar actions that would ensure that different convictions and belief are not undertaken in a manner incompatible with human rights of queer people, could be regarded as unfulfilled obligations to promote this right as it relates to queer people.

Principle 22	THE RIGHT TO FREEDOM OF MOVEMENT		
	Respect: Y	Protect: Y	Fulfil: TSE

Article 39 of the Constitution³³³ guarantees the right to freedom of movement to everyone, and in the list of possible restrictions of this right, reasons relating to SOGIESC personal traits are not included. Similarly, the prohibition of entry of persons within the State borders is not dependent of the SOGIESC characteristics.

Cases have been recorded that attest to problems with entry in regards to trans persons who changed their personal documents, or their perceived gender does not match the sex marker on their documents.³³⁴ Even in these cases, the right of those persons to freedom of movement was not violated, but the procedure could be regarded as discriminatory as it took longer and required additional proofs of identity, attesting to the need of more State effort in educating border personnel.

In summary, the right to freedom of movement is guaranteed to all persons, and could not be restricted on the basis of SOGIESC personal traits. Discriminatory instances have been

³³³ Ustav Republike Srbije, 2006, Article 39.

³³⁴ P. Živić, *'Od Makedonije do Slovenije: Kada tvoje telo nije tvoje'*, [web page], 2 April 2019, available at: <https://www.bbc.com/serbian/lat/balkan-47777443> (accessed 9 August 2020).

recorded and further efforts in the State obligation to ensure the fulfilment of this right of queer people is necessary.

Principle 23	THE RIGHT TO SEEK ASYLUM		
	Respect: Y	Protect: Y	Fulfil: Y

The legislative framework regulating the right to seek asylum in Serbia has improved with the adaptation of the Law on asylum and temporary protection,³³⁵ the Law on foreigners,³³⁶ and the Law on border control,³³⁷ all in 2018, and EUCOM reports it as an improvement in its alignment in the area of migration management with the *acquis* of the European Union law.³³⁸ The EUCOM also reports that Serbia has the necessary institutions in regards to the asylum seeking process. Nevertheless, HRW reports that the refugee and asylum processes remain inadequate, in relation to the duration of the processes and attending to the specific needs of those who wish to apply for asylum.³³⁹

It is important to note that the Law on asylum and temporary protection specifically list sexual orientation and gender identity as basis on which discrimination is prohibited during the process of seeking asylum. Furthermore, justifiably fear of persecution for the reason of ‘*belonging to a particular social group*’³⁴⁰ is included, and this concept is understood to possibly ‘*...signify a group based on the common characteristics of sex, gender, gender identity and sexual orientation*’.³⁴¹ By the estimation of the Crisis Response and Policy

³³⁵ Zakon o azilu I privremenoj zaštiti, Službeni glasnik RS, br. 24/2018, available at: <https://www.paragraf.rs/propisi/zakon-o-azilu-i-privremenoj-zastiti.html> (accessed 9 August 2020).

³³⁶ Zakon o strancima, Službeni glasnik RS, br. 24/2018 i 31/2019, available at: https://www.paragraf.rs/propisi/zakon_o_strancima.html (accessed 9 August 2020).

³³⁷ Zakon o graničnoj kontroli, Službeni glasnik RS, br. 24/2018, available at: <https://www.paragraf.rs/propisi/zakon-o-granicnoj-kontroli.html> (accessed 9 August 2020).

³³⁸ European Commission, 2019, p. 38.

³³⁹ Human Rights Watch, ‘*Serbia/Kosovo Events of 2019*’, [web page], available at: <https://www.hrw.org/world-report/2020/country-chapters/serbia/kosovo> (accessed 9 August 2020).

³⁴⁰ Zakon o azilu I privremenoj zaštiti, 2018, Article 24.

³⁴¹ *Ibid.*, Article 26.

Centre (CRPC) of Serbia, and reported by ILGA,³⁴² 32 asylum seekers have been granted a recognized status in Serbia in 2019, of which 7 were granted protection based on SOGI personal traits. Moreover, Serbia is considered a safe country of origin in relation to LGBT people.³⁴³

ILGA also reports that the authorities have acted accordingly in relation to problems of queer asylum seekers when they are at risk of further marginalization in collective accommodation, and in cooperation with CRPC and United Nations High Commissioner for Refugees (UNHCR) office in Serbia provided private accommodation for such individuals.³⁴⁴ Furthermore, CRPC and UNHCR have organized a series of educational trainings for the relevant Ministries and national Asylum Office,³⁴⁵ showing a willingness of State authorities to cooperate and provide for the needs of queer migrants and asylum seekers.

In summary, the legislative framework provides for the protection and respect of queer persons when seeking asylum, and also recognizes prosecution based on SOGIESC personal traits as valid ground for seeking asylum. Moreover, relevant State authorities have showed willingness to participate in educative training and provide for specific needs of queer asylum seekers to some extent, which is particularly important when the fact that the adequacy of the asylum seeking processes are judged to be far from ideal by international organizations.

³⁴² ILGA-Europe, 2020, p. 31.

³⁴³ United Nations Development Programme, 2017, p. 31.

³⁴⁴ ILGA-Europe, 2020, p. 31.

³⁴⁵ For example, see: CRPC, 'Novosti', [web page], available at: <https://www.crpc.rs/novosti.html> (accessed 10 August 2020); or: UNHCR, 'Obuka mladih predavača u cilju unapređenja bezbednosti dece izbeglica bez pratnje i dece razdvojene u putu', [web page], available at: <http://www.unhcr.rs/opste/price-iz-zivota/obuka-mladih-predavaca.html> (accessed 10 August 2020).

Principle 24	THE RIGHT TO FOUND A FAMILY		
	Respect: N	Protect: N	Fulfil: N

Serbian Constitution³⁴⁶ and Family Law³⁴⁷ both define marriage between a man and a woman, and the latter explicitly states that such unions between same-sex partners are declared null and void.³⁴⁸ The reiterated partnerships are not possible within the State of Serbia, for same-sex and different-sex couples alike. This issue has been put in focus by both national organizations and international monitoring mechanisms, and positive State action has been requests with urgency.³⁴⁹

Furthermore, instances have been reported where administration offices refused to issue the certificate of marital status, if they had knowledge that this certificate would be used for the purposes of registering same-sex partnerships abroad.³⁵⁰ After the complaint of BCHR, the Secretariat in Belgrade changed this discriminatory practice, but the information about this issue in other parts of Serbia is unavailable.³⁵¹ By this practice, the State not only fails to respect the right of queer people within the state, but interferes in the realization of this right in State where it is respected and provided for.

Moreover, lesbians are not included in regulations about artificial insemination, and instance of discriminatory incidents have been reported by the Labris.³⁵² The procedure for donation of reproductive cells and embryos contains discriminatory provisions, preventing queer people from accessing this service. Similarly problematic is the unregulated practice of medical personnel to urge parents of intersex children to perform sex 'normalizing'

³⁴⁶ Ustav Republike Srbije, 2006, Article 62.

³⁴⁷ Porodični zakon, Službeni glasnik RS, br. 18/2005, 72/2011 - dr. zakon i 6/2015, Article 3, available at: https://www.paragraf.rs/propisi/porodicni_zakon.html (accessed 10 August 2020).

³⁴⁸ *Ibid.*, Article 31.

³⁴⁹ For example: Poverenik za zaštitu ravnopravnosti, 2020, p. 24.

³⁵⁰ United Nations Development Programme, 2017, p. 21.

³⁵¹ *Ibid.*, p. 21.

³⁵² Labris – Lesbian Human Rights Organisation, *Serbia: Discrimination against Lesbian Women on the Basis of Sexual Orientation*, Shadow Report, online, 2018, p. 3, available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SRB/INT_CEDAW_ICO_SRB_31492_E.pdf (accessed 10 August 2020).

surgical procedures when they are born without providing adequate information, or respecting the right of a child to freely choose their gender and sex when they have developed such capabilities, as previously discussed in Principles 10, 17, and 18. Also, queer children are often exposed to discrimination by their families, and within the education system, as seen when Principles 13-16 were assessed.

In summary, no obligation on the State of Serbia in regards to the right to found a family as it relates to queer people are fulfilled. Not only does the State has a lack of respect for this right, instances take place where the realization of this right is directly interfered with when queer people attempt to realize it elsewhere. There is a serious deficiency in positive and protective actions done by the State in regards to realization of this right of queer people.

Principle 25	THE RIGHT TO PARTICIPATE IN PUBLIC LIFE		
	Respect: Y	Protect: Y	Fulfil: TSE

No legislation in the legal framework of the State prohibits or includes discriminatory provisions in relation to the participation in public life to persons of diverse SOGIESC characteristics. Furthermore, at the time of writing of this paper, one of the highest positions in the State is occupied by a publicly declared lesbian.³⁵³

Service in the military and police is not dependent on SOGIESC personal traits, although discriminatory attitudes remain within these institutions,³⁵⁴ reflecting the overall stance of the general population. The Commissioner reports the lowering of the social distance of citizens towards LGBT persons, and interprets this as due to the Prime Minister of the State being a part of this population.³⁵⁵ Moreover, public servants are reported to be more successful in recognizing discrimination of LGBT people,³⁵⁶ implying that the attitudes

³⁵³ See: Section 3.2 of this paper.

³⁵⁴ United Nations Development Programme, 2017, p. 26.

³⁵⁵ Poverenik za zaštitu ravnopravnosti, 2019, p. 49.

³⁵⁶ Poverenik za zaštitu ravnopravnosti, 2018, p. 24.

towards queer people of both general population and representatives of public authorities are changing in a forward direction.

Conversely, during the elections that took place in Jun of 2020, no party list had representatives with diversity of SOGIESC personal traits or had political agenda that focused on the issues faced by queer people. No affirmative action programmes were developed by the State that would promote public and political participation for persons marginalized on the basis of SOGIESC personal traits. These efforts were predominantly taken by the CSOs aiming to promote human rights of queer people.

In summary, no discriminatory provisions are in place that would disable queer people from participating in public life. However, there is a lack of State effort in encouraging queer people to take part in the conduct of public affairs, or measures that would decrease prejudice and discriminatory attitudes, and the promotion of this right is largely dependent on the efforts of civil society.

Principle 26	THE RIGHT TO PARTICIPATE IN CULTURAL LIFE		
	Respect: Y	Protect: Y	Fulfil: TSE

No legislative measures are imposed that would prevent queer people from participating in the cultural life within the State. The events that are aimed at promoting queer cultures, including the Pride Parade, Pride Month, celebration of important dates such as IDAHOT, film festivals, drag shows, and nigh life activities are taking place in rising numbers,³⁵⁷ and are often awarded adequate police protection, already mentioned in Principle 20. However, these events are predominantly organized by CSOs and informal queer groups, and they are also occurring only in the two largest cities in Serbia, Belgrade and Novi Sad. In this

³⁵⁷ Beogradski centar za ljudska prava, 2020, p. 295-296.

regards, positive State action that would enable cultural activity to take place in other places in Serbia is lacking.³⁵⁸

On the other hand, there is no visible State effort in fostering the dialogue between different cultural groups that exist within the State, which is related with the assessment of Principle 21. These different cultural groups do not include only religious communities, but national minorities, as well as medical and academic societies, which might hold different views on matters of SOGIESC personal traits, and where cultural dialogue is needed. They also include groups of football supporters, which have known to attack PIC when exercising their rights of assembly.³⁵⁹

In summary, the right of queer people to participate in cultural life of the State is respected by the State which is reflected in the legislative framework, and protected by the State efforts to ensure the security and non-discrimination when this right is exercised. However, this mainly refers to two biggest cities in the State, and further action is necessary to provide for this right to queer people outside of the largest cultural centres.

Principle 27	THE RIGHT TO PROMOTE HUMAN RIGHTS		
	Respect: Y	Protect: TSE	Fulfil: TSE

No State measures exist that would restrict individuals and groups from exercising the right to promote human rights, and this applies to the promotion of the rights of queer people. Furthermore, access to, communication, and cooperation with international human rights organization and bodies is not interfered with, and human rights activists are not prevented

³⁵⁸ ERA, 'Case study Serbia 2018', Belgrade, ERA, 2019, p. 18, available at: <https://www.lgbti-era.org/sites/default/files/pdffdocs/CASE%20STUDY%202019%20LGBTI%20Rights%20in%20Serbia.pdf> (accessed 10 August 2020).

³⁵⁹ Parada, 'Jedanaesti napad na Prajd info centar – nema odgovornih', [web page], available at: <https://parada.rs/2020/03/01/jedanaesti-napad-na-prajd-info-centar-nema-odgovornih/> (accessed 10 August 2020).

from submitting reports or participating in other monitoring activities of international bodies.³⁶⁰

Regarding the protection of this right, campaigns and organized attacks that were happening during the beginning of the last decade have been largely neutralized since 2014. Furthermore, what was considered under Principle 19 and 20, and Principle 25 and 26 also applies here, as the rights covered under those Principles are directly related to promotion of human rights. In other words, the efforts in protecting and providing for the right to peaceful assembly during Pride Parade also protects and provides for the right to promote human rights, seeing as that is the primary goal of the Parade itself. Ensuring the right of queer people to participate in cultural and political life within the State also directly ensures the right to promote human rights, as by such participation queer people often raise awareness about the issues they face and advocate for better and more systematic rights protection.

Nevertheless, individual attacks on defenders of human rights of queer people and queer defenders of human rights still take place in large numbers, as reported by DSZ.³⁶¹ These incidents are often inadequately investigated and processed, similar to any incidents involving people of diverse SOGIESC personal traits, and for the reasons similar to those discussed under Principles 1, 2, 4, and 5. However, for such reasons, queer human rights defenders are often more visible because they are usually more empowered to report and talk about such incidents, and are more equipped with knowledge about mechanisms for claiming remedies and redress.³⁶² In turn, because of their increased visibility they are more exposed to violence and harassment, indicated by the fact that 19% of incidents recorded by DSZ were attacks on queer human right defenders.³⁶³ Consequently, human rights defenders are in need of greater protection from the State, which is not provided at all times. Attacks on queer human rights activists have known to happen during events that

³⁶⁰ See: Section 2 of this paper.

³⁶¹ M. Kovačević and N. Planojević, 2020.

³⁶² European Commission, 2019, p. 29.

³⁶³ M. Kovačević and N. Planojević, 2020, p. 21.

promote human rights of queer people other than Pride, events that promote human rights of other groups or human rights in general, and at places that serve the purpose of human rights promotions, such as CSO offices and PIC.³⁶⁴ In this sense, the fulfilment of the obligation of the State to protect and ensure the fulfilment of this right by queer people is not systematic and requires further efforts.

In summary, the right to promote human rights, including human rights of queer people is largely respected, and sometimes ensured by the State, although progress is noticeable in this regard, especially since 2014. However, more State action is necessary if the obligations that the State has are to be fully fulfilled.

Principle 28	THE RIGHT TO EFFECTIVE REMEDIES AND REDRESS		
	Respect: Y	Protect: TSE	Fulfil: N

The right to effective remedies and redress to human rights violations is closely related to the right to fair trial (Principle 8) rights to accountability and state protection (Principles 29 and 30), as well as the right to truth (Principle 37). In this regard, if this right is to be fully enjoyed by anyone, including queer people, State mechanisms for reporting and processing violations of human rights need to be adequately established and utilized in the first place, after which the remedies and redress could be provided for the victims of such violations.

The UNDP reports that the access to the State established mechanisms of processing human rights violations and legal and other means of providing for remedies and redress are accessible to queer people.³⁶⁵ However, they are assessed to be ineffective, evident from the high number of judgments that have not been enforced.³⁶⁶ Similarly, the judgments of the cases considered by the CCS were mostly ruled in favour of queer people, but even here

³⁶⁴ Ibid., p. 72-73.

³⁶⁵ United Nations Development Programme, 2017, p. 31.

³⁶⁶ Ibid., p. 31

issues arose when it refused access to the constitutional complaint to individuals who would have been the participants of the Pride Parade in 2012, which is in discord with the decision of the ECtHR.³⁶⁷ Another problem with fulfilment of this right is the fact that the Law on free legal aid³⁶⁸ does not identify queer people as a group of heightened need for aid, making access to justice even less possible to queer people who are socially and economically marginalized.³⁶⁹

The report of DSZ where incidents reported to this CSO by queer people from 2017 to July of 2020 were analysed, indicates that out of 166 incidents only 57 (34.3%) were reported to the police or the prosecution.³⁷⁰ Out of these, for only 5 (8.8%) incidents a court proceeding has been initiated.³⁷¹ Furthermore, out of 63 incidents that were recorded during 2019, 33 (52.4%) were not reported to any State authority,³⁷² and victims of 8 (24.2%) such incidents listed '*lack of information about procedures*' as a reason for this.³⁷³

In cases of discrimination, the Commissioner and Ombudsman often use their competences to issue public warnings when such instances are recognized and opinions and recommendations for their redress. Although these opinions and recommendations are inconsistently and unsystematically addressed, and there is no State enforcement of their application, there is an upward trend in their application.³⁷⁴

In summary, the right to effective remedies and redress are interlinked with the efficiency of the State judiciary and enforcement mechanisms, which are generally lacking within the State, but are in most part respected by the State, which is reflected from the lack of active interference. The reports of independent bodies indicate that protection of this right is

³⁶⁷ Ibid., p. 31

³⁶⁸ Zakon o besplatnoj pravnoj pomoći, Službeni glasnik RS, br. 87/2018, available at: <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html> (accessed 10 August 2020).

³⁶⁹ Zaštitnik građana, 2020, p. 48.

³⁷⁰ M. Kovačević and N. Planojević, 2020, p. 49.

³⁷¹ Ibid., p. 63.

³⁷² Ibid., p. 32.

³⁷³ Ibid., p. 35.

³⁷⁴ Poverenik za zaštitu ravnopravnosti, 2020, p. 66.

unsystematic and unstructured, and positive action from the State is in most part lacking, and cannot amount to the fulfilment of the obligation to enable the fulfilment of this right by queer people.

Principle 29	ACCOUNTABILITY		
	Respect: TSE	Protect: N	Fulfil: N

The accountability to violations of human rights of queer people is, similar to the previous Principle, interrelated with the adequacy of State judiciary, investigative and monitoring mechanisms, and the levels of access of information about remedies and redress available to victims, as well as their empowerment and trust-building actions with aims of encouraging reporting of violations, the lack of which could be interpreted as an obstacle in preventing persons responsible for human rights violations based on SOGIESC personal traits from being accountable. These issues have been already discussed in Section 3 of this paper, as well as within the assessment of Principles 8, 27, and 28, but will be also important during the assessment of Principle 30 and 37.

It is important to examine here the lack of information available to queer people that had been victims of human rights violations, and the levels of trust in State mechanisms for their protection, which in turn contribute to the persons responsible for such violations to be held accountable. DSZ reports that a vast majority of victims were not informed about the possibility of acquiring information about their incident reports from the relevant authorities, either during, or after finishing the reporting procedures.³⁷⁵ Moreover, the analysis of the BR recorded incidents by DSZ in the period between 2017 and July of 2020 of victims knowledge of the status of their report to State authorities showed that 87% of the those victims do not have any information whether the criminal report was ever acted

³⁷⁵ M. Kovačević and N. Planojević, 2020, p. 65-66.

upon,³⁷⁶ and of those incidents that were reported to the police in the same period, and the information is available, more than half (54.4%) was in the investigation procedure at the time of complying of the report.³⁷⁷ This data shows that the State efforts to enforce accountability are minimal, especially taking into account the facts that no official data disaggregated to indicate crimes conducted on the bases of SOGES personal traits are adequately provided by the State authorities.³⁷⁸

In summary, State obligations in regard to the accountability for persons responsible for human rights violations based on SOGES personal traits is lacking, limited only to the moderate fulfilment of the obligation to respect, which is reflected in the appropriate legislative framework discussed under previous Principles.

Principle 30	THE RIGHT TO STATE PROTECTION		
	Respect: Y	Protect: TSE	Fulfil: N

The right to State protection of the rights of queer people in Serbia has been assessed within every Principle so far, and will be continued to be discussed for the Principles that remain to be assessed. In regards to the specific obligations listed within this principle, they are mostly discussed within the assessment of Principles 1-3, 8-10, and 28-29, but will also be discussed within Principles 31, 33, and 37.

Here, the obligation of the State to respect the right to State protection is understood to signify the lack of State interference with the provided legislative, administrative and other measures already in place within the State aiming at the protection of other human rights. Because there is a lack of such interference, most notably since 2014, it could be said that the obligation of the State to respect the protection of other rights is fulfilled.

³⁷⁶ *Ibid.*, p. 68-69.

³⁷⁷ *Ibid.*, p. 68.

³⁷⁸ United Nations Development Programme, 2017, p. 32.

On the other hand, the obligation to protect the right to state protection from abuses by non-State actors could be said to be fulfilled only to some extent because abuses have been reported to take place in many areas of private and public life in which queer people operate, as evident from the assessment of other Principles.

Furthermore, the obligation of the State to enable fulfilment of the right to State protection could be said not to be fulfilled, as the lack of positive state action in regard to the protection of this right is lacking, which is also evident when previous Principles were discussed, most notably the lack of positive action in providing victims of human right violations with adequate information, the lack of availability of information about reporting procedures, as well as access to remedies and redress, and the lack of comprehensive data on the nature of crimes committed against queer people, as well as data on trends and changes in their frequency.

In summary, the right to State protection of the human rights of queer people is respected within the State, but obligations related to ensuring the protection and fulfilment of this right is lacking, evident from the absence of positive State actions.

Principle 31	THE RIGHT TO LEGAL RECOGNITION		
	Respect: N	Protect: N	Fulfil: TSE

The State obligations under the right to legal recognition are in most part discussed within the assessment of Principle 3. What differs in regards to obligations within this Principle is that it is explicitly stated that changes of names, as well as sex and gender markers in registries and personal identification documents should reflect self-defined gender and sex. Moreover, multiplicity of gender marker options should be available, and that no eligibility criteria shall be a prerequisite to making changes in registries and personal documents. Since such gender marker options are not available, and prerequisites to making changes of sex marker exist under the regulatory framework enabling non-state actors to interfere with

the enjoyment of this right, it cannot be said that State obligations to respect and protect this right are fulfilled.

The obligations stemming from this right, being mostly relevant to trans and intersex persons, as opposed to Principle 3 relating to all persons with diverse SOGIESC characteristics, the assessment of the fulfilment of the obligation to respect, protect, and fulfil this right differs from the one in Principle 3.

In summary, the legal recognition of trans and intersex persons is insufficiently respected and protected within the State. Some State action took place in 2018, when legislation changed in regard to change of information in birth registries, but the criteria for such changes do not rely on self-identification, but rather depend on the assessment of medical workers.

Principle 32	THE RIGHT TO BODILY AND MENTAL INTEGRITY		
	Respect: N	Protect: N	Fulfil: N

The State obligations under stemming from the right to bodily and mental integrity when considered in relation to queer people most notably relate to the status of intersex people. It was mentioned numerous times before that intersex people are legally and socially invisible within the state of Serbia, and this directly indicates the lack of fulfilment of any State obligation under this right.

For the purposes of respecting the principle of interrelatedness of human rights, it is important to refer to previously discussed fulfilment of State obligations under Principles 10 and 18, reiterating that the lack of recognition of the fact that uninformed and unnecessary surgical procedures done on intersex children when they are born amounts to violations of right to freedom from torture and cruel, inhumane or degrading treatment, as well as violations of the right to freedom against medical abuse. Furthermore, it relates to the State obligations under Principle 9 in the sense of the lack of data about the treatment of

detainees of diverse SOGIESC personal traits, and a lack of regulatory procedures during body searches of queer people amount to the lack of ensuring the obligations stemming from the right to be treated with humanity while in detention.

In summary, no State obligation in as it relates to the right of queer people to bodily and mental integrity is fulfilled to any satisfactory level. The lack of legal and social visibility of intersex people serves as the most important indicator of this lack of obligations fulfilment.

Principle 33	THE RIGHT TO FREEDOM FROM CRIMINALISATION AND SANCTION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION OR SEX CHARACTERISTICS
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Respect: Y	Protect: Y	Fulfil: Y
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The obligations of the State to respect in regards to this principle were previously assessed to some extent when Principles 3 and 31 were discussed, but regardless of the lack of state respect and protection within these Principles, the freedom from criminalization and sanctions on the basis of SOGIESC personal traits takes place.

Furthermore, the State has taken measures under the obligation to ensure this right to persons, who face criminalization and sanctions on the basis of SOGIESC personal traits elsewhere, as seen when the obligations under Principle 23 were assessed.

In summary, no criminalization of persons with diverse SOGIESC personal traits exists under the legal framework of the State. There is adequate protection from interference with this right, and State actions in regards to persons who are not able to enjoy this freedom in other States have taken place in the recent past.

Principle 34	THE RIGHT TO PROTECTION FROM POVERTY
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Respect: TSE	Protect: N	Fulfil: N
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The main issues with the State obligations stemming from the right to protection from poverty as it relates to queer people is the lack of available and meaningful data on the impact of factors related to diversity in SOGIESC personal traits on risk of poverty to this group. On the other hand, it can be inferred from the lack of measures that would fulfil State obligations discussed under Principles 12-15, 17, 24, and 28, and properly address the issues of discrimination in almost all parts of private and public life greatly increase the risk of poverty for queer people. Issues such as lack of adequate measures for providing social protection to persons who are denied work based on their SOGIESC personal traits, or social protective measures that would attend to the need of minors exposed to the risk of homelessness after being rejected by their families all amount to inadequate fulfilment of the State obligations stemming from this right. Additional problem is the fact that same-sex partnerships are in no way recognized under the legal framework of the State, disabling people living in such unions to access benefits through their partners.

In summary, there are no discriminatory requirements that would prevent queer people from accessing social services, but some of these services are inaccessible because of the lack of recognition of same-sex unions. Furthermore, the investigation of interrelation of issues faced by queer people and heightened risk of poverty are non-existent, disabling them from being protected as well as fulfilling their right.

Principle 35	THE RIGHT TO SANITATION
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Respect: TSE	Protect: N	Fulfil: N
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No provisions in the legislative framework exist that would attend to the need of persons with diverse SOGIESC personal traits to sanitation in non-discriminatory settings, and this

mostly affects people of diverse trans identities. No regulations dictate that private entertainment and service providing sectors should have gender neutral restrooms, or any other measures to provide for the enjoyment of this right with respect to personal traits of queer people. However, no policies are in place that would prevent the use of restrooms according to their self-identification.

Moreover, restrooms in public facilities are dependent on the sex of the users, and no efforts have been made to introduce the legislation that would change this, which is directly related to the obligations under Principles 6, 9 and 17. It also relates to the obligations under Principle 5, as queer people can be exposed to heightened risk of violence and abuse in places of exercising their right to sanitation.

In summary, no structured policy or measures exist that would provide for the right of queer people to enjoy the right to sanitation in accordance to their diversity in SOGIESC personal traits. However, no legislative measures exist that would prevent queer people from exercising this right in accordance to their self-identification.

Principle 36	THE RIGHT TO ENJOYMENT OF HUMAN RIGHTS IN RELATION TO INFORMATION AND COMMUNICATION TECHNOLOGIES
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Respect: Y	Protect: TSE	Fulfil: N
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No restrictions apply within the legal framework to the enjoyment of human rights in relation to information and communication technologies to people with diverse SOGIESC personal traits, and any such restriction would be considered discrimination.

In regards to the right to protection of personal information that relates to SOGIESC personal traits of persons, sexual orientation is considered as distinct piece of data that is regulated under special procedures, provided in the Law on protection of personal data.³⁷⁹

The obligations of the State stemming from the right of queer people to seek, receive, and impart information and ideas of any kind have been previously discussed when obligations under Principle 6 has been assessed, as well as obligations under Principle 19, and will be further elaborated upon under the obligation of the following Principle 37.

Regarding the right of queer people to be protected from abuses and violations of human rights online, worrying is the fact that persons with diverse SOGIESC personal traits often face harassment and bullying, as reported by DSZ. Only during 2019, out of 63 recorded incidents, 7 (11.1%) were done via internet.³⁸⁰ Indicative are also the recommendations by the Commissioner in regard to discriminatory comments on online portals and social networks.³⁸¹

Furthermore the lack of positive State action that would ensure the fulfillment of the rights related to information and communication technologies amounts to the obligation to fulfill as not satisfied.

In summary, the collective obligations as they relate to human rights of queer people in relation to information and communication technologies are inconsistently and unsystematically provided for, although the respect for this right is fulfilled by the lack of State actions that would interfere with these rights.

³⁷⁹ Zakon o zaštiti podataka o ličnosti, 2018.

³⁸⁰ M. Kovačević and N. Planojević, 2020, p. 21.

³⁸¹ Poverenik za zaštitu ravnopravnosti, 2020, p. 67-72.

Principle 37	THE RIGHT TO TRUTH		
	Respect: Y	Protect: TSE	Fulfil: N

The State obligations as they relate to the right to truth of queer people are interrelated with the State obligations under many other Principles. Namely, fulfilment of the obligations under Principles 8 and 29 ensure that the information about the truth behind the violations and abuses of rights are found during court proceedings and persons responsible are held accountable, providing for the truth to victims of such abuses and violations. Furthermore, obligations under Principles 19, 20, and 25-27 enable queer people to disseminate knowledge through participation in public and cultural life, and through exercising the right to assembly and peaceful protest, and the right to promote human rights, advocating by this for appropriate changes in legislation, or demanding further State investigative and protective and action. Moreover, the previously discussed obligations under Principle 36 enable free and adequate access to information relevant to the truth about human rights violations.

In summary, by taking into account the obligations previously assessed under relevant Principles, it can be concluded that the obligation of the State to respect this right is fulfilled and reflected in the lack of State interference with the access to knowledge about the truth. The obligations to ensure this right, on the other hand, are inconsistently fulfilled, in the sense that the obligation to protect is somewhat fulfilled as the access to truth is often disabled by the inefficiency of non-state actors and other authorities to provide for it, and the obligation to fulfil is not provided for because positive State action in this regard are minimal or non-existent.

Principle 38	THE RIGHT TO PRACTICE, PROTECT, PRESERVE AND REVIVE CULTURAL IDENTITY
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Respect: Y	Protect: Y	Fulfil: TSE
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Similar to the obligations of the State within Principle 26, the right to practice, protect, preserve, and revive cultural identity are respected and protected when exercised by queer people. There is no State interference or prohibitions of cultural events since 2014 and events during which there is a risk of violence from other groups the police protection have been adequate. Furthermore, the cultural events organized by queer artists and queer civil society have multiplied in number, and range from exhibitions, film festivals, theatre play, parties, and workshops.³⁸² However, they remain a part of the ‘alternative’ or ‘underground’ scene, and are not offered to the general population in a structured and systematic manner.³⁸³

When it comes to positive action of the State in providing for this right to queer people, a progress could be noticed by queer people appearing more often on public television with national frequencies.³⁸⁴ However, no national museums or theatres are hosting artworks relevant to queer culture and no promotion of this diversity is evident.

In summary, as with Principle 26, the right to practice cultural diversity is protected and respected within the State and this marks a big change to the state of affairs from the beginning of the last decade. There are certain State efforts in raising the visibility of queer culture through the media, but more systematic and structured efforts are necessary in order for this right to be fully ensured for queer people.

³⁸² ERA, 2019, p. 10-16.

³⁸³ *Ibid.*, p. 18.

³⁸⁴ *Ibid.*, p. 13-14.

4.3. Main Findings and Interpretation

After assessing Serbia's efforts in fulfilling the obligation to respect, protect, and ensure the fulfilment of the rights described within each of the 38 Yogyakarta Principles, with the exception of Principles 1 and 2, for reasons previously described, by combining the descriptive values assigned to them, a wider perspective can be gained about Serbia's compliance with the international human rights standards as they relate to queer people. Below is a tabular overview of the assessment of obligations within each Principle.

Principle	The right to:	Obligation to respect	Obligation to protect	Obligation to fulfill
1	UNIVERSAL ENJOYMENT OF HUMAN RIGHTS	N/A	N/A	N/A
2	EQUALITY AND NON-DISCRIMINATION	N/A	N/A	N/A
3	RECOGNITION BEFORE THE LAW	TSE	TSE	TSE
4	LIFE	YES	YES	TSE
5	SECURITY OF THE PERSON	YES	TSE	TSE
6	PRIVACY	YES	YES	TSE
7	FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY	TSE	TSE	TSE
8	FAIR TRIAL	TSE	TSE	NO
9	TREATMENT WITH HUMANITY WHILE IN DETENTION	NO	NO	NO
10	FREEDOM FROM TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT	NO	NO	NO
11	PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS	YES	TSE	NO
12	WORK	YES	TSE	TSE
13	SOCIAL SECURITY AND OTHER SOCIAL PROTECTION MEASURES	TSE	TSE	NO
14	ADEQUATE STANDARD OF LIVING	YES	TSE	NO
15	ADEQUATE HOUSING	NO	NO	TSE
16	EDUCATION	YES	TSE	TSE
17	HIGHEST ATTAINABLE STANDARD OF HEALTH	NO	NO	NO
18	PROTECTION FROM MEDICAL ABUSE	NO	NO	NO
19	FREEDOM OF OPINION AND EXPRESSION	TSE	TSE	TSE
20	FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION	YES	YES	YES
21	FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION	YES	NO	NO
22	FREEDOM OF MOVEMENT	YES	YES	TSE
23	SEEK ASYLUM	YES	YES	YES
24	FOUND A FAMILY	NO	NO	NO
25	PARTICIPATE IN PUBLIC LIFE	YES	YES	TSE
26	PARTICIPATE IN CULTURAL LIFE	YES	YES	TSE
27	PROMOTE HUMAN RIGHTS	YES	TSE	TSE
28	EFFECTIVE REMEDIES AND REDRESS	YES	TSE	NO
29	ACCOUNTABILITY	TSE	NO	NO
30	STATE PROTECTION	YES	TSE	NO
31	LEGAL RECOGNITION	NO	NO	TSE
32	BODILY AND MENTAL INTEGRITY	NO	NO	NO
33	FREEDOM FROM CRIMINALISATION AND SANCTION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION OR SEX CHARACTERISTICS	YES	YES	YES
34	PROTECTION FROM POVERTY	TSE	NO	NO
35	SANITATION	TSE	NO	NO
36	ENJOYMENT OF HUMAN RIGHTS IN RELATION TO INFORMATION AND COMMUNICATION TECHNOLOGIES	YES	TSE	NO
37	TRUTH	YES	TSE	NO
38	PRACTICE, PROTECT, PRESERVE AND REVIVE CULTURAL IDENTITY	YES	YES	TSE

Figure 2. The overview of descriptive values given to obligations within each Principle

Moreover, when the values assigned to each obligation are quantified, they could be compared and contrasted, providing further insight into the trends present when assessing Serbia’s fulfilment of obligations stemming from the rights described in Yogyakarta documents. The figure below shows how the fulfilments of obligations compare to each other, divided by the descriptive values assigned to them.

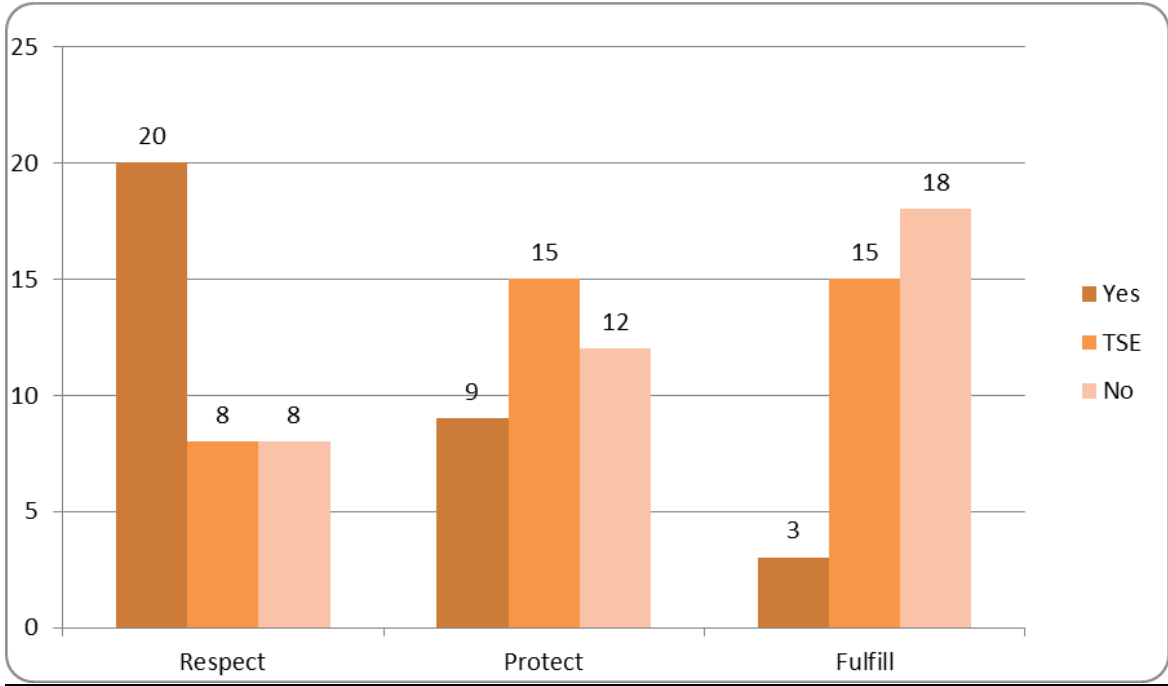


Figure 3. Quantitative representation of respect, protection, and fulfilment by the State for the rights within Yogyakarta documents

As could be inferred from this comparison, the State of Serbia has showed greatest efforts in respecting the right of queer people (20 Principle obligations with the value ‘yes’ and 8 with the value ‘*to some extent*’), as compared to ensuring they are protected (9 Principle obligations with the value ‘yes’ and 15 with the value ‘*to some extent*’), and ensuring they are fulfilled (3 Principle obligations with the value ‘yes’ and 15 with the value ‘*to some extent*’). In line with that, ensuring that the rights of the queer people are fulfilled is the

obligation least fulfilled by the State (18 Principle obligations with the value ‘no’), followed by the slightly decreased failure to ensure that the rights are protected (12 Principle obligations with the value ‘no’), whereas the obligation to respect the rights described within the Principles is unfulfilled in the fewest number of cases (8 Principle obligations with the value ‘no’).

Further disaggregation of the fulfilment of the State obligations can shed a light on State compliance with different groups of rights. Figure below show how the fulfilments of obligations differ in regard to separation between civil and political (C&P) and Economic, social, and cultural rights (ESC).³⁸⁵

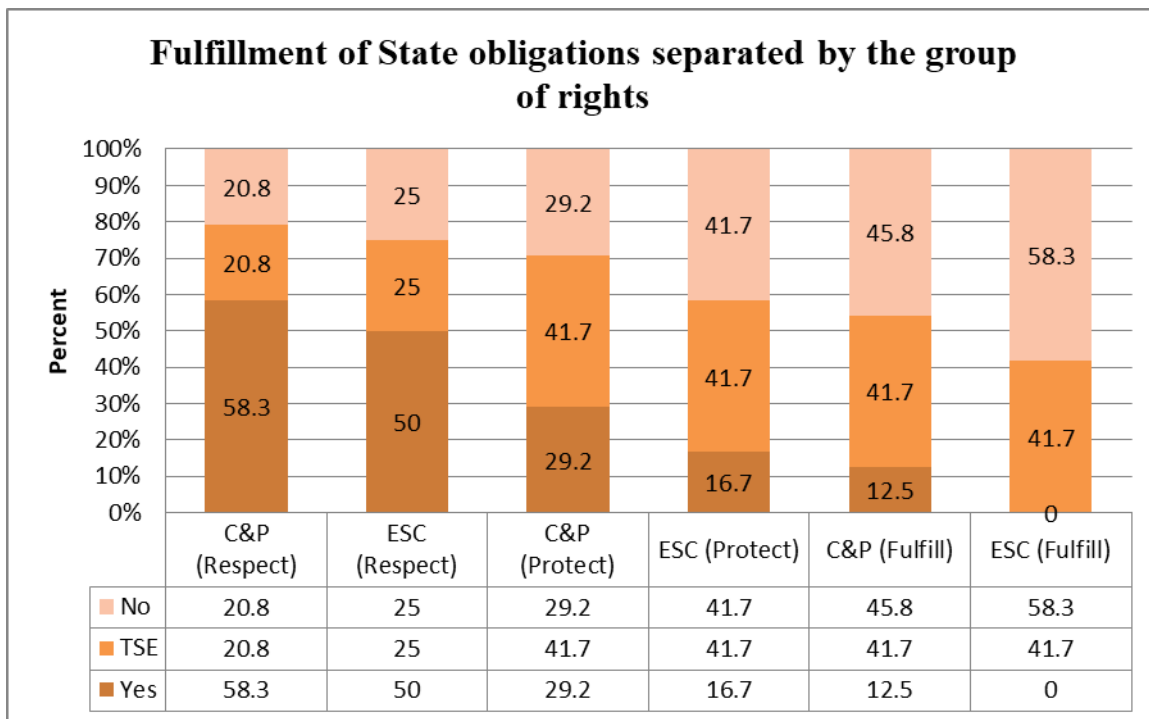


Figure 4. Percentage of the assigned values for groups of rights when divided by State obligations

³⁸⁵ Principles (and corresponding rights) included in C&P group are: Principles 3-11, Principles 19-25, Principles 27-33, and Principle 37.; Principles (and corresponding rights) included in ESC group are: Principles 12-18, Principle 26, Principles 34-36, and Principle 38. Principles 1 and 2 are not included in the analysis.

Results presented in the Figure 2 indicate the downward trend in percentages of obligations assigned a 'yes' value as they go from the obligation to respect (58.3% and 50%), over to the obligation to ensure protection (29.2% and 16.7%), and finally to the obligation to ensure the fulfilment of rights (12.5% and 0%), both in relation to C&P group of rights, and ESC group of rights, but also in relation to how these two groups compare between each other.

Noticeable is also the upward trend in percentages of obligations assigned a 'no' value from the obligation to respect (20.8% and 25%), over the obligation to ensure the protection (29.2% and 41.7%), to the obligation to ensure the fulfilment of rights (45.8% and 58.3%). This trend is also true for the relation in obligation to protect as they relate to the group of rights, but also how these two groups compare between each other on any given obligation.

The percentage of obligations assigned a value '*to some extent*' remains similar to all three obligations when compared to different groups of rights in relation to the obligation to ensure protection (41.7% for both groups) and the obligation to ensure the rights are fulfilled (also 41.7% for both groups), but is shown to be slightly higher for the obligation to respect for the group of ESC rights (25%) than the group of C&P rights (20.8%), while being smaller for both groups in relation to other two obligations, as seen above.

The comprehensive nature of the Principles and State obligations indexed in the Yogyakarta documents, and otherwise set upon by the IHRL, while not being legally binding, enabled the structured analysis of the compliance of the State of Serbia with international human rights standards to be conducted. Findings that emerged from the comparative analysis done within each Principle sheds light on the extent of Serbia's compliance to the obligations it has towards the rights of queer people, and consequently, the compliance to the IHRL standards. Following this, it can be concluded that *the extent to which Serbia complies with the international human rights standards, as they relate to the rights of queer people, is limited*. Furthermore, after assigning each obligation a descriptive value and categorically compiling them in the process of quantification, it is revealed that

although unsystematic and unstructured, Serbia complies to a greater extent with the obligation to respect, then the obligations to protect and ensure the fulfillment of human rights by queer people, while the compliance with all obligations is present at a smaller extent in relation to economic, cultural, and social rights, than to the civil and political rights.

5. Conclusion

What can be understood from the data that emerged from the analysis presented in the previous section is that, although Serbia shows effort in complying with the obligations it has in relation to human rights of queer people, which stem from the body of IHRL applicable to this State, this compliance is done only to a certain extent, and it is distinctively unsystematic and unstructured.

Nevertheless, certain trends can be noticed, mostly in relation to Serbia's lack of interference with the enjoyment of rights of queer people, by complying with the obligation to respect, in relation to most rights. Although even this obligation is not universally complied with, being equally not respected and respected to some extent, when the cultural history and the recent developments of the legislative framework of the State are taken into account, these results could be interpreted as progress. The identification of such points of progress and change are important when considering how the situation could be improved further, even if these points are reflected only by the absence of negative activity of the State in relation to the human rights of queer people.

As for the two positive obligations of the State of Serbia, namely to protect the rights and ensure their fulfilment, in almost all cases nearly half of the obligations are complied with to some extent, and the least complied with is the obligation to ensure the fulfilment of rights to queer people in relation to ESC rights. This serves as an indication that the State does not invest in the full realization of queer people's human rights and only

in some cases ensures the adequate protection from the abuse and violations of these rights by non-state actors.

This set of circumstances leaves the enjoyment of human rights by queer people extremely strenuous and understanding these findings in the context of the social reality of Serbia, where the Prime Minister is a lesbian who enjoys all privileges provided by her status, amplifies the comprehension of the struggles people with diverse SOGIESC personal traits experience when attempting to enjoy their human rights, to which all should be entitled to equally, and without discrimination.

Another important point emerging from this investigation is that the changes and improvements, both in legislative and cultural framework of the State of Serbia, are incited directly as a result of the engagement of persons with diverse SOGIESC personal traits, whether organised, or in their individual capacity. On the other hand, the body of IHRL applicable to the State, as well as related international mechanisms, serve to set the standards, monitor the development, and assist in the implementation of better suited measures for fuller realisation of human rights by queer people. However, the greatest power and ability to provide for this realisation lies within the ruling political powers of the State, at any given point, and what this paper also shows is that this ability is not utilized to its full potential.

It should be in the interest of any State to comply with the obligations it has towards its citizens in relation to human rights set upon in IHRL. However, the State of Serbia shows a lack of such interest when the realization of human rights by queer people is in question. Compared to the comprehensive standards described in the Yogyakarta documents, Serbia is shown to have a long road ahead if it is to comply with the IHRL standards in relation to queer people to a greater extent, and by that contribute to the goal of achieving peace, justice, and freedom in the world, for all.

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Abstract

All human beings are entitled to full enjoyment of all human rights, regardless of their sexual orientation, gender identity and expression, or sex characteristics (SOGIESC personal traits). However, full realization of any human right is directly related to State compliance with *the obligations to respect, protect, and enable their fulfillment*. The State of Serbia has agreed to comply with these obligations by ratifying relevant agreements under the international human rights law (IHRL). The present paper investigates the extent to which Serbia complies with these obligations, as they relate to the full enjoyment of human rights by queer people. For this purpose, a *comparative analysis* has been conducted using Yogyakarta Principles, for them being the most comprehensive framework, within which the standards for full compliance with the State obligations are indexed. After conducting a *descriptive analytical assessment* of the standards set upon by each of the 38 Principles, a *descriptive values* were given to the obligations to respect, protect, and enable the fulfillment of the right considered under the corresponding Principle. The interpretation of both *qualitative and quantitative data* emerging from the analysis indicate unsystematic and inconsistently adequate compliance with the obligations. Consequently, the standards of international human rights are shown to be satisfied only to a certain extent. Moreover, the results indicate a greater compliance with the obligation to respect, as compared to the obligations to protect, and the obligation to enable the fulfillment of realization of human rights by queer people.

Key words: human rights; queer people; Serbia; compliance; Yogyakarta Principles.

Abstrakt

Alle Menschen haben ein Recht auf Menschenrechte, unabhängig von ihrer sexuellen Orientierung, Geschlechtsidentität und -äußerung oder Geschlechtsmerkmale (SOGIESC* persönliche Eigenschaften). Die vollständige Verwirklichung eines Menschenrechts steht jedoch in direktem Zusammenhang mit der Einhaltung der Verpflichtungen des Staates zur Achtung, zum Schutz und zur Ermöglichung ihrer Erfüllung. Serbien hat zugestimmt, diesen Verpflichtungen nachzukommen, indem der Staat einschlägige Abkommen nach dem internationalen Menschenrechtsgesetz (IHRL*) ratifiziert. Die vorliegende Arbeit untersucht, in welchem Ausmaß Serbien erfüllt diese Pflichten, , wenn sie sich auf die uneingeschränkte Wahrnehmung der Menschenrechte durch queere Menschen beziehen. Zu diesem Zweck wurde eine vergleichende Analyse unter Anwendung der Yogyakarta-Prinzipien durchgeführt, da diese den umfassendsten Rahmen darstellen, in dem die Standards für die vollständige Einhaltung der staatlichen Verpflichtungen indexiert werden. Nach einer deskriptiven analytischen Bewertung der Standards, die für jedes der 38 Prinzipien festgelegt wurden, wurden die Verpflichtungen zur Achtung, zum Schutz und zur Erfüllung der nach dem entsprechenden Prinzip berücksichtigten Rechte beschreibend bewertet. Die Interpretation sowohl qualitativer als auch quantitativer Daten, die sich aus der Analyse ergeben, zeigt eine unsystematische und inkonsequent angemessene Einhaltung der Verpflichtungen. Folglich wird gezeigt, dass die Standards der internationalen Menschenrechte nur bis zu einem gewissen Grad erfüllt sind. Darüber hinaus zeigen die Ergebnisse eine bessere Einhaltung der Verpflichtung zur Achtung im Vergleich zu den Schutzverpflichtungen und der Verpflichtung, die der Verwirklichung der Menschenrechte für queere Menschen zu ermöglichen.

Schlüsselwörter: Menschenrechte; Queer Menschen; Serbien; Beachtung; Yogyakarta-Prinzipien.