

**MONITORING THE  
IMPLEMENTATION OF THE  
COUNCIL OF EUROPE COMMITTEE OF  
MINISTERS RECOMMENDATION ON  
COMBATING SEXUAL ORIENTATION OR  
GENDER IDENTITY DISCRIMINATION.**

**Bosnia-Herzegovina Summary Report**

**Human Rights Edition**

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editor:	Emina Bošnjak
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authors:	Marinha Barreiro, Vladana Vasić
translation and proofreading:	Dalila Mirović, Senita Džigal
layout and design:	Feđa Bobić
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## EXECUTIVE SUMMARY

The only measure taken by Bosnian-Herzegovinian authorities in compliance with the Recommendation CM/Rec(2010)5 is the inclusion of sexual orientation and sexual expression in anti-discrimination legislation. However, in the absence of other measures, and in the face of severe social hostility, it offers little protection to lesbian, gay, and bisexual persons.

So far as the Sarajevo Open Centre has been able to ascertain, the authorities have adopted no other measures to implement the requirements of the aforementioned Recommendation. In particular, there has been no review of existing legislative and other measures that could result directly or indirectly in discrimination, no provision for protection from discrimination on grounds of gender identity, and no introduction of a comprehensive strategy aimed at tackling discriminatory attitudes within the general public and correcting prejudices and stereotypes. The Recommendation and its Appendix have not been translated, and have not been disseminated either within government or civil society.

A bias motive based on sexual orientation (but not gender identity) is included as an aggravating circumstance in the criminal codes of the Republic of Srpska and Brcko District, but not in that of the Federation of BiH. There appears to be no specific training for police officers and judiciary in relation to homophobic or transphobic hate crimes, nor for prison officers in relation to LGBT prisoners. There is no collection of data in this field.

There are no laws prohibiting “hate speech” or incitement to hatred on grounds of sexual orientation or gender identity (including on the Internet)

Although freedom of expression and assembly exist in theory for LGBT people, the violence at the time of the Queer Sarajevo Festival, and the failure of authorities to provide protection, demonstrate that the reality at that time was very different. How far things have improved will only be tested when the LGBT community

gains the confidence to try to exercise freedom of expression and assembly fully again.

Same-sex sexual acts are not criminalised. No steps have been taken to remove discrimination in access to rights of couples and parenting.

Once gender reassignment is completed, the individual can apply for changes to the gender marker in all official documents including, as a first stage, the identification number. Therefore at least one abusive requirement, that of gender reassignment surgery, exists.

The Labour Law of the Brcko District and Labour Law of the institutions of BiH prohibits sexual orientation discrimination, but equivalent legislation in the Republic of Srpska and the Federation of BiH does not. It appears that none of the other measures proposed by the Recommendation have been taken, including in relation to the armed forces, and the privacy of transgender persons.

The BiH Anti-Discrimination Law, and some legal instruments at entity level, specifically prohibit sexual orientation discrimination in education, but it does not specifically include gender identity discrimination. It appears that no other measures proposed by the Recommendation have been acted on. A study of school textbooks found that some still define homosexuality as an illness and include it group of disorders such as paedophilia and drug addiction.

Homosexuality is no longer classified as a disease, HIV/AIDS prevention programme includes LGBT people, and there is nothing in principle that would prevent LGBT persons identifying their partner as “next of kin”. However, it seems that other measures proposed by the Recommendation have not been carried out.

The BiH Anti-Discrimination Law prohibits discrimination in the field of housing on grounds of sexual orientation, but it does not specifically include gender identity. Apart from this, there is little suggests that any steps have been taken to address the other measures proposed by the Recommendation

None of the specific measures proposed by the Recommendation have been implemented in the field of measures to prevent discrimination in the field of sports.

BiH law does not explicitly recognise sexual orientation or gender identity in the

context of asylum. No action has been taken in relation to the measures proposed by the Recommendation.

The mandate of the Ombudsman for Human Rights explicitly includes sexual orientation but not gender identity. However, the Ombudsman has included gender identity in the work of the/ Office, and has, within the limits of his resources, conducted some activities along the lines proposed by the Recommendation. However, due to lack of resources, the Ombudsman's office does not carry out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity.

## RECOMMENDATIONS TO GOVERNMENT FOR PRIORITY ACTIONS

In order to fulfil the requirements of the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, as well as other binding international obligations, European human rights obligations and in order to achieve an accurate implementation of the Bosnian-Herzegovinian law on Prohibition of Discrimination and the law on Gender Equality, the state public authorities, entities and cantonal level should take the following actions:

- In the Law on Gender Equality and the Law on Prohibition of Discrimination, as laws, which regulate the area of discrimination prohibition in a systematic way, the terms sexual orientation and gender identity should be defined. Since this is the question of relatively new terms, adequate definition would facilitate application by state bodies, other legal and natural persons, or judicial bodies, and prevent narrow or wrong interpretation;

- Public authorities should ensure that BiH legislative and other measures are adequate to combat discrimination on grounds of sexual orientation and gender identity, and should adopt and effectively implement a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes.
- In order for the system of protection to be used, and for the deficiencies within it is application to be identified; it is necessary for persons or groups towards which the protection against discrimination system is addressed to be aware of it and to use it. Therefore an extensive awareness raising campaign needs to be issued by BiH public authorities.
- Non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are not appropriately and systematically consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons. Therefore there is a need for systematic consultation and cooperation between non-governmental organizations and public authorities.
- In the Criminal Laws of Bosnia and Herzegovina, of Republic of Srpska, of Federation of BiH and of Brčko District in the criminal offence *violation of equality of a man and a citizen*, gender identity should be introduced as an element of the criminal offence. With the introduction of gender identity as an element of the criminal offence, the Criminal laws of Bosnia and Herzegovina would be harmonised with the Law on Prohibition of Discrimination of Bosnia and Herzegovina. Also, police statistics should not be focused only on crimes but also on the motives of those crimes.
- Although the laws guarantee free press and the freedom of expression there is neither an extra stimulation nor policies issued to ensure more visibility of LGBT persons within the media or in the public sphere. Some agencies like

Communications Regulatory Agency (RAK) are persistently fighting against any kind of discrimination in the media, as well as the non governmental agency Press Council. On the other side, we conclude that public institutions are not just insufficient in encouraging a good report on LGBT issues, they are also failing to condemn cases of homophobic contents

- Public authorities need to ensure the right of peaceful assembly of every citizen. However the authorities failed to ensure public events as was clear during the events of the Queer Sarajevo Festival in 2008 where 8 persons were injured. So far, no one has been prosecuted for the aforementioned events and the case is still pending before the Constitutional Court of BiH. The occasional manifestations of violence, discrimination and homophobia in society are still a matter of concern.
- In respect of changes to the family laws in Bosnia and Herzegovina, the following steps should be taken:
  - a) Introduction of registered partnership whereby members of gay and lesbian community would regulate their property relations within the community of life;
  - b) Introduction of registered partnership for members of gay and lesbian community within which partners could regulate property rights, and realise the right to pension from other partner, right to support, as well health insurance;

The minimum regulation should at least remove the legal vacuum and enable joint partner property investments, or protection of such properties enable the right to support of the other partner; enable realisation of right to pension; tax exemptions and privileges in respect of resolving housing issues: especially when the partners have spent a lifetime together. Negation of existence of such partnership by the state does not contribute to resolving the problem.

- Harmonise the Employment laws of Federation of BiH, of Republic of Srpska and of Brčko District with the relevant provision of the Law on Gender Equality and Law on Prohibition of Discrimination, introducing expressly discrimination on grounds of sexual orientation and gender identity. Public authorities should

implement a strategy in order to raise awareness among employers and employees of their rights and obligations.

- Regarding transgender persons, the public authorities at entity level and Brčko District need to establish a procedure that enables change of name and gender in official documents in a quick, transparent and accessible way. Also, the right of a legally recognized transgender person to marry a person of the opposite sex to their reassigned sex needs to be legally guaranteed.
- The BiH state needs to provide the possibility to undergo surgery and other needed treatments leading to full gender-reassignment, but also to ensure that insurance plans should cover medically necessary treatment in general, with gender reassignment surgery as a part of this.
- There is a need for harmonization of the Education laws of different levels with the Law on Prohibition of Discrimination. Also the curricula and the textbooks need to be reviewed in order to include reliable information regarding sexual orientation and gender identity, eliminating all the misinformation and stereotypes.
- There is no official collection of data about bullying incidence in schools, so the public authorities need to take into consideration the systematic collection of data related to discrimination and violence in schools related to sexual orientation and gender identity, as well as implementing systematically trainings and codes of conduct for educational staff to promote a tolerant environment and the prevention of violence.
- BiH public authorities should develop a national strategy to adapt health services based on the needs of every citizen, offering effective health services while having due regard, among other things to the patient's sexual orientation and/or gender identity. This strategy should include accurate training for health workers in order to provide their services without discrimination on grounds of sexual orientation and gender identity.

- The Law on housing of both Federation of BiH and Republic of Srpska should be amended to be consistent with the law on Prohibition of Discrimination, because the former does not address discrimination on the grounds of sexual orientation or gender identity but the latter prohibits discrimination on all grounds including sexual orientation and gender identity. The amendments should introduce explicit prohibition of discrimination based on sexual orientation or gender identity in access to housing, the conditions of housing and the lease contract.
- BiH public authorities need to undertake policy and legislative measures to prevent the risk of exclusion from participation in sports on the grounds of sexual orientation and gender identity. Homophobic and transphobic chanting and violence that accompany sports events need to be included as a criminal offence in the BiH criminal laws.
- The BiH Law on migration and residence of foreigners and asylum should recognize a well-founded fear of persecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status and asylum.
- The Ombudsman office has shown its willingness to cooperate and to work with non-governmental organizations for better implementation of the anti-discrimination law, as well as providing information in order to raise awareness of the procedures for complaint in cases of suffering discrimination on grounds of sexual orientation and gender identity. However, due to lack of resources, the Ombudsperson office is not carrying out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity, issues that should be addressed in the near future. Also, BiH should strengthen the anti-discrimination department of the Ombudsman office in order to fulfil its competences accurately.

## 1. INTRODUCTION

### BACKGROUND

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.<sup>1</sup>

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states, including BiH. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

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<sup>1</sup> “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” <https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>, visited July the 12th 2012

The Recommendation consists of four elements:

- A **preamble** which identifies that homophobia, transphobia and other forms of intolerance and discrimination against lesbian, gay, bisexual and transgender are historically and still current problems that need to be addressed. Also it recalls that human rights are universal and shall apply to all individuals without discrimination on any ground, in accordance with the European Convention on Human Rights and other international conventions such as the European Social Charter, the International Convention on the Rights of the Child, the International Covenants on civil and political rights, and on economic, social and cultural rights, and the European Union Charter of Fundamental Rights. Also the Recommendation recognizes the role that state actors should play both as to negative obligations, ensuring non-discriminatory treatment, and as to positive obligations that require implementing measures to protect against discriminatory treatment, including measures implemented by non-state actors. These are both fundamental components of the international system to protect human rights and fundamental freedoms- without discrimination on any ground.
- An **operative text** which highlights three key areas of activity by governments, namely: review and eliminate existing discriminatory laws and policies; introduction of laws and other measures to combat discrimination and ensure that effective legal remedies are in place.
- An **appendix**, which sets out in more detail the measures required of governments in the operative text. The appendix is divided in the following sections: I. Right to life, security and protection from violence (hate crimes and hate speech); II.. Freedom of association; III. Freedom of expression and peaceful assembly; IV. Right to respect for private and family life; V. Employment; VI. Education; VII. Health; VIII. Housing; IX. Sports; X. Rights to seek asylum; XI. National Human Rights Structures. The proposed actions are based on the legally binding international covenants exposed before.

- The **explanatory memorandum** which supports the Recommendation by adding background information in the different sections and topics, clarifying what was intended by individual recommendations, explaining the principles derived from existing European and other international instruments on which the individual recommendations are based and giving examples of the detailed measures required to implement individual recommendations.

## THE PURPOSE OF THIS REPORT

The purpose of this report is to assess what progress has been made by the Bosnian Herzegovinian all relevant authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

## METHODOLOGY

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Sarajevo Open Centre has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix iii to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and other agencies to letters from Sarajevo Open Centre listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.
- Information from published sources, such as the reports on Bosnia and Herzegovina commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, “Discrimination on grounds of sexual orientation and gender identity in Europe”. Also other sources such as the European Union Progress Report for BiH<sup>2</sup>, the Country Reports on Human Rights Practices by the United States Department of State<sup>3</sup>,
- Research and documentation assembled by Sarajevo Open Centre and other non-governmental organisations.

BiH has been created after the war in early 90’s with a very complex political system and legal framework in order to reflect all identities of a multi-ethnic, multi-cultural and multi-religion state which consist of two entities and one district: the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and Brcko District (BD). FBiH is a federation of 10 Cantons, while RS is centralised.

In addition to the State Constitution, each entity has its own constitution while BD has its own statute. Furthermore, in addition to laws and ministries at the State level, there are laws and ministries both at the entity/district level, as well as at the level of cantons.

This structure means that responsibility for implementing the Recommendation of the Committee of Ministers on combating sexual orientation or gender identity discrimination lies with ministries or institutions at State, entity/district and canton

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<sup>2</sup> EU Commission Progress Report 2011 (Brussels, 12.10.2011 SEC(2011) 1206 final)

<sup>3</sup> US Department of State, Country reports on Human Rights Practices for 2011, Bosnia-Herzegovina <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>, visited July the 10<sup>th</sup> 2012

level, making accountability for action very diffuse. In preparing this report, the letters referred to above have been directed to no fewer than 71 ministries or other institutions at all the levels of government described above.

## 2. FINDINGS

### THE RECOMMENDATION

*The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.*

*The only measure in compliance with the above is the inclusion of sexual orientation and sexual expression in anti-discrimination legislation. However, in the absence of other measures, and in the face of severe social hostility, it offers little protection to lesbian, gay, and bisexual persons. There is no specific legal protection for transgender persons<sup>4</sup>.*

LGBT people in BiH face a very considerable degree of hostility. According to a Gallup survey conducted in 2010, 64.1% of BiH citizens think that homosexual relations are wrong and just 18% think that homosexuals should enjoy the same rights as heterosexuals.

This hostility has impacted very negatively on the development of the LGBT community. LGBT persons remain largely invisible socially and politically. In 2008 there

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<sup>4</sup> The anti-discrimination law includes prohibition of discrimination on the grounds of “sex, sexual expression (expression of sex) or orientation” (“...ispola, spolnogizražavanjailiorijentacije”). Although this law was expected at minimum to include the grounds of gender identity and sexual orientation, it fails to do so. This law is not satisfactory as it does not specifically include the term gender identity. Banovic, D., *Prava I slobode LGBT osoba, Seksualna orijentacija I rodni identitet u pozitivnom pravu u Bosni I Hercegovini*, Edition Questioning Sarajevo Open Centre, Sarajevo 2011

was a first attempt to break through this invisibility, with the holding of the Sarajevo Queer Festival, a cultural event with an art exhibition, movies etc. Announcement of the Festival was met with an outpouring of homophobic and transphobic speech in the media. Extremist groups called for violence against homosexual and transgender people. Some mainstream politicians joined the outcry. Only two opposition parties gave open public support to the Festival.

When it opened, there was a brutal attack on participants by hooligans and religious extremists, with eight persons being injured. With the police failing to provide adequate protection, the organisers were unable to ensure the safety of participants, and the rest of the programme was cancelled.<sup>5</sup>

Since then, the LGBT community has remained largely invisible, it being considered too dangerous to organise any form of public event. However, in 2010 the Sarajevo Open Centre began work within the LGBT community, and due to this fear created after QSF 2008 events had deliberately low public profile. However after verifying that the events were carried out without difficulties, since mid- 2011 till nowadays all the events around the country are totally public and even advertised in different mainstream media. So far, none of the public events have been attacked.

## MEASURES TAKEN

Of the measures required under the Recommendation proper, only one has been implemented, namely prohibition of discrimination on grounds of sexual orientation, which is provided for both by the BiH Law on Gender Equality and the BiH Law on Prohibition of Discrimination. They were adopted in 2003 and 2009 respectively under pressure from the EU and Council of Europe, rather than from any impetus by BiH politicians.

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<sup>5</sup> For further information on the Sarajevo Queer Festival, see the Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, – Sociological Report: Bosnia-Herzegovina, prepared for the Office of the Commissioner for Human Rights

So far as the Sarajevo Open Centre has been able to ascertain, the authorities have adopted no other measures to implement the above-mentioned requirements of the Recommendation. In particular, there has been no review of existing legislative and other measures that could result directly or indirectly in discrimination, no provision for protection from discrimination on grounds of gender identity, and no introduction of a comprehensive strategy aimed at tackling discriminatory attitudes within the general public and correcting prejudices and stereotypes. The Recommendation and its Appendix have not been translated, and have not been disseminated either within government or civil society.

On paper, legal remedies exist for victims of discrimination. However, Sarajevo Open Centre knows of no examples of successful use of anti-discrimination law in relation to discrimination on the grounds of sexual orientation or gender identity. Indeed, given the continuing hostility towards LGBT people, it is an open question whether the courts, police and other administrative bodies would apply the anti-discrimination legislation effectively.

The 2011 annual report of the Ombudsman indicates the necessity of intensifying a campaign of awareness-raising among certain categories of victim, including those suffering discrimination based on sexual orientation.

Against this background, it comes as no surprise to find that the Council of Europe Commissioner for Human Rights has stated the necessity of encouraging the authorities “to step up their efforts to ensure the effective implementation of anti-discrimination legislation and to raise public awareness of this law”.<sup>6</sup>

During the preparation of this report we met representatives of the Ministry for Human Rights and Refugees of BiH. Regrettably, we were left with the impression that they have no plans to work on combating sexual orientation or gender identity discrimination or collaborate with NGOs working on the issue, and these issues are not a priority for the Ministry.

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<sup>6</sup> Council of Europe Commissioner for Human Rights, 4TH QUARTERLY ACTIVITY REPORT 2010 by Thomas Hammarberg, CommDH(2011)1

### 3. APPENDIX TO RECOMMENDATION CM/REC(2010)5

#### 3.1 HATE CRIMES AND HATE SPEECH

*The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.*

*A bias motive based on sexual orientation (but not gender identity) is included as an aggravating circumstance in the criminal codes of the Republic of Srpska and Brčko District, but not in that of the Federation of BiH. There appears to be no specific training for police officers and judiciary in relation to homophobic or transphobic hate crimes, nor for prison officers in relation to LGBT prisoners. There is no collection of data in this field.*

*Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.*

*There are no laws prohibiting “hate speech” or incitement to hatred on grounds of sexual orientation or gender identity (including on the Internet). The Communications Regulatory Agency (broadcast media) include sexual orientation in its regulation and code of practice, and the Press Council (print media) include sexual orientation and gender identity in its regulation<sup>7</sup>. At the time of the Queer Sarajevo Festival, leading public officials*

<sup>7</sup> See article 4a of the Press Code: [http://english.vzs.ba/index.php?option=com\\_content&view=article&id=218&Itemid=9&lang=en](http://english.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9&lang=en)

*did not distance themselves from “hate speech”, and indeed, some leading public officials were guilty of using homophobic language.*

## HATE CRIMES AND HATE RELATED INCIDENTS

In the legal system of BiH hate crimes have not been defined and the criminal laws differ depending on the region: The Criminal codes of Republic of Srpska and Brcko District have recently introduced hate as an aggravating circumstance in all the criminal felonies, and recognize sexual orientation as a possible motive in such crimes. However gender identity however is not explicitly mentioned. In the Federation of BiH such legislation has not yet been introduced. Federation of BiH does not recognise hate crime as such.

As for the prompt and impartial investigation of hate crimes and other hate motivated incidents, due to the political division of the country this varies depending on the region. While the Ministry of internal affairs of the Federation of BiH, agrees that training for police officers and for the staff of the legal system should be ensured in order to deliver accurate justice, the Ministry did not conduct any such training so far. In Republic of Srpska the Department of police education of Ministry of internal affairs has included in its programme the realisation of training “Professional specialisation of the police officers in the area of prevention and suppressing the violence motivated by sexual orientation and gender identity” and training on “Raising the awareness on gender equality”, but these planned activities have never been conducted. Even though the ministries in charge affirm that training programmes for police officers as well as codes of conduct ensure that everyone, including LGBT individuals, is treated equally and in a respectful manner so that they would feel safe to report hate crimes or other hate motivated incidents in 2011, there have been no cases reported to the police. This is a evidence of the lack of trust from LGBT persons in the system and their fear to report cases of hate crime and hate motivated incidents. In BiH there are no special police liaison officers tasked with investigating crimes and incidents linked with sexual

orientation and gender identity or to maintain contact with local LGBT communities in order to foster the relationship of trust.

The majority of institutions in charge at every level do not emphasize the need for a special approach in the investigation of homophobic and transphobic hate crime cases, because they think that during the investigation of any criminal case police officers should be guided by the principle of objectivity, efficiency and in general have a professional approach to the investigation. However there is no efficient nor professional system for admission and investigation of complaints of hate crimes or hate motivated incidents, particularly ones based on sexual orientation or gender identity, allegedly committed by the law enforcement officers in any of the ministries in charge of the police. One example of the lack of efficient and professional system of police investigation and prosecution is that none of the alleged perpetrators of the attacks during Queer Sarajevo Festival in 2008 have been prosecuted so far, and this fact is a matter of concern as the former Commissioner Hammarberg states in his report of June 2011.

As for the situation in the judiciary, the Ministry failed to provide us with information about their programmes and codes of conduct, and thus it shows the lack of action on this area of hate crimes and hate motivated incidents with sexual orientation and/or gender identity as bias.

Regulations of the Law on the Execution of Criminal Sanctions, Confinement and Other Measures, especially Article 52 (the demand for humane treatment), prohibit any kind of discrimination based on ethnic belonging, race, skin colour, gender, sexual orientation, language, religion or a belief or any other grounds, in the treatment of prisoners. However the ministry in charge did not inform us of any effective measures used to minimise the danger of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible.

As for the effective system for recording and publishing statistics on hate crimes and hate motivated incidents related to sexual orientation and gender identity, the ministries

in charge of police keep these data and statistics within their regular crime statistics and there is no specific registration of hate crimes. The police statistics are focused on the crime not the motive.

#### “HATE SPEECH”

Legislation penalising “hate speech” exists. It is penalised in Federation of BiH and Brčko District in their criminal laws, but these laws do not specify homophobic and transphobic hate speech. Criminal Law of the Republic of Srpska does not expressly prohibit hate speech, although the law prohibits incitement of ethnic, racial and religious hatred (Article 390), but it does not penalise homophobic or transphobic hate speech.

But we have to be aware, as it is said in the Report of the Council of Europe Commissioner, T. Hammarberg<sup>8</sup>; he was particularly concerned about statements of parliamentarians and some religious leaders supporting persons who had physically assaulted participants of the Queer Sarajevo Festival in 2008, resulting in eight casualties. For example, a senior member of the dominant Bosniak peoples party, Stranka Demokratske Akcije (SDA), and nowadays one of the members of the Presidency, Bakir Izetbegović, said around the QSF of 2008 “I am not glad that we are holding a Queer Festival. This is a reminder of Sodom and Gomorrah, during one important night that noble Muslims were waiting for, so I am not pleased about that”<sup>9</sup>. Also as Head of the Presidency of BiH he stated in Gracija magazine on October 2010 “we have to fight with all moral means against those who want to pervert high moral society. Everyone has the right to live his life as he pleases, but no right to represent youth perverted things as normal, they call it.”<sup>10</sup>

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8 Vid supra note 5

9 Diskriminacija (web portal to report and advertise cases of discrimination) <<http://diskriminacija.ba/node/72>>, visited the 6<sup>th</sup> July 2012

10 Gracija, <<http://www.gracija.ba/novost/11079/gracija-144>>, visited July 6<sup>th</sup> 2012

It is also a matter of particular concern that “no public institutions or officials clearly demarcated themselves from the hateful discourse.”<sup>11</sup>

The Codex on audiovisual media services and radio media services of the Communications Regulatory Agency of BiH (RAK) states that in audiovisual media services and radio media services human dignity and elementary rights of others will be respected, and the freedom of forming an opinion will be encouraged. The providers of media services will not provide content that involves any kind of discrimination or prejudice on the grounds of sex, race, ethnicity, nationality, religion or a belief, physical disability, special needs, age, sexual orientation, social origin, as well as any other content whose purpose or consequence is to disable or endanger the recognition or the realization, on an equal basis, of any individual rights and freedoms. However, gender identity is not included in the list.

The Press Council, an independent non-governmental self-regulated media body whose mission is to improve ethical and professional standards in the print media, in article 4, in consultation with Organization Q, decided to include sexual orientation as follows “Journalists must avoid prejudicial or insulting references to a person’s ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state. References to a person’s ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state shall be made only when directly relevant to the occurrence being reported.” Also a new article was added, 4a, which states as follows: “Journalists shall avoid direct or indirect comments which might place individuals in an unequal position or discriminate them based on sex, gender, sexual identity, gender identity, gender expression and/or sexual orientation.”

In cooperation with the Gender centres of FBiH and Republic of Srpska and the Gender Equality Agency of BiH the Press Council adopted a new tool “Recommendation for media- treatment of gender issues in media” where they recommend editors and editorial

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11 “Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Sociological Report: Bosnia – Herzegovina” - the Danish Institute for Human Rights (commissioned by the Council of Europe Commissioner for Human Rights)

staff of print and electronic media in BiH, via editorial policy, “to make efforts to assure respect of equality based on gender, sex, sex identity, gender identity, gender expression and sexual orientation, through different measures such as showing positive examples of non-discrimination and respect of human rights in both private and public aspects of life, showing all persons in an equal and non-stereotyped manner, fully respecting their personality and human dignity, restricting sexism, gender-phobia, homophobia, bi-phobia, trans-phobia and other prejudice and stereotypes in media language”.

On the negative side, we conclude that public institutions are not just insufficient in encouraging objective coverage of LGBT issues, they fail to condemn cases of homophobic content.

For example, the Coordination Body of the Colourful network of BiH (LGBTTIQ)<sup>12</sup> lodged a complaint regarding an article in SAFF magazine entitled “AIDS is actually GIRD- Gay related immune deficiency” published on May the 4<sup>th</sup> of 2012, and signed by MD Adem Zalihić. The Press Council found that the layout elements, heading, headline and subheading were tendentious, manipulative, discriminatory and stigmatizing regarding LGBT population.<sup>13</sup> The magazine has not been fined nor have the public authorities stated in public the breach of the Press Code and the necessity to present information in a reliable way, without stereotypes that discriminate citizens of BiH.

Even so, there are cases that show better practice of implementation, like OBN television that was fined on account of messages shown at the MIMOHOD show on August 2008 that were discriminatory against LGBT population, when talking about the Queer Sarajevo Festival.

Printed media in B&H produce and preserve the values of Bosnian and Herzegovinian society through reporting on LGBT topics and creating the reality utilizing several models that represent LGBT persons: (1) Topics not related to LGBT, but – for the purposes of spreading hate or sensationalism – are connected to LGBT context (2) Topics related

<sup>12</sup> The Colourful network of BiH is a non-formal network where LGBT human rights organizations and individuals are engaged on the fighting against discrimination towards LGBTTIQ persons in BiH.

<sup>13</sup> Press Council, <[http://english.vzs.ba/index.php?option=com\\_content&view=article&id=1277%3Athe-color-lgbtqi-network-of-bih-magazine-qsaffq-08062012&catid=68%3Asaff&Itemid=25&lang=en](http://english.vzs.ba/index.php?option=com_content&view=article&id=1277%3Athe-color-lgbtqi-network-of-bih-magazine-qsaffq-08062012&catid=68%3Asaff&Itemid=25&lang=en)>, visited July the 15<sup>th</sup> 2012

to Pride Parades in Serbia, Split, Zagreb and the rest of the world. (3) Issues related to LBGT through popular culture and celebrities (4) A group of articles that show positive shift related to the rights of LGBT persons (5) Interviews with LGBT persons from Bosnia and Herzegovina. (6) Authorial articles that are a mix of information, prejudice and arbitrariness and deal with different topics

Two conclusions are evident – a small number of articles is related to B&H and to LGBT issues in B&H and a great number of articles, reporting on LGBT topics, creates the image of frivolous persons and subculture, who are there to entertain, humour, shock and reaffirm the prejudices. In that way, the responsibility of failing to write about real, everyday, economical, legal and other problems related to violence and discrimination LGBT persons are subjected to<sup>14</sup>.

### 3.2 FREEDOM OF ASSOCIATION, EXPRESSION AND ASSEMBLY

*Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.*

*LGBT organisations are able to gain official registration. Their involvement in implementing relevant public policies is not systematic, being in the context of wider civil society consultations, or on an occasional ad hoc basis. No public funding has ever been made available to them. Since the violence at the Queer Sarajevo Festival, state protection has improved, although the low public profile maintained by the LGBT community has meant that this issue has not been put to the test to any extent.*

*Section III of the Appendix requires member states to guarantee freedom of expression*

<sup>14</sup> Causevic, J. and Ljevak, K., *Čekajući ravnopravnost analiza sadržaja izvještavanja pisanih medija o LGBT temama. Period: oktobar 2011. – oktobar 2012, Human Rights Edition Sarajevo Open Centre, Sarajevo 2012*

*and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.*

*Although freedom of expression and assembly exist in theory for LGBT people, the violence at the time of the Queer Sarajevo Festival, and the failure of authorities to provide protection, demonstrate that the reality at that time was very different. How far things have improved will only be tested when the LGBT community gains the confidence to try to exercise freedom of expression and assembly fully again.*

#### **FREEDOM OF ASSOCIATION**

The BiH anti discrimination law forbids public institutions in charge of NGO and other organizations to impede or prevent official registration in accordance with Article 11 of the European Convention on Human Rights. Nevertheless few organizations that directly mention LGBT and/or queer in their statute are registered so far.

Non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are not appropriately and systematically consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

Nevertheless we can affirm that LGBT human rights organizations are able to work with national human rights institutions such as the Ombudsman's office, even though they need to strengthen their consultation and collaboration with LGBT human rights non-governmental organizations. However, they have shown their willingness to cooperate and to work together with Sarajevo Open Centre for a better implementation of the anti-discrimination law, as well as providing information to raise awareness of the procedures to complain in case of suffering discrimination on grounds of sexual orientation and gender identity.

## FREEDOM OF EXPRESSION AND ASSEMBLY

Freedom of speech in BiH is ensured by the Constitution, in accordance with applicable international treaties and specific legal norms. Constitutional provisions at the state level and in both entities include the protection of freedom of expression in article II/3 at BiH Constitution; article II/2 of the Federation BiH Constitution and in articles 32 and 34 of the Republic of Srpska Constitution.

Although the laws guarantee free press and freedom of expression there is neither an extra stimulation nor policies to ensure more visibility of LGBT persons within the media or in the public sphere. Some agencies like RAK and the non-governmental Press Council are permanently fighting against any kind of discrimination.

As for the need to ensure the right of peaceful assembly, the events during the Queer Sarajevo Festival provide a disturbing example of failure by the authorities to protect the participants of public events. Although the Ministry ensured the presence of police, the protection they provided was no more than nominal. It was clearly insufficient taking into account the gravity of the violence that happened during the inauguration day of Queer Sarajevo Festival, with the result that 8 people were injured. Moreover, there was extensive public hate speech with posters stating “Death to Faggots” and “We Shall Not Allow Gay Festival” all over Sarajevo. While there were numerous statements by international organisations and other states condemning such acts, few BiH public authorities publicly condemned these interferences with the right to freedom of expression and peaceful assembly; the majority of the state institutions remained silent. So far, no one has been prosecuted for the violence, but the case against the two perpetrators that were caught by the police is currently before the Constitutional Court of BiH. The Council of Europe Human Rights Commissioner summed up a widespread worry when he commented that he remained “concerned about the manifestations occasionally violent, of discrimination and homophobia in the society of BiH. It is of particular concern that investigations into attacks against LGBT activists and their supporters have not resulted in any prosecution so far”.<sup>15</sup>

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<sup>15</sup> Council of Europe, *supra* note 10

There is no evidence provided by BiH authorities that they will provide protection for future public demonstrations or gatherings of the LGBT community. Moreover, the advisor of the Ministry of Human Rights and Refugees, in a meeting with representatives of Sarajevo Open Centre showed no willingness to ensure LGBT persons freedom of assembly.

### 3.3 RESPECT FOR PRIVATE AND FAMILY LIFE (EXCLUDING SPECIFIC TRANSGENDER ISSUES) (SECTION IV, PARAS 18, 19, AND 23 – 27 OF THE APPENDIX)

*These paragraphs of Section IV of the Appendix address inter alia criminalisation of same-sex sexual acts and discrimination in access to the rights of couples and parenting.*

*Same-sex sexual acts are not criminalised. No steps have been taken to remove discrimination in access to rights of couples and parenting.*

The Criminal Law does not recognize same sex acts thus it does not criminalize same-sex sexual acts. The family laws of Federation BiH, of Republic of Srpska and Brčko District confer rights and obligations on unmarried couples, but no steps have been taken to ensure that these rights and obligations apply to same sex couples. The legislation does not recognize registered same-sex partnerships and the state Ministry of Justice mentioned no possibility of implementing legal or other means to address the practical problems arising from the lack of recognition of rights and obligations of same-sex couples. When it comes to adoption of a child, the family laws of the Federation of BiH, of Republic of Srpska and of Brcko District do not allow single individuals to adopt children<sup>16</sup>, regardless of their sexual orientation and gender identity, so all single individuals are discriminated.

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<sup>16</sup> Family Laws gather two different regimes of adoption: the fully adoption and the limited/incomplete (nepotpuno) adoption. Just married individuals are allow to fully adopt children

Furthermore, in case of lesbian, gays or bisexual persons in the process of getting divorced it is recommended not to mention their sexual orientation in court, because judges are more likely to give custody of the children to the other partner.

In addition, the state Ministry of Justice mentioned no steps taken to ensure access to single women to assisted reproductive treatment without discrimination based on sexual orientation. However according to BiH clinics the assisted reproductive treatment is just for married women, so it discriminates against all single women.

There is a plan for adopting a new law in Federation of BiH called Law on treatment of infertility with biomedical assisted reproductive technology which is specifically aimed at married couples or couples that live in extramarital cohabitation.

#### 3.4 RESPECT FOR PRIVATE AND FAMILY LIFE AND ACCESS TO HEALTH CARE – SPECIFIC TRANSGENDER ISSUES (SECTION IV OF THE APPENDIX, PARAS 20, 21 AND 22, AND SECTION VII, PARAS 35 AND 36)

*These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.*

Once gender reassignment is completed, the individual can apply for changes to the gender marker in all official documents including, as a first stage, the identification number. This stage requires that the relevant medical documentation has been submitted by a doctor or medical team, confirming that full gender reassignment and full transition

have been completed. These procedures are of an administrative nature and do not involve court proceedings. It is not clear how far these procedures are quick, transparent and accessible. The right of a legally recognized transgender person to marry the person of the opposite sex to their reassigned sex is not legally guaranteed. In principle, a person that has legally recognised as the reassigned sex have no obstacles to marry a person of the opposite sex to their reassigned sex, but since there are no legal provisions in the family law recognizing the right of legally recognised transgender persons to marry we are not certain if discrimination would occur in this situation by the administrative bodies.

No review of prior requirements to legal gender recognition has been conducted. At least one abusive requirement that of gender reassignment surgery, exists.

Transgender persons do not have access to appropriate gender reassignment services. Moreover, neither the Federation of BiH nor the Republic of Srpska cover the costs of gender reassignment treatment. Transgender persons wishing to undergo gender reassignment treatment are thus forced to seek such treatment abroad at their own expense.

### 3.5 EMPLOYMENT

*Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.*

*The BiH Anti-Discrimination Law prohibits discrimination on the ground of sexual orientation, but it does not specifically include gender identity. The Labour Law of the Brčko District and the Labour Law of the institutions of BiH also prohibits sexual orientation discrimination, but equivalent legislation in the Republic of Srpska and the Federation of BiH does not. It appears that none of the other measures proposed by the*

*Recommendation have been taken, including in relation to the armed forces, and the privacy of transgender persons.*

The existing legislation, the Anti-discrimination Law in particular, prohibits discrimination in employment in the public and private sectors on the grounds of sexual orientation and sexual expression at the state level and is applied to entities, Brčko District, cantons and municipalities, and all laws should be harmonized with this specific one. The Law on prohibition of discrimination covers direct and indirect discrimination and the burden of proof remains on the employer or the alleged person who committed discrimination.

Nevertheless the US Department of State affirmed in their country report of 2011 that “while the law prohibits discrimination on the basis of sexual orientation, it was not fully enforced in practice, and there was frequent societal discrimination against LGBT. Gays and Lesbians faced frequent harassment and discrimination, including termination from employment. In some cases dismissal letters explicitly stating that sexual orientation was the cause of termination made finding another job extremely difficult.”<sup>17</sup>

The Labour law and the Law on mediation in employment and on social support to unemployed of Federation of BiH as well as the Labour law of RS have no special prohibition of discrimination on the grounds of sexual orientation and gender identity. Labour law of Brčko District prohibits discrimination on the grounds sexual orientation, but it does not specifically list gender identity as one of the prohibited grounds of discrimination.

Related to the enrolment in the armed forces, the failure of the Ministry of Defense to reply to the questionnaire and the lack of available information strongly suggests that there is a need for further action, especially in order to provide the effective protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill treatment and promote tolerance and respect.

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<sup>17</sup> US Department of State, Country reports on Human Rights Practices for 2011, Bosnia-Herzegovina <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>, visited 10th July 2012

### 3.6 EDUCATION

*Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.*

*The BiH Anti-Discrimination Law, and some legal instruments at entity level, specifically prohibit sexual orientation discrimination in education, but it does not specifically include gender identity discrimination. It appears that no other measures proposed by the Recommendation have been acted on. A study of school textbooks found that some still define homosexuality as an illness and include it group of disorders such as paedophilia and drug addiction.*

Within the anti-discrimination legislation it is specifically prohibited to unlawfully deny the right to education to persons on the basis of their sexual orientation, but not their gender identity.

The system of primary, secondary and higher education in Bosnia and Herzegovina is extremely fragmented: Republic of Srpska has its own system, Brčko District has its own, and in Federation of Bosnia and Herzegovina 10 systems exist. All this fragmentation makes discrimination towards marginalised groups more probable and more difficult to control.

Systematic legislation on prohibition of discrimination has influenced the process of changes in the laws in the area of education, and resulted in explicit introduction of prohibition of discrimination on grounds of sexual orientation in some areas. The Framework Law on Higher Education of Bosnia and Herzegovina, which regulates prohibited discrimination, expressly mentions gender and sexual orientation as

prohibited discrimination grounds. Furthermore, for example, in the Law on Higher Education in the Canton Sarajevo, which regulates the area of higher education of the largest university centre in the country, it is stated that the high education institution cannot limit access to higher education, be it directly or indirectly, on grounds of gender or sexual orientation. This prohibition is also in the Ethical Code of the University.

Regarding the curricula and the information available to students about sexual orientation and gender identity, in 2010 Organization Q published an analysis titled “1+1=0” researching high school’s handbooks about how they showed LGBTIQ issues. They analyzed 62 handbooks from the three different educational plans (Bosnian/Serbian/Croatian) of different subjects such as biology, psychology, sociology, democracy and human rights, philosophy and ethics. They concluded that the information about these topics was underrepresented, with a very low quality, using gender stereotypes and promoting heteronormativity. In some cases the terminology is wrongly defined (homosexuality, bisexuality, transsexual/transgender) even confusing gender and sex.<sup>18</sup> Homosexuality is even sometimes defined as an illness and included in the same group of disorders as pedophilia and drug addiction.

There is no official collection of data about bullying incidence in schools, so we believe the public authorities need to take into consideration the systematic collection of data related to discrimination and violence in schools related to sexual orientation and gender identity, as well as implementing systematically trainings and codes of conduct for educational staff to promote a tolerant environment and the prevention of violence.

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<sup>18</sup> Organization Q, *1+1=0: analiza srednjo skolski huzdzenika o LGBTIQ pojmovima u Bosni i Hercegovini*, Sarajevo 2010.

3.7 HEALTH - OTHER THAN TRANSGENDER SPECIFIC HEALTH ISSUES<sup>19</sup>  
(SECTION VII OF THE APPENDIX PARAGRAPHS 33, 34,)

*These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their “next of kin” without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity*

*Homosexuality is no longer classified as a disease, HIV/AIDS prevention programme includes LGBT people, and there is nothing in principle that would prevent LGBT persons identifying their partner as “next of kin”. However, it seems that other measures proposed by the Recommendation have not been carried out.*

The Ministry of health and social care of Republic of Srpska informed us that it uses the International Classifications of Diseases which does not classify homosexuality as a disease. And the Federal ministry of health-care states that in the Federation of BiH homosexuality is no longer considered a disease and that it has been removed from all textbooks and educational material for medicine studies.

The Republic of Srpska Minister of Health affirmed that health and social workers are encouraged to create an open and encouraging environment for young LGBT individuals. Although we have no evidence to support this claim.

The Health Ministry of Federation of BiH claims that health care is available to all the individuals equally without any discrimination based on sexual orientation or gender identity, but no information campaigns towards the LGBT population have been conducted.

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<sup>19</sup> See Section iv above

A countrywide HIV/AIDS prevention programme is implemented and gives support to LGBT persons. All costs are covered by United Nations Development Programme. Sarajevo Open Centre is unaware that any informational campaigns or user assessment have ever been conducted by the public institutions within the LGBT population.

Despite the existence of the above mentioned official policies and practices which do not discriminate, the situation in the field shows some examples of LGBT persons treated negatively by health professionals. One is the case of the 2012 annual voluntary blood donation programme conducted by the Federal institution for transfusion medicine at the Faculty of Philosophy of Sarajevo. When some LGBT students saw that the questionnaire for blood donors states that “any person that has ever had contact with homosexuals is banned to donate blood” they wanted to have a meeting with the person in charge of the donation programme, which did not occur. A health technician from the Institute and one employee from the library of the Faculty were insulting and mocking the students who were trying to warn others about the discrimination. The students contacted the director of the Centre for Human Rights of the University of Sarajevo who advised them to go to the Ombudsman and to the police<sup>20</sup>. Sarajevo Open Centre had sent before those events several letters to the Blood Donation Institute, both in Federation of BiH and RS, and after this incident organized together with other human rights activists an action to change the aforementioned questionnaire. By September 2012 Sarajevo Open Centre met with the representatives of the Blood Donation Institute of the Federation and they explained the changes made at the questionnaire, erasing any previous discriminatory statement.

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<sup>20</sup> Case documented by Sarajevo Open Centre in June 2012

### 3.8 HOUSING

*Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.*

*The BiH Anti-Discrimination Law prohibits discrimination in the field of housing on grounds of sexual orientation, but it does not specifically include gender identity. Apart from this, there is little suggests that any steps have been taken to address the other measures proposed by the Recommendation.*

The Law on housing of both Federation of BiH and Republic of Srpska does not address discrimination on the grounds of sexual orientation or gender identity either. However the Anti-Discrimination Law prohibits discrimination on grounds including sexual orientation and sexual expression (but not gender identity) concerning housing, including the access to housing, the conditions of housing and the lease contract.

The Ministries in charge of housing failed to reply to our letter requesting information, suggesting that there is no action in this field by the authorities. We believe that there is a clear need for action in order to prevent that LGBT persons face discrimination when they want to exercise their housing rights, such as the sale or rent of housing, the provision of loans for purchase of housing, the recognition of the rights of a tenant's partner or eviction. To give one example, an LGBT non-governmental organization wanted to rent an office in June 2012 for a "daily living room" which would provide to LGBT persons a safe space to meet and obtain information, but the landlord refused to rent the flat for these purposes.

Also Sarajevo Open Centre has no evidence that there are provisions in place to ensure non-discriminatory access to shelters and other emergency accommodation by LGBT people. In their replies to our enquiries, the Federal ministry of labour and social support mentioned no social programmes or support programmes that address the factors which increase vulnerability to homelessness of LGBT people. However, on the positive side, the Ministry of labour, social affairs and refugees of Zeničko-dobojski Canton claims that even though the existing laws do not include the category of homelessness, social programmes and support programmes conducted in coordination with centres for social work, and municipality services in charge of social care, are available for all the users under equal conditions, regardless of sexual orientation and gender identity in their Canton. Other cantonal ministries that replied did not address the issue of homelessness of LGBT persons.

### 3.9 SPORTS

*Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.*

*None of the specific measures proposed by the Recommendation have been implemented.*

In their responses to our enquiries, the Ministry of Civil Affairs of BiH, the Ministry of Family, Youth and Sports of Republic of Srpska and the Department for Economic Development Sports and Culture of Brčko District mentioned no particular measures that have been taken to prevent the risk of exclusion from participation in sports on the ground of sexual orientation and gender identity. Besides the legislation that prohibits spectator violence and insulting acts, the ministries offered no information on concrete measures that are being taken in order to prevent, counteract and punish the use of

discriminatory insults during and in connection with sports events. The Ministry of Culture, Sports and Youth of the Federation of BiH did not reply to our enquiry, suggesting that no action is being taken by this ministry.

Homophobic and transphobic chanting at or around sports events has not been made a criminal offence in particular, but the Law on Sports of Republic of Srpska forbids spectator violence and insulting acts, especially those that provoke racial, national, political and other intolerance. This is confirmed by the Law on Prevention of Violence at Sport Events which states that violence and inappropriate behavior are considered to include putting up banners, flags or other texts, pictures, songs or other marks which show or encourage hate or violence on the grounds of racial, national or religious belonging, or some other special characteristic. Nevertheless sexual orientation and gender identity are not mentioned in this law.

### 3.10 RIGHT TO SEEK ASYLUM

*Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.*

*BiH law does not explicitly recognise sexual orientation or gender identity in the context of asylum. In the absence of any response from the relevant ministry, it can only be assumed that no action has been taken in relation to the measures proposed by the Recommendation.*

The Law on the Migration and Residence of Foreigners and Asylum of Bosnia and Herzegovina does not explicitly recognize a well-founded fear of persecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status and asylum.

Since the Ministry for Human Rights and Refugees of BiH failed to respond to our enquiries, there is no information available on any measures taken to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman, degrading treatment or punishment on the grounds of sexual orientation or gender identity. Sarajevo Open Centre is unaware of any measures to prevent risk of physical violence, including sexual abuse, verbal aggression or other form of harassment against asylum seekers deprived of their liberty and to ensure their access to information relevant to their particular situation.

### 3.11 NATIONAL HUMAN RIGHTS STRUCTURES

*Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.*

The mandate of the Ombudsman for Human Rights explicitly includes sexual orientation but not gender identity. However, the Ombudsman has included gender identity in the work of Office, and has, within the limits of his resources, conducted some activities along the lines proposed by the Recommendation.

The Institution of Ombudsman for Human Rights has a clear mandate to deal with discrimination on the grounds of sexual orientation but not specifically on gender identity, in accordance with Article 2 of the Law on Prohibition of discrimination of Bosnia and Herzegovina.

In practice the Institution of Ombudsperson for Human Rights carries out the following activities related to discrimination on any ground, including sexual orientation and gender identity:

- Issues recommendations in order to eliminate violations of the law; these recommendations can cover the alteration of the regulation and the general acts, as well as individual measures
- Carries out an intensive campaign in order to promote Anti-discrimination law and its mandate
- Receives individual complaints and based on them conducts the investigation, both in public and private sector, and takes appropriate decisions
- Monitors the court trials but has no jurisdiction over them and cannot influence the process of judicial decisions
- Publicly supports respect of the rights of all the endangered categories, including the right to express their opinions and attitudes.

However, due to lack of resources, the Ombudsman's office does not carry out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity. Only two persons are working in the anti-discrimination department which makes it one of the smallest units dealing with anti-discrimination in South East Europe. Nevertheless the Ombudsman's office has implemented some actions in order to accomplish their mandate when it comes to sexual orientation and gender identity as prohibited grounds of discrimination, such as: participating in a workshop that the Sarajevo Open Centre organized in OSCE premises in December 2011 dealing with relevant legal issues for LGBT activists and also in the LGBT Law School in October 2012, participating in conferences dealing with anti-discrimination policies abroad, giving lectures at faculties of law and political sciences in BiH and taking part in a local radio talk show in Banja Luka as part of the campaign to promote anti-discrimination.

## GLOSSARY

**Biphobia:** the fear, unreasonable anger, intolerance or/and hatred toward bisexuality and bisexual people (see “Bisexual”). The phobia may exist among heterosexuals, gay men, lesbians, or by bisexuals themselves, and is often related to multiple negative stereotypes of bisexuals centre on the belief that bisexuality does not exist and on the generalization that bisexuals are promiscuous.

**Bisexual:** when a person is emotionally and/or sexually attracted to persons of more than one sex.

**Coming-out:** the process of revealing the identification of a lesbian, gay, bisexual, trans or intersex person.

**Discrimination:** unequal or unfair treatment which can be based on a range of grounds, such as age, ethnic background, disability, sexual orientation or gender identity. Can be divided into different types of discrimination, which all can lead to victimisation and harassment:

- Direct discrimination: a situation where a person is treated less favourably than others on grounds of his or her sexual orientation or gender identity.
- Indirect discrimination: where an apparently neutral provision or practice would put persons having a particular sexual orientation or gender identity at a disadvantage compared to others.

**Gay:** a person who feels sexual and/or emotional desire exclusively or predominantly for persons of her or his own sex. The term has however been misused to cover all gay men and lesbians (and sometimes even bisexuals). This has been widely discussed, and gay should therefore only be used when it is referring to men who are emotionally and/or sexually attracted to other men. If the intention is to cover all without intentionally excluding any sexual orientation or gender identity/expression, then it is recommendable not to use only the term gay, and instead use LGBTI (lesbian, gay, bisexual, trans and intersex people).

**Gender:** refers to people’s internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles

which vary across history, societies, cultures and classes. Gender is hence strongly linked to society's expectations and is not exclusively a biological matter.

**Gender expression:** refers to people's manifestation of their gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

**Gender identity:** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism (Yogyakarta Principles).

**Gender marker:** is a gendered designator on official documents. The most obvious gender markers are designations such as male/female or Mr/Mrs/Ms/Miss. They are often embedded in ID cards, driver's licences, birth certificates, diplomas, civil status documents and tax forms. Less obvious gender markers can be coded numbers such as social security numbers and tax numbers.

**Gender reassignment:** refers to the process through which people re-define the gender in which they live in order to better express their gender identity. It is often referred to as a process that may involve medical assistance including hormone therapies and surgical procedures that transpeople undergo to align their body with their gender.

**Hate crime:** offences that are motivated by hate or by bias against a particular group of people. This could be based, inter alia, on gender, gender identity, sexual orientation, ethnicity, religion, age or disability. Also called bias crime.

**Hate speech:** refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards minorities — for example statements by political or religious leaders appearing in the press or the Internet.

**Heteronormativity:** Reference to cultural and social practices where men and women is being led into believing and behaving as if heterosexuality were the only conceivable

sexuality. It also implies the positioning of heterosexuality as the only way of being “normal” and as the key source of social reward.

**Heterosexual:** People are classified as heterosexual on the basis of their gender and the gender of their sexual partner(s). When the partner’s gender is other than the individual’s, then the person is categorised as heterosexual.

**Homophobia:** the fear, unreasonable anger, intolerance or/and hatred toward homosexuality. Homophobia can appear in various ways:

- Internalised Homophobia: when lesbian, gay men and bisexual people are considering and accepting heterosexuality as the correct way of being and living.
- Institutionalised Homophobia: when governments and authorities are acting against equality for LGB people. This can be hate speech from public elected persons, ban on pride events and other forms of discrimination of LGB people.

**Homosexual:** People are classified as homosexual on the basis of their gender and the gender of their sexual partner(s). When the partner’s gender is the same as the individual’s, then the person is categorised as homosexual. It is recommended to use the terms lesbian and gay men instead of homosexual people. The terms lesbian and gay man are being considered neutral and positive, and the focus is on the identity instead of being sexualised. Lastly, the term homosexual has for many a historical connotation of pathology.

**Intersex people:** refers to those people who have genetic, hormonal and physical features that are neither exclusively male nor exclusively female, but are typical of both at once or not clearly defined as either. These features can manifest themselves within secondary sexual characteristics such as muscle mass, hair distribution, breasts and stature; primary sexual characteristics such as reproductive organs and genitalia; and/or in chromosomal structures and hormones. This term has replaced the term ‘hermaphrodite’ which was used extensively by medical practitioners during the 18th and 19th centuries.

**Lesbian:** a woman who is sexually and emotionally attracted to women.

**LGBT:** Acronym for lesbian, gay, bisexual and trans people.

**Pride events:** Pride events and marches date back to June 1969 to the so-called Stonewall riot, when LGBTI persons in New York protested in the streets for several days against persistent police harassment of LGBTI individuals and venues. The following year, the uprising was commemorated by demonstrations in several American cities, and since then annual demonstrations against homophobia/transphobia and for LGBTI rights have spread around the world.

**Queer:** has become an academic term that is inclusive of people who are not heterosexual - includes lesbians, gay men, bisexuals and trans. Queer theory is challenging heteronormative social norms concerning gender and sexuality, and claims that gender roles are social constructions. For many LGBTI persons, the term “queer” has negative connotations as it was traditionally an abusive term, however many LGBTI persons are now comfortable with the term and have “reclaimed” it as a symbol of pride.

**Sexual orientation:** refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**Transgender:** refers to those trans people who live permanently in their preferred gender, without necessarily needing to undergo any medical intervention/s. Until recently, this term was also the primary umbrella term referring to all trans people, but this use is now losing favour to the term ‘trans’ which is perceived to be more inclusive of all trans communities.

**Transsexual:** refers to people who identifies entirely with the gender role opposite to the sex assigned to at birth and seeks to live permanently in the preferred gender role. This often goes along with strong rejection of their physical primary and secondary sex characteristics and wish to align their body with their preferred gender. Transsexual people might intend to undergo, are undergoing or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery).

**Trans Person/People/Man/Woman:** is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

**Transvestite/Cross dresser:** refers to people who enjoy wearing the clothing of another gender for certain periods of time. Their sense of identification with another gender can range from being very strong and indeed their primary gender, to being a less critical part of their identity. Some transvestite or cross-dressing people may seek medical assistance to transition and live permanently in their preferred gender at some point in their life. Others are happy to continue cross dressing part-time for the rest of their lives.

**Transphobia:** refers to negative cultural and personal beliefs, opinions, attitudes and behaviors based on prejudice, disgust, fear and/or hatred of transpeople or against variations of gender identity and gender expression. Institutional transphobia manifests itself through legal sanctions, pathologisation and inexistent/inadequate mechanisms to counter violence and discrimination. Social transphobia manifests itself in the forms of physical and other forms of violence, hate speech, discrimination, threats, marginalisation, social exclusion exoticisation, ridicule and insults.

## ABOUT SARAJEVO OPEN CENTRE

Sarajevo Open Centre is an independent, non-political and non-profit organization that promotes full respect of human rights and decreases the level of discrimination on grounds of gender, sexual orientation and gender identity by empowering marginalized groups through community activities, promoting human rights within the society and advocating for policy change towards the public authorities. Sarajevo Open Centre was established in 2007 and ever since has been constantly working and increasing its scope of action from cultural programmes to a human rights programme, especially women, Lesbian Gay Bisexual and Transgender rights. We have been working intensively since 2011, when we opened our first office and had our staff constantly working in the Sarajevo Open Centre. Nowadays, our team is composed of 12 employees and 2 voluntaries. We are part of the following networks:

- Omladinska mreža BiH – Youth Network in B&H
- Koalicija protiv govora i zločina iz mržnje - Coalition against hate speech and hate crime
- Mreža izgradnje mira u BiH – Peace Network in B&H
- Mreža pravde – Justice Network in B&H
- Koalicija “Jednakost” – Coalition “Equality”
- Ženska mreža u BiH – Women’s Network in B&H
- Regional Network Against Homophobia

Our specific objectives are to increase awareness among state institutions/officials about the necessity to fully implement International, European and national human rights standards towards women and LGBT persons, to raise citizens awareness about the LGBT rights and political, social and economic rights of women and to empower and strengthen the LGBT community by implementing supportive community based activities, related to their rights and needs.

Some of our major achievements so far include starting free legal counselling programme for LGBT persons in B&H; in cooperation with other human rights activists we have successfully advocated for removing discriminatory clauses from the FB&H voluntary blood donation questionnaire and we have been the Focal Point for ILGA Annual Review 2011 and 2012, submitting contributions about LGBT human rights situation to EU Progress Report, UPR, Human Rights Watch.

[www.soc.ba](http://www.soc.ba)

[www-lgbt-prava.ba](http://www-lgbt-prava.ba)

[office@soc.ba](mailto:office@soc.ba)

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editor Emina Bošnjak

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Vladana Vasić, Sadžida Tulić (2012): Ne toleriši netoleranciju.

Upoznaj svoja prava i koristi ih! Vodič za LGBT osobe

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Zlatiborka Popov-Momčinović, Saša Gavrić, Predrag Govedarica (editors, 2012): Diskriminacija – Jedan pojam, mnogo lica.

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Other titles published as the result of the activities of Sarajevo Open Centre (chosen titles):

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Parlamentarizam u Bosni i Hercegovini.

Sarajevo: Sarajevo Open Centre/Friedrich Ebert Foundation.

Saša Gavrić/Damir Banović/Christine Krause (editors, 2009):

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Čitanka LGBT ljudskih prava, 2nd edition

Sarajevo: Sarajevski otvoreni centar/Heinrich Böll Foundation.

Damir Banović (2012)

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William G. Naphy (2012):

Born to be gay. Historija homoseksualnosti.

Sarajevo: Sarajevo Open Centre/Heinrich Böll Foundation/CURE Foundation.

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