



*PINK*<sup>2019</sup>

*report*

*Annual Report on the State of the Human Rights  
of LGBTI People in Bosnia and Herzegovina*

# Pink Report 2019

Annual Report on the State of the Human Rights of  
LGBTI People in Bosnia and Herzegovina

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Authors: Amina Dizdar, Delila Hasanbegović, Liam Isić,  
Darko Pandurević, Jozo Blažević, Lejla Huremović

Editors: Emina Bošnjak and Vladana Vasić

Proofreading (BCS) and revision: Sandra Zlotrg

Translation to English: Adisa Okerić Zaid

Layout and design: Feđa Bobić

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# PINK REPORT 2019

ANNUAL REPORT ON THE STATE OF THE HUMAN RIGHTS  
OF LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA

Sarajevo, 2019

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# ABBREVIATIONS

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<b>AFA</b>	Academy of Fine Arts in Sarajevo
<b>GEA BiH</b>	Gender Equality Agency of Bosnia and Herzegovina
<b>BiH</b>	Bosnia and Herzegovina
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>FBiH</b>	Federation of Bosnia and Herzegovina
<b>GAP</b>	Gender Action Plan
<b>GC FBiH</b>	Gender Center of Federation of Bosnia and Herzegovina
<b>GC RS</b>	Gender Center of Republika Srpska
<b>ICCPR</b>	United Nations' International Covenant on Civil and Political Rights
<b>ICESCR</b>	United Nations' International Covenant on Economic, Social and Cultural Rights
<b>JPTC FBiH</b>	Centre for Education of Judges and Prosecutors of Federation of Bosnia and Herzegovina
<b>LGBTI</b>	lesbians, gay, bisexual, transgender and intersex persons
<b>LGE</b>	Law on Gender Equality of Bosnia and Herzegovina
<b>LPD</b>	Law on the Prohibition of Discrimination
<b>LPPO</b>	laws on public peace and order
<b>MIA</b>	ministry of internal affairs
<b>MHRR BiH</b>	Ministry of Human Rights and Refugees of Bosnia and Herzegovina
<b>MoJ FBiH</b>	Ministry of Justice of the Federation of Bosnia and Herzegovina
<b>PA FBiH</b>	Police Academy of the Federation of Bosnia and Herzegovina
<b>RTV</b>	radio-television
<b>RS</b>	Republika Srpska
<b>SC MoT</b>	Sarajevo Canton Ministry of Transport
<b>SC MIA</b>	Sarajevo Canton Ministry of Internal Affairs
<b>SC MLSPDPR</b>	Ministry of Labour, Social Policy, Displaced Persons and Refugees of Sarajevo Canton
<b>SOC</b>	Sarajevo Open Centre
<b>SOGI</b>	sexual orientation and gender identity
<b>SOGISC</b>	sexual orientation, gender identity and sex characteristics
<b>UDHR</b>	United Nations' Universal Declaration of Human Rights



# NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS

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## Failure to adopt the Action Plan for Equality of LGBTI Persons

During 2017, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina (MHRR BiH) developed and sent a draft 2018-2020 Action Plan for Equality of LGBTI persons in Bosnia and Herzegovina to Entity governments. The Action Plan follows the structure of recommendations of the Committee of Ministers of the Council of Europe to member states concerning prevention of discrimination on grounds of SOGI, and contains an overview of the state of affairs, necessary measures and expected results.

At a session held in September 2018, the Government of Federation of Bosnia and Herzegovina (FBiH) gave a positive opinion about the received Draft, noting that it needed certain corrections with regard to the financial framework, methodology of evaluation of implemented activities, and inclusion of some governmental bodies as leading institutions (JPTC FBiH, for example). One can conclude that a minor progress has been achieved in this field in FBiH, noting that the date of adoption is uncertain, considering that no further measures have been taken since, and that a new FBiH Government is currently in the process of establishment.

The Government of Republika Srpska (RS) gave a negative opinion about the proposed Draft because “public consultations with competent institutions of the RS were not conducted during the development process”.

Until the time of writing this report, the Brčko District Government did not issue an opinion about the draft Action Plan for equality of LGBTI persons.

## Violation of the freedom of assembly in Sarajevo Canton

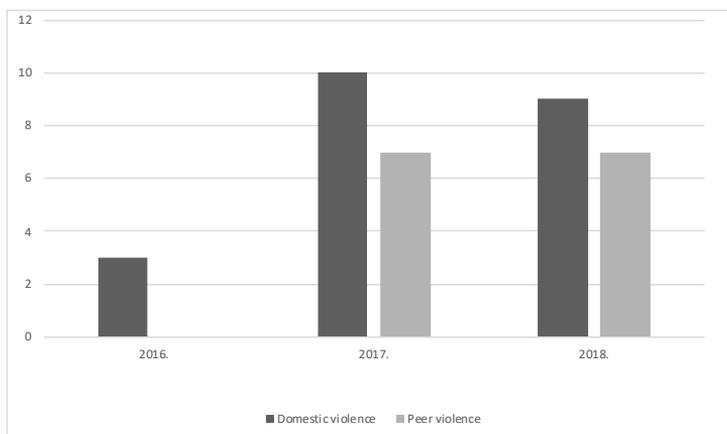
In 2018, application of the Law on Temporary Use of Public Areas on the Territory of Sarajevo Canton to non-profit assemblies of citizens poses a new barrier to the protection of the freedom of assembly. Namely, this Law foresees the need to obtain approvals of the municipality where the assembly takes place, and of the institution/legal person that has the occupancy right or is located in the public area, as a precondition for holding of a peaceful assembly. Such practice enables institutions and persons who are not authorised to conduct the risk assessments for assemblies, or to discriminate and prevent public assemblies of citizens in accordance with their own stereotypical beliefs, and there is no complaint or control mechanism against such practice.

This administrative procedure was used twice in 2018 in order to deprive LGBTI persons of their right to freedom of assembly. In March 2018, on the occasion of the International Transgender Day of Visibility, both BBI Centre and National Theatre refused to give their approvals to the Sarajevo Open Centre (SOC) for such an assembly, which *de facto* prevented the assembly from taking place. Reasons for the refusal they cited both times were their disagreement with the organiser's efforts to point to the violation of human rights of LGBTI persons and to the need for improvement and inclusion of this marginalised group in the BiH society.

## Domestic violence and bullying

In the past few years, increased domestic violence rates, expression of homophobia and transphobia and bullying in educational institutions appeared as particularly worrying trends. Continuation of such trends results from insufficient level of reporting of such violence to competent institutions, but also largely from their inadequate response in terms of sanctioning of domestic violence perpetrators and bullies.

From 2016 until the end of 2018, SOC documented the total of 36 cases of domestic violence and bullying in educational institutions. Of the total number of documented cases, 22 cases involved domestic violence, and 14 were related to bullying.



Graph 1. Sarajevo Open Centre's data on domestic and peer violence against LGBTI persons

More than two times less domestic violence cases were recorded in 2016 than in 2017 and 2018, whereas almost the same numbers of domestic violence and bullying cases were recorded both in 2017 and 2018, which were still much higher than in 2016.

It should be noted that, out of fear, victims (LGBTI persons) still do not report all the violence they were exposed to. Reasons for non-reporting of violence include lack of trust in officials, lack of sensibility, lack of education and professional approach (presence of bias) of officials towards LGBTI persons, and the fact that reported cases were not prosecuted adequately, and that abusers were not sanctioned, which causes distrust in competent institutions. Also, LGBTI persons are afraid of forced/unwanted coming out and consequences it may cause within their families.

## GOOD PRACTICES

### Cooperation with the Police Academy of the Federation of Bosnia and Herzegovina

During 2016, cooperation with the Police Academy of the Federation of Bosnia and Herzegovina (PA FBiH) was realised. The cooperation resulted in education of PA FBiH representatives about human rights of LGBTI persons, with a special focus on hate crimes against LGBTI persons. In 2016, PA FBiH representatives completed trainings together with other police agencies of the Federation of BiH (FBiH Ministry of Internal Affairs, FBiH Police Administration and the Directorate for Coordination of Police Bodies of BiH). Moreover, the cooperation with PA FBiH continued by including the Academy representatives in the Train the Trainer programme for police officers of all cantonal ministries of internal affairs (MIA) in FBiH, with the aim of educating them about hate crimes against LGBTI persons, so that they can transfer the acquired knowledge to their colleagues in MIAs through permanent/ compulsory trainings for all police officers in MIAs.

The cooperation established in 2016 eventually resulted in the FBiH MIA giving the approval to SOC in early 2019 to organise trainings for PA FBiH cadets in hate crimes. Fifty classes were organised within regular teaching hours for PA FBiH students both for basic police officer and junior inspector ranks. The purpose of the training was that, once the cadets complete the Academy and become police officers, they are familiar with the topic and issues of hate crimes from the very first day they assume professional police duty, and that the acquired knowledge facilitate and improve their work on revealing of these crimes, but also in becoming sensitive to problems arising from hate crimes and incidents, and from the need to provide full protection of human rights, especially of vulnerable groups in BiH.

### Continued cooperation with the Ministry of Labour, Social Policy, Displaced Persons and Refugees of Sarajevo Canton

In the beginning of September 2018, SOC developed a model of Report on Gender Equality and Human Rights of Women and LGBTI Persons for the Sarajevo Canton, with the related Action Plan. The model report includes legislation and an overview of the state of human rights of LGBTI persons and women in different fields of life. The related Action Plan includes

measures that would improve human rights and the position of women and LGBTI persons in the Sarajevo Canton.

SOC developed this report in cooperation with the Ministry of Labour, Social Policy, Displaced Persons and Refugees of Sarajevo Canton (SC MLSPDPR), the Gender Centre of Federation of Bosnia and Herzegovina (GC FBiH), and other civil society organisations that are active in this Canton. The report will be proposed as a working document for the development of a cantonal operational plan for the implementation of 2018-2022 Gender Action Plan (GAP) which will be developed by the Sarajevo Canton Government at the initiative of the Cantonal Assembly.

### Proactive activities of the Government of the Federation of Bosnia and Herzegovina

In October 2018, faced with requests of same-sex couples for registration of their same-sex partnerships and of parental status in civil registries of FBiH, the FBiH MIA sent an opinion to the Government proposing the establishment of a working group which would be in charge of the analysis of existing legal framework and of required legislative amendments in order to regulate the issue of same-sex partnerships. The FBiH Government adopted this opinion in the form of a conclusion, and designated the FBiH Ministry of Justice (MoJ) as the leading institution for the working group.

The FBiH MIA and FBiH Government thus reacted diligently to violations of human rights of LGBTI citizens of BiH and recognised the need for regulation of same-sex partnerships. Initial contacts of SOC with the Government and the MoJ indicated their willingness to join a working group of legal experts and civil society representatives. This process is currently on hold, because the working group has not been established yet, and the Government has not carried out any new activities on this issue since October 2018.

In September 2018, the FBiH Government gave a positive evaluation of the 2018-2020 Draft Action Plan for Equality of LGBT persons in BiH which was proposed by the MHRR BiH (for more details, see the chapter entitled *Failure to adopt the Action Plan for Equality of LGBTI Persons*).

These examples indicate willingness of the FBiH Government to start seriously considering and improving the position of LGBTI persons in this Entity.

## PRIORITY MEASURES THAT SHOULD BE TAKEN

### Adoption of the Action plan for equality of LGBTI persons in BiH

Adoption of an adequate document in the form of an action plan with an overview of the state of affairs, a list of measures, obligations and objectives of all relevant public bodies is one of the priority obligations of all government levels, and mostly of the Entity-level governments. (For more details about the Action Plan, see the chapter entitled *Failure to adopt the Action Plan for Equality of LGBTI Persons.*)

As such, this document should improve the implementation of existing antidiscrimination framework in order to turn into reality the equality of LGBTI persons guaranteed by legal provisions, declarations and recommendations.

### Law(s) on same-sex partnerships

The task of the new executive government branch in FBiH will be to relaunch the already initiated process which will eventually lead to a legislative solution for same-sex partnerships, with mandatory participation of civil society representatives in the planned working group. Namely, in October 2018, the FBiH Government took the first step in the process of elimination of discrimination against same-sex couples by adopting the decision on the establishment of the working group which will examine existing laws and define conclusions on required legislative amendments, and on the need for adoption of a new law in order to regulate this field adequately. Following the adoption of the decision on the establishment of the working group in October 2018, there were no further activities in this domain.

Existing legislation of the Entities in BiH does not enable same-sex couples to exercise their socio-economic rights foreseen by laws for marriages/common law marriages in BiH. Such discrimination of same-sex couples constitutes direct violation of rights guaranteed by the Constitution of BiH and by the European Convention on Human Rights which has the constitutional strength in BiH.

Governments of the RS and of Brčko District, which have not initiated this issue yet, should commence the process of regulating same-sex partnerships as soon as possible.

## Freedom of assembly of LGBTI persons

A law on freedom of assembly should be adopted on the level of the Federation of BiH, and Entity and Brčko District laws should lay down that only one competent body (internal affairs body) may decide on notifications of assemblies. The notification submitted to police bodies should only specify whether the assembly will cover a road, so that they can consider this circumstance and communicate it to ministries responsible for transport, and clearly define that laws/provisions on temporary use of public space cannot apply to peaceful assemblies of citizens and citizens' associations in BiH, and that such public assemblies in public space cannot be dependant on approvals of institutions/other legal persons occupying such public space.

The legally imposed obligation of organisers to ensure the presence of firefighters, ambulance and security guards when organising public assemblies poses an additional burden on organisation of peaceful assemblies.<sup>1</sup> Such obligation is a financial burden for civil society organisations, especially when they do not enjoy financial support of the state.

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1 Article 19 of the Law on Public Assembly of Sarajevo Canton

# I EQUALITY AND ANTI-DISCRIMINATION

## International legal standards and obligations of Bosnia and Herzegovina

The non-discrimination principle enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) of the United Nations, as well as the European Convention on the Protection of Human Rights and Fundamental Freedoms,<sup>2</sup> indirectly applies to LGBTI persons under *other status or* an open list of specific characteristics of an individual or a group. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is particularly relevant for the protection of lesbians, bisexual, and transgender women, as it confirms intersectionality as the main principle which tightly connects sex-based and gender-based discrimination of women to SOGI, among other things.

Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)51 on measures to combat discrimination on grounds of sexual orientation or gender identity is the most concrete international document which lays down measures for review and revision of existing legislative and other measures, their efficient application in the combat against discrimination, collection and analysis of relevant data on discrimination, ensuring that discrimination victims are acquainted with their right to an effective legal remedy, and to have access to public bodies, and that anti-discrimination measures include sanctions for violation of rights and adequate compensation to discrimination victims, where necessary.

Due to their importance in the legal system of BiH and its membership in regional and international organisations, these documents constitute the basis for development and amending of legislation and public policies in BiH, and a standard that should lead to equality and reduction of the level of discrimination against LGBTI persons in BiH.<sup>3</sup>

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2 Pursuant to Article 2 point 2 of the Constitution of Bosnia and Herzegovina, rights and freedoms laid down in the European Convention on the Protection of Human Rights and Fundamental Freedoms and its protocols directly apply in Bosnia and Herzegovina. These documents are equal to constitutional provisions and have supremacy over all other acts.

3 This international framework also applies to other fields, and therefore it is not explicitly cited in other chapters.

## National legal framework

Sexual orientation, gender identity and sex characteristics as significant grounds for LGBTI persons are not included in the exhaustive list of characteristics protected from discrimination provided in Article 2 of the BiH Constitution.

Still, the prohibition of discrimination against LGBTI persons is regulated by two systemic laws: the **Gender Equality Law in BiH (GEL)** from 2003 and the **Law on the Prohibition of Discrimination (LPD)** from 2009. While the Gender Equality Law which prohibits discrimination on grounds of “sexual expression and/or orientation” is merely declarative<sup>4</sup> in the context of the protection of LGBTI persons from discrimination, the LPD offers a comprehensive protection from discrimination in all areas of public life, including education, employment, health, availability of services etc. With the adoption of amendments to the LPD in 2016, **SORI were correctly named in terms of terminology, and sex characteristics** were added to the list of protected characteristics, whereby the Law finally explicitly regulates the protection of LGBTI persons from discrimination.

Although the LPD itself foresees the obligation to align state-level, Entity-level and cantonal laws with it, there are still many laws that do not include SOGISC as prohibited discrimination grounds. In the context of human rights of LGBTI persons, the fact that laws in the areas of labour and employment, social and health care, among others, often specify a much more restrictive list of protected characteristics under the prohibition of discrimination than the LPD, causes particular concern.

### Institutional activities with the aim of providing protection from discrimination

Although the institutional framework for the protection from discrimination is still extremely weak, certain progress was achieved in the domain of protection of LGBTI persons from discrimination, although, unfortunately, a slow, insufficient and reactive one.

4 Although it mentions “sexual expression and/or orientation”, the GEL does not lay down any mechanisms for the protection of LGBTI persons from unequal treatment, whereas the LPD provides for the protection from discrimination which covers all areas of public life and some spheres of private life, and defines different forms of discrimination, in addition to the clear regulation of protection mechanisms.

During 2017, the **Gender Equality Agency of BiH** (GEA BiH) developed the Draft Action Plan for Equality of LGBTI Persons in BiH and sent it to the executive government branch for adoption.<sup>5</sup> In this way, the Agency changed the existing approach, and incorporated the recommendations for improvement of LGBTI position in annual gender action plans that are submitted to governments for adoption. The Action Plan and the set of measures for the improvement of LGBTI position were not taken into serious consideration in the RS, and it is certain that they will not be adopted either, whereas they are still in the adoption process in FBiH, after the issuance of a positive opinion in September 2018 (for more information, see the chapter *Public policies on prevention of discrimination of LGBTI persons* below). On the occasion of the International Day Against Homophobia and Transphobia, 17 May 2018, the Agency issued a press release and supported the I support campaign<sup>6</sup>, and expressed its support to the first BiH gay pride which has been announced for 2019.<sup>7</sup>

**Gender Centre of the Federation of Bosnia and Herzegovina** and **Gender Centre of the Republika Srpska** did not carry out any significant activities relating to human rights of LGBTI persons in the previous period.

**The Ombudsman Institution for Human Rights of Bosnia and Herzegovina** as the umbrella institution for the protection from discrimination still mostly bases its activities in this field on a reactive approach, through receiving of complaints and issuance of recommendations for the elimination of discrimination. Preventive and promotional activities still come second, due to insufficient capacities of the Institution.

Nevertheless, the press release issued by the Ombudsman Institution on the occasion of the International Coming Out Day should be emphasised. The press release underlines the need for further activities of public authorities aiming at the improvement of position of LGBTI persons, and reminds of the recommendations from the Special Report on the Rights of LGBT Persons in BiH.<sup>8</sup> This symbolic activity is very important, because the Ombudsman Institution reacted promotionally and independently for the first time, in order to increase visibility and improve the rights of LGBTI persons.

<sup>5</sup> For more information, see the next chapter - Public policies on prevention of discrimination

<sup>6</sup> <https://arsbih.gov.ba/kampanja-povodom-medjunarodnog-dana-borbe-protiv-homofobije-i-transfobije-podrzavam/>

<sup>7</sup> <https://arsbih.gov.ba/saopstenje-povodom-najavljene-bosanskohercegovacke-povorke-ponosa-8-septembra-2019-u-sarajevu/>

<sup>8</sup> Human Rights Ombudsman Institution, Press release – International Coming Out Day, ULR: <https://ombudsmen.gov.ba/Novost.aspx?newsid=1071&lang=EN>

**During 2018, the Ombudsman Institution received 3 complaints related to sexual orientation and gender identity.** Two complaints were submitted by SOC due to violation of the right to freedom of assembly on the International Trans\* Visibility Day,<sup>9</sup> and of the right to freedom of assembly on the 10th anniversary of LGBTI activism<sup>10</sup>. Based on the 2 complaints by SOC, the Ombudsman Institution sent a recommendation to the BBI Centre, and an inquiry to the Academy of Performing Arts requesting their reaction to the specified events in the second case, but no recommendation has been issued in this case to date.

Apart from these two complaints, the Ombudsman Institution received one more complaint submitted by the FBiH MIA related to same-sex partnerships, and it referred the Ministry to the Special Report on the Rights of LGBT Persons in BiH. **The FBiH Ministry used the Special Report as the basis for launching of the initiative for regulation of same-sex partnerships in BiH.**

There are no continuous trainings in human rights of LGBTI persons for representatives of the judiciary in any of the Entities in BiH, although this is one of the recommendations provided by the Ombudsman Institution in their Special Report for 2016.<sup>11</sup> SOC continued its practice of holding trainings for judges and prosecutors in cooperation with JPTC FBiH, focusing on human rights of LGBTI persons, and it organised one training in 2018.

## Public policies on prevention of discrimination against LGBTI persons

During 2017, the working group established by the GEA BiH developed the **2018-2020 Draft Action Plan for Equality of LGBTI Persons in Bosnia and Herzegovina** and sent it to the Council of Ministers for adoption. The Draft contains recommendations of the Committee of Ministers of the Council of Europe to member states concerning measures for the prevention of discrimination on grounds of sexual orientation and gender identity.

The FBiH Government provided a positive opinion to the Draft, noting that corrections were necessary in order to adjust the activities to the scope of work of competent and responsible institutions (e.g. specifying SOC as a partner, and not a responsible institution, indicating the financial

<sup>9</sup> Pink report 2017, Sarajevo Open Centre, Chapter III - Freedom of Assembly

<sup>10</sup> For more information, see Chapter III - Freedom of Assembly of this report

<sup>11</sup> Special Report on the Rights of LGBTI People in Bosnia and Herzegovina, Banja Luka, September 2016

framework, inclusion of JPTC FBiH and others).<sup>12</sup> The Government of RS gave a negative opinion about the proposed Draft because “public consultations with competent institutions of the Republika Srpska were not conducted during the development process”. Until the time of writing this report, the Brčko District Government did not issue an opinion about the Draft Action Plan for equality of LGBTI persons.

The cooperation established in 2017 and 2018 with the SC MLSPDPR, which resulted in a series of trainings for social workers, psychologists, psychiatrists and civil servants within the competence of this Ministry in the previous reporting period, also resulted in the development of a Model report on the implementation of gender equality legislation, and social inclusion of women and LGBTI persons in Sarajevo Canton. SOC developed this report in cooperation with the SC MLSPDPR, the GC FBiH and other civil society organisations that are active in this Canton. The report will be proposed as a working document for the development of a cantonal operational plan for the implementation of 2018-2022 GAP which will be developed by the Sarajevo Canton Government at the initiative of the Cantonal Assembly.

Mid-term programme for the prevention of discrimination and a training programme for the promotion and protection of human rights in BiH for 2017 – 2022 which falls within the competence of the MHRR BiH and should include clear provisions for the protection from discrimination on SOGISC grounds has not been finalised yet. The original timeframe until the end of 2018 was not met, and a new programme should be finalised by the end of 2019, according to the Preliminary draft work plan of this Ministry.<sup>13</sup>

## Documented cases

Every third LGBTI person in BiH experienced discrimination. Still, one should keep in mind that only a small number of LGBTI persons come out to a wider circle of people, and the information that 38% of persons confirmed that they experienced discrimination to some extent can be attributed to this factor as well, i.e. to the fact that LGBTI persons mostly hide their identity. The high number of transgender persons who experienced discrimination is particularly worrying: around 2/3 of transgender persons covered by a survey of problems and needs of the LGBTI community in BiH which was carried out in 2017 experienced some form of discrimination,

<sup>12</sup> 157th session of the FBiH Government – Work Information, 21.9.2018

<sup>13</sup> Pre-draft of the 2019 Work Programme of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, URL: <https://ekonsultacije.gov.ba/legislativeactivities/details/7504->

which confirms the particularly vulnerable status of this category and suggests a high level of transphobia in the society. To some extent, this can be explained with the fact that it is harder for transgender persons to avoid revealing of their identity, considering that gender expression is mostly visible to others.<sup>14</sup>

**SOC documented 5 discrimination cases in 2018.** Of 5 recorded cases, 3 involved discrimination at the workplace, one was related to discrimination in the administration (by public servants), and one to service provision and access to public goods. None of these cases were reported to the Ombudsman Institution, and no court proceedings were initiated. In all three cases, victims were afraid to report perpetrators, one victim left the country, and one case was eventually solved through an agreement with the service provider.

Although data indicate a small number of discrimination cases, it is impossible to derive clear conclusions based on these numbers, considering that only a few LGBTI persons are willing to engage in litigation, which also applies to other marginalised groups protected by the LPD, and the fact that discrimination implies that one has to launch a civil action independently, and that institutions do not act at own motion.

**There is still not a single final judgement establishing SOGI-based discrimination.**

Passivity of the judiciary and lack of proactive combat against discrimination of LGBTI persons by executive bodies resulted in the community's distrust in the institutions responsible for human rights protection (87% of surveyed LGBTI persons do not trust the judiciary), which also contributes to the small number of reported discrimination cases.<sup>15</sup>

The table below presents discrimination cases recorded by SOC in the past 3 years. These numbers represent cases monitored by SOC in public, or those reported by LGBTI persons. In view of the fact that the level of confidence of LGBTI persons is still very low, there is not a single court decision establishing discrimination, it is impossible to give an answer about trends and frequency of discrimination over the years based on this table. It can be concluded, however, that discrimination is present and recorded in the majority of areas mentioned in the Law.

<sup>14</sup> Numbers that mean equality 2 - Research results analysis of LGBTI people problems and needs in Bosnia and Herzegovina in 2017, Amar Numanović, Sarajevo Open Centre, 2017

<sup>15</sup> Numbers that mean equality 2 - Research results analysis of LGBTI people problems and needs in Bosnia and Herzegovina in 2017, Amar Numanović, Sarajevo Open Centre, 2017

	2016	2017	2018	TOTAL
<b>FOUNDATIONS<sup>16 17</sup></b>				
Sexual orientation	5	3	4	12
Gender identity	1	5	2	8
<b>AREA</b>				
Education	2	2	0	4
Access to goods and services	3	0	1	4
Employment	0	1	3	4
Health	0	2	0	2
Other <sup>18</sup>	0	2	1	3
<b>TOTAL FOR THE YEAR</b>	<b>5</b>	<b>7</b>	<b>6</b>	<b>18</b>

Table 1. Sarajevo Open Centre data on SOGI-based discrimination cases

## Practice guidelines

- Implement the LPD through the development and adoption of multiannual public policies on equality of LGBTI persons on state, Entity and Brčko District levels, which would foresee concrete and realistic measures for equality of LGBTI persons;
- Based on recommendations from the Special Report of the Ombudsman Institution, improve laws and regulations, and include rights and needs of LGBTI persons in all public policies on all government levels, thereby ending the institutional disregard for this marginalised group;
- Introduce LGBTI specific modules in education of future judges and prosecutors;
- Apart from legislative and policy solutions, internal acts should be adopted and internal mechanisms of all legal persons for solving of SOGISC based discrimination cases should be developed.

<sup>16</sup> Some of the identified cases are related both to sexual orientation and gender identity, which is why the number of cases per ground is higher than the total number of documented cases per year.

<sup>17</sup> Sexual characteristics (related to intersexual persons) have been incorporated in the LPD since 2016, but we have not received any discrimination cases on this ground yet.

<sup>18</sup> This section relates to other different fields mentioned in the Law, such as public bodies, housing, social protection, goods and services intended for the public and public places, and carrying out of economic activities and public services.

## II HATE CRIMES AND INCITEMENT TO HATRED

### Legal framework

**In July 2017, the National Assembly of the Republika Srpska adopted the Criminal Code of the Republika Srpska** which, among other things, lays down the criminal offence of **public provocation of, and incitement to violence and hatred**, which makes RS the first administrative unit in BiH which sanctions incitement to hatred, hate speech and violence against LGBTI persons and other marginalised groups in BiH. Public provocation of, and incitement to violence and hatred are thus prohibited based on **“national, racial, religious or ethnic background, skin colour, sex, sexual orientation, disability, gender identity, origin or other characteristics.”**

Provisions that sanction incitement to hatred, hate speech and violence are also incorporated in criminal codes of the FBiH and Brčko District, but unfortunately, they are limited to the prohibition of the provocation of hatred and incitement to violence on national, ethnic and religious grounds only. With such legal framework, it is impossible to sanction incitement to hatred and violence against LGBTI persons which prevails on websites and social networks, and often escalates to discrimination and hate crimes. Therefore, criminal codes of the Federation of BiH and Brčko District should be amended in the same way as it was done in the Republika Srpska.

All the three criminal codes recognise **hate crimes** (in Brčko District, hatred is defined as an aggravating factor in perpetration of crimes), under which they provide protection to LGBTI persons and other marginalised social groups, and amendments to the part relating to hatred, hate speech and violence follow the legislator’s willingness to sanction and prevent similar socially harmful behaviours.

Apart from the Criminal Code of BiH, Criminal Code of FBiH, Criminal Code of the RS, and Criminal Code of Brčko District of BiH, other laws that include similar provisions, especially in relation to expressions and offences causing national, religious or racial hatred are: laws on public peace and order (LPPO) of the RS and Brčko District, cantonal LPPOs in FBiH; Law on Public Assembly of Brčko District; Laws on Radio Television of the RS and of FBiH; and the Law on Prevention of Disorders at Sports Events in Herzegovina-Neretva Canton.

## Institutional activities

**Police and the judiciary still do not collect information** about hate crimes perpetrated out of gender-based hatred and on SOGISC grounds **in a systematic manner**. In early 2019, SOC sent inquiries to all municipal, basic, cantonal and district courts in BiH about the number of prosecuted cases involving hate crimes on SOGI grounds. According to information they provided, none of the courts have prosecuted such crimes so far.<sup>19</sup>

In 2018, SOC organised on two-day **training in discrimination and hate crimes against LGBTI persons for judges and prosecutors**, and two two-day **trainings in hate crimes for police officers and prosecutors**. These trainings were attended by **48 representatives of police agencies and the judiciary**.<sup>20</sup>

## Documented cases

In 2018, SOC documented **39 cases of hate speech and calling for violence and hatred, and 33 cases of crimes and incidents motivated by SOGI-based prejudices**.

From the very beginning of 2018, **increased domestic violence rates, expression of homophobia and transphobia and bullying** in educational institutions appeared as particularly worrying trends. These trends from previous years and inadequate response of competent institutions unfortunately still continue.

Of the 33 cases documented from January to December 2018, **there were 9 domestic violence cases**, which varied from threats and blackmails, illegal deprivation of freedom and movement prohibition, violence and inflicting of bodily injuries, to forced medical treatment. In all these cases, parents or siblings were the perpetrators, supported by extended family, and neighbours.

**Homophobic and transphobic bullying** was an ongoing problem in 2018 as well (seven cases). Although some cases were reported to social work centres, the absence of a concrete institutional plan against bullying and for the development of an inclusive and tolerant educational environment, which would include a LGBT perspective, is still evident.

<sup>19</sup> Letters were sent to 78 courts in BiH, and 21 courts submitted replies.

<sup>20</sup> The HJPC BiH held a working meeting with the Sarajevo Open Centre in 2018 in order to consult on the CMS and activities aimed at promotion and support to the exercise of rights by vulnerable groups, including members of the LGBTI community, in contacts with the judiciary.

**Four years following the attack on Merlinka festival**, on 09.02.2018, the Municipal Court in Sarajevo convicted one person who had been accused of the crime of violent behaviour referred to in Article 362 of the FBiH Criminal Code. Until the time of developing this report, we neither received a confirmation of whether the case was qualified as a hate crime, nor any data on the imposed sanction.

The survey of problems and needs of the community which was conducted by SOC in 2017, showed that 60,9% of LGBTI persons feared for their safety because of their LGBTI status, and that they did not feel they were adequately protected or provided with minimum safety. Because of their SOGISC, 25,4% (every 4th person) of respondents experienced violence.

**Two-thirds of transgender respondents experienced violence.** Of this number, 66,7% of transgender respondents received transphobic comments, whereas 55,6% were exposed to transphobic verbal abuse. It is particularly worrying that five out of 18 transgender respondents experienced sexual abuse.

LGBTI persons apply different strategies for avoiding potential threats out of fear from violence: as much as 69,4% hide their LGBTI identity, around 55% avoid some places because they view them as unsafe for LGBTI persons, whereas 19,4% avoid mass gatherings. Around 12,5% avoid walking alone, 7,4% do not use public transportation, and almost seven percent of respondents avoid leaving home out of fear for their safety, which can be qualified as an extreme case of self-isolation due to this fear.

<b>HATE CRIME</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>TOTAL</b>
<b>GROUND</b>				
Sexual orientation	13	26	24	63
Gender identity	4	3	7	14
SOGI <sup>21</sup>	3	2	2	7
<b>TOTAL</b>	<b>20</b>	<b>31</b>	<b>33</b>	<b>84</b>
<b>TYPE OF OFFENCE</b>				
Domestic violence	3	10	9	22
Bullying	0	7	7	14
Threats	9	10	5	24
Other	8	4	12	24
<b>TOTAL</b>	<b>20</b>	<b>31</b>	<b>33</b>	<b>84</b>

Table 2. Sarajevo Open Centre's data on SOGI-based hate crimes and hate crime incidents

	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>TOTAL</b>
<b>GROUND</b>				
Sexual orientation and/or gender identity	2	39	39	80
<b>TOTAL FOR THE YEAR</b>	<b>2</b>	<b>39</b>	<b>39</b>	<b>80</b>

Table 2. Sarajevo Open Centre's data on SOGI-based hate speech

<sup>21</sup> Sexual orientation and gender identity

## Practice guidelines

- Amend criminal codes of the Federation of BiH and Brčko District, and expand provisions on incitement to hatred and violence in order to include SOGI as protected grounds;
- For the purpose of combating homophobia and bias within the institutions, constantly train and inform judges, prosecutors, police officers and civil servants about hate crimes and incitement to hatred and violence against LGBTI persons;
- Improve cooperation between the police and the judiciary on prosecution of hate crimes against LGBTI persons, and systematically collect data on hate crimes perpetrated out of gender-based hatred, and on SOGISC grounds;
- Introduce LGBTI-inclusive modules in curricula of law faculties and police academies, and in permanent and specialist training programmes for police officers and civil service exams;
- Develop a programme of combat against bullying in primary and secondary schools, which will also include homophobic and transphobic violence and programmes for tolerance promotion and creation of an inclusive education system;
- Train higher education/academic staff in order to become sensitised to work with LGBTI persons, and to recognise, condemn and avoid hate speech against LGBTI persons.

## III FREEDOM OF ASSEMBLY

### Legal framework as an obstacle to the exercise of the right to freedom of assembly

**The right to freedom of assembly** is laid down in the Constitution of BiH, and constitutions of the entities and cantons, Brčko District statute, laws of the Entities and cantons, but it is also protected by international documents that were ratified by BiH or transposed into its legal system, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms. All of these documents guarantee the right of citizens in BiH to free assembly, which can be restricted only for the purposes of protecting the safety of people and property.

In 2018, application of the Law on Temporary Use of Public Areas on the Territory of Sarajevo Canton to non-profit assemblies of citizens poses a new barrier to the protection of the freedom of assembly. Namely, this Law foresees the need to obtain approvals of the municipality where the assembly takes place, and of the institution/legal person that has the occupancy right or is located in the public area, as a precondition for holding of a peaceful assembly. Such practice enables institutions and persons who are not authorised to conduct the risk assessments for assemblies, or to protect freedom of assembly, to discriminate and prevent public assemblies of citizens in accordance with their own stereotypical beliefs, and there is no complaint or control mechanism against such practice. This administrative procedure was used twice in 2018 in order to deprive LGBTI persons in Sarajevo Canton of their right to freedom of assembly. In March 2018, on the occasion of the International Transgender Day of Visibility, both BBI Centre and National Theatre refused to give their approvals to SOC for such an assembly, which de facto prevented the assembly from taking place. Reasons for the refusal they cited both times were their disagreement with the organiser's efforts to point to the violation of human rights of LGBTI persons and to the need for improvement and inclusion of this marginalised group in the BiH society.

According to the interpretation of the MIA of Sarajevo Canton, the existing Law on Public Assembly of Sarajevo Canton imposes an obligation on organisers to hire and pay a security agency, which costs BAM 20 to 30 per hour per security guard, and to ensure presence of an ambulance which is paid BAM 150 per hour, as well as preparedness of a firefighting

service, which is paid BAM 170 for individual cases<sup>22</sup>. In addition, organisers must ensure the presence of own stewards to maintain peace and order during the assembly. Such requests create unreasonable financial and other difficulties for civil society organisations, but also for individuals who organise public assemblies, and influence the exercise of the right to freedom of assembly in Sarajevo Canton.

## Documented cases

**At a session held on 19.12.2018, the Constitutional Court of BiH adopted the appeal of the SOC and others**, and issued a decision on admissibility and merits and confirmed that public authorities of Sarajevo Canton violated the LGBTI persons' right to freedom of assembly by failing to ensure safety of participants in Merlinka Festival in 2014. The Constitutional Court also confirmed that by failing to ensure safety of participants, but also to conduct a thorough investigation and sanction the violence perpetrators, public authorities also violated the prohibition of torture or inhumane or degrading treatment or, more precisely, they enabled occurrence of homophobic and transphobic violence at the Festival itself.

In July 2017, several persons filed a **motion for the protection of individual freedoms and rights to the Cantonal Court in Sarajevo against the SC Ministry of Transport**, due to denial of their right to freedom of assembly. SOC addressed the Administrative Department of the SC Cantonal Court, requesting access to information about the aforementioned case. After the verification, they noted that they did not find that SOC or specified individuals had submitted a request for the protection of individual freedoms and rights guaranteed by the Constitution of FBiH.

During 2017 and in early 2018, the freedom of assembly of LGBTI persons was violated in Sarajevo Canton, which points to serious systemic and legislative shortfalls that should be eliminated.

**In mid-March 2018, SOC sent a request to Centar Municipality for their approval of organisation of an assembly on the occasion of the International Trans Visibility Day** on the plateau in front of the BBI centre, after the National Theatre had refused to approve such assembly. Considering that a part of the plateau belongs to the Municipality, and the other part to BBI Centre, the approval of BBI Centre was also necessary.

<sup>22</sup> In this specific case, the SOC paid BAM 170 KM for organisation of a 6-hour public event.

The Centre director refused to give an approval explaining that another event was scheduled on the same date, that they could not allow a high-risk event to take place at the plateau, and that shop owners were against such events. SOC sent letters to all businesses located at the BBI centre, but only a few responded, noting that they had not been informed about such an event, and that they would not be opposed to it taking place. SOC lodged appeals to the Ombudsman Institution due to decisions of the National Theatre and BBI Centre, calling on them to issue recommendations that will point to the harmfulness of such practice.<sup>23</sup>

**The second case of violation of the right to freedom of assembly took place in September 2018.** Namely, 10 years after the organisation of QSF, SOC planned to organise an event to mark the 10th anniversary of activism in the field of the fight for human rights of LGBTI persons. The plan was to open the event with an exhibition of queer artists, and the Academy of Fine Arts (AFA) was chosen as the venue for the exhibition. In communication with the deputy dean of AFA, it was agreed that the gallery space would be available on the scheduled date, and that it could be used for the exhibition, provided that SOC hired security guards. When organising public events, SOC always hires a security agency, and events are also attended by MIA representatives, and there were no obstacles to implement the agreement. Three days after the agreement had been made, SOC was informed that they would not be able to rent the gallery space after all. SOC requested an explanation of the decision, in order to eliminate doubts about discrimination of LGBTI persons and associations dealing with the rights and protection of LGBTI persons, but a reply never arrived. For all these reasons, SOC filed a complaint to the Human Rights Ombudsman Institution of BiH, referring to Article 2(1) of the Law on the Prohibition of Discrimination. Apart from the notification of the complaint receipt, no other information was received.

### Practice guidelines

- Adopt a unified law on the level of the Federation of BiH governing public assemblies equally for all cantons, because there are no constitutional obstacles to that, and harmonise solutions on all government levels in order to ensure equal countrywide enjoyment of constitutional rights for all. The unified law on the FBiH level should include the following solutions and rely on the following principles:

<sup>23</sup> Pink report 2018

1. The law must rely on the government's obligation to protect all kinds of assemblies as long as they are peaceful, and on the proportionality principle which should be further regulated in the way that every restriction or prohibition of assembly are proportionate and based on valid and justifying grounds – e.g. relate it to location restrictions/prohibitions particularly, with a general provision which enables prohibition only at places that pose an actual and immediate threat for health and safety of a large number of persons and property, while respecting the proportionality principle;
2. Stipulate that prohibitions of assemblies are only possible in a strictly limited number of cases, i.e. only when an actual threat exists, and avoid listing of specific places where prohibitions are possible (consistent application of the proportionality principle);
3. Stipulate an efficient and effective legal protection procedure which will enable review of a decision prohibiting a public assembly, especially through an appropriate court procedure which must be urgent;
4. Stipulate that public assemblies should be notified only to internal affairs bodies, in order to simplify the assembly notification procedure and abandon the mechanism of seeking prior approval from other competent bodies in situations when an assembly occupies a road or public space in front of the institutions/other legal persons.
5. Clearly define that laws/provisions on temporary use of public space (e.g. Law on Temporary Use of Public Areas on the Territory of Sarajevo Canton) cannot apply to peaceful assemblies of citizens and citizens' associations in BiH, and that such public assemblies in public space cannot be dependant on approvals of institutions/other legal persons occupying such public space.
6. Improve existing legislation in order to define clearly the differences between the protection of right to freedom of assembly of citizens, and commercial public events; and to prevent transfer of responsibility for securing the events from competent internal affairs institutions to private agencies the engagement of which poses additional financial burden on organisers of non-profit assemblies.

## IV FAMILY LIFE AND SAME-SEX PARTNERSHIPS

### Legal framework

Mutual relations of same-sex partners and their partnerships are not regulated in any administrative unit in BiH (FBiH, RS, Brčko District). In this way, LGBTI persons are prevented from using the constitutionally guaranteed rights to personal freedom and safety, private and family life and home, to family, protection of property, or to freedom of movement and residence. BiH's obligation to regulate same-sex partnerships arises from its membership in the Council of Europe, but also from judgements of the European Court of Human Rights. Several recommendations of the Council of Europe indicate that member states should respect private and family life of every individual, and enable registration of same-sex partnerships by equalising their rights and obligations at least with the rights and obligations of heterosexual common-law couples.

**The first step towards regulation of same-sex partnerships in the FBiH was made in 2018.** At the FBiH Government session held in October 2018, information of the FBiH MIA was adopted relating to requests for entry of data on same-sex partnerships in civil registries.<sup>24 25</sup> The Government adopted the FBiH MIA proposal for appointment of an inter-ministerial working group which will analyse existing legislation and propose new pieces of legislation that should be adopted in order to enable couples living in same-sex partnerships to exercise rights arising from the European Convention for the Protection of Human Rights and Freedoms that are already granted to heterosexual couples in BiH.

Although this information attracted a lot of public and media attention, and the original deadline for the establishment of the working group was two weeks, no further steps were taken until the time of writing this report. SOC, as an organisation with multiannual experience, knowledge, data and contacts among experts and the academic community, possessing an expertise in this issue, insisted on being included and contributing to the work of the inter-ministerial working group. Initial contacts with the FBiH MoJ were positive and

<sup>24</sup> 158th session of the FBiH Government – Work Information, 19.10.2018

<sup>25</sup> Possible cases relate to BiH citizens who registered same-sex partnerships abroad, foreign citizens with registered same-sex partnerships/marriages coming to live in BiH, but also requests from BiH citizens submitted to BiH institutions asking them to enable registration of same-sex partnerships.

promising when it comes to the participation in the inter-ministerial working group, but the stagnation of the whole process resulted in the lack of any feedback from the Government and the Ministry on the establishment of, and participation in the group itself. The practice of including experts and civil society in inter-ministerial groups is not a novelty in BiH politics, but it is also an often-neglected option. If we consider the principles of participatory democracy and good governance principles contained in, and promoted by the EU and Council of Europe in numerous documents and resolutions<sup>26</sup>, the participation of non-governmental experts in this case could only increase transparency, efficiency and expertise, but also result in direct inclusion of social groups affected by these regulations the most in the process.

SOC's survey from 2017 also indicates that the non-regulation of same-sex partnerships is one of the most problematic aspects, but also the issue which is equally necessary for LGBTI persons and for all other citizens, as two-thirds of respondents said that the inability to register partnerships was a very important problem. Furthermore, the fact that more than two-thirds of survey respondents live or plan to live with their partner, and that more than 50% would register same-sex partnerships if they were able to, provides a sufficiently clear picture of the discrepancy between the needs of LGBTI persons on the one side, and the government's disregard for this issue on the other.<sup>27</sup>

## Documented cases

**In 2018, 3 persons addressed SOC (2 from FBiH and 1 from the RS) inquiring about options for same-sex marriages or registered partnerships.** 2 cases relate to the possibility for registration of same-sex partnerships or marriages in BiH, and 1 to the possibility for registration of a same-sex partnership in the neighbouring Croatia.

**In 2018, a municipal court in one of the cantons in FBiH, adjudicating a case involving property claims, characterised a same-sex relationship as a life partnership of two people with the purpose of living together.** According to findings of SOC, this is the first time that a court in BiH classified a same-sex relationship as a *life partnership of two people*, which is the legal definition used to describe a marriage and common law marriage.

<sup>26</sup> These principles also imply involvement of civil society organisations in decision making processes, and active inclusion in working bodies that make decisions through all decision making phases.

<sup>27</sup> Numbers that mean equality 2 - Research results analysis of LGBTI people problems and needs in Bosnia and Herzegovina in 2017, Amar Numanović, Sarajevo Open Centre, 2017

## Practice guidelines

- When establishing the inter-ministerial group of FBiH Government for the assessment of existing regulations and the need for adoption of new ones that will enable same-sex couples to enjoy the rights guaranteed in the European Convention on Human Rights and Freedoms, enable participation of experts and civil society representatives (organisations with multiannual experience in the domain of LGBTI rights), in order to make the whole process more efficient and transparent, which will eventually result in a better legislative solution.
- Initiate processes for the adoption of a legislative solution for same-sex partnerships both in the Republika Srpska and Brčko District, in order to provide same-sex couples with equal treatment in this issue countrywide.

# V RIGHTS OF TRANSGENDER PERSONS

## Legal framework

The sex marker in personal documents and single identification number can only change after a “completed” medical gender reassignment treatment. According to laws on civil registries of the Entities and Brčko District, and to internal rules of ministries of health and ministries of internal affairs of the Entities and Brčko District, following the review of documents brought from abroad, MIAs cancel the old single identification number and issue a new one, as well as a decision based on which the person can change other personal documents. The fact that endocrinological therapy and surgeries must be done abroad, and that transgender persons cover the costs themselves because BiH medical institutions do not perform these treatments and the official health insurance system does not cover their costs, additionally prolongs the transition process and increases financial costs.

## Social reality

Considering that the gender reassignment process is lengthy, and that the transgender person’s body changes during the process, it results in a discrepancy between the person’s appearance and the sex marker specified in personal documents. This practice leads to discrimination and inequality of trans persons and forces them to constantly explain their gender identity, reveal personal information and have their medical documentation constantly with them during the most mundane moments of their life like taking classes and sitting for exams, paying by card in supermarkets, visiting a medical institution, crossing the border, identifying themselves to a person at a state institution and during a job search, which makes them very exposed to discrimination and violence in the transphobic BiH society.

The 2017 survey of the needs of the LGBTI community conducted by SOC<sup>28</sup> indicates that around 61% of transgender persons who participated in the survey plan to change their sex partially or completely, whereas 22,2% have not decided yet. Of this number, four (22,2%) persons are already in the transition process, and seven (38,9%) would like to commence that process. Although the decision on sex reassignment means that respondents will have to cover all treatment costs, most of them plan to do it because they believe it is a very important step in their identity building process.

<sup>28</sup> Amar Numanović (2017). Numbers that mean equality 2 - Research results analysis of LGBTI people problems and needs in Bosnia and Herzegovina in 2017 Sarajevo: Sarajevo Open Centre

Several transgender respondents were having problems because of their gender expression and the discrepancy between their appearance and sex marker in personal documents. There were problems in interaction with civil servants (police, border police). Almost 2/3 of respondents said that they would change their sex marker in personal documents even before completion of the transition process if they had such formal option. Such change would prevent constant exposure of transgender persons to potentially discriminating and/or abusive behaviour and reduce the need for constant proving and explaining their gender identity in private and public life.

In 2018, the SOC developed a cost estimate of the sex reassignment and provided recommendations for the improvement of legal and medical approach to transgender persons in BiH.<sup>29</sup>

Required sex reassignment services are the following, depending on whether it is female-to-male (F2M) or male-to-female reassignment surgery (M2F):

- psychological counselling – issuance of a psychological opinion and a referral to a psychiatrist;
- psychiatric counselling – giving the F64.0 diagnosis and a referral to an endocrinologist
- endocrinological counselling – giving recipes for hormone therapy (for F2M reassignment - testosterone; for M2F reassignment - oestrogen and oestradiol and progesterone);
- surgical procedures – hysterectomy (removal of the uterus), ovariectomy (removal of ovaries and fallopian tubes), removal of vagina, creation of urethra, metoidioplasty or phalloplasty, creation of scrotum, testicular prosthesis implantation, penis forming, penectomy (penis removal), orchiectomy (removal of testicles), vaginoplasty (creation of vagina), clitoroplasty (creation of clitoris) and vulvoplasty (creation of female external genital organs), mastectomy (removal of breasts) and augmenting mammoplasty (implants/lipofilling).

Cost estimate for hormones is as follows:

Androcur tablets 50 mg	65.80 BAM, 50 tablets
Testosterone depo, ampules 250 mg/ml 1ml	4.95 BAM, per ampule

Table 4. Price of hormone pills according to the pricelist of the public company «Apoteke Sarajevo» during 2018

<sup>29</sup> Liam Isić (2018). Sex reassignment cost estimate: Recommendations for the improvement of legal and medical approach to transgender persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre

Transgender persons from Bosnia and Herzegovina mostly look for healthcare services related to sex reassignment in neighbouring countries. Sex reassignment costs for non-citizens of Serbia are as follows:

The price of consultations with a psychiatrist (price per consultation, and the psychiatrist decides on the required number of consultations)	5000 RSD = 82.78 BAM
Price of consultations with an endocrinologist	9000 RSD = 148.87 BAM
Surgical procedure for implant positioning	App. 354,608 RSD = 5867 BAM
Metoidioplasty for trans men	App. 1,182,092 RSD = 19,556 BAM
Sex reassignment surgeries for trans women (price of implants not included)	App. 945.190 RSD = 15.642 BAM

Table 5. Data on prices of gender reassignment treatment in Serbia, according to trans activists

Sex reassignment costs for foreign nationals in Croatia are as follows:

Price of consultations with a psychologist (price per consultation, and the psychologist decides on the required number of consultations)	88 HRK = 23.22 BAM
Price of a psychological opinion/ finding	450 HRK = 118.77 BAM
The price of consultations with a psychiatrist (price per consultation, and the psychiatrist decides on the required number of consultations)	200 HRK = 52.75 BAM
Price of mastectomy	7412,76 HRK = 1955.83 BAM

Table 6. Data on prices of gender reassignment treatment in Croatia, according to trans activists

If public clinics are unable to offer required medical findings prior to prescribing a hormone therapy or related healthcare services, there is an option for costs of such findings provided by private clinics to be covered from the health insurance fund.<sup>30</sup>

<sup>30</sup> The publication provides prices of all required medical findings on private clinics, and in such a situation, the fund would only cover the costs of those that are not offered by public clinics.

## Documented cases

**In 2018, SOC was contacted by three transgender persons** inquiring about legal possibilities to change the sex marker in personal documents: how to cross the state border; what is the procedure for changing one's name; how to continue using visa after changing the passport. None of these persons was able to change the sex marker in personal documents, because they did not undergo a complete medical gender reassignment. One trans person asked for information about asylum seeking possibilities in EU Member States. One person reported discrimination on grounds of gender identity. Eight trans persons reported incidents or hate crimes on grounds of gender identity to SOC. One trans person inquired about possibilities for marrying/registering a partnership with their partner in BiH.

### Practice guidelines

- BiH, its Entities and Brčko District should regulate the legal change of sex by adopting laws that will lay down the procedure relating to sex markers in personal documents and single identification numbers in a systematic and comprehensive manner. Therefore, trans persons should be allowed to change the sex marker based on own request and on their right to self-determination, and it should not be dependent on any prior medical intervention.
- Adopt and implement laws in all three administrative units (Republika Srpska, Federation of BiH, Brčko District), which would define duties of medical institutions to establish teams and train professionals who could follow the process and guide medical procedures for sex reassignment in BiH, as well as the obligation of the health insurance institute to cover the costs of these procedures from health insurance.
- In parallel to the above, BiH medical experts and health workers in the fields of psychology, psychiatry, endocrinology, gynaecology, urology, plastic, reconstructive and aesthetic surgery should be continuously educated about adequate, trans inclusive and trans specific provision of services and support to trans persons in the transition process.

# VI HUMAN RIGHTS OF INTERSEX PERSONS

## Legal framework

BiH is still among the few countries in Europe that explicitly protected intersexual persons in their antidiscrimination legislation by prohibiting discrimination based on sex characteristics. However, there are still no clear medical guidelines and procedures for practices in different cases of intersexuality that would be applied by all medical institutions in BiH and prevent the so-called medical normalisation of sex i.e. medical and surgical treatments of infants for the exclusive purpose of aesthetic adjustment of the baby's appearance and sex characteristics, although the child's life is not threatened<sup>31</sup>. A large number of intersex persons, but also of medical experts support the position that any aesthetic medical procedures should be postponed until such time when a child is able to provide an informed consent.

## Social reality

2017 survey of LGBTI problems and needs conducted by SOC indicated a few things relevant for intersex persons. First of all, it shows that intersex persons are still invisible and that it is hard to find interlocutors willing to talk about their problems. Also, it indicates that the problem of forced surgical procedures on intersex persons has been taken very seriously within the LGBTI community and that, although the majority of respondents do not face it, the problem has been identified as a bigger priority than the inability to register partnerships, difficult access to services etc.<sup>32</sup>

A case study of an intersex person from Bosnia and Herzegovina is provided below:

“Violence started early in my family. Actually, it was always there. My father first started beating and maltreating my mom, and then me and my brothers and sisters. I grew up at the countryside, as my mother and father's first son. I used to think that I was a gay man, but I never talked to my family about it. In my case, coming out was

<sup>31</sup> For more information, see the Pink Report 2018.

<sup>32</sup> Numbers that mean equality 2 - Research results analysis of LGBTI people problems and needs in Bosnia and Herzegovina in 2017, Amar Numanović, Sarajevo Open Centre, 2017

not my decision. It was a response to constant slapping, fists and a knife before my face, threatening that he would cut my throat unless I told him I was a fagot. Then he beat me up terribly and kicked me out of the house. I remember, it was winter and I was 18. Physical pain can never surpass the level of emotional pain I felt. Then I went to a mental health centre, and it changed me. Both the psychiatrist and psychologist who worked with me told me that I was not ill, but traumatised. My self-confidence and self-esteem totally hit the bottom. The psychologist helped me work on my self-confidence. I found a job and started living a new life. I practically have no contact with my family, and I do not want it at this point. It is hard for me to remember this period, but I know it made me become who I am today. Recently I did some tests because of a stomach pain, and they indicated that I am an intersex person, that I have ovaries and the uterus, and external genitals that are typical for men. My parents never considered this." Andrea, 26<sup>33</sup>

### Practice guidelines

- Cooperation between civil society organisations and medical institutions and experts should be established, and activities on information and awareness raising of problems of intersex persons should be launched, along with the revision of medical classifications and abandoning of obsolete terms such as *hermaphrodite* and *pseudohermaphrodite*.
- Transparent and available information should be provided about procedures and medical treatment that are performed when intersex persons are born, as well as the prohibition of unnecessary surgical procedures and medical treatments of sex normalisation performed on intersex persons in healthcare institutions without a full and informed consent of the intersex person.
- Provide continuous inclusion of government institutions (ministries of health) and bodies responsible for human rights protection (ombudsmen) in the protection of human rights, self-determination and bodily integrity of intersex persons.

<sup>33</sup> Domestic violence against LGBTI persons: Situation analysis and recommendations, Dalila Bašić and Amina Dizdar, Sarajevo Open Centre, 2018.

## VII ASYLUM

### Legal framework

Legal framework has been largely harmonised with the EU standards in this domain. The Law on Asylum and the Law on Aliens were adopted in 2015 and 2016 respectively, transposing provisions of relevant EU directives in this field in the largest part. Still, the provision which defines SOGI as a specificity of certain social group and as a ground for persecution and asylum seeking has been left out. Same-sex partnerships are also not recognised as the basis for obtaining the approval for a temporary stay in BiH, and the law does not recognise them in the provisions about family reunification.<sup>34</sup>

LGBTI persons from BiH decide to seek asylum due to psychological difficulties, psychological and physical violence, discrimination in employment, and social rejection they suffer on SOGI grounds.

### Documented cases

Throughout 2018, SOC received 7 inquiries of LGBTI persons about asylum seeking possibilities for themselves or their partners in EU Member States or USA/Canada.

<b>Year of inquiry and asylum-seeking ground</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Sexual orientation	6	5	6
Gender identity	3	4	1
<b>Total number of cases</b>	<b>9</b>	<b>9</b>	<b>7</b>

Table 7. Sarajevo Open Centre's data on free legal aid cases related to asylum requests

Apart from the case of a gay Syrian man who suffered violence at the beginning of the year<sup>35</sup>, a gay young man from Albania contacted SOC at the end of the year. He falsely presented himself as a Syrian to the authorities, hoping to reach the EU. This person complained about poor conditions in reception centres, and about fear from the institutions because of his sexual orientation, and he expressed the wish to return to Albania.

<sup>34</sup> For more information about this topic, see the Pink Report 2018 – Chapter VII Asylum

<sup>35</sup> Ibid

Until April 2018, the Service for Foreigner Affairs of BiH recorded 2 asylum seekers on SOGI grounds. We did not receive information for the whole year of 2018, despite of several inquiries sent to the Ministry of Security of BiH.

### Practice guidelines

- Amend the Law on Asylum of BiH in order to explicitly specify sex, SOGISC as asylum seeking grounds and potential reasons for persecution;
- The Law on Aliens should recognise same-sex partnerships, i.e. family reunification, as the ground for granting of temporary stay to partners of BiH citizens.
- Provide trainings for officers working on asylum issues in order to treat LGBTI asylum seekers with respect, in an adequate, professional and sensitive way during the asylum-seeking procedure.

## VIII MEDIA

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### Legal framework

Codes of professional ethics for journalism in BiH exist on the levels of the Regulatory Communications Agency of BiH, the Press Council in BiH, and of individual journalist associations. The Code on broadcasting radio and TV (RTV) programme is in force on the level of the Regulatory Communications Agency of BiH, and whereas the Press Council abides by the Press Code. The biggest difference between these two codes lies in the fact that the Regulatory Communications Agency is authorised to impose certain sanctions (oral and written admonitions, fines, licence revocation) for violation of the Code on RTV broadcasting, whereas violations of the Press Code do not imply and legal sanctions. Contents of print media are subject to self-regulation through activities of the Press Council, where the Press Council analyses media content which is the subject of a filed complaint, and if it finds a violation, it notifies the responsible medium about their duty to publish a correction; the medium can do it, but it is not obligated to.

The difference between these codes also reflects in the way in which they regulate hate speech. The prohibition of hate speech is directly laid down in the Code on RTV broadcasting, which defines hate speech as the: "language/speech intended to humiliate, intimidate or incite to violence or bias against persons or a group based on their sex, race, age, ethnicity, sexual orientation, handicap, moral or political beliefs, social-economic status or profession," whereas the Press Code covers hate speech in a different way, stipulating that "journalists will do their best to refrain from agitation and/or incitement to hatred and/or inequality based on ethnic background, nationality, race, religion, sex, sexual orientation, physical disability, or mental state."

## Analysis of media reporting

In 2018, 62 media were followed<sup>36</sup>: electronic (radio – 3 and television – 14), print (daily newspapers, weekly and bi-weekly magazines – 20), and online (news portals and print media portals – 25). In total, 2139 articles/stories were published in all media: 568 articles - in print media, 111 stories - on television, and 1460 stories in online media.

**The print medium that reported on LGBTI topics the most was Jutarnji list – 113; as for TV stations, it was BHT1 – 31, and Avaz.ba among online portals – 189. The largest number of recorded news are still related to showbiz and famous people on international, regional, or BiH level.**

When it comes to BiH, media continued reporting the most on activities of civil society organisations, and they rarely researched and reported on LGBTI topics self-initiatively. Media reports cover cultural events focusing on human rights of LGBTI persons, and especially Merlinka Festival in Sarajevo. They broadcasted media campaigns of civil society and wrote about restrictions of the freedom of assembly in Sarajevo Canton. The number of pieces of news about trans rights increased in 2018, but it is notable that journalists often do not use proper terminology in these reports, especially when referring to the gender of a person they write about.

### Practice guidelines

- Media in BiH should refrain from incitement to hatred and use gender sensitive language and politically correct LGBTI terminology; they should use their role in order to educate the public, combat stereotypes and prejudice, and promote tolerance;
- Media in BiH should point to legislation and the need for respect of human rights of LGBTI persons; they should regulate comments on their online portals and social networks in order to prevent crimes of incitement to discrimination, hatred and violence.

<sup>36</sup> For a number of years, the Sarajevo Open Centre has followed and analysed media reporting on LGBT persons, topics, rights and culture. These data constitute a part of the analysis for 2018.

## IX 2018 GENERAL ELECTIONS

So far, rights of LGBTI citizens of BiH have not been raised in any local or general elections, especially during pre-election campaigns. SOC conducted an analysis of political campaigns for the 2014 General Election, which indicated that most parties dealt with economic and social issues, whereas human rights were mentioned only superficially. Therefore, it was impossible to find any mention of LGBTI persons or of the protection from discrimination.

Existing programmes and policies of political parties do not include issues relevant for human rights of LGBTI persons. All parties declaratively support the respect of fundamental human rights and freedoms, but none of them mentions protection from discrimination on grounds of sexual orientation or gender identity in their statutes and programme objectives.

**However, rights of LGBTI persons became one of the topics during the pre-election period in 2018.** Media tried to find out politicians' positions in pre-election debates. Igor Crnadak, Minister of Foreign Affairs of BiH thus said that his political party did not have an official position about issues concerning the LGBTI population. On the other hand, Božo Skopljaković, president of HSBiH emphasised that he would personally support legalisation of same-sex partnerships, and that he was not opposed to the organisation of gay pride, but that he would not be a part of such event. He condemned any violence against LGBTI population and supported the right to freedom of assembly and peaceful fight for one's rights.<sup>37</sup>

During the pre-election period, the candidate for the BiH Presidency member, Mirsad Hadžikadić attracted special attention, as he clearly expressed support to the LGBTI community and legal recognition of same-sex marriages.

The Democratic Front, Our Party, Social-Democratic Party of BiH and Alliance for Better Future BiH also expressed support to LGBTI human rights in the pre-election period.

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<sup>37</sup> <http://lgbti.ba/politricari-ke-vrlo-cesto-uopce-ne-poznaju-nijednu-lgbti-osobu/>

## LGBTI GLOSSARY<sup>38</sup>

### BISEXUAL PERSON

A person who is sexually and/or emotionally attracted to people of both sexes.

### COMING OUT

A syntagma which arises from the English phrase *coming out of the closet* has become a commonly used term which refers to publicly and openly disclosing one's sexual orientation (for lesbians, gays and bisexuals), gender identity (for trans persons), and sex characteristics (for intersex persons). It happens on two levels: as self-revelation, and as (more or less) public disclosure. *Coming out* bears large significance for LGBTI persons, because they publicly affirm their identity in this way, which is very important for psychological health and quality of life of this minority group.

### DISCRIMINATION

Discrimination is every different treatment, exclusion, limitation and bringing in disadvantaged position of a person or group of persons on some ground. There are different grounds or characteristics based on which a person or a group of persons can be put in disadvantaged position. Lesbians, gays and bisexuals can be discriminated on the basis of *sexual orientation*, trans (among other, transgender and transsexual persons) on the basis of *gender identity* and gender expression, and intersex persons can be discriminated based on *sex characteristics*. Therefore, it is very important for all the three grounds (sexual orientation, gender identity and sex characteristics) to be recognised in laws as prohibited discrimination grounds.

Non-discrimination principle

Equal treatment of individuals or groups, regardless of their specific characteristics. It is used to assess the seemingly neutral criteria and practices that may cause effects that systematically put persons with those characteristics in a less favourable position.

### HOMOPHOBIA

Irrational fear, intolerance and bias against gay men and lesbians. It is manifested as conviction about superiority of heterosexuality. This conviction generates violence against non-heterosexual persons, which is justified by belief in own superiority (and their inferiority). Violence is reflected in verbal and physical attacks and discrimination.

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<sup>38</sup> The LGBT Glossary is a product of joint work of the Sarajevo Open Centre's team.

## HOMOSEXUAL PERSON

A person who is attracted to people of same sex.

### Lesbian

A woman who is sexually and/or emotionally attracted to other women.

### Gay

A man who is sexually and/or emotionally attracted to other men. It can also be used as an adjective (e.g. a gay person), and in that case it can refer both to men and women of same-sex orientation.

### Homosexual

Obsolete clinical term for people whose sexual orientation is directed towards persons of same sex, i.e. people who are sexually and/or emotionally attracted to persons of same sex. This term is inappropriate and many gays and lesbians find it to be offensive. Gay (man)/gays and lesbian are more correct terms.

## HOMOSEXUALISM

Obsolete clinical term which was used for medical purposes to denote same-sex sexual orientation. It is viewed as offensive, because it implies that homosexuality is an illness that should be treated. In view of the fact that the World Health Organisation (WHO) confirmed in 1990 that homosexuality, just like heterosexuality, is a natural variation of human sexuality, this term is no longer used.

## INTERSEX PERSONS

Persons whose *sex characteristics*, including chromosomes, gonads and genitals deviate from the typical binary division to male and female bodies. There are different forms of intersexuality. Based on sex, persons can be divided to males, females and intersex persons. *Intersex persons*, like male and female persons, have their sexual orientation and gender identity. In the past, these people were often called hermaphrodites, but this term is viewed as discriminatory and medically incorrect.

## INTERSECTIONALITY

The approach arose from the sociological theory of intersectionality, which analyses discrimination as a complex system in which different discrimination forms are based on different categories of identity (gender, sex, race, class, sexual orientation, gender identity). These identities are mutually related and influence one another, and they must be observed together in considerations of discrimination.

## LGBTI

A comprehensive term which is used to denote lesbians, gay men, bisexual, trans\*(gender) and intersex persons. This term denotes a heterogeneous group that usually goes by the LGBTI acronym in social and political activism.

## LGBTTIQ

An abbreviation for lesbians, gay men, bisexual, transgender, transsexual, intersex and queer persons.

## QUEER

Queer was previously used in English language as a pejorative name for non-heterosexual persons. LGBTI people then started using it to describe themselves. Some people particularly value this term, because it symbolises defiance and captures diversity – not only of gays and lesbians, but also of bisexual, transgender and intersex persons, and it includes heterosexual persons who see themselves, or live outside of the heteropatriarchal norms.

## GENDER IDENTITY

Gender identity is related to the individual experience and understanding of own sex and gender, which may correspond to the sex assigned at birth, but not necessarily. Gender identity, among other things, applies to personal experience of own body, clothing and way of speaking. People whose gender identity matches the sex that they were assigned at birth are called *cisgender persons*, and those whose gender identity does not match the sex that they were assigned at birth are called *trans(gender) persons*. Transsexual persons, as a subgroup of transgender persons, are people whose gender identity does not match the sex that they were assigned at birth and who intend to reassign their biological sex, or who are already in the reassignment process.

### Gender expression

Visual and external presentation of a person, including personality features, appearance and behaviours that are viewed as masculine or feminine in a culture and time period (therefore, typical for male or female social role).

## SEXUAL ORIENTATION

Emotional and/or sexual attraction or inclination towards persons of the same and/or different sex/gender. Commonly used classification is the one to *heterosexual* (attracted to people of different sex), *homosexual* (attracted to people of same sex) and *bisexual* (attracted to people of same and different sex) persons. Law in Bosnia and Herzegovina often uses terms sex orientation, sexual choice, sexual preferences, but the recommended term is sexual orientation.

## SEX CHARACTERISTICS

Sex characteristics of persons, including chromosomes, gonads and genitals can deviate from the typical binary division to male and female bodies. Based on sex, persons can be divided to males, females and intersex persons. Intersex persons can therefore be discriminated or become targets of hate crimes and bias due to their sex characteristics.

## TRANSGENDER PERSON

The term used for people whose gender identity does not match the sex that they were assigned at birth. Transgender identity covers those who feel, prefer or choose to present themselves differently from expected gender roles that traditionally belong to them based on sex that was assigned to them at birth, be it through clothing, language, manners, cosmetics or body modification. Among other, trans gender identity applies to persons who do not identify themselves with male and female markers, transsexual persons, transvestites, cross-dressers, agender, non-binary, gender-fluid and other gender variant persons. *Transgender man* is a person who was assigned female sex at birth, but their gender identity is male, or they are somewhere on the spectrum of masculine gender identities. *Transgender woman* is a person who was assigned male sex at birth, but their gender identity is female, or they are somewhere on the spectrum of feminine gender identities.

### Transsexual person

A person who clearly wants and intends to change/reassign their sex, and a person who modified its body partially or completely (including physical and/or hormone therapy and surgeries).

## TRANSPHOBIA

Irrational fear, intolerance and bias against transgender persons.

## HATE CRIME (crimes perpetrated out of hatred)

It refers to crimes motivated by bias against a specific person or a group. Hate crimes include intimidation, threats, property damage, abuse, murder or any other crime against a victim who became the target because of their real or perceived sexual orientation, gender identity or sex characteristics, or the victim's is affiliation with, belonging to, supporting, or membership with an LGBTI group.

# ANNEX

## Political system of Bosnia and Herzegovina

Political system of Bosnia and Herzegovina is very complex and asymmetrical. Bosnia and Herzegovina comprises 13 federal units. Administratively, it is divided to two Entities (Federation of BiH and the Republika Srpska) and Brčko District. The Republika Srpska has a unitary structure, and it is only divided to municipalities and cities, whereas the Federation of BiH consists of ten cantons, and each is divided to at least three municipalities/cities. Responsibilities and relations between the institutions of the state, the Entities and Brčko District are laid down in the Constitution of BiH, but in daily political life we often encounter different interpretations of these provisions, which directly contributes to (non-) adoption and (non)implementation of laws and other public policies (strategies/ action plans). The state and both its Entities have their constitutions, and different administrative and political systems. Brčko District has a separate administrative system and own Statute as the highest legal act, but it is almost equal to the Entities in terms of competences. Laws and other public policies relevant for the improvement of equality of LGBTI persons fall within powers of the State, the Entities, cantons and Brčko District. This complexity points to the need for a coordinated approach, and for capacity development and awareness raising of LGBTI needs on all of these government levels. Work on the improvement of equality of LGBTI persons must not only be the responsibility of selected state-level and Entity-level institutions, but it is extremely important for other institutions, especially on the levels of cantons and Brčko District, to take measures to eliminate systemic discrimination of LGBTI persons, and work on the improvement of equality of LGBTI persons.

There is a three-member Presidency on the **state level**, and its members (a Bosniak, a Croat and a Serb) rotate every eight months in presiding over this institution. Executive government branch comprises the Council of Ministers with one chairperson and nine ministries. The state institutions are responsible for foreign, financial and monetary policies, border surveillance and management, foreign trade, immigration, refugees, and asylum regulation. Ministries within the Council of Ministers of BiH include the Ministry of Human Rights and Refugees, and the Gender Equality Agency of BiH functions within this Ministry. This Ministry and the Agency are very important for the improvement of human rights of LGBTI persons. The Institution of Human Rights Ombudsman of BiH also functions on the level of BiH, and with its three ombudspersons, it has powers in the whole of BiH, and for all government levels. According to the

Law on the Prohibition of Discrimination, the Ombudsman Institution is also an equality body. Legislative government branch (Parliamentary Assembly) is bicameral, with House of Representatives as the upper house, and House of Peoples as the lower house. The House of Representatives of the Parliamentary Assembly includes the Gender Equality Committee, whereas the Constitutional-Legal Committee of the House of Peoples performs the function of a specialised gender equality body. The state has competences for some of the key laws for LGBTI persons, such as anti-discrimination laws, gender equality laws, laws on aliens and asylum.

**Each Entity** has one president and two vice-presidents. Entity governments have on prime minister and 16 ministers each. Although positions of upper houses are not equal in the political systems of the Republika Srpska and the Federation of BiH, in simple terms, the Entities have bicameral parliaments with one house of representatives and one house of peoples each. Entity parliaments have parliamentary working bodies for human rights and gender equality/equal opportunities. The executive government branch includes gender centres, governmental institutions for improvement of gender equality, which play the key role in coordination of entity-level institutions in issues of LGBTI human rights, considering that there are no entity-level institutions specialising in human and/or minority rights. E.g. labour legislation, criminal legislation governing hate crimes and family legislation fall within competences of the Entities.

**Cantons in the Federation of BiH** (ten of them) are guaranteed the substantive autonomy. All cantons have their governments and unicameral parliaments. Although cantons form the third government level top-down, they have the status of federal units, and therefore they have their own competences (such as education on all levels, employment, health), and they adopt laws and other public policies in those domains. Although the Federation of BiH is superior of the cantons, they sometimes adopt legislation which is contradictory to legislation of the Federation, or simply fail to implement existing regulations of the Federation of BiH. Cantons do not have gender equality and/or human rights offices/institutions within their governments, and only two cantons have coordinating committees for gender equality (working group consisted of representatives of different ministries). Almost all cantons fail to take any coordinated measures for the improvement of human rights of LGBTI persons independently.

Although it is a form of a local community, **Brčko District** is factually equal to the Entities by its competences. The District is run by the Mayor who presides over the Brčko District Government which comprises ten departments. The Brčko District Assembly passes laws and other regulations. Brčko District does not have a gender equality and/or human rights office/institution within its government,

whereas the Brčko District Assembly has the Gender Equality Committee. The District institutions have failed to take any measures for the improvement of human rights of LGBTI persons so far.

Three constitutional courts, one for each Entity and one on the state level are the highest court instances. Due to the nature of its political system, Bosnia and Herzegovina does not have a supreme court. Entities have first instance and appellate courts, and supreme courts. Brčko District has its own basic and appellate courts. Entities and Brčko District are in charge of the police, while the Federation also includes ten cantonal police administrations that share their powers with the Entity-level police.

Tabular overview of the implementation of recommendations from the Special Report on the State of the Rights of LGBT Persons in Bosnia and Herzegovina of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina

NO	RECOMMENDATION	INSTITUTION	IMPLEMENTED	NOT IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT POSSIBLE TO CONCRETELY ASSESS
1	<p>A. To act preventively to protect the rights of LGBTI people</p> <p>B. To act timely in the cases of LGBTI human rights violations</p> <p>C. To continue taking measures to strengthen the sensibility in working with the LGBT people</p> <p>D. To take measures within their competences in order to guarantee personal security to anyone exercising their constitutional right to freedom of assembly</p> <p>E. To create a comprehensive training program for the police officers and a Handbook for the education of their employees on LGBT topics in cooperation with the BiH Institution of Ombudsmen for Human Rights</p>	<p>Police Agencies in BiH</p>	<p>B. C.</p>	<p>E.</p>		<p>A. I.D.</p>
2	<p>A. To continually train judges and prosecutors with a special focus on the human right, and LGBTI human rights</p> <p>B. To continually train judges and prosecutors with a special focus on the human right, and LGBTI human rights</p>	<p>The High Judicial and Prosecutorial Council of BiH Center for Education of Judges and Prosecutors in FBiH Center for Education of Judges and Prosecutors in RS</p>			<p>A. B. Only JPTC FBiH, in partnership with non-governmental organizations working on LGBTI human rights</p>	

3	To create comprehensive training program for prison officials and a Handbook for the education of their employees on LGBT topics cooperation with the BiH Institution of Ombudsmen for Human Rights	BiH Ministry of Justice FBIH Ministry of Justice RS Ministry of Justice All penitentiary institutions	x		
4	To raise awareness and promote the rights of LGBT people in order to sensitize the general public	Public broadcasting services, as well as all media (print, electronic) in BiH		Everything achieved in this area so far has been initiated by the civil society organizations or happened on the occasion of important dates or public actions, and topics relevant to BiH were rarely or not at all tackled autonomously	
5	To be more publicly supportive to protection of LGBT human rights when individual human rights violations arise, as well as generally	Holders of public office		Public statements were given by the representatives of the institutions that have competence over LGBTI human rights, but not from the institutions that usually react in the cases of violence, discrimination, or human rights violations	

6	To include protection from discrimination on grounds of sexual orientation and gender identity	Political parties	x			
7	To analyze the content of textbooks and obligatory teaching literature/materials in order to change the treatment of homosexuality as a variant of sexual orientation, and not as a deviation or an illness	Law faculties in Bosnia and Herzegovina	x			
8	To amend the BiH Gender Equality Law to explicitly define sexual orientation and gender identity, as it was done in the BiH Anti-discrimination Law	Parliamentary Assembly of BiH	x			
9	To amend the Law on Registry Books of Brčko District BiH in order to regulate the sex reassignment registry in a manner regulated in laws on registry books in FBiH and RS	Brčko District Assembly	x			
10	To deliberate the possibility of amending the laws on health insurance that would introduce partial or complete coverage of the sex reassignment medical costs	Entity and Brčko District ministries of health	x			
11	To systematically and continuously train medical staff to monitor the process of transition of transexual persons, and offer needed medical assistance To undertake measures in order to ensure the existence of a medical team that could carry out complete medical process of gender reassignment.	Clinical centres in BiH	x			
12	To legally regulate the same-sex partnership	Parliamentary bodies in BiH	x			

## About the Sarajevo Open Centre

The Sarajevo Open Centre (SOC) advocates for full respect of human rights and social inclusion of LGBTI persons and women. The Sarajevo Open Centre is an independent, feminist civil society organisation striving to empower LGBTI (lesbians, 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 advocates for the promotion of legislation and public policies in Bosnia and Herzegovina on national, European and international levels.

We will mention only some of the achievements in LGBTI equality domain. Apart from psychosocial and legal counselling, we continued running the only LGBTI medium in the country – [www.lgbti.ba](http://www.lgbti.ba) portal. We organised trainings for the police, prosecutor's offices and courts, and we intensely worked on creation of the local institutional network of support to LGBTI persons in Sarajevo Canton, improvement of the proposals for regulation of biomedically supported fertilisation in FBiH, rights of female workers related to sex-based discrimination and maternity leave, but also on awareness raising of gender based violence in BiH. We focused our advocacy activities on policies for equality of women and LGBTI persons in BiH, reproductive rights of women and men, parenting in the context of reconciling private and business life, freedom of assembly of LGBTI persons, and improvement of the institutional framework for the protection from violence and discrimination. Last year, we carried out media campaigns and reached over one million citizens of BiH, and we also organised the LGBTI film festival Merlinka.

For more information about our work, see: [www.soc.ba](http://www.soc.ba).

## Editors

**Emina Bošnjak** (Zenica, 1983) is the director of the Sarajevo Open Centre, a feminist and an activist. She works on organisational management, annual narrative and financial reports of the organisation, preparation and implementation of national and international advocacy actions, and on producing of annual reports on women's and LGBTI human rights. Emina is also active in capacity building of civil society organisations in BiH for work on human rights of LGBTI persons.

Contact: emina@soc.ba

**Vladana Vasić** (Sarajevo, 1990) is the manager at the Sarajevo Open Centre. She focuses on issues related to violations and protection of human rights of LGBTI persons and women in BiH. She advocates for the improvement of national legislation and policies in accordance with regional and international human rights standards. Vladana is a member of the European Commission on Sexual Orientation Law. She graduated law at the Faculty of Law of the University in Sarajevo.

Contact: vladana@soc.ba

## Authors

**Darko Pandurević** (Sarajevo, 1991) has been the programme coordinator at the Sarajevo Open Centre since 2018, where he also runs legal counselling for LGBTI persons. He has been involved in SOC's activities since 2015, first as a volunteer on the LGBTI programme, and then as the project assistant on coordination of activities of the Initiative for Monitoring the EU Integration process in BiH. So far, he has focused his work and interests in SOC on human rights of LGBTI persons, legal counselling to LGBTI persons, participation in research and implementation of existing legislation, and on training activities concerning the rights of LGBTI persons. He graduated from the Faculty of Law of Sarajevo University, where he currently attends master studies.

Contact: darko@soc.ba

**Liam Isić** (Bihać, 1996) volunteered at the Sarajevo Open Centre from 2016, and he has been employed as the project assistant since 2018. He is involved in activities related to human rights of LGBTI persons, he works with LGBTI persons, and particularly focuses on work with the trans\* community in Bosnia and Herzegovina. He graduated international law at the American University in BiH, and he currently finalises studies within the European Regional Master's Programme in Democracy and Human Rights.

Contact: liam@soc.ba

**Jozo Blažević** (Zenica, 1986) is the programme coordinator at the Sarajevo Open Centre, where he works on trainings and sensibilisation of police officers and representatives of the judiciary, on issues of discrimination and hate crimes against LGBTI persons and other marginalised social groups in BiH. He worked on the establishment of the local network of support to LGBTI persons in Sarajevo Canton, which includes representatives of the judiciary, but also of social protection and health care institutions.

Contact: jozo@soc.ba

**Lejla Huremović** (Vlasenica, 1987) is a programme coordinator at the Sarajevo Open Centre. She works on analysis of media reporting on LGBTI topics, organisation of media campaigns, and public/street actions and performances, and on empowerment of LGBTI persons and the community in BiH. Lejla completed public relations studies at the Faculty of Political Science in Sarajevo, where she currently writes a master thesis at the Communicology Department.

Contact: lejla@soc.ba

**Amina Dizdar** (Sarajevo, 1992) graduated law at the Faculty of Law of the University in Sarajevo in 2018. She joined the Sarajevo Open Centre team as a volunteer in March of the same year on the Human Rights of LGBTI Persons programme. She currently works as the programme assistant on EU integration issues.

Contact: amina@soc.ba

**Delila Hasanbegović** (Sarajevo, 1991) is a programme coordinator at the Sarajevo Open Centre. She is engaged in advocacy for adequate access of trans persons to healthcare in Bosnia and Herzegovina, and coordinates activities on training and sensibilisation of medical experts and health workers in the domain of human rights and needs of trans persons in the transition process. Also, she coordinates advocacy activities for gender equality in employment relations and on the labour market, and for biomedically supported fertilisation in BiH. She graduated law, and she is about to complete master law studies at the University in Sarajevo.

Contact: delila@soc.ba