

**STATE OF THE HUMAN RIGHTS OF LGBT PEOPLE
BOSNIA AND HERZEGOVINA 2014 PROGRESS REPORT
CONTRIBUTION OF SARAJEVO OPEN CENTRE**

1. The Social and Political Situation

The everyday lives of LGBT (lesbian, gay, bisexual and transgender) people continue to be affected by the presence of homophobia and an aversion to homosexuality stemming from prejudice.

- Heterosexuality and patriarchal values are still very much ingrained in the private life and family sphere, in educational institutions and in the media. School textbooks and curricula do not cover sexuality and health issues. Homosexuality, bisexuality, transgender, transsexual and intersex are rarely addressed in books and still perceived as social deviations, creating risk groups for society.¹
- LGBT issues are being covered in electronic, print and online media. While media reporting has increased and improved drastically in quality and content,² manifestations of homophobia through hate speech (i.e. death and violence threats) and sensationalist reporting are still present, especially in online media. There is no follow-up of such cases, even though cases are being reported to the police. One of the reasons for that is the low level of coordination between police agencies – one agency is in charge of reporting the cases and another one of investigating online hate speech).
- A recent report³ about a kiss between two pilots in the BiH Armed Forces has triggered strong verbal statements and the Armed Forces have announced that an investigation will take place.
- A public opinion survey in 2013⁴ showed that 56.5% of the respondents still think “homosexuality must be cured,” which shows a lack of knowledge and entrenched stereotypes about homosexuality, which was removed from the list of illnesses and social disorders by the World Health Organization in 1992. For 3/4 of the respondents, same-sex kissing in public is unacceptable, whereas having a sex change is considered repulsive by 59.5%.
- A 2013 countrywide LGBT community research project⁵ showed that only every seventh person is out to his parents and family, confirming the low level of social and familial support of LGBT persons.
- LGBT people often leave the country, sometimes legally and sometimes as illegal immigrants. Some of them, if they feel they have experienced violence and discrimination on a regular basis, seek asylum in certain Western countries. Three cases related to asylum seekers and sexual orientation have been submitted to Sarajevo Open Centre for

¹ Sarajevo Open Centre Report on Homo-/Bi-/Transphobia in BiH Schools, 2013: <http://soc.ba/en/izvjestaj-o-homofobiji-bifobiji-i-transfobiji-u-skolama-u-bih-2/>

² Number of article in print media grew 60% from 2012 to 2013, while the number of texts about LGBT rights in Bosnia and Herzegovina is five times bigger then. Expecially, the number of texts related to Bosnia and Herzegovina is five time bigger. See Sarajevo Open Centre Media analysis: <http://soc.ba/en/programmes/lgbt/lgbt-and-media/>

³ <http://soc.ba/en/reaction-a-kiss-is-not-a-scandal/>

⁴ Sarajevo Open Centre Report on the 2013 Public Opinion Pool on Homosexuality: <http://soc.ba/en/56-5-of-bih-citizens-still-think-homosexuality-must-be-cured/>

⁵ 2013 LGBT community research report: <http://soc.ba/en/numbers-of-life-2/>

counseling.

- Political leaders are continuing to use discriminatory or derogative language. Samir Kaplan, the Minister of Culture and Sports of the Federation of BiH, stated in August 2013 in a magazine that pride parades in BiH were “*a demonstration of someone’s internal needs on the streets that has no sense; they are unnecessary and only cause more troubles because they provoke reactions such as criminal offences. They are the oppression of the majority by the minority.*” Similar language is used by ministers, members of parliament and political party representatives on all levels of governance.

As a conclusion on the general social situation of LGBT, homophobia and transphobia are still widespread and present in governmental institutions, political parties, police and other public institutions. The general feeling among LGBT activists and NGOs suggests that the legal measures promoting the human rights of LGBT people are created in order to satisfy the minimum requirements and international obligations of the UN, Council of Europe and are a result of the ongoing political criteria set by the European Union as part of the enlargement process.

2. Anti-discrimination

Legal framework

- The BiH Gender Equality Law, adopted in 2003 and amended in 2009, is the first law that prohibits discrimination on the grounds of sexual orientation (*spolne orijentacije*).
- The BiH Anti-Discrimination Law from 2009 covers the prohibition of discrimination on the grounds of “sex expression and/or orientation.”⁶ The terms (grounds on which discrimination is prohibited) are not defined and are left to the interpretation of attorneys, prosecutors and judges.
- Gender identity (crucial for trans persons) is not covered by the law, but can be covered under “sex expression” if attorneys, prosecutors and judges interpret the law broadly. Different laws on the state, entity and cantonal levels do cover sex/gender, sexual orientation and gender identity.

Transposition

- The provisions of the national Anti-Discrimination Law have not been adequately reflected or transposed to labour law or higher education despite the commitment that this would happen in the 90 days following the adoption of the law. As a result, different laws, such as the labour or higher education laws, contain different types of anti-discrimination clauses that address sexual orientation and gender identity. For example, the draft of the new FBiH Labor Law did not include sexual orientation in its anti-discrimination clause.

Data collection

- Information about discrimination on the grounds of sex/gender, sexual orientation and gender identity, as well as on any other ground, is not collected or tracked because the BiH Ministry of Human Rights and Refugees has not put the necessary collection mechanisms into place. According to the Law on Prohibition of Discrimination, a database was to be created in the 90 days following the adoption of the Anti-Discrimination Law in 2009.

⁶ In local language, the terminology that is used is: “(s)polnog izražavanja i/ili orijentacije”, which literally means “sex expression and/or orientation”. Sex in this case refers to “(s)pol”, i.e. biological sex. Local translation for gender is “rod”, gender identity is “rodni/spolni identitet”, and sexual orientation is “seksualna/(s)polna orijentacija”.

BiH Ombudsman Institution on Human Rights

- The BiH Ombudsman Institution on Human Rights works on complaints. The decisions of the Ombudsman Institution are not binding. The very low number of registered cases based on sexual orientation – 4 cases in 2013⁷ - raises questions concerning the level of trust towards this human rights protection mechanism.
- The BiH Ombudsman Institution on Human Rights has not implemented any activities or actions related to LGBT rights.
- Since September 2013, Sarajevo Open Centre has recorded five cases of discrimination on grounds of sexual orientation and/or gender identity by LGBT people seeking legal advice or that were reported in the press.
- The BiH Ombudsman Institution was invited by 22 civil society organizations to issue a Special Report on the state of the human rights of LGBT people in order to analyze the existing discrepancy between adoption of documents for the protection of human rights and harmonization and adequate implementation of the laws. The BiH Ombudsman Institutions have declined the proposal, arguing of a lack of resources.
- BiH has not so far discussed or adopted a countrywide anti-discrimination strategy that would define concrete measures on how to fight discrimination (including on the grounds of sexual orientation and gender identity), prejudices and the promotion of tolerance and equality on the state, entity, cantonal and local levels. The Law on Prohibition of Discrimination mentions the possibility of developing an anti-discrimination strategy and stipulates that in this specific case, civil society needs to be extensively consulted.

Judiciary

- There are no publically known court cases regarding discrimination on the grounds of sexual orientation or gender identity, although discrimination cases on those grounds have been documented.
- Existing discrimination court cases (on other grounds of discrimination) show that legal proceedings are lacking efficiency, as some cases take up to three years to be solved. Citizens do not trust the judiciary system and there have not been any trust-building mechanisms coming from institutions, especially not targeted at marginalized groups like the LGBT community.
- Judges and prosecutors countrywide either completely lack or have limited training related to the new Anti-Discrimination Law. The combined lack of society's trust in institutions with the lack of knowledge and training of law enforcement officials is not conducive to creating an enabling environment for the effective implementation of the Law on Prohibition of Discrimination.

Family law and same-sex partnerships

- The family laws of FBiH, Republika Srpska (hereinafter RS) and Brčko District (hereinafter BD) define marriage and domestic partnership as a union between a woman and a man even though jurisprudence (for example, the case Schalk and Kopf vs. Austria, 30141/04) of the European Court for Human Rights indirectly binds BiH, as a Council of Europe member state, to extend its legislation to recognize some of the rights and obligations (i.e. social rights) that come out of the union between same-

⁷ Data provided by the Ombudsman Institution BiH following a Sarajevo Open Centre request. The report about 2013 is not published yet.

sex couples. It is the opinion of the European Court that same sex couples in stable de-facto relationships are also protected by Art. 8 of the European Convention for Human Rights and Fundamental Freedoms. There have been any developments so far aiming to adopt registered partnership for same-sex couples law in any of the BiH federal units.

- Among other things, same sex couples cannot access reproductive technologies or adopt a child, as such rights are limited by law to married couples and heterosexual couples in domestic partnerships, constituting clear discrimination.
- There is also no framework addressing the situation of intersex children and decisions about their sex and sexual/gender identity, although such surgeries are practiced in BiH. Data related to intersex children is not collected or tracked.

Transgender issues

- There is no medical support for transsexual persons. Surgeries have to be undertaken abroad, while the official social security system does not cover any costs. However, once the sex reassignment is done, transsexual persons can legally change their name, personal number (JMB) and documents. Only the BD Law on Birth Register Books does not cover “sex reassignment” as a ground for legal change of personal data. Civil society organizations called the BD Government in 2013 to amend the law, which the government refused to do.

LGBT equality mainstreaming

No public institution at the federal or municipality level has taken the initiative to implement awareness-raising activities related to LGBT rights. The institutions have not expressed interest to proactively work on LGBT rights issues.

3. Hate crime and hate speech

Legal framework

- The BiH state-level Security Ministry and the Organization for Security and Co-operation in Europe (OSCE) called on BiH federal units (FBiH, RS and BD) to adopt amendments to their criminal laws and to include hate crime regulation. The RS and BD did so in 2010, including the grounds of sex/gender, sexual orientation and gender identity in the hate crime definition. FBiH did not adopt amendments to its criminal law.
- Since December 2012, the CSO Coalition to Combat Hate Crime and Hate Speech⁸ has been advocating the need for to adopt hate crime regulation in the Criminal Law of FBiH. Amendments were adopted in July 2013 in the FBiH House of Representatives but not confirmed through adoption in the second chamber – the FBiH House of Peoples. Building on the momentum created by the CSO Coalition, the Parliamentary Women’s Club of the FBiH House of Representatives has put forward another proposal to amend the criminal law and include hate crime.
- A hate speech provision covering, for example, sexual orientation and gender identity, is not included in the Criminal Laws of FBiH, RS or BD. There has been no attempt to amend the criminal laws to include hate speech provisions.

Implementation (monitoring and data collection)

- Information about hate crime acts on the grounds of gender/sex, sexual orientation and

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<http://soc.ba/en/hate-crime-to-be-introduced-into-the-criminal-code-of-federation-of-bih/>

gender identity is not systematically collected or tracked. Nevertheless, the police have been investigating some concrete cases and some of them are in the prosecution phase.

- A countrywide LGBT community research project⁹ showed that every third LGBT person has experienced violence, but only every seventh case of violence has been reported to the police. This is a clear sign of mistrust towards law enforcement institutions. Beside rights prosecution, law enforcement institutions need to start investing in trust building, especially towards minority groups (i.e. returnees, LGBT people, Roma).
- Since September 2013, Sarajevo Open Centre has documented 8 cases of hate crime on grounds of sexual orientation and/or gender identity, which means a remarkable increase in comparison with the same period last year. The increase of public visibility of LGBT human rights defenders and the community itself is the main reason for the increase in violence. The police of the Sarajevo Canton have been cooperating with civil society organizations that are working on LGBT rights since 2012. Educational and informative actions took place and the police committed to continue working on LGBT rights issues in 2014 by including LGBT and hate crime topics in the police's permanent educational curriculum. Other police agencies did not show special interest in working on these issues. Despite being invited by Sarajevo Open Centre in 2013, the Sarajevo Canton police did not appoint contact points on LGBT rights and is not showing any preparedness to do so. Judges and prosecutors have zero or limited training related to hate crime legislation.
- Sarajevo Open Centre has recorded 8 cases of hate speech since September 2013. No case has been prosecuted so far since the criminal laws don't cover hate speech.

4. Freedom of Assembly

- Freedom of assembly is guaranteed by the Constitution and laws, but in practice, different minority groups are not being provided the rights to exercise it, and this is of great concern to LGBT people.
- On February 1st 2014, the LGBT film festival Merlinka in Sarajevo was attacked by a hooligan group. Even though the event was registered with the police 16 days in advance, the police were 50 minutes late to the festival location. During this attack, two festival speakers were physically hurt and 25 other participants experienced fear and trauma. Even though the main human rights institutions and ministries were invited to condemn the attack, the BiH Human Rights Ombudsman Institution was the only official body to do so. It took 14 days for the BiH Ministry of Human Rights and Refugees to issue a statement.
- Taking into account the violent attacks against another LGBT festival in 2008, Queer Sarajevo Festival, where 8 participants were injured and the perpetrators never prosecuted, and observing that the same modus operandi leading to similar results was present during Merlinka Festival, concerns are being expressed about the ability of BiH to guarantee and protect the freedom of assembly of LGBT people.

Recommendations

Bosnia and Herzegovina need to ensure that its laws and policies protect all human rights of LGBT people in accordance with the existing international legal standards applicable at the level of the United Nations and the Council of Europe, and notably, 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.

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2013 LGBT community research report: <http://soc.ba/en/numbers-of-life-2/>

Bosnia and Herzegovina need to fully integrate EU fundamental rights acquis, notably laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender ReCast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

At the domestic level, Bosnia and Herzegovina needs to:

1. Amend the BiH Anti-Discrimination Law to include gender identity and sexual orientation (as opposed to the existing grounds: sexual expression and/or orientation), with clear definitions of the terms
2. Harmonize all other laws in education, employment, sports, etc. of Federation of BiH, of the Republic of Srpska and the Brcko District with the relevant provisions of the law on gender equity and the law on prohibition of discrimination
3. Amend the FBiH Criminal Law to include hate crime and hate speech provisions, including, for example, on the grounds of gender identity and sexual orientation
4. Amend the RS and BD Criminal Law to include hate speech provisions, for example, on the grounds of gender identity and sexual orientation
5. Adopt an anti-discrimination strategy that defines concrete and realistic measures on how to fight discrimination (including the grounds of sexual orientation and gender identity) and prejudices and promote tolerance and equality at the federal, regional and local levels
6. Develop legal provisions (for example, a registered partnership law on the entity and Brcko District level) that regulates the rights and obligations of same sex unions
7. Guarantee and protect freedom of expression and peaceful assembly of LGBT people in accordance with Article 12 of the Charter of Fundamental Rights of the EU, Article 11 of the ECHR and the recommendation CM/Rec(2010) of the Committee of Ministers of the CoE
8. Guarantee that medical support to transsexual persons during sex reassignment procedures is provided and the corresponding costs covered by the official social security system
9. Train law enforcement institutions' representatives (police, prosecutors, judges) on anti-discrimination, hate crime and hate speech regulation, focusing on marginalized groups' (i.e. women, Roma, returnees, LGBT persons) needs and problems
10. Implement trust-building actions for marginalized groups (i.e. women, Roma, returnees, LGBT persons)
11. Ensure that non-governmental organizations defending the human rights of lesbian, gay, bisexual and transgender persons are fully consulted and involved on the adoption and implementation of measures that concern LGBT rights