

## I. WHO WE ARE

Youth LGBT Organization Deystvie was founded by a group of young LGBTI people in 2012 and has been providing support to the members of the LGBTI community in Bulgaria ever since. We promote visible and active political life for LGBTI people in Bulgaria, and we demand from the competent authorities to respectfully address the rights of LGBTI people in Bulgaria and inform the general public with regard to the rights of LGBTI people in Bulgaria. Deystvie is part of coalitions that address the issues of LGBTI people or other marginalized groups and is member of [#NoviteBuditel\(k\)i](#), [Equality League](#), [National Youth Forum Bulgaria](#), [ILGA-Europe](#), [IGLYO](#) and [NELFA](#).

Empowering the LGBTI community and promoting the rule of law is the mission of Youth LGBT Organization Deystvie. The Organization on achieving proper social and legislative changes for LGBTI people in Bulgaria. This is why Deystvie established the only Legal Defense program in the country which provide pro-bono legal support for LGBTI-related cases. Youth LGBT Organization Deystvie focuses also its activities on providing opportunities for empowering the members of the LGBTI community and promoting the rule of law as a tool to prevent homophobia and transphobia from being a part of the everyday life of LGBTI people.

## II. LEGISLATION OVERVIEW WITH REGARD TO BASIC RIGHTS OF LGBTI PEOPLE

Except the Law for protection against Discrimination, Bulgaria lacks any other pieces of legislation for protection of LGBTI people.

### 1. No legislation for civil partnerships and/or marriage to protect same-sex couples

Bulgaria is one of few countries within Europe that do not provide any legal recognition of the same-sex families. Both the Constitution and the Family Code define marriage as voluntary union between a man and a woman. Bulgaria scores the lowest in the Eurobarometer research on same-sex marriage support and issues related to LGBTI people.

Same-sex cohabiting partners are lacking different state and private benefits, tax breaks, inheritance rights, adoption rights, etc. These are rights which lack in the legal realm of unmarried different-sex couples as well because their relationship is not recognised by the State law either. This is a consequence of the lack of regulation of the legal institute of "civil union" which is non-existent in the country. And while different-sex couples have access to marriage, same-sex couples have no way to have their relationship legally recognized and arrange their rights because the Constitution limits the marriage as such concluded between a man and a woman.

In 2018 Youth LGBT organization Deystvie together with the Law Firm Popov, Arnaudov and Partners executed a legal research which reflects the state of the Bulgarian legislation in force. This study researches on how many rights are LGBTI people deprived of because of the lack of legislation recognizing their relationship. The study researches 70 legal acts and discovers over 300 rights that LGBTI people are deprived of because of the lack of legislation regulating their relationships. Among these are the right to inherit your partner, visitation rights in hospitals, right to adopt, right to donate

tissues, organs, etc. to your partner as only married couples can donate, right to be granted protection under the Law on Domestic Violence because it does not cover same-sex cohabiting couples.

## **2. No protection of the children born and/or raised in rainbow families.**

No legislation is available to establish the legal connection of the children born and/or raised in rainbow families and their parents. The kids are left discriminated based of the sexual orientation of their parents and the legal bond between them could be established only with the birth mother or one of the fathers. There are many rainbow families living in Bulgaria mostly concentrated in the capital city of Sofia. Several birth certificates of Bulgarian kids coming from abroad have been sent for registration in the respective municipalities. No official answers were received so far with the cases LGBT Deystvie is supporting. Legal cases are under preparation. In the meantime, one of the kids is deprived from their right to health services and could not receive vaccinations.

## **3. No protection fro hate crimes based on sexual orientation, gender identity and gender expression**

The Constitution of the Republic of Bulgaria in its Art. 63 proclaims equality before the law on the basis of characteristics of race, nationality, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status and property status. Sexual orientation, gender identity and gender expression are absent from the text of the Constitution. The Criminal Code does not contain any provisions describing an act as a crime and/or hate speech based on sexual orientation, gender identity, gender expression and/or the sexual characteristics of the person. There are also no provisions to characterize this motive as an aggravating circumstance.

## **III. Strategic litigation by Youth Organization Deystvie**

Since 2014 the organization is provided pro-bono legal support and was able brought strategic cases to the national/EU courts.

### **1. Refusal for protection under Domestic Violence Act for homosexual couples**

The Protection Against Domestic Violence Act (2005) regulates the rights of the victims of domestic violence. This law protects persons who are or have been married or cohabiting. As regulations on cohabiting partners are missing in Bulgaria, in theory this law should also grant protection to cohabiting same-sex couples. Nevertheless, in recent court case litigated by Denitsa Lyubenova from Youth LGBT organization Deystvie, the court held that the plaintiff is not among the persons allowed to seek protection against domestic violence because the law of the State can only grant protection to persons from different sex who were cohabiting together as the Constitution and the Family Code recognizes the marriage as such between a man and a woman. The case is pending before the European Court of Human Rights and decision is expected.

## **2. Legal case for recognition of marriage certificate of Lilly and Darina, Bulgarian lesbian couple**

In general, under the Private International Law Code of Bulgaria the marriage concluded under the laws of a foreign state between same-sex persons should be recognised by the Republic of Bulgaria.<sup>29</sup> However, in 2017 a Bulgarian female couple who had got married in the UK received a refusal to reflect their marriage as current marital status in the personal registration card of each of the two women. The motive for the Municipality's refusal was the same gender of the two persons. Under the Bulgarian law only municipal offices keep data on marriages concluded abroad and only they certify that circumstance by issuing the respective document or certificate to citizens and institutions. Thus the consequences of the non-registration are that each of the two women is deprived of inheritance rights, tax benefits, matrimonial shared property, right to child adoption by the two women jointly, as well as the right of one of the women to adopt a biological child of the other. The two women filed a complaint against the decision of Sofia City Municipality, Lozenets district. The decision of Sofia Municipality was confirmed by the first instance court – Administrative Court of the City of Sofia. The case were brought to the Supreme Administrative Court in Bulgaria and the decision is pending. The two women are represented on the case by attorney Denitsa Lyubenova from the Youth LGBT Organisation Deystvie, as well as of a team of lawyers including Bulgarian Helsinki Committee and Sofia University professors.

## **3. Case of Lilly and Dari on Denied Access to the Assisted Reproduction State Fund**

At the end of 2017, the same couple received a refusal from the Centre for Assisted Reproduction for financing an in-vitro procedure, because in the application form the women applying for the procedure mentioned that she was married and mentioned the names of her wife. The Centre argues that the reason for the refusal is that two women cannot create a progeny together in a natural way. In same circumstances that argument evokes dismay in view of the circumstance that heterosexual couples seeking financing for the in vitro fertilisation procedure do that because they are unable to create progeny in a natural way. The refusal by the Centre, obviously prompted by heterosexist motives and not by any contradictions with the rules of the fund, was surprisingly confirmed by the first instance court. The latter was appealed and now the decision of the Supreme Administrative Court is expected.

## **4. Recognition of same-sex marriage with regard to EU free movement right – the case of Mariama and Cristina**

Mariama (a French citizen) and Cristina (an Australian citizen) were married in France for 2 years. In 2016 they both decided to come and live in Bulgaria. In 2016 Mariama was granted a residency permit on the basis of her EU citizenship. Cristina requested the Migration in Sofia to be granted a residency permit as a “wife” of an EU citizen. At the end of 2016 Cristina was granted such permit for one year. Meanwhile, they bought a house in a village in Bulgaria. At the end of 2017 when Cristina needed to submit a request to prolong her residency permit she submitted the same documents as the ones she submitted in 2016. Nevertheless, in December 2017 Cristina was rejected the permit and the Migration Department of the Ministry of Interior based its rejection on the Constitution, Family Code and the Bulgarian public order stating that allowing the non EU same-sex partner to reside in Bulgaria would contradict Article 46 of the Constitution and Article 5 of the Family Code of Bulgaria both defining marriage as a one concluded between a man and a woman.



With the legal support of Youth LGBT organization Deystvie and its lawyer Denitsa Lyubenova, Cristina submitted a complaint against the decision of the Migration Department. The Decision of the court was issued on 29 June 2018 and was entirely based on the decision of the European Court of Justice and the implementation of the Free Movement Directive. Sofia administrative court overturned the Interior Ministry's Migration Directorate ban, saying that upholding it would "hinder the right of the EU partner to move and reside freely in the territory of the EU." The ruling was also in line with a decision of the EU's top court of justice in Luxembourg on June 5, stating that EU laws on freedom of movement oblige all member states to allow residency of the non-European spouses of EU citizens, including same-sex partners, even if they did not recognize same-sex marriage. This is the first ever court case in Bulgaria where the Court recognizes a same-sex marriage. After appeal by the Migration Directorate, the Supreme Administrative Court confirmed the first instance court decision by recognizing the marriage between two women and acknowledging Cristina her rights over the Free Movement Directive.

This information is submitted on October 3, 2019 by Veneta Limberova on behalf of Youth LGBT Organization Deystvie ([info@deystvie.org](mailto:info@deystvie.org)).