

Human Rights of Lesbian, Gay, Bisexual and Trans* People in Bosnia and Herzegovina: New Approaches?

CURRENT SITUATION AND GUIDELINES FOR FUTURE ACTIONS OF INSTITUTIONS AND CIVIL SOCIETY

Contents

INTRODUCTION	3
DISCRIMINATION	4
VIOLENCE / HATE CRIME / HATE SPEECH	6
FREEDOM OF ASSEMBLY AND ASSOCIATION	8

This project is funded
by the European Union



The project is implemented by



Project partners are



Title: Human Rights of Lesbian, Gay, Bisexual and Trans* People in Bosnia and Herzegovina: New Approaches?
Current Situation and Guidelines for Future Actions of Institutions and Civil Society

Author: Saša Gavrić

Layout/Cover Page: Dina Vilić

Publisher: Heinrich Böll Foundation – Office for BiH
Sarajevo Open Centre
CURE Foundation

On behalf of Publishers: Mirela Grünther-Đečević, Saša Gavrić,
Jadranka Miličević

© Author/Sarajevo Open Centre

ISSN 2303-6087

Any non-commercial multiplication, photocopying or any other means of reproducing the complete publication or its part is desirable, with prior notice to the publisher sent to: office@soc.ba

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Union.

Sarajevo, 2014

Introduction

Heinrich Böll Foundation Office for Bosnia and Herzegovina, in cooperation with BiH partner organisations Sarajevo Open Centre and CURE Foundation, has been implementing *Coming out! Advocating Promotion and Protection of LGBT Rights* project during 2013 and 2014. This is the first project in Bosnia and Herzegovina, financed by the European Union, which is fully devoted to advocating the rights of lesbian, gay, bisexual and transgender persons.

Over the last two years, the project worked through different components that can be categorised as the following key areas: research, education, informing and raising awareness, and advocacy. The project worked with political parties, health sector, police, judiciary, education, media, civil society organisations, as well as LGBT persons.

This project is unique for its icebreaking activities in certain fields and for doing certain things for the first time. Cooperation with Canton Sarajevo Police started with this project and finally resulted not only in trainings, as project activities, but in the integration of LGBT hate crime incidents in the permanent education of Canton Sarajevo Police. It also resulted in the appointment of LGBT contact persons within police authorities in the city of Sarajevo. This project therefore is a truly pioneer action whose direct and indirect results will be felt in the coming years.

In a way the highlight of this project, a regional conference was held in Sarajevo on September 24 and 25, 2014 entitled: *Human Rights of Lesbian, Gay, Bisexual and Trans*¹ People in Western Balkans: Is a New Approach Possible?* For the first time in Bosnia and Herzegovina, the conference gathered numerous activists, journalists, civil society representatives, institutional representatives, researchers etc. During the two days, through a range of panels, they discussed the state of LGBT human rights not only in BiH but in the countries of the region as well.

Conference discussions were held about different experiences with the aim of finding new approaches. The central question was: how to come up with new solutions and how to work more efficiently towards the full inclusion and equality of lesbian, gay, bisexual and transgender persons in Bosnia and Herzegovina. Based on presented conclusions, but also on all experiences and research findings collected over the last two years, we developed this publication that summarises the current state of affairs in guaranteeing rights to LGBT population, but also defines concrete proposals as to the directions that the institutions and civil society should take in the coming few years.

1 Trans* is an umbrella term that refers to all of the identities within the gender identity spectrum.

DISCRIMINATION

Current situation

When it comes to the legal framework dealing with LGBT rights in BiH, the BiH Gender Equality Law adopted in 2003 and amended in 2009 is the first law that stipulates prohibition of discrimination on grounds of sex/gender (*spol*) and sexual orientation (*spolna orijentacija*).

The 2009 BiH Anti-Discrimination Law covers the prohibition of discrimination on grounds of “sex expression and/or orientation”². It was adopted as a result of pressure exercised by the international community. However, the terms were not defined and are now left to the interpretation of lawyers. Gender identity (important for trans persons) is not covered by the law (but can be classified under “sex expression”). Different laws on state, entity and cantonal levels fail to tackle sexual orientation or gender identity.

Information about discrimination based on gender, sexual orientation and gender identity has not been collected or tracked yet, because BiH Ministry of Human Rights and Refugees did not create a database (that was to be created 90 days after the adoption of the 2009 Anti-Discrimination Law). Although there are reported cases³, not a single one of them refers to discrimination on grounds of sexual orientation or sexual/gender identity and expression. The existing discrimination cases in courts demonstrate that legal proceedings are not efficient, as some cases take up to three years to be solved. As research shows⁴, LGBT persons do not trust the judiciary system and there were no trust-building efforts by the institutions towards the LGBT community.

Laws are still not harmonized with the Anti-Discrimination Law although this was supposed to happen within 90 days following the adoption of the Law. As a result, different laws (e.g. labour or higher education laws) have different anti-discrimination provisions (some covering and some not sexual orientation and gender identity). For example, the new draft FBiH Labour Law did not stipulate sexual orientation in the anti-discrimination provisions, leaving the level of workplace protection to the BiH Anti-Discrimination Law.

The BiH Ombudsman Institution has very limited resources to work on anti-discrimination cases. Even though the Anti-Discrimination Law stipulated a special budget allocation for the Ombudsman Institution for this purpose, the Anti-Discrimination Department in the Ombudsman Institution never received any additional funds. BiH Ombudsman Institution did not agree to work on the Special Report on the State of Rights of LGBT people in BiH, but they announced consultations on the report for December 2014.

Judges and prosecutors countrywide have no or limited training related to the

² In local language, the terminology that is used is: “spolno izražavanje i/ili orijentacija”, which literally means “sex expression and/or orientation”. Sex in this case refers to “spol”, i.e. biological sex. Local translation for gender is “rod”, gender identity is “rodni/spolni identitet”, and sexual orientation is “seksualna/spolna orijentacija”.

³ See i.a. *Pink Report. Annual Report on the Human Rights Situation of LGBT persons in BiH*: <http://soc.ba/en/pink-report-annual-report-on-the-human-rights-situation-of-lgbt-persons-in-bih-in-2012/>

⁴ See in *Numbers of Life: Analysis of the results of the research on needs of LGBT community in BiH* <http://soc.ba/numbers-of-life/> and *Rights of LGBT persons in BiH: Justice* <http://ba.boell.org/bs/2014/02/07/sektoralna-istraganja-prava-lgbt-osoba-u-bosni-i-hercegovini-pravosude>

new Anti-Discrimination Law. The result is that the law is still not being implemented in the manner stipulated by its provisions⁵.

BiH never adopted a countrywide anti-discrimination strategy that would define concrete and realistic measures on how to fight discrimination (including discrimination based on sexual orientation and gender identity) and prejudices, but that would also promote tolerance and equality on state, entity, cantonal and local levels. BiH did adopt the Council of Europe's Recommendation on measures to fight against discrimination based on sexual orientation and gender identity, but it did not take any steps to implement this Recommendation⁶. If the CoE Recommendation had been implemented, the BiH institutions would have been more informed and aware about discrimination of LGBT persons.

Family laws of FBiH, RS and BD define marriage and domestic partnership as the union between a woman and a man. However, jurisprudence⁷ of the European Court for Human Rights indirectly bounds BiH as a Council of Europe member state to extend its legislation to recognize some of the rights and obligations (i.a. social rights) that stem from the union of same-sex couples, since it is the opinion of the Court that same-sex couples in stable *de facto* relationships are equally protected by Article 8 of the European Convention for Human Rights and Fundamental Freedoms. Unfortunately, there was no attempt to adopt a law on registered partnership for same-sex couples in any of the BiH administrative units. Among other things, same-sex couples cannot access reproductive technologies or adopt children, as the law reserves these rights only for married couples and heterosexual couples in domestic partnerships.

Another issue is lack of medical and financial support for transsexual persons. Surgeries have to be done abroad, while the official social security system does not cover any of the related costs. However, once sex reassignment is done, transsexual persons can legally change their name, personal identification number (JMB) and documents. Only the BD Law on Registers does not stipulate "sex reassignment" as a ground for legal change of personal data. Civil society organizations have called on the relevant institutions of BD to initiate amendments to this law. BD Government refused this request, after which the Institution of Ombudsman received a complaint of discrimination against transsexual persons. Institution of Ombudsman closed this case after the Human Rights Commission of Brčko District replied that it will initiate amendments to this Act, which has not happened yet.

5 See a range of policy papers and analyses on <http://analitika.ba/en/projects/overview-ad-framework-and-practice-bih>

6 Monitoring of the implementation of the Council of Europe's Recommendation on measures to fight SOGI discrimination, <http://soc.ba/en/monitoring-the-implementation-of-the-council-of-europe-committee-of-ministers-recommendation-on-combating-sogi-discrimination-2/>

7 For example, see Case Schalk and Kopf vs. Austria, 30141/04.

Guidelines for further actions

- Amend the BiH Anti-Discrimination Law and clearly define grounds on which discrimination is prohibited, so that they explicitly include the following: sexual orientation, gender identity, gender expression and intersex status;
- Implement BiH Anti-Discrimination Law, by drafting and adopting a country-wide multiannual anti-discrimination strategy and action plan, which shall define concrete and realistic measures on state, entity, cantonal and local levels to challenge discrimination of i.a. LGBT people; this should happen in close cooperation with civil society;
- In order to fight homophobia and prejudices within institutions, train and inform judges, prosecutors, police officers and public servants on discrimination of LGBT people;
- BiH Ombudsman Institution should draft a special report on the state of rights of LGBT people in BiH, which will serve as basis for the development of further actions and policies;
- Mainstream social acceptance and inclusion of LGBT people through the media, institutions and the educational system and thus prevent any future discrimination and hate related incidents;
- Analyse curricula and textbooks at all educational levels (primary and secondary schools, as well as universities), remove all discriminatory and derogative content and introduce LGBT inclusive diversity education;
- Introduce LGBT specific modules into the education of future pedagogues but also train the existing school staff to work on LGBT inclusive schools;
- Introduce LGBT inclusive anti-discrimination modules into curricula of faculties of law and civil service exams;
- Introduce LGBT specific modules into medicine and psychology study programmes to work towards LGBT inclusive health services;
- Provide sex reassignment medical support for transexual people; ensure cost coverage through the official social security systems and define clear procedures for legal recognition of sex reassignment;
- Adopt and implement laws in all three administrative units (Republika Srpska, Federation BiH, Brčko District) to legally recognize same-sex relationships, and define duties and rights of the union of two same-sex persons (focusing on social and economic rights).

VIOLENCE / HATE CRIME / HATE SPEECH

Current situation

The BiH state level Ministry of Security and the Organisation for Security and Cooperation in Europe (OSCE) urged the BiH administrative units (FBiH, RS and BD) to adopt amendments to their criminal codes by incorporating provisions on hate crime. RS and BD did so in 2010, stipulating, *inter alia*, grounds of sexual orientation and gender identity in the definition of hate crime. FBiH has not yet adopted the amendments to the criminal code. Since December 2012, an informal coalition⁸ has been advocating for the addition of provision on hate crime to the FBiH Criminal Code. Although the FBiH House of Representatives adopted the amendments in July 2013, the second chamber - FBiH House of Peoples failed to do so. However, civil society continued with their advocacy actions.

In addition, hate speech provisions that include i.a. sexual orientation and gender identity are not stipulated by criminal codes of FBiH, RS and BD and so far there has not been any attempt to amend this situation.

Data on hate crime acts on grounds of gender, sexual orientation and gender identity has not been systematically collected or tracked by police or judiciary. Nevertheless, the police in BiH are working on concrete cases (hate crime acts against homosexual persons) and some of these cases are now in the prosecution phase. A countrywide LGBT community research⁹ shows that every third LGBT person has been violated, but only every seventh incident of violence has been reported to the police. This is a clear sign of the lack of trust in law enforcement institutions.

Canton Sarajevo Police have been cooperating with civil society organizations working on LGBT rights since 2012. Educational and informative actions have been conducted and the police did commit to continue working on LGBT rights issues in 2014, by including LGBT and hate crime topics into their permanent education. Some other police units (Bihać, Banja Luka, Brčko, Goražde, Zenica) showed limited to broad interest in working on these issues. Judges and prosecutors countrywide have got no or limited training on hate crime provisions.

Violent acts against LGBT persons are happening on a regular basis and are also regularly reported about in the media. On a number of occasions in 2013 and 2014, LGBT activists from Banja Luka and Sarajevo have been targets of violence and threats and LGBT events had to be cancelled or postponed because of the attacks. Unfortunately, BiH public institutions almost never responded to these acts.

⁸ <http://soc.ba/en/hate-crime-to-be-introduced-into-the-criminal-code-of-federation-of-bih/>

⁹ LGBT community research report 2013: <http://soc.ba/en/numbers-of-life-2/>

Guidelines for further actions

- Amend the Criminal Code of the Federation of Bosnia and Herzegovina to include hate crime provisions on i.a. grounds of sexual orientation and gender identity;
- Amend criminal codes of the three administrative units (Republika Srpska, Federation BiH, Brčko District) to include hate speech provisions on i.a. grounds of sexual orientation and gender identity;
- In order to fight homophobia and prejudices within institutions, train and inform judges, prosecutors, police officers and public servants on hate crimes and hate speech directed against LGBT people;
- High officials of governments and parliaments at all administrative levels should publicly condemn hate related incidents in order to send a clear message to citizens that LGBT hate crimes will not be tolerated;
- Mainstream social acceptance and inclusion of LGBT people, through the media, institutions and the educational system, preventing thus any future discrimination and hate related incidents;
- Introduce LGBT inclusive hate crime modules into curricula of faculties of law and police academies, police ministries training programmes and civil service exams;
- Appoint contact persons for LGBT hate related incidents in all police stations and train them;
- Raise awareness of citizens on LGBT hate crimes and hate speech by implementing public campaigns in the media, art and public space;
- Collect and analyse data on documented, prosecuted, but also officially undocumented hate crime and hate speech incidents and report thereon annually to national and international institutions (such as OSCE-ODIHR office); this should be coordinated by BiH Ministry of Security.

FREEDOM OF ASSEMBLY AND ASSOCIATION

Current situation

Freedom of Assembly is guaranteed by the constitution and the laws in BiH, but in practice different minority groups, including LGBT persons, are prevented from exercising it.

After the attack on Queer Sarajevo Festival in September 2008, when 8 persons have been hurt, nobody was prosecuted. The case was submitted to the BiH Constitutional Court in 2011. The BiH Constitutional Court responded that this case is no priority, indirectly saying that the freedom of assembly for LGBT persons, one of the fundamental human rights, is not a priority for the highest judicial authority in BiH. Only recently, six years after the attack, the BiH Constitutional Court partially adopted the appeal filed in this case, stating that the right to freedom of assembly of LGBT persons in BiH has been violated.

On February 1, 2014 LGBT film festival Merlinka in Sarajevo has been attacked by a hooligan group. Even though the event was duly reported to the police 16 days in advance, the police showed up at the festival location 50 minutes late. During the attack, two festival speakers have been physically hurt, 25 other participants experienced fear. Main human rights institutions and ministries have been urged to condemn the attack, however only BiH Human Rights Ombudsman Institution did so. The BiH Ministry for Human Rights and Refugees reacted with a press release 15 days later.

Activists of the organisations Sarajevo Open Centre, Okvir (Sarajevo) and BUKA (Banja Luka Queer Activists Association) have been the target of threats (including death threats) and attacks. We do not have any information whether these cases are being prosecuted.

In BiH there have been no attempts to organize a pride march or public discussions on this topic so far. This fact is an indicator as to the current state of rights of LGBT people in BiH, as well as the conditions in which human rights defenders work.

Guidelines for further actions

- Train and inform judges, prosecutors, police officers and public servants on special challenges related to the freedom of assembly of LGBT people, in order to fight homophobia and prejudices within institutions and to be ready to adequately protect such events;
- Police and human rights institutions should stay in direct and ongoing contact with human rights organisations and groups working on rights of LGBT people in order to build trust, gather data and prevent any further violence;
- Each public LGBT event should be carefully and professionally planned in close contact with human rights defenders; every public, but also closed event, should be protected by police, having in mind that LGBT events are regularly the target of attacks;
- Raise awareness of citizens on LGBT hate crimes and hate speech by implementing public campaigns in the media, art and public space.

