

DOMESTIC VIOLENCE EXPERIENCED BY LGBTI PERSONS: ANALYSIS AND RECOMMENDATIONS

Sarajevo Open Centre

Bosnia and Herzegovina

DALILA BAŠIĆ
AMINA DIZDAR

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Authors: Dalila Bašić, Amina Dizdar

Language editing: Klaudija Mlakić Vuković

Translation: Aida Spahić

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SUMMARY

LGBTI persons are exposed to continuous discrimination in all spheres of life: freedom of assembly, health, education, right to respect of private and family life, in sports etc. A specific problem this population faces inside their families is violence, both physical and psychological. The purpose of this publication is to provide an analysis of the state of protection of LGBTI persons from domestic violence. The paper presents the types of violence LGBTI persons are most often subjected to, as well as the percentages of LGBTI persons who have experienced violence in their families, the most common perpetrators of violence and the consequences for the victims of violence. We also analysed the relevant documents, and conducted interviews with representatives of social services, security agencies, mental health centres and safe houses in Sarajevo Canton. We surveyed the LGBTI community and carried out two interviews with persons who experience domestic violence because of their gender identity and/or sexual orientation. We took into account the international and domestic institutional framework relevant to protection from domestic violence which indicates a lack of adequate mechanisms to protect LGBTI children from violence committed most often by parents or siblings. In the last part, we present a number of recommendations to be implemented in order to improve the level of protection of LGBTI domestic violence victims and combat discrimination on the grounds of sexual orientation and/or gender identity.

INTRODUCTION

Violence experienced by LGBTI persons includes various forms of homophobic, biphobic and transphobic behaviour which has as its aim or consequence to humiliate or hurt the integrity, health or safety of the person who identifies as lesbian, gay, bisexual, transgender, intersex person (LGBTI), as well as persons who are not LGBTI but are perceived as such by the perpetrators. Given that we live in a society which is reluctant to accept differences or departures from the traditional hetero- and cis-normativity, attacks directed at this population are very common and often the perpetrators are the closest family members. This form of violence often has devastating consequences for the mental health and the overall welfare of the person subjected to it. The family, one of the basic pillars of support and acceptance, becomes an environment in which a person experiences pain, suffering and rejection. The consequences are numerous, and it often happens that LGBTI persons, in order to avoid such suffering, choose to spend their lives hiding their gender identity, sexual orientation and/or sex characteristics. Unfortunately, despite the many attempts to eradicate this problem in the society in general, domestic violence is very difficult to identify and it most often remains unreported to the competent institutions.

In April this year, Sarajevo Open Centre (SOC) published the 2018 Pink Report presenting the results of work on LGBTI human rights within various projects. According to this report, in 2017 a total of 11 cases of domestic violence experienced by LGBTI persons have been documented,¹ which is almost 5% of the total number of offences committed against marriage, family and youth recorded in Sarajevo Canton (SC) for that year.² Furthermore, one third of all SOC-documented cases of violence against LGBTI persons from January to December 2017 constitute domestic violence. These percentages are not at all negligible given the number of LGBTI persons in the entire population. Meta-analysis of demographic studies showed that the percentage of adults identified as LGBTI ranges from 2.2 to 4% of the total population.³ The committed acts of violence ranged from threats and blackmails, unlawful deprivation of liberty and prohibition of movement,

¹ 2018 Pink Report; Sarajevo Open Centre

² 2017 Work Report of the Police Administration of Sarajevo Canton Ministry of Interior

³ LGBT Demographics: Comparisons among population-based surveys: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>

inflicting bodily injury to forceful medical treatments. Perpetrators in majority of these cases were parents or siblings, in complicity with the extended family. It is a worrisome fact that the existing security and judicial system often has a delayed and/or inappropriate response to this problem, whereas preventive activities in this regard are almost non-existent or are insufficient.

In this policy paper, we will focus on the problem of domestic violence with special emphasis on violence motivated by sexual orientation and/or gender identity of family members. This policy paper presents results of a qualitative analysis of the existing laws, protocols, research, programmes and practices relevant to domestic violence experienced by LGBTI persons, with a special focus on the current situation in Sarajevo Canton.

In addition to relevant documents and information, the analysis includes interviews with representatives of social services, security agencies, mental health centres and a safe house in Sarajevo Canton, i.e. those institutions which have worked on cases of domestic violence of LGBTI persons and with which Sarajevo Open Centre already cooperated in the past. The interviews took place in June and July 2018. We carried out eight semi-structured interviews with professionals from various public services. The sample was adequate. Given the lack of official statistics or the register of LGBTI domestic violence cases, we decided to survey the LGBTI community in BiH. We created an online questionnaire and circulated it through SOC email lists and social networks. We also conducted two in-depth interviews with persons who survived domestic violence because of their gender identity and/or sexual orientation.

With this analysis, we would like to provide a clearer overview of the current situation with the aim to help the relevant stakeholders with the collected data, experiences and policy paper recommendations to improve the existing mechanisms of protection from and prevention of domestic violence, with a special focus on the affected LGBTI persons.

DOMESTIC VIOLENCE IN BOSNIA AND HERZEGOVINA

Today, it is very difficult to define family as there are many different types of families in the society given the increasing liberalisation of society and family relations (Raboteg-Šarić et al. 2003). The classic definitions of family which rely on marriage or blood relations as its significant characteristics no longer cover all the types. Maleš (2012) differentiates between traditional and non-traditional families, but the difference is based more on the organisational aspect of the family and the roles of individual members than on the very family dynamics or relations. Every family has its own dynamics and way of functioning. Behavioural patterns in a family can often be dysfunctional and can slow down the progress of some of its members.

Domestic violence is definitely the most severe problem and it has its roots in the distant past and is, unfortunately, still socially acceptable in many cultures. Patriarchal societies have undervalued women and children as lower-status beings and violence against them was justified. Family violence was considered a private problem of family members until recently. However, given the consequences and the human rights norms, we may not perceive domestic violence as a private problem (Zloković, 2009). Domestic violence, therefore, is not a phenomenon of the new age, it is just being considered a social problem as of recently (Ajduković, 2000).

The broadest definition of violence would refer to any act by which an individual and/or a group intends to hurt another individual and/or group. A very important characteristic of this definition is the intention to cause emotional and/or physical pain of the victim. Violence includes any act committed against the will of an individual which threatens the personal integrity, be it physical, psychological, sexual or economic violence. In fact, we differentiate between two types of aggressive behaviour, reactive and instrumental. The reactive type of aggression is a result of physical or psychological punishment which is rather a purpose than a means. The instrumental type includes the intention to cause pain or inflict injury with the person being aware that the aggressive behaviour will achieve a given goal (Radenović, 2012).

Domestic violence is a violation of human rights and this is why international standards for human rights protection oblige the states to implement appropriate measures to make sure the perpetrators are held responsible and victims are protected. The success of Bosnia and Herzegovina in addressing and resolving these cases remains questionable and we can say with certainty that there is a lot of space for improvement of measures and procedures in this field. This is also confirmed by the 2009 OSCE study in BiH that analysed the implementation of the Law on Protection from Domestic Violence by the competent institutions.⁴ Notably, following the interviews with 75 respondents from the police, social welfare centres and the judiciary, it was concluded that majority of staff in competent institutions was not appropriately trained in domestic violence to know well its nature and specificities and they cannot therefore put law enforcement in the appropriate context. A high number of respondents in competent bodies was not aware of the basic provisions of the Law on Protection from Domestic Violence and its supporting rulebooks. Today, the situation is somewhat different, often thanks to the non-governmental sector – that the interviewed representatives of the police and social welfare centres identified as the main source of additional relevant trainings. Unfortunately, the weak human resources and burdensome bureaucracy, as well as unclear responsibility-sharing, are still being identified as key obstacles to adequate practical implementation of protocols and procedures.

“Additional trainings are now mostly organised by non-governmental organisations and are most often linked to a given period and project funds. We need continuous training in order to be able to progress. Such an important issue cannot be left to an individual decision of whether one wants to learn or not.”

A senior police officer II PA – PS Novo Sarajevo⁵

The very definition of domestic violence varies depending on the field, state and cultural context and, finally, the expert working on it. However, in defining violence, very often the aspect and perspective of gender is neglected, as well as the broader context in which it is taking place (Mamula, 2004). In research and in practice, the standardised definitions of violence are rarely

⁴ Response to Domestic Violence and Co-ordinated Victim Protection in the Federation of Bosnia and Herzegovina and the Republika Srpska, 2009, OSCE Mission to BiH

⁵ An interview carried out in Sarajevo, 9 July 2018.

used. Definitions vary depending on the context in which it is analysed, but there are three prevailing perspectives today. The health approach refers to the medical characteristics of the event and the clinical description of consequences, whereby the International Classification of Diseases is used. The judicial approach is directed at recognising the criminal actions and punishing the perpetrator. The importance here is assigned to evidence and the focus is on facts. The social approach takes into account the circumstances and consequences of violence and in that way tries to provide adequate help to the victim. This approach makes a deeper insight into the dynamics of the violent event, its causes, consequences and the wider context in order to work on prevention. Pećnik (2006; quoting Rajter, 2013) introduces into this classification the subjective approach which refers to the subjective statement of the victim.

**Internationally recognised
Council of Europe definition
of domestic violence**

In this paper, we will use an internationally recognised Council of Europe definition of domestic violence according to which it constitutes all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

DOMESTIC VIOLENCE EXPERIENCED BY LGBTI PERSONS

Although, in general, the public discourse condemns violence and considers it a negative phenomenon in the society, it seems that hate speech, as well as provoking, inciting and spreading hate in Bosnia and Herzegovina (BiH) is ever present and growing in the recent years both in the real and virtual worlds.⁶ Often the target of such narratives is the LGBTI community. We can find condemnations of this community in the public discourse every day and, unfortunately, many of our citizens silently or publicly approve of homophobic and transphobic statements and discrimination. It is logical that such a social climate is a favourable environment for higher levels of violence against LGBTI persons, not only in the general society but also in the family.

Young LGBTI persons experience equal stress and anxiety as all other young people growing up. An important difference is that LGBTI persons must at the same time accept and deal with an identity they will be stigmatised for and usually they do it without having the support of their parents who very often become the “enemies”. In a place where everyone needs most support, this population faces additional labelling and discrimination. With the goal to present personal stories of persons who experience violence and by that to draw attention to this problem, we carried out in-depth interviews. What follows is a case study of a person who was willing to talk to us and share her story:

In my family, violence started early, in fact, it was always there. My father beat and abused first my mom, and then me and my brothers and sisters. I grew up in a village, as the first son of my parents. Later, they had five more children. From my first memories onwards, I knew I was different from other boys and from my brothers. I always liked doing women's chores, but as any other boy in the village, I was doing all the men's jobs as well. That wasn't enough for my father. Now that I think of it, he always managed to find a reason for me not being good enough. We were never close. It is not easy being different and growing

⁶ BiH Press Council: Eskalirao govor mržnje u medijima 21.06.2018., Available at: <https://jajce-online.com/2018/06/21/vijece-za-stampu-bih-eskalirao-govor-mrznje-u-medijima/>

up in a family with a violent father. He beat us all, but when I started puberty his focus shifted from my mother to me. My path of revealing my true identity was very difficult. Nobody likes being different, but there are things you just cannot change about yourself. As I grew, my identity was becoming more and more visible both to me and to my family members and the village. My father did not like that at all. I simply wasn't the son he wanted. I thought then that I was a gay man, but I never talked about it with my family. Coming out was not a decision of mine, it came as a response to continuous slaps, fists and knives waved in front of my face followed by threats that he will slit my throat unless I tell him if I was a faggot. He beat me terribly then and kicked me out of the house. I remember it was winter and I was 18. I had no job and I had no aunt, uncle, grandparent, or friend I could stay with. The only person who did me a favour was the landlady of an apartment I managed to rent with the last BAM 100 that I saved. I saved exactly for such purposes. After a month I returned to the house. Frankly, it is like a nightmare that keeps repeating every night. When I was 20, he kicked me out again, but this time I never returned. I decided I cannot lead such a life. Physical pain can never exceed the emotional pain I felt. He made me believe I was sick. He killed everything in me and any respect I had for him or myself. I visited the Social Welfare Centre and they listened to me but did not know how to help me. Then I contacted the Mental Health Centre and that changed me. Both the psychiatrist and the psychologist who worked with me told me that I was not sick, but that I was traumatised. My self-confidence and self-esteem were at the bottom. The psychologist helped me work on self-confidence. I found a job and started a new life. I almost have no contact with my family, and right now I do not want it. It is difficult to even remember that period, but I know it made me what I am today. Recently I have had some medical tests done because of abdomen pain and they revealed that I am intersex, I have ovaries and uterus and external genital organs typical of a man. My parents never questioned that.

Andrea, 26⁷

Violence that this young woman experienced has never been reported. Primarily because, as she says, she did not want any additional problems.

⁷ Interview carried out on 13 August 2018.

Domestic violence is a general problem of the society for which statistically sound data are hard to collect. It truly is common that this type of violence is not reported and is kept hidden for various reasons, very often because of victim blackmailing and intimidation. The consequence is that a high percentage of these criminal offences is never included in public statistics, which creates a distorted perception of the seriousness of the problem. When it comes to LGBTI persons it seems that these grim numbers⁸ are much higher than we can assume. One of the reasons lies in the fact that public statistics of police and social services do not disaggregate data to keep separate records of domestic violence against LGBTI persons. Furthermore, sometimes these cases of violence are recorded as hate crime and sometimes as an offense against marriage, family or juveniles. Another aggravating fact is that many LGBTI persons in our society must hide their sexual orientation and gender identity. Lack of awareness and understanding and the bias within families force LGBTI persons to hide their identities and to continuously live in fear and lies. Inability to freely and honestly express one's identity leads to numerous difficulties for the individual within a family. It results not only in dysfunctional relations and communication within the family but it also prevents the formation of sound relationships in all segments of life and is often followed by psycho-emotional anxiety. In an intolerant society such as Bosnia and Herzegovina, this problem is often neglected, unrecognised and unaddressed which adds to stigmatisation and invisibility of this population.

There is no systemic research in BiH of this problem in particular and the presented cases are primarily based on individual statements of professionals and LGBTI persons who experienced domestic violence. With the goal of obtaining a general insight into the position of victims of this type of violence, we also conducted an online survey among the LGBTI population.

A total of 52 persons took part in the survey, ages 12 to 50. The highest percentage of respondents, 30.8%, identify as lesbians according to their sex, sexual orientation, gender identity and sex characteristics. The percentage of 21.2% respondents identify as gay men, and the same percentage identify as bisexual women. More than half the respondents, 57.7%, live in the capital, and a somewhat lower percentage come from some other towns in BiH, whereas 11.6% of respondents live in rural or suburban areas. A high

⁸ Refers to the number of cases never reported or recorded by public services.

percentage of respondents has a secondary or tertiary level of education – 76.5%. Based on these socio-demographic data, we can conclude that the sample is not representative but it can provide a level of insight into the problem.

The most important piece of information from this survey is the fact that 26.9% of respondents reported that at one point in their lives they experienced domestic violence because of their sexual orientation, gender identity or sex characteristics. Of all the respondents, 19.2% experienced domestic violence but are not sure whether the violence was motivated by intolerance for their sexual orientation, gender identity or sex characteristics. Also, many have stated that they were not sure because they never came out to their family members.

- *There have been problems because I was different to them, you could feel it in the air, but I never admitted it.*
- *The violence I experienced was in one part motivated by my gender presentation but that was not the primary and the conscious driver of the perpetrator.*
- *I am not sure that was the reason because I am not certain that my family is aware of my sexual orientation.*

These figures are particularly worrisome given that even in such a small sample almost every second person experienced some form of domestic violence. As in several studies on domestic violence against LGBTI persons in other countries (D'Augelli and Grossman, 2001, Herek et al., 1999), this survey also showed that most common are verbal types of violence such as insults or curses, and threats of physical violence, whereas physical assaults are not as common. In this survey, ten respondents reported experiencing emotional violence, nine verbal, eight physical violence and eight have experienced neglect and rejection by their families. It is noteworthy that one manifestation of violence is often combined with another, therefore, it is impossible to speak about physical violence which is not followed by a form of verbal or emotional violence. Psychological violence is most often hidden, invisible, and constitutes a long-term process. It is based on various forms of verbal aggression, by which the personal integrity is disturbed or jeopardised through control, coercion, humiliation, intimidation, manipulation and

insults. The consequences of such behaviour are far reaching and identifying this type of violence which is often neglected requires special attention. Although it is widely accepted that physical injuries are the only valid evidence at court, psychological violence is also provable. The following can be used to determine the existence of psychological violence at court: statement of the victim, witness testimonies and psychiatric testimony – expert witness report.

The findings can be presented as evidence through expert witness testimony. Furthermore, the experience of associations in BiH dealing with LGBTI rights very often shows that cases of emotional violence and assaults by family members against LGBTI persons have the goal to punish or *correct* their sexual orientation or gender identity, which can have terrifying consequences.

I grew up in a completely “normal” family. Mother, father, and two children – a boy and a girl. My parents are not violent people, they are not uneducated but they are traditional and conservative. We always lived by the standards. We observed religious holidays and rituals, regularly attended mosque prayers. It was entirely “impossible” for a son to be gay in such a family. Being gay was something that came from the West; children see different sorts of things nowadays on TV and the internet. When I was 16, my neighbour saw me kissing a man in a small, remote backyard of a former kindergarten. I think he followed us because I failed to notice him. He told my mom, probably did not dare tell my father. My mom did not dare either and we never told him. Although I denied it, she knew it was true. She still knows. But we don’t talk about it since I was “cured”. I accepted to see an imam, we went several times. The cure mostly revolved around me lying down and him reading the Qur’an and watching my reactions. I would lie if I said that I was very afraid and that all of it was somehow mystical, it just made me show some emotions. I cried, I was never sure why. I remember that I never left the house that summer and there was a ban on TV and the internet. It felt horrible then, now not so much. My mom says that in her family there was this “strange” cousin, most of them lost touch with him. “He died alone, like a dog. I don’t want that to happen to you, find yourself a girlfriend”, mom often says. Maybe the fear that she will abandon me is the reason I never told her that the imam did not help

me. That I fell in love. I never mentioned to them that I've been with my boyfriend for more than three years and I love him. I decided it is easier this way. Easier for them. And I love them because they love me. There is just this one part of me they don't love.

Muamer, 31⁹

In addition to forced treatment, LGBTI persons are often rejected or even thrown out in the streets. Financial dependence is an extremely common reason for LGBTI persons to accept life hiding their identity and avoid reporting violence to competent services. Also, many parents and family members are trying to keep the “secret” within the family. The parents also experience a form of shock when they find out about sexual orientation, gender identity and/or sex characteristics of their children. The shock often leads to their inappropriate reactions. Parents/family do not have the support of their environment and are themselves afraid of their coming out to others. Therefore, it does not come as a surprise that most common perpetrators of domestic violence against LGBTI persons are mothers and fathers. In 71.4% of cases it was the mother and in 42.9% the father. In two cases the perpetrator of violence was the partner of the LGBTI persons. Intimate violence is a special problem which is very rarely discussed even within the LGBTI community.

Of the respondents, 78.6% did not report domestic violence. Violence was reported in only three cases – two to the police and one to the social welfare centre. It is very important to continue working on creating an environment in which LGBTI persons feel free to contact the competent institutions. Negative experiences in the past and frequent condemnations even by professionals lead to LGBTI persons not having trust that the competent institutions will work on resolving their problems.

It is alarming that the existing system to combat domestic violence is not ready to respond to these cases and that, in addition to civil society organisation which are ready to accept lesbians into safe houses, there is no accommodation whatsoever for gay men and transgender persons victims of domestic violence. It is necessary to systemically approach the resolution of this problem which can, due to vulnerability of victims, lead to homelessness

⁹ Interview carried out on 20 July 2018 in Sarajevo.

of young lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.¹⁰

Every person, irrespective of their sexual orientation and/or gender identity must have the right to home, parental support, freedom of expression and movement. Impossibility or the lack of protection of a child exposed to violence due to his/her sexual/gender identity/sex characteristics constitutes most probably the cruellest violation of their rights.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROTECTION FROM DOMESTIC VIOLENCE

The Universal Declaration of Human Rights and the European Convention on Human Rights are two fundamental acts on which all international documents and national laws should be based, as they guarantee numerous freedoms to all persons irrespective of sex, race, national, religion and other characteristics. These two conventions have been the starting points for the adoption of new acts that further regulate the entire spectre of human rights in BiH. International law recognises domestic violence as a serious violation of human rights, and that is also confirmed by the Council of Europe Convention on preventing and combating violence against women and domestic violence. The purpose of the Convention is to protect women from all forms of violence, to prevent, prosecute and eliminate violence against women and domestic violence, as well as to develop a comprehensive legal framework and policies for the protection and assistance to all victims of domestic violence.

The most vulnerable social category are definitely children and their human rights are additionally regulated by the Convention on the Rights of the Child. This Convention obliged all member states to respect all rights stipulated by the Convention and to provide adequate legal aid to every child in their jurisdiction. That includes protection from all forms of discrimination, which indirectly includes protection from discrimination on the grounds of sexual orientation, gender identity and/or sex characteristics.

Article II of the Constitution of Bosnia and Herzegovina guarantees to all persons within the territory of Bosnia and Herzegovina the rights stipulated by the Constitution without discrimination on any ground. Sexual orientation and gender identity are not listed among the grounds stipulated by the Constitution and they are classified under “other status”, whereas the Anti-Discrimination Law stipulates them as prohibited grounds of discrimination. The Anti-Discrimination Law foresees the harmonisation of other laws, rulebooks, statutes and other acts with this Law, otherwise they would be proclaimed null and void, however, with the exception of the Gender Equality Law, no other law stipulates sexual orientation or gender identity as prohibited grounds of discrimination.

The amendments should be in particular introduced in the Law on Protection from Domestic Violence as the position of LGBTI persons in their families represents a specific problem. In addition to being exposed to discrimination, they are often victims of violence, blackmails, unlawful deprivation of liberty and forced treatments, while the perpetrators are parents or siblings. As a result, many LGBTI persons live in fear, choosing to keep their sexual orientation or gender identity in secret, and they often leave their families due to domestic violence they experience. Victims most often decide to leave their home and family or do not report violence because they fear they will be thrown out. One of the main causes of this situation is the non-existence of appropriate regulations to protect LGBTI persons from domestic violence. Article 6 (4) of the FBiH Law on Protection from Domestic Violence stipulates the obligation of family members to refrain from harming physical or psychological integrity of another family member or discrimination on the grounds of gender or age and from subordination on any basis. Therefore, the Law does not list sexual orientation, gender identity and/or sex characteristics as prohibited grounds of discrimination and domestic violence. The provisions of the RS Law and Brčko District Law regulate this matter similarly, also failing to list sexual orientation and gender identity as grounds for protection from domestic violence. Entity laws and the law of Brčko District oblige healthcare and social workers, family members, citizens and other stakeholders to report domestic violence immediately after finding out about it. The laws stipulate fines for non-reporting ranging from BAM 100 to BAM 3000, depending on whether an official person or citizens and family members failed to report and also whether the victim was a child. In the RS Law, the minimum stipulated fine is BAM 300 if the violence is not reported by a family member, whereas if it is not reported by staff of healthcare, social or educational institutions the fines range from BAM 1000 to BAM 3000. Brčko District stipulates lower fines for official persons who are obliged to report cases of domestic violence and have failed to do so – the minimum fine is BAM 500 and the maximum is BAM 1000, whereas fines for family members in case of failure to report violence are only stipulated when the victim of violence is a child – the fines range from BAM 300 to BAM 900. There is the need to amend these laws, particularly the Law on Protection from Domestic Violence of the Federation BiH, as it only stipulates protective measures such as a restraining order, prohibition of harassment and stalking etc. whereas the penal provisions contain sanctions in the form of fines exclusively for

persons who fail to report violence. The Laws on Protection from Domestic Violence of the Republika Srpska and Brčko District stipulate a range of fines for violence perpetrators, but treating these acts as misdemeanours is a big disadvantage. Criminal Codes of the Entities and Brčko District also regulate domestic violence; Article 222 of the FBiH Criminal Code stipulates a fine or imprisonment of up to one year for persons who by violence, insolent or arrogant behaviour violate peace, physical integrity or mental health of a member of his/her family, and imprisonment of up to three years when the offence was perpetrated against a member of his/her household. Similar provisions can be found in the BDBiH and the RS Criminal Codes. However, the FBiH, RS and BDBiH laws on protection from domestic violence, as *lex specialis*, have a priority over criminal codes so in practice, misdemeanour procedure will be initiated first and the provisions of the laws on the protection from domestic violence and laws on misdemeanours will apply first. The misdemeanour procedure is, as a rule, shorter than criminal proceedings and the victims will, if they decide to report violence, most often opt for a misdemeanour procedure and by that exclude the option of imposing a criminal sanction on the perpetrator of violence. The fact that criminal codes regulate domestic violence as a criminal offence and stipulate imprisonment as punishment means little in practice because the victim must experience serious bodily consequences to be able to initiate criminal proceedings.

The situation is similar in the countries of the region. The Law on Prevention of Domestic Violence of the Republic of Serbia stipulates urgent measures to be imposed on the perpetrator of violence, such as a restraining order, but imprisonment is foreseen only in case the perpetrator acts in contravention of the imposed measures. Therefore, the perpetrator can be punished only once the violence has been committed and when it clearly constitutes a criminal offence. In its Law on Protection from Domestic Violence, Montenegro stipulates both fines and imprisonment for the perpetrators, as well as for persons who are legally obliged to report violence and fail to do so. The Law on Prevention of Domestic Violence of the Republic of Croatia contains more detailed provisions, stipulating in Article 22 fines for perpetrators, as well as imprisonment. None of the above laws represent an appropriate legal framework for the protection of violence victims in general, especially those who became victims of violence due to their sexual orientation or gender identity. LGBTI persons are a particularly vulnerable category, therefore,

pressure should be exercised on the legislators to amend the existing laws in order to harmonise them all with the Anti-Discrimination Law.

In 2013, ILGA-Europe prepared a report on hate speech and violence against LGBTI persons. The report included some Balkan countries; in Albania, of the ten documented cases of violence, three have happened in families, in Serbia one out of four, and in Macedonia one out of six.¹¹ The research also included Bosnia and Herzegovina with three examples of violence against the LGBTI population. This, of course, does not mean that the situation in BiH is more favourable for LGBTI persons, to the contrary, many LGBTI persons do not want to come out because of the fear that they will experience violence or lose their job. And even when they do come out, they confide in the closest circle of friends, afraid of their family's reaction. All the listed cases have been reported to the police but none of them was prosecuted. That is the reason for the lack of trust of the LGBTI community in the judiciary. It is time for the competent institutions to undertake appropriate measures to harmonise the existing legislation and implement laws protecting the LGBTI community, such as the Anti-Discrimination Law.

There is no law or binding international act ratified by Bosnia and Herzegovina which explicitly lists sexual orientation, gender identity and/or sex characteristics of a child as prohibited grounds of discrimination, but they can be derived from other provisions. The only international document which lists measures that the member states should implement into their legislation is the 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. The Recommendation is a very important document for improvement of human rights of LGBTI persons as it contains a set of measures that the member states should adopt and apply in various areas of life.¹²

In any legal system, the interests of the child are of highest importance, irrespective of the type of a legal situation. Accordingly, the child should enjoy the highest level of protection, without any exceptions whatsoever. The

¹¹ Violence against lesbian, gay, bisexual, transgender and intersex people in the OSCE region, 2013

¹² [https://ravnopravnost.gov.hr/UserDocsImages/arhiva/preuzimanje/dokumenti/ve/Preporuka%20CMRec\(2010\)5%20Odbora%20ministara%20ministrice%20dr%C5%BEavama%20%C4%8Dlanicama%20o%20mjerama%20za%20suzbijanje%20diskriminacije%20na%20osnovu%20seksualne%20orijentacije%20ili%20rodnog%20identiteta.pdf](https://ravnopravnost.gov.hr/UserDocsImages/arhiva/preuzimanje/dokumenti/ve/Preporuka%20CMRec(2010)5%20Odbora%20ministara%20ministrice%20dr%C5%BEavama%20%C4%8Dlanicama%20o%20mjerama%20za%20suzbijanje%20diskriminacije%20na%20osnovu%20seksualne%20orijentacije%20ili%20rodnog%20identiteta.pdf)

nonexistence of social structures that are adequately acquainted with this topic leads to the situation in which those trained to work with children do not know how to act when they are in contact with an LGBTI child. Educational staff, pedagogists and psychologists should be experts who treat every child equally and who are able to notice a problem and do everything to resolve it in an appropriate manner. Research conducted by Family Acceptance Project, an initiative which works on risk prevention with respect to health and mental illnesses of LGBTI children and youth, as well as risk of suicide and other problems they face, showed that parents who have a hard time accepting the fact that their child is LGBTI, think that the best way to help their child is to isolate him or her from the LGBTI community.¹³ They attempt to do everything for the child to adapt to heterosexual environment and break all the connections with other LGBTI people. Their motive is care and love for the child and the wish to make his/her life easier, however, the child sees such actions of the parents as unaccepting and they think that the parents don't love them or even hate them. Lack of communication between the parents and the children is a cause of conflicts in the family, which often lead to a child being thrown out from the house. In such cases, the person reports to the youth centre, if there is one in the community, or ends up on the street, which is a much more common outcome. These factors affect young people and increase the risk of mental illness, drug abuse, they are isolated and have low self-esteem. Also, the research showed that LGBTI children who are not accepted by their families are eight times more likely to commit suicide than LGBTI children who have not been exposed to non-acceptance, they are six times more likely to suffer from depression, three times more likely to use substances and three times more likely to contract HIV or other sexually transmitted diseases.¹⁴

In addition to the need to work on prevention and parents' education, an efficient support system must be developed for juvenile LGBTI persons who do not enjoy the support of their families and have been forced to leave them. The Family Acceptance Project developed guidelines thanks to which the legal framework started developing to establish constitutional and legal obligations of public institutions to care of the youth who are left without a home.

¹³ <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1744-6171.2010.00246.x>

¹⁴ <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1744-6171.2010.00246.x>

Young trans girl won the case against a Child Protection Agency in New York

Due to those amendments, a young trans girl won the case against a Child Protection Agency in New York, demanding to be allowed to wear girls' clothes in the common boys' home. Based on that, the state of California became the first federal state to adopt a law on protection of juveniles and their rights which prohibits discrimination on the grounds of sexual orientation or gender identity in the foster care system.

In the families, but also social welfare centres, violence against LGBTI persons is often considered justified. That is why laws must be changed and new ones adopted to clearly and precisely exclude any differentiation based on sexual orientation, gender identity and/or sex characteristics, to make it very clear that any abuse or violation of human rights of LGBTI persons constitutes unacceptable behaviour which will not be tolerated. Adoption and implementation of a policy which prohibits violence, insults and other forms of harassment and discrimination will encourage equal care for all young people. Such a policy does not affect the personal beliefs about homosexuality or gender roles. Family members, service providers and staff can freely keep their beliefs as long as they respect the rules of non-discriminatory policy and refrain from expressing their personal views in their work.

CONCLUSION AND RECOMMENDATIONS

Many valuable data have been collected in this paper which should be taken into account in creating the guidelines for future action of state institutions and non-governmental organisations for the purpose of ensuring the protection of rights of LGBTI persons, but also recognition of their needs. On a daily basis, LGBTI persons face a quite homophobic and transphobic society, which makes them vulnerable to domestic violence but also leads to lower probability that such a violence will be recognised and reported and that they will get adequate support.

The Amendments to the Anti-Discrimination Law are still not producing the desired results in practice in terms of better protection and improvement of position of marginalised social groups. The comprehensive anti-discrimination policies are still lacking. Monitoring of court proceedings conducted at 22 courts showed that domestic violence is still perceived as a less serious offence, for which the courts generally impose suspended sentences and low fines, even in cases of recidivist perpetrators who have committed the same criminal offence multiple times.¹⁵ The courts should try and avoid any postponing in domestic violence cases and should, for that purpose, introduce mechanisms for the urgent handling of these cases, given that the international legal standards stipulate that domestic violence cases must be addressed without any unjustified delays. Furthermore, laws on protection from domestic violence foresee the obligation of urgent action of the court in handling misdemeanour domestic violence procedures (the Republika Srpska law) or imposition of protective measures in domestic violence cases (the law in the Federation of Bosnia and Herzegovina).

Based on the interviews with the representatives of the social and healthcare sectors, we can conclude that, along with additional and systemic training of professionals, it is necessary to also work on increasing the human resources in services. Social, healthcare and educational sectors should be the first line of prevention in the society, but for them to serve that role there must be a sufficient number of professionals to primarily deal with prevention, and

¹⁵ Analysis of monitoring criminal and misdemeanour proceedings in the field of gender-based violence in Bosnia and Herzegovina, United Women and Centre for Legal Aid to Women, 2017 (<https://goo.gl/DDztDB>) taken from the 2018 Alternative Analytical Report on the Application of Bosnia and Herzegovina for EU Membership: Political Criteria

reintegration and empowerment of victims. Unfortunately, the SC Ministry of Labour, Social Policy and Displaced Persons has a ban on employment of new staff as of 2016. In practice, this means a reduction of social welfare staff in the circumstances of the already insufficient number of people. Despite the fact that Sarajevo population is growing, there is disproportionate employment of professionals in the relevant services.

“In the social protection service, we do not have enough professionals. Currently, we employ just one psychologist. The multidisciplinary approach required in this issue is almost impossible. In the end, the support comes down to a few conversations, whereas the victims in fact need systematic work to overcome such traumas.”

Social worker in the Social Welfare Centre of Stari Grad¹⁶

A positive step in this direction was the appointment of a contact person in the CS Cantonal Prosecutor's Office for cases of hate crime on the grounds of sexual orientation and/or gender identity. This practice should become widely accepted not only in other administrative units but also in other institutions responsible for protection of safety and human rights of LGBTI citizens in BiH. Although there are contact persons for the LGBTI population in police administrations in Sarajevo, we found out in the interviews that their work is linked with cooperation with relevant non-governmental organisations, while direct contact with the LGBTI community is still rare. It is necessary to work on the relation between the two sides in order to avoid the previous practice of having this population exist only on paper and for the LGBTI community to start seeing the police as allies in the pursuit of their rights.

Furthermore, due to unsystematic monitoring of incidents, it is necessary to establish an official system for the monitoring and public reporting of reported and prosecuted cases of violence against LGBTI persons, as well as cases of discrimination they have been exposed to. This is necessary to secure precise data that will serve as a basis for the adoption of public policies with the goal of combating violent hate crime and evaluation of hate crime and domestic violence prosecution.

¹⁶ Interview carried out on 11 July 2018 in Sarajevo.

A special problem for LGBTI persons is the non-existence of LGBTI inclusive safe houses in BiH and, with the exception of civil society organisations who manage safe houses for women victims of violence who are open for lesbians, there is no accommodation for gay men and transgender persons victims of domestic violence. The state must work on the systemic solution to the problem of ensuring safe houses for members of vulnerable social groups that experience violence.

Working with LGBTI persons on reducing the effects of their traumas must not be neglected. Public policies for the prevention and suppression of violence are often reduced to punishments for perpetrators, whereas mental health consequences for the victims are often ignored. It is therefore necessary to provide free psychological and/or psychotherapeutic assistance to the victims. It is noteworthy that in the recent years BiH started reforming its mental health sector to introduce a broader social approach and depart from the traditional medical model. This resulted in the establishment of over 100 Mental Health Centres all over BiH, which is a great step towards a more humane approach to people with psychiatric illnesses. However, the capacities of these centres are often reduced to diagnostic-specialist services and, according to the findings of the situation analysis, the main target group of these centres are “adults” and “chronic patients”.¹⁷ Therefore, with the exception of certain non-governmental organisations which, as part of their programmes, offer free psychological counselling and/or psychotherapy, these services in the public sector are very difficult to reach.

It is necessary to work on the opening of counselling services for parents, but also for children – both heterosexual and cisgender and for LGBTI children who become aware of their sexual orientation, gender identity and/or sex characteristics. These services are almost non-existent in BiH, but the need for them is huge.

Despite the numerous efforts, a long and demanding process is ahead of us to train and sensitise the entire society and social institutions caring for the welfare of all citizens in the context of rights and position of LGBTI persons in BiH. Prevention of homophobic and transphobic violence, mitigating the

¹⁷ Analiza situacije i procjena usluga mentalnog zdravlja u BiH, 2009. Federalno ministarstvo zdravstva BiH

consequences of violence and reduction of secondary victimisation, as well as better care for LGBTI victims and their closest ones are goals set before the legislators, police and judiciary, but also staff and professionals assisting victims of domestic violence and civil society organisations that work on human rights of LGBTI persons.

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ABOUT SARAJEVO OPEN CENTRE

Sarajevo Open Centre (SOC) advocates the full respect of human rights and social inclusion of LGBTI persons and women. Sarajevo Open Centre is an independent, feminist civil society organisation which strives to empower LGBTI (lesbian, gay, bisexual, trans and intersex) persons and women by strengthening the community and building the activist movement. SOC also publicly promotes human rights of LGBTI persons and women and it advocates the improvement of public policies in Bosnia and Herzegovina at the State, European and international levels.

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counselling we also continued running the only LGBTI media outlet in the state – a web portal www.lgbt.ba. We organised trainings for the police, the prosecutor's offices and the courts and we worked intensely with journalists and young lawyers, as well as other future professionals. Over the recent years, several of our legislative and policy initiatives have been submitted to governmental or parliamentary procedures. We also started working with the local level institutions – the level most important for LGBTI persons. Our advocacy focuses on anti-discrimination regulation, as well as regulations relevant for the protection of LGBTI person from violence. We intend to continue working on matters important for trans* people, same-sex partnerships, social inclusion, but also the position of LGBTI persons in education, health, labour and employment. In the previous year, we had media campaigns that reached over a million of BiH citizens and we organised the LGBTI film festival Merlinka.

You can find out more about our work at: www.soc.ba

ABOUT THE AUTHORS

Dalila Bašić (1989, Sarajevo) completed the Studies of Psychology at the Faculty of Philosophy of the University of Sarajevo in 2013. She has been providing psychological counselling to LGBTI persons in Sarajevo Open Centre as of February 2018.

E-mail: dalila.bashic@gmail.com

Amina Dizdar (1992, Sarajevo) graduated from the Faculty of Law of the University of Sarajevo in 2018. She joined the Sarajevo Open Centre team as a volunteer in March that year in the LGBTI Human Rights Programme. She is currently employed as programme assistant working on EU integration matter.

E-mail: amina@soc.ba.

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Papers on LGBTI human rights relevant to this topic include:

Amina Dizdar (Author): Monitoring of the Implementation of Committee of Ministers' Recommendation CM/Rec (2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity. Sarajevo, Sarajevo Open Centre, 2018. Available at: http://soc.ba/site/wp-content/uploads/2018/09/Report_Monitoring-Recommendation-CM-Rec-2010-5.pdf.

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