



# PINK REPORT 2016.

ANNUAL REPORT ON THE STATE OF HUMAN  
RIGHTS OF LGBTI PEOPLE IN BIH

PINK REPORT 2016  
ANNUAL REPORT ON THE STATE OF HUMAN RIGHTS OF  
LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA

SARAJEVO, APRIL 2016

*Human Rights Series*, published by Sarajevo Open Centre  
Publication Number: 49

Title: Pink Report 2016:  
Annual report on the state of human rights of  
LGBTI People in Bosnia and Herzegovina

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Publisher: Sarajevo Open Centre, [www.soc.ba](http://www.soc.ba)

For the publisher: Saša Gavrić

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*This report covers the period between January 2015 and the end of March 2016.*

This publication is a result of our work on human rights of LGBTI people within several of Sarajevo Open Centre's different projects, supported by (in alphabetical order): Embassy of the United States, European Union (EIDHR), Lesbian Foundation Astraea for Justice, Mission of Kingdom of the Netherlands to the OSCE in Vienna, Netherlands Embassy (MATRA program), Open Society Fund BiH, Royal Norwegian Embassy, and Swedish International Development Cooperation Agency (SIDA).

This publication has been produced within the project financed by the Royal Norwegian Embassy. The contents of this publication are the sole responsibility of the publisher and can in no way be taken to represent the views of the donors.



ISSN 2303-5552

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### ***Intersex as a New Priority***

*Although we have been working on measures and activities relating to the rights of intersex people for years, our organization has not directed its work towards intersexuality sufficiently. By the Executive Board's decision, we will be including the rights of intersex persons in our agenda starting in 2016 and we will be fighting to end discrimination based on sex characteristic. Sarajevo Open Centre's program for human rights of LGBT persons will from now on be the program for human rights of LGBTI persons.*

### ***Acknowledgments***

*This report could not have been created without the outstanding individuals and institutions that cooperate with us, as well those who offer their friendly support. For this reason, we want to thank our friends, members of our families, our associates, activists, and politicians, partner organizations in BiH and the Region, institutions, publishers, donors and all other great people and organizations that have contributed to our work and success.*

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## THE LIST OF ACRONYMS

ARS BiH	Agency for Gender Equality of Bosnia and Herzegovina
BD	Brčko District
BiH	Bosnia and Herzegovina
CSO	Civil Society Organizations
FBiH	Federation of Bosnia and Herzegovina
LBGTI	Lesbian, Gay, Bisexual, Trans* and Intersex individuals
OSCE	Organization for Security and Cooperation in Europe
RS	Republic of Srpska
SDP BiH	Social Democratic Party of Bosnia and Herzegovina (Political Party)
SOC	Sarajevo Open Centre



# ON-GOING PRACTICE OF HUMAN RIGHTS VIOLATIONS:

## FAILING TO PROSECUTE THE ATTACKS ON MERLINKA FESTIVAL IN 2014

On Saturday, 1st February 2014, at 3:15 in the afternoon, at the beginning of a discussion on the topic "Transsexuality in Transition" a group of 14 masked men forced their way into the Art Kriterion Cinema in Sarajevo, with the aim of attacking those present. Most of the visitors managed to hide in the emergency exit passage, where they remained for about 20 minutes. In the meantime, the organizer of the festival from Belgrade, the moderator of the discussion and another person were attacked. The attack lasted for less than a minute, resulting in minor physical injuries, but it left significant psychological consequences. The attackers escaped without a scratch.

Sarajevo Open Centre had announced the event to the police 20 days prior, emphasizing the need for protection, and the police were informed of dates and times for each Festival event. The police were present on Friday evening, during the opening of the Festival. However, on Saturday, the police were not present at the agreed time and for that reason they failed to prevent and stop the attack. The police arrived only after the fact and after the perpetrators had escaped.

While the police investigation was ongoing Sarajevo Open Centre submitted two reports to the Prosecutor of Canton Sarajevo: one for compromising the safety of all present, causing bodily harm, preventing public gatherings and conspiracy to commit a criminal offense, and a second report for violating the principle of equality of men and citizens. The police failure to come at the agreed time has also been reported to the Internal Control of the Ministry of Internal Affairs of Canton Sarajevo and as a consequence of the investigation two police officers had been reprimanded, although their responsibility for the breach was overturned after they lodged an appeal.

Two years after the attack, no one has been indicted and the Police investigation had focused only on one suspect out of the 14 people who came into the Art Kriterion Cinema. The crime itself has been characterized as violent behavior, which is only a misdemeanor, according to the Criminal Code of the Federation of BiH. The homophobic intent behind the attack and the fact that the crime was pre-determined have been ignored.

It is clear that the pattern of inadequate and reckless investigation and processing of the attacks on the Sarajevo Queer Festival in 2008 and the Merlinka Festival in 2014, as well as a number of attacks inciting violence and hate against LGBTI individuals have created an atmosphere in which homophobic and transphobic attacks in BiH are being tolerated. This culminated in another homophobic attack on the staff and guests of the Art Kriterion Cinema, on March 4th 2016.

On Friday 4th of March 2016 four young men entered the Cinema, started shouting profanities, including hate speech against LGBTI persons; they threatened those present with violence and threw bottles, ashtrays and glasses at them. They threatened the staff with burning the place down and detonating a bomb if anyone were to call the Police. One young man was hurt and saw a doctor, and a young woman was also attacked. Thirty persons who were present at the time suffered psychological harm.

The police officers that arrived at the scene escorted the attackers outside, where they stayed with them, instead of taking them to the Precinct. This meant that the attackers could clearly see the guests entering and exiting and giving their statements to the police.

According to the media reports the police took all four perpetrators to the Police Precinct, and they released them after taking their statements. Further, the representatives of the Ministry of the Interior of Canton Sarajevo stated that the motivation behind the attack is unknown and the attack was therefore characterized as violent behavior (misdemeanor).

This attack once again is another instance in the pattern of violence that emerged during the Queer Festival Sarajevo in 2008 and the attack on Merlinka Festival in 2014. It is clear that the lack of punishment for homophobic and transphobic violence is leading to its repetition and sending a message to the perpetrators that what they are doing is socially justified. It is essential that the police and the Prosecutor's Office classify this crime as a hate crime on the grounds of sexual orientation, which would send a message that homophobic and transphobic attacks will not be tolerated.

LGBTI PEOPLE'S HUMAN RIGHTS IN THE  
OPERATIONAL PLANS FOR GENDER EQUALITY

The General Election in 2014 resulted in the Executive government being formed in 2015 that has, thus far, been open for cooperation with the civil society organizations.

A new partnership was established between the Sarajevo Open Centre and the Institutional mechanisms for Gender Equality in 2015. The Agency for Gender Equality of BiH, Gender Center of Republika Srpska and Gender Center of the Federation of Bosnia and Herzegovina have demonstrated a willingness to cooperate on issues regarding gender equality and LGBTI people's rights.

As a result of this cooperation there has been an institutional recognition of the issues faced by LGBTI individuals and their specific needs, for the first time in Bosnian and Herzegovinian history. In December 2015 the Government of Republika Srpska passed the Annual Operational Plan on the basis of the Gender Action Plan for 2016, which addresses a number of activities to be undertaken by the Institutions of RS in order to advance LGBTI people's rights. Significant focus has been put on addressing hate crime, but also on planning for future activities. The Government of the Federation of BiH passed their Annual Operational Plan for 2016 in March, and it also set out the activities to be realized in the Federation of BiH. A state-level Operational Plan is currently being made and it should be adopted by autumn of 2016.

The Agency for Gender Equality of BiH and the Gender Centers of Republika Srpska and the Federation of BiH have demonstrated significant commitment and understanding of broader gender concepts and so have become institutional pioneers for spearheading equality of LGBTI persons in BiH, therefore ending the marginalization of this group by the Government.

The above-mentioned institutions are currently (March 2016) cooperating with Sarajevo Open Centre and are working on mapping the needs for implementation of the Recommendation CM/Rec(2010)5, by the Council of Europe to Member States, addressing the measures for tackling discrimination on the basis of sexual orientation or gender identity, which should result in a proposal of measures for achieving equality of LGBTI persons in Bosnia and Herzegovina, to be implemented by the State and entity governments in 2017.

The European Union has, through the European Commission's reports and European Parliament's Resolutions, emphasized the need to harmonize the Law on Prohibition of Discrimination with European legal standards. In autumn of 2015 a working group was formed with the intent of proposing amendments to the Law. At the very beginning of the process the Civil Society Organizations, including Sarajevo Open Centre, were invited to offer their proposals. As a result of this work, in December 2015 the Council of Ministers BiH passed the Draft Law on the Changes and Amendments of the Law on Prohibition of Discrimination, which contains the amendments proposed by the Sarajevo Open Centre.

If this Law is passed through the BiH Parliamentary Assembly, Bosnia and Herzegovina will become one of the first countries in Europe to ban discrimination on the basis of sex characteristics, which will provide better protection from discrimination for intersex persons. In addition to this the Law will prohibit discrimination on the grounds of sexual orientation and gender identity by employing the updated and accurate vocabulary. The Law will therefore protect all Lesbian, Gay, Bisexual, Trans\* and Intersex (LGBTI) persons from discrimination. The Draft Law on Changes and Amendments of the Law on the Prohibition of Discrimination prohibits discrimination on the basis of association with a protected group (Art. 2), improves definition of harassment and sexual harassment (Art. 4) and introduces victimization as a form of discrimination (Art. 4). It also defines the incitement of discrimination on any basis as a form of discrimination (Art. 4), defines grave forms of discrimination (Art. 4) and improves the procedural aspects of the Law.

The Law will enter the legislative procedure in April 2016. After a discussion by the Joint Committee for Human Rights the Draft has to be adopted by both Houses.

2015 has not been a year of great progress in terms of LGBTI people's (lesbian, gay, bisexual, transgender and intersex) human rights, compared to 2014: the number of cases of discrimination and violence on the grounds of sexual orientation documented by the Sarajevo Open Centre has not gone down – it has actually gone up. The number of LGBTI individuals who contacted Sarajevo Open Centre looking for help in seeking asylum, changing the gender category in official documents and looking for adequate psychological support (which is particularly important for trans\* individuals who are going through transition – gender-reassignment), or because they need documentation to be able to enter into marriage/same-sex partnership in states which recognize this, has also gone up, which implies that there have been no structural changes that have significantly improved the quality of life of LGBTI individuals and their inclusion in the BiH society.

The media reporting in 2015 shows insufficient progress – mostly in the form of an increase in the number of articles that present LGBTI people and topics neutrally. A particularly worrying trend is inadequate processing of the attacks on LGBTI individuals, mostly in cases where they exercise their right to public assembly: the case of Merlinka in 2014 and the attack on the visitors of the Art Kriterion Cinema.

While the police and the legal system have made barely any progress in their protection of LGBTI people's rights, despite a three-years long cooperation with the Sarajevo Open Centre, spring of 2015 has indicated a new approach by the legislative and executive branch at state and entity levels; a shift towards working on improving the legal and policy frameworks for protection of LGBTI people's rights. In May 2015 the State Parliament held the first special session on the state of LGBTI people's human rights in BiH, and formed three concise conclusions. However, the initial enthusiasm experienced by the LGBTI activists deflated, because almost a year later the conclusions have yet to be implemented and achieved. This act, nevertheless, opened the door for further cooperation between the Civil Society representatives who work on LGBTI people's rights and the Parliamentary Committees for Human Rights and Gender Equality.

In December 2015, authorities made another pioneering move: the Government of Republika Srpska passed their Annual Plan for Implementation of the Gender Action Plan (GAP) for 2016, which also contains specific measures for protection of LGBTI people's rights. The government of FBiH followed soon after in March of 2016. This is the first time that the governments in Bosnia and Herzegovina are including LGBTI people's rights in their action plans. It remains to be seen how these measures will be implemented, but our hopes are high, especially because of the evolving partnership between the Sarajevo Open Centre and the institutional mechanisms for gender equality.

In December 2015 the Council of Ministers BiH confirmed the draft proposal of the Law on Changes and Amendments of the Law on Prohibition of Discrimination, which includes amendments submitted by the Sarajevo Open Centre that would ensure better protection from discrimination for all LGBTI individuals. The Law should enter legislative procedure in 2016.

# PRIORITY MEASURES TO BE UNDERTAKEN

## ADEQUATE REGULATION OF HATE CRIMES IN THE FEDERATION OF BIH

As a member of the Coalition for Combating Hate Speech and Hate Crime, Sarajevo Open Centre has been advocating for regulation of hate crimes in the Criminal Code of FBiH since 2013. The proposed amendments have been debated, but they were not passed twice. After the Government was formed in 2015 we started lobbying again, which resulted in a meeting with the Minister of Justice. In February 2016 the Ministry of Justice of the Federation of BiH prepared a Law on Changes and Amendments of the Criminal Code of FBiH, which was passed in both the House of Representatives and the House of Peoples of the Federation of BiH after the first reading. The changes include the regulation of hate crime committed on the basis of sexual orientation and gender identity. The Changes unfortunately do not include the widened definition of inciting hatred that would allow for better processing of hate speech against LGBTI persons. After public consultation the Law will be presented to the Parliament for the second reading. It is expected that it will be passed without any issues.

It is imperative that hate crime become regulated through the Criminal Code of FBiH in 2016, which would put an end to the process of introducing the regulation that had been ongoing since 2010. It is necessary both because of the stricter penalties assigned to these crimes, but also for the harmonization of the Criminal Code of FBiH and the Criminal Codes of Republika Srpska and Brčko District where hate crime has been regulated since 2010.

## ACTION PLAN FOR EQUALITY OF LGBTI PERSONS

Although concrete activities relating to human rights of LGBTI persons have been included in the Gender Equality Operational Plan in Republika Srpska and the Federation of BiH, the engagement by the institutions is still low and limited only to certain issues. The fight for the equality of LGBTI persons requires a more systematic and active approach.

Therefore we recommend that a periodic Action Plan for Equality of LGBTI persons be devised, in line with the Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe, addressing the measures for tackling discrimination on the basis of sexual orientation or gender identity. The Plan would specify the activities to be undertaken by the State, Entities, Brčko District and the Cantons. The aim is to create a system in which progress would no longer depend on Civil Society initiatives and several well-meaning individuals from within the institutions, but would be clearly assigned to departmental jurisdictions. That is the only way systematic progress in terms of human rights and social acceptance of LGBTI people can be achieved.

LGBTI persons and same-sex couples are a reality of Bosnian and Herzegovinian society. Unfortunately the existing legal framework does not engage in protecting these relationships, which means that individuals in same-sex partnerships that are rooted in an emotionally stable family life cannot claim their Constitutional rights to freedom and security, private and family life and home, to forming a family, protection of property, or freedom of movement and residence, solely on the basis of their sexual orientation. As a Member State of the Council of Europe, and a State wanting to accede to the EU, BiH will have to establish a Legal Framework which would regulate family rights of same-sex couples. The European Court for Human Rights has ruled on multiple occasions, including the latest decision *Oliari v Italy*, that same-sex partnerships are covered by the provision on protection of family life and that states have to guarantee at least the same level of legal protection to same-sex partnerships that they offer to heterosexual civil partnerships, in order to ensure compliance with this right. Since the European Convention on Human Rights and Fundamental Freedoms is directly applicable in BiH, through its ratification in the BiH Constitution, it legally binds the State and the Entities, and therefore the Institutions at all levels are bound to regulate same-sex partnerships by updating their legal frameworks to better protect the citizens' human rights.

## THE LAW ON GENDER IDENTITY

Trans\* persons in BiH are discriminated against in all areas of life on the basis of their gender identity and gender expression, and they are faced with a legal vacuum in terms of legal regulation of sex change. Trans\* persons in BiH can only change the sex marker in their official documents after they have completed medical transition. This change is done according to the procedures set up in ministries of health, which check the documentation brought from abroad and ministries of interior which then retract the old Unique Master Citizen Number, issue a new one and issue a decision on the basis of which the person can proceed to change the rest of their documents. The lack of medical and financial support for transgender persons makes this already lengthy process even longer and more difficult. Both the endocrine therapy and the surgical procedures have to be undergone abroad, because they cannot be performed in BiH, and the cost is not covered by the state-funded health insurance. That means that each individual has to burden the costs of their transition and the auxiliary costs that are inherent with specialist treatments abroad.

It is imperative that BiH, its entities and Brčko District regulate the legal aspects of sex change so that they recognize the particular vulnerabilities of trans\* persons undergoing transition and to explicitly regulate the rights and freedoms of transgender and transsexual persons. These laws need to systematically regulate the procedures of name change, sex-category change and Unique Master Citizen Number in all personal documents, and they need to enable trans\* individuals to change their sexual category while still undergoing transition, without waiting to complete the medical aspects of transition, in order to end discrimination they face.

# I EQUALITY AND COMBATING DISCRIMINATION

## LEGAL FRAMEWORK

Art. 2 of the Constitution of BiH prohibits discrimination, but unfortunately sexual orientation, gender identity and sexual characteristics are not included in the exhaustive list of protected categories.

The first law that prescribed the prohibition of discrimination based on gender and sexual orientation is the **Law on Gender Equality in BiH** from 2003, which was amended in 2009. More wide-ranging protection against discrimination was introduced in 2009 through the **Law on Prohibition of Discrimination**. This law prohibits discrimination on the basis of “sexual expression and/or orientation” in all aspects of public life, including education, employment, healthcare, provision of services, etc. Following pressure from the International Community and the Civil Society Organizations the Ministry of Human Rights and Refugees drafted a **Proposal of Changes to the Law on Prohibition of Discrimination in 2015**. Although the changes and amendments to the Law will not lead to complete harmonization of the Law with the European legal framework, particularly in terms of exceptions from discrimination (Art. 5) the upshot is that the Law would amend the list of protected characteristics. Following the proposals made by Sarajevo Open Centre the Draft includes sexual orientation, gender identity and sexual characteristics as protected grounds— which would make BiH one of the few European states that offer adequate protection from discrimination to intersex individuals. The changes and amendments will be considered in Spring/Summer 2016 in the Parliamentary Assembly of BiH.

Although there is an obligation to harmonize all laws with the Law on Prohibition of Discrimination many laws at the state, entity and cantonal level do not include sexual orientation, gender identity and/or sexual characteristics as the grounds protected from discrimination. **The troubling examples include the Labour Laws of FBiH and RS, which were passed in 2015**. The Labour Law of FBiH only includes “sex-expression,” while the Labour Law of RS does not include any kind of protection of LGBTI individuals from discrimination, in the areas of employment and work.

## INSTITUTIONAL ACTION FOR PROTECTION FROM DISCRIMINATION

Institutional framework for protection from discrimination is still extremely weak. **Information on discrimination is neither being collected nor analyzed**. The Ministry of Human Rights and Refugees of BiH still has not established a database (a task it was meant to complete within 90 days from the passage of the Law on Prohibition of Discrimination in 2009). Judicial practice has demonstrated that the Courts are not the most efficient way of addressing issues of discrimination, because it can take as long as three years for the cases to be ruled on. We are not aware of a single case of discrimination on the basis of sexual orientation, gender identity of sexual characteristics currently being adjudicated. Research shows that LGBTI persons do not trust the legal system and that institutions are not trying very hard to gain their trust.

**The Institution of the Ombudsman BiH** has very limited resources to work on cases of discrimination. Although the Law on Prohibition of Discrimination envisions the establishment of a Division for Eliminating All Forms of Discrimination within the Institution of the Ombudsman, which would be separately funded, this was never realized. The Institution of Ombudsman BiH did not respond to the offer to contribute to the **special report on the state of human rights of LGBT persons** in BiH, despite multiple requests from the Civil Society Organizations. The Institution of Ombudsman only accepted this task after the Joint Committee for Human Rights of the Parliamentary Assembly BiH issued a request for cooperation on the Report on 19 May 2015. However, it is a cause for concern that a year later the report still has not been finalized. In general, the Institution of Ombudsman does not have the capacities to adequately advocate for the rights of LGBTI persons, which is particularly troubling if we consider the fact that this is the only independent human rights institution and that there are no other institutional actors who could play a more active role.

**Judges and prosecutors** across country receive very little training on the Law on Prohibition of Discrimination. Without the trainings organized by the Civil Society there would be no education on LGBTI people's rights. In 2015 Sarajevo Open Centre educated 42 judges.

## PUBLIC POLICIES FOR TACKLING DISCRIMINATION

Issues of discrimination and equality of LGBTI persons have not been a matter for public policy, including strategies, action plans, operational plans and work plans of institutions in BiH, until 2015. Neither **international obligations, nor the needs of the LGBTI individuals were included in public policies, nor were separate public policies addressing the rights of LGBTI persons created.**

This changed significantly in 2015. The Agency for Gender Equality in BiH, the Gender Center of Republika Srpska and the Gender Center of the Federation of BiH have given significant support for the equality of LGBTI persons and they have included measures addressing the inequality of LGBTI persons in the **annual operational plans.** The annual operational plans for Republika Srpska and the Federation of BiH have been adopted in December of 2015 and March of 2016 respectively. These three institutions are currently working with the Sarajevo Open Centre on mapping the needs for implementation of the Council of Europe Recommendation CM/Rec(2010)5 to Member States, focusing on the measures for tackling discrimination on the basis of sexual orientation or gender identity, which should result in a proposal of measures for the Government at State and entity levels to implement in 2017.

Successful lobbying by the Civil Society Organizations has led the Ministry of Human Rights and Refugees to work on the **Strategy for Human Rights and the Strategy for Combating Discrimination.** Both Strategies should include questions relating to LGBTI persons and the representatives of the Civil Society have been included in the making of these documents. Both strategies should be adopted by the end of 2016. These developments imply that the Ministry for Human Rights and Refugees BiH has finally taken on a more active role in addressing the rights of LGBTI persons, which also needs to be recognized as a positive change.

Family laws in the Federation of BiH, Republika Srpska and Brčko District define marriages and civil partnerships as a union between women and men. However, the judicial practice of the European Court for Human Rights directly binds BiH, as a Council of Europe Member State, to expand its Legal Framework so that it finally recognizes the legal rights and obligations arising out of same-sex partnerships. The opinion of the Court is that same-sex couples who are in stable, de facto, relationships are protected by Article 8 of the European Convention on Human Rights and Fundamental Freedoms. Unfortunately there were no attempts to legally regulate **life partnerships** of same-sex couples at any level of government in BiH.

## WORK OF POLITICAL PARTIES

The majority of political parties and their representatives avoid engaging with issues relating to LGBTI persons' rights. There are several reasons for this, from genuine lack of understanding and fear, to pragmatic calculations that it is unpopular to offer support to a minority that most citizens still considers unnatural and undesirable.

Following the General Election in 2014 the level of cooperation has started to change significantly. Members of the Joint Committee for Human Rights of the Parliamentary Assembly BiH provided particular support. There are more and more representatives of the Federal Parliament and other parliaments who are addressing the rights of LGBTI persons publicly.

Social-democratic Party (SDP BiH) has developed a **Policy for Equality of LGBT Persons** in 2015, which should be adopted by the Party Presidency in 2016.

## DOCUMENTED CASES OF DISCRIMINATION

Because of the fact that the majority of LGBTI persons have not come out publicly about their sexual orientation, gender identity and/or sexual characteristics to their closest friends/colleagues in their place of work/education, the highest percentage of discrimination cases remains unrecorded. Research conducted in BiH in 2015 by the National Democratic Institute showed that **51% of LGBTI persons have experienced discrimination because of their sexual orientation and/or gender identity.**

The Institution of Ombudsman recorded eight cases of discrimination on the basis of sexual orientation and gender identity in 2015 and at the beginning of 2016, and 11 cases in 2014.

Sarajevo Open Centre documented **six cases of discrimination in 2015 and three cases in the first quarter of 2016.** Four cases were discrimination in the services sector, three of which were bans to enter cafes or discriminatory behavior in cafes, and one was discrimination in offering services by the company which distributes promotional material. From other documented cases: one related to discrimination of blood donors in Republika Srpska, the second case was discrimination and intimidation of a foreign couple while they were crossing the border and the third was loss of work place because of sexual orientation; and two cases of public incitement to discriminate against LGBT persons were recorded.

*Guidelines for Further Action:*

- Change the Law on Prohibition of Discrimination BiH so that it clearly defines the groups protected from discrimination and to explicitly include: sexual orientation, gender identity and sex characteristics;
- Implement the Law on Prohibition of Discrimination BiH by drafting and passing the periodic public policy for equality of LGBTI persons which would be applied in the entire state and which would define specific and realistic measures on state, entity, cantonal and local level;
- Rights and needs of LGBTI persons need to be included in all public policies at all levels of government to stop the institutional sidelining of this minority and under-privileged group;
- The Institution of Ombudsman needs to urgently issue a special report on the state of rights of LGBTI persons in BiH which would serve as a basis for developing further actions and policies;
- Introduce LGBTI-specific modules in education of future teachers, police officers, judges and prosecutors;
- Pass and implement laws in all three jurisdictional units (Republika Srpska, The Federation of BiH and Brčko District) which would legally recognize same-sex partnerships and define the rights and obligations arising from cohabitation of two persons in a same-sex partnership (with a particular focus on social and economic rights).

## II HATE CRIMES AND INCITEMENT TO HATE

### LEGAL FRAMEWORK

The Ministry of Security of BiH and the OSCE have invited the FBiH, RS and BD to pass changes and amendments to their respective Criminal Codes and to **introduce provisions on hate crime**. Republika Srpska and Brčko District have done so in 2010 and they have included sexual orientation and gender identity amongst the listed grounds in the definition of hate crime. The Federation of BiH still has not adopted the Changes and Amendments to the Criminal Code. An informal coalition has been advocating the inclusion of hate crime provisions in the Criminal Code of FBiH since December 2012. The Changes were considered in 2013 and 2014, but have yet to be passed.

In February 2016 **the Ministry of Justice FBiH prepared a proposal of the Law on Changes and Amendments of the Criminal Code of FBiH** which has been passed in its Draft form in the House of Representatives and The House of Peoples in the Parliament of FBiH and which will be discussed again during the second reading and following a period of public consultation. The proposed regulation is narrower than the regulation which the Sarajevo Open Centre proposed on behalf of the Coalition of CSOs for the fight against hate speech and hate crime, but it is certainly a positive step in a six-year attempt to recognize these crimes and punish them through the Criminal Code of the Federation of BiH.

**Provisions which penalize incitement to hate, hate speech and violence** are included in the Criminal Code of both entities and Brčko District, but they are unfortunately limited exclusively to prohibition of incitement of hate and violence on the grounds of national, ethnic and religious basis. Within this Legal Framework it is impossible to penalize incitement to hate and violence against LGBTI persons, which proliferate on internet portals and social networks and frequently grow into discrimination and hate crime. Criminal Code of both entities and Brčko District should therefore be amended with the aim of introducing additional grounds on which the incitement of hate, intolerance and violence that would also include those grounds recognized as the bases for hate crimes.

### INSTITUTIONAL ACTION

**The Police and the Justice Sector are still not systematically gathering information** on hate crimes committed on the grounds of gender, sexual orientation, gender identity and sexual characteristics. In March 2016 Sarajevo Open Centre sent a memo requesting the Offices of the Prosecutor and the Courts in the FBiH, Republika Srpska and Brčko District to provide us with information on the number of hate crime cases in the period from January 2015 to March 2016. Only the Cantonal Prosecutor's Office of Unsko-Sanski Canton has stated that they had one case of a hate crime motivated by sexual orientation in which there had been an indictment. The other institutions replied that either there were no cases, or that there is no system according to which these cases would be classified and so that it is impossible to know the numbers.

**Education of Police Officers, judges and prosecutors still depend** on the Civil Society Sector and the International Organizations. Hate crimes based on sexual orientation, gender identity and sexual characteristics are either covered superficially or not at all in the curricula at the Police Academies, while the Permanent and Specialist Police Training and the training of judges and prosecutors do not address hate crime in a way that is systematic and coherent.

In 2015 the Sarajevo Open Centre, in cooperation with the OSCE Mission to BiH continued working on **trainings for the Police and associates at the Courts and the Prosecutor's Offices**. A total of 151 police officers from all cantons in the Federation of BiH have been trained on how to adequately react to hate crimes. Two trainings on hate crimes have also been organized for Associates at the Courts and the Prosecutor's Offices and a total of 40 young lawyers participated.

On the recommendation of the Institution of Ombudsman BiH the **Ministry of the Interior of Republika Srpska** started a training program in 2015, to educate their police officers on the rights of LGBT persons and on working with LGBT persons. Although Sarajevo Open Centre offered to be included in the development of the programs of training and its implementation the Ministry declined. The trainings were held in three of the Ministry's Public Safety Centres and another three trainings are planned for 2016. **Unfortunately, ministries of education are not better in their responses to homophobic and transphobic violence**. A fourteen year-old boy from Sarajevo committed suicide in December 2015 after suffering verbal and physical bullying in school over an extended period of time. The boy's parents and peers have claimed that the boy was a victim of violence and that his classmates had forced him to kiss a male friend while they were recording it, and that they had tied them and raped them with a rolling pin. The Institution of Ombudsman and the Prosecutor of Canton Sarajevo announced that they would conduct a detailed investigation of the incident. In March 2016 they published that no evidence was found which would confirm the claims made by the parents and that nothing in this case indicates that a crime was committed. **However, this case clearly demonstrated that there is a link between xenophobia, homophobia and violence, and peer-to-peer violence**. Sarajevo Open Centre sent a memo to Cantons and Republika Srpska to put up posters with messages that homophobic peer violence will not be tolerated, in schools under their jurisdiction. Unfortunately, out of the 10 cantonal ministries only three agreed to do so (Hercegovačko-neretvanski, Zeničko-dobojski i Srednjobosanski Cantons).

## DOCUMENTED CASES

Research conducted by the National Democratic Institute in 2015 showed that **15% of LGBT people in BiH have experienced physical violence because of their sexual orientation and/or gender identity, and that as many as 72% of LGBT people in BiH have experienced verbal abuse and harassment**. However, the research did not include intersex persons.

In 2015 Sarajevo Open Centre documented **103 instances of hate speech and incitement to hate and violence and 20 crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity**. In the period January-March 2016 Sarajevo Open Centre documented **23 instances of hate speech and incitement of violence and hate and two crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity**. Hate crimes

varied from blackmails and threats, offensive graffiti, stalking and intimidation, domestic violence and physical violence. These are some of the key cases.

Two years after the attack at the Merlinka Festival in February 2014, no one has been indicted and the Police investigation has focused only on one suspect out of the 14 people who came into the Art Kriterion Cinema. The crime itself has been characterized as violent behavior. It is clear that the pattern of inadequate and reckless investigation and processing of the attacks on the Sarajevo Queer Festival in 2008 and the Merlinka Festival in 2014, as well as a number of attacks inciting violence and hate against LGBTI individuals have created an atmosphere in which the homophobic and transphobic attacks in BiH are being tolerated. **This culminated in another homophobic attack on the staff and guests of the Art Kriterion Cinema, on the 4th of March 2016.** On Friday, 4<sup>th</sup> of March 2016, four young men entered the Cinema, started shouting profanities, including hate speech against LGBTI people, they threatened those present with violence and threw bottles, ashtrays and glasses at them. They threatened the staff with burning the place down and detonate a bomb if anyone were to call the Police. One young man was hurt and saw a doctor, and a young woman was also attacked. Thirty persons who were present at the time suffered psychological harm. According to the media reports the Police took all four perpetrators to the Police Station, and they released them after taking their statements. Further, the representatives of the Ministry of the Interior of Canton Sarajevo stated that the motivation for the attack is unknown and the attack was therefore characterized as violent behavior (misdemeanor), despite statements by witnesses attesting to the fact that homophobic hate speech was used by the attackers during the attack.

The Minister of Justice of Canton Sarajevo who was present at the support gathering in Art Cinema Kriterion following the attack confirmed that he would be invested personally in the processing of this case and that it is a crime beyond a mere violent offence. Sarajevo Open Centre reported **the inadequate reaction by the authorities and the wrong qualification of the crimes** (for both the attack on the Art Cinema Kriterion and the Merlinka Festival) to the Agency for Gender Equality in BiH and the Institution of Ombudsman for Human Rights in BiH. We also asked the OSCE Mission to BiH to follow up on these cases through their judicial oversight programme.

In March 2016 Haris Zahiragić, **the President of the Student Parliament of the University of Sarajevo expressed his prejudice against LGBTI persons**, at first on social media and then in the media. He engaged in hate speech calling for LGBTI persons to be cured and marked. As a result of this, Zahiragić breached both the Statute of the Student Parliament of the University in Sarajevo, the University's Ethical Code and the Law on Prohibition of Discrimination by stating: *"There were normal people there as well, who were threatened, why are you discriminating against them? 100% chance that there were and how would those four guys know who is a faggot and who isn't, it's not written on their forehead. Although, maybe it should be, just so that we can stay away from them (without attacking them), run away from them, God-forbid you get some disease."* and *"I am normal, and homosexuality, rapists, [those who engage in] intercourse with children or animals – those are all sick people."* He also claimed to have conducted his own scientific research and to have arrived at a conclusion that *"homosexuality is a systematic and contagious disease"* and that LGBTI people should be *"medically and socially helped"*, therefore expressing his attitude that LGBTI people need to be medicated and segregated from the rest of the society. Sarajevo Open Centre reported this case to the Assembly of the Student Parliament of the University in Sarajevo, to the Ethics Committee, the Senate and the Rector of

the University, asking that all of these institutions denounce this attitude and replace Mr. Zahiragić as the President. This case has also been reported to the Agency for Gender Equality in BiH and the Institution of Ombudsman for Human Rights.

*Guidelines for Further Action:*

- Pass the changes and amendments to the Criminal Code of the Federation of Bosnia and Herzegovina which would regulate hate crime, including, on the grounds of sexual orientation and gender identity;
- Change and amend the Criminal Codes of all three jurisdictional units (Republika Srpska, the Federation of BiH and Brčko District) and expand the provisions on inciting hate and violence so that they include sexual orientation and gender identity as protected grounds;
- With the aim of fighting homophobia and prejudice within institutions keep educating and informing the judges, prosecutors, police officers and state officials on hate crimes, incitement to hate and violence against LGBTI persons;
- Introduce LGBTI inclusive modules in curricula and programs in law schools and police academies and in the permanent and specialist programs of training for police officers, and civil service exams.

# III FREEDOM OF ASSEMBLY AND ASSOCIATION

## LEGAL FRAMEWORK

The right to freedom of assembly and association is regulated by entity and cantonal laws. Although the state has not created a nurturing environment for the development of the civil society, nor have strategies for the development of the civil society been adopted, but LGBTI activism is still growing. In addition to the established organizations like the Sarajevo Open Centre, Foundation CURE and Association Okvir, Libert Mo Association was registered in 2015 in Mostar, and Tuzla Open Centre was registered at the beginning of 2016.

## DOCUMENTED CASES

There were no attempts to organize a pride parade in BiH, but there are other significant and visible LGBTI-themed events. Sarajevo Open Centre hosted the Merlinka Queer Film Festival in 2015 and at the beginning of 2016. After the attacks in 2014, the 2015 and 2016 festivals were organized with adequate support and protection from the police. Merlinka Festival was also organized in Tuzla in 2015 and 2016. Although the Festival had been announced to the police, the police did not adequately assess the risk level and so they were not present at the time of the event. The management of security was left entirely up to a security agency.

### *Guidelines for Further Action*

- Create a framework to support the Civil Society Organizations which are working on improving LGBTI persons' rights;
- It is important to understand the public gathering with the LGBTI theme as gatherings which are high-risk and which therefore need to be adequately secured by the police.

## IV FAMILY LIFE AND SAME-SEX PARTNERSHIPS

### LEGAL FRAMEWORK

LGBTI persons and same-sex couples are a reality of the Bosnian and Herzegovinian society. Unfortunately, the existing legal framework (family laws of RS, FBiH and BD) does not engage in regulating these relationships, which means that it does not secure the minimum rights necessary to ensure the respect and protection for same-sex unions.

Individuals in same-sex partnerships that are rooted in an emotionally secure family life cannot claim their Constitutional rights to freedom and security, private and family life and home, to starting a family, protection of property, or freedom of movement and residence, solely on the basis of their sexual orientation, and not because those rights are any less important to them. BiH is discriminating against its citizens by failing to ensure their access to these rights and freedoms and is breaching the guarantee of equality found in Art. 4(2) of the Constitution of BiH and in Art. 1(2), which guarantees that the State and both entities will ensure the highest possible level of protection of the internationally recognized human rights and freedoms.

As a Member State of the Council of Europe, and a State wanting to accede to the EU, BiH will have to pass a Legal Framework that would regulate family rights of same-sex couples. **This obligation arises from BiH membership in the Council of Europe and from the decisions of the European Court for Human Rights.** Several recommendations by the Council of Europe bind the member states to respect private and family life of each and every individual and to advocate the elimination of discrimination on the basis of sexual orientation and gender identity. Further, although it does not support the legalization of same-sex marriages, it implies **the right to same-sex partnerships that would be legally equal to heterosexual civil partnerships.**

The European Court for Human Rights has ruled on multiple occasions, including the latest decision **Oliari v Italy**, that same-sex partnerships are covered by the provision on protection of family life and that states have to guarantee at least the same level of legal protection to same-sex partnerships that they offer to civil partnerships in order to ensure compliance with this right.

Since the European Convention on Human Rights and Fundamental Freedoms is directly applicable in BiH, through its ratification in the BiH Constitution it legally binds the State and the Entities, and therefore the Institutions at all levels are bound to regulate same-sex partnerships by updating their legal frameworks to better protect its citizens' human rights.

### DOCUMENTED CASES

In February 2016 the European Court for Human Rights handed down a decision on prohibition of discrimination (Art. 14) and the right to private and family life (Art. 8) enshrined in the ECHR, deciding that the **Republic of Croatia had acted discriminatorily in its consideration of a BiH citizen's request for limited leave to remain on the basis of family ties.** Ms. Pajić filed a request for limited leave to remain in the Republic of Croatia on the basis of family reunion as she had been in a

stable same-sex partnership for several years and wanted to move in with her partner who is Croatian. Her request was denied with the explanation that according to the Law on Foreigners of the Republic of Croatia, a same-sex partnership did not present a family. The Constitutional Court in Zagreb dismissed her administrative claim on the same grounds, while the Constitutional Court of the Republic of Croatia dismissed the constitutional claim on the basis that a legal remedy provided by the Law on Prohibition of Discrimination of the Republic of Croatia had not been used.

The fact that the Claimant and her girlfriend had been in a relationship for several years and that they had been visiting each other was sufficient for the ECtHR to determine that they were in a stable relationship which was covered by the Convention's definition of family. The European Court emphasized that the Law on Foreigners of the Republic of Croatia was discriminatory because it prescribes different treatment for same-sex and heterosexual couples, and therefore it makes the temporary residence on the basis of uniting the family a right only available to heterosexual couples. The Court emphasized how the local bodies failed to consider the Claimant's situation, but have rather automatically referred to the provisions of the Law on Foreigners which stipulate that a same-sex union does not represent a family unit.

**The Court awarded the claimant 10,000 EUR in damages for the breach of her Convention rights.**

**During 2015 two persons looking for information on registering their partnerships in the Countries in the region and in the EU contacted the Sarajevo Open Centre, and one person who needed an official document issued by the state to confirm that same-sex partnerships cannot be registered in BiH. Two more persons contacted the Sarajevo Open Centre asking for information on this document, in early 2016.** All three of these persons were registering their partnerships in Slovenia where a precondition was a confirmation that they are unmarried and proof that BiH does not recognize these partnerships. Sarajevo Open Centre contacted the Ministry of Human Rights and Refugees in order to obtain these documents.

Although it is believed that the majority of citizens in BiH is against legal regulation of same-sex communities, recent research conducted by the National Democratic Institute showed that **30% of the general population of BiH is in favor of same-sex couples having all economic, social and other rights that heterosexual couples gain through marriage and civil partnership**, with the exception of adoption.

### *Guidelines for Further Action*

- Pass and implement laws in all three jurisdictional units (Republika Srpska, the Federation of BiH and Brčko District) that would legally recognize same-sex partnerships and define the rights and obligations of cohabitating couples in same-sex unions (with a particular focus on social and economic rights).

Trans\* people in BiH are discriminated against in all areas of life on the basis of their gender identity and gender expression, and they are faced with a legal vacuum in terms of legal regulation of sex change.

Trans\* people in BiH have a right to change their name, like all other citizens of BiH, to a name of their choice. This is regulated by laws on Personal Names at entity level, and the choice is not legally limited to names that correspond to the sex listed in their personal documents. The only limitation is that after the name change the person cannot change their name again in the next five years.

Trans\* people in BiH can only change the sex marker in their official documents after they have completed medical transition. These procedures are regulated in the laws on The Registry Books at entity level and in Brčko District and through the internal rules of the Health and Interior Affairs Ministries and Brčko District. This change is done according to the procedures set up in the ministries of health, which check the documentation brought from abroad and ministries of interior which then retract the old Unique Master Citizen Number, issue a new one and issue a decision on the basis of which the person can proceed to change the rest of their documents. The lack of medical and financial support for transgender persons makes this already lengthy process even longer and more difficult. **Both the endocrine therapy and the surgical procedures have to be undergone abroad, because they cannot be performed in BiH, and the cost is not covered by the state-funded health insurance.** That means that each individual has to burden the costs of their transition and the auxiliary costs that are inherent with specialist treatments abroad.

If we consider that there are long waits for sex reassignment surgery and that prior to it, a person needs to undergo hormonal therapy during which their body changes and develops the characteristics of the other sex which leads to a discrepancy between how the person looks and the information about their sex in their official documents. This practice leads to discrimination and inequality of trans\* individuals and it forces them to constantly explain their gender identity, reveal personal information and have their medical documentation constantly with them during the most mundane moments of their life like taking classes and sitting for exams, paying by card in supermarkets, visiting a medical institution, crossing the border, identifying themselves to a person at a state institution and during a job search. The fact is that in addition to the prohibition of discrimination on the ground of gender expression the majority of trans\* individuals in transition have difficulties securing employment and are pushed to the very edge of survival.

It is imperative that BiH, its entities and Brčko District regulate the legal aspects of sex change so that they recognize the particular vulnerabilities of trans\* persons undergoing transition and to explicitly regulate the rights and freedoms of transgender and transsexual persons. These laws need to systematically regulate the procedures of changing one's name, sexual identification and Unique Master Citizen Number in all personal documents, and they need to enable trans\* persons to change their sexual identification while still undergoing transition, without waiting to complete all the medical aspects of transition, in order to end discrimination they face.

In addition to these laws it is necessary to introduce rules that would regulate

the procedure of getting the necessary medical documentation and the procedure for the bodies and commissions issuing opinions on the changes of sex marker in the Registry Books and the Unique Master Citizen Number.

## DOCUMENTED CASES

The necessity of harmonizing the identification documents with appearance became clear through the research entitled: **Life outside of norms: Transgender in BiH**, which was conducted by the Sarajevo Open Centre in 2015. From the total number of trans\* persons who participated in this research **30% of them had faced problems relating to identification documents (ID card, passport, University ID, Health Insurance ID, etc.). All the participants were faced with problems when trying to get new identification documents and also when identifying themselves to the healthcare providers and when they were crossing the border. For a majority of them finding a place to rent was a challenge (75%), as was proving their identity at the educational institutions and proving their identity during the process of employment (50%).**

**88% of participants** replied that if there were a legal option to change the sex category on their personal documents they would use it.

**In 2015 Sarajevo Open Centre was contacted by six trans\* persons** who inquired about the possibility of changing the sex-category on their personal documents. Unfortunately, none of them could change it, because they had not undergone complete medical sex reassignment.

### *Guidelines for Further Action*

- Pass and implement laws in all three jurisdictional units (RS, the Federation of BiH and Brčko District) that would simplify the procedure of legal sex change and which would enable the legal change without having to complete medical transition;
- Pass and implement laws in all three jurisdictional units (RS, the Federation of BiH and Brčko District) which would define the duties of medical institutions to form teams and train professionals who could follow the process and perform medical procedures for sex reassignment in Bosnia and Herzegovina, and which would establish the obligation of the Health Bureau to cover the cost of these procedures out of the health insurance budget.

Towards the end of 2015 and at the beginning of 2016 the new **Law on Foreigners of BiH and the new Law on Asylum of BiH** were adopted. While the draft Law on Asylum of BiH was still in legislative procedure Sarajevo Open Centre proposed amendments which would have included sexual orientation and gender identity among the grounds for persecution, therefore recognizing them explicitly as grounds for seeking asylum. These amendments were passed in the House of Representatives of the Parliamentary Assembly BiH, but a different version of the Law was passed in the House of Peoples. After a session of the Joint Committee of Both Houses to harmonize the text of the Law on Asylum of BiH the amendments were excluded and so the Law on Asylum does not recognize sexual orientation and gender identity as grounds for seeking asylum.

The Law on Foreigners of BiH also omits the mention of sexual orientation and gender identity, which means they are also omitted from the anti-discrimination provision in the Law, and same-sex partnerships are not recognized as a basis for getting temporary residence in BiH.

## DOCUMENTED CASES

Sarajevo Open Centre received information from its partner organization Vaša prava BiH that they represented a gay man from Africa who claimed asylum in BiH and that this process had ended successfully in 2015.

Sarajevo Open Centre received **13 inquiries regarding either information or help for LGBTI persons in BiH in the process of claiming asylum in the EU in 2015, and we received two such inquiries in 2016.**

### *Guidelines for Further Action*

- Change the Law on Asylum BiH, so that sexual orientation and gender identity are listed explicitly as grounds for seeking asylum and possible grounds for persecution;
- Recognize same-sex partnerships as a basis for awarding temporary residence to partners of BiH citizens on the grounds of uniting a family, through the Law on Foreigners.

The codes of professional journalistic ethic in BiH exist at the level of Communications Regulatory Agency BiH, the Press Council BiH and at the level of certain journalistic associations that prescribe the ethical standards for professional journalism in the media. **At the level of the Communications Regulatory Agency BiH there is a Code on RTV standards and at the Press Council level there is a Code for Print Media.** In both of these codes the first provisions define the basic principles of the profession and state the right to information, freedom of expression and the prohibition of discrimination and they reflect on the questions of truth, objectivity, impartiality and accurate reporting (to varying extents).

The biggest difference between these two Codes is in the fact that the Communications Regulatory Agency is entitled to apply certain sanctions (oral and written warnings, money penalties and taking away of licenses) in case of a breach of the rules of the Code on the RTV standards, while a breach of the rules in the Code for the Print Media does not have any legally backed consequences and the content of the print media is subject to self-regulation through the work of the Press Council. The Press Council evaluates certain media content for which they received a complaint and if they determine that there is a breach they inform the media in question to publish a correction, which they can, but do not have to do.

The difference between these codes is also reflected in the way in which they regulate hate speech. The prohibition of hate speech is clearly stated in the **Code on the RTV Standards** which defines hate speech as: **“language/speech which aims to humiliate, intimidate or incite violence or prejudice against persons, or a group, on the basis of their sex, race, age, nationality, sexual orientation, disability, moral or political convictions, socio-economic status or profession,”** while the **Code for the Print Media** approaches the issue by prescribing that: **“journalists will do their best to abstain from encouraging or inciting hate and/or inequality on the basis of ethnicity, nationality, race, religion, sex, sexual orientation, disability, or mental state.”**

## ANALYSIS OF MEDIA REPORTING IN 2015

Sarajevo Open Centre followed nine daily newspapers and 26 weekly/monthly magazines. From the total number of published texts in the written media (563 articles) the highest percentage was neutral (421), which was followed by positive accounts (73) and negative (69) – a decrease from last year. The TV news programs of 24 stations were also analyzed – 43 segments were broadcast, 31 segments were neutral, eight were positive and four were negative.

Sarajevo Open Centre also followed 24 online news portals. From the total number of articles in the online media (528 articles) the highest number was neutral (350), there were less positive articles (119), but there were even less negative articles (49).

The results of this media monitoring were published in the analysis: **Towards positive practices 3: Media Reporting on LGBTI topics in Bosnia and Herzegovina in 2015.**

In December 2015 Press RS e-mailed Sarajevo Open Centre to ask for an interview, with a number of questions relating to the number of LGBT persons in BiH, the security of LGBT persons in BiH, the potential to organize Pride and other public LGBT events. The email also included questions relating to re-direction of funds at Sarajevo Open Centre's disposal for implementation of activities, to associations representing the interests of families and children and the religious communities. Assessing that some of the questions were aimed at discrediting the work of organizations advocating LGBTI human rights, Sarajevo Open Centre, in line with organizational principles and values for which we stand and in consultation with PR and media experts responded to the specific and relevant questions, with the aim of informing the public about our work, activities and plans. After emailing the replies back, Press RS published two articles that presented the decision of the Sarajevo Open Centre not to respond to the questions regarding the donation of the funds to associations working with families and children and religious associations, in a sensationalist light therefore confirming our anxiety that our reply to their inquiry will only be used to raise their readership and not for objective, ethical and professional reporting. The answers addressing the specific questions on the state of human rights of LGBTI persons were completely ignored. This publication completely missed the opportunity to demonstrate a minimal level of journalistic professionalism and to fulfill their responsibility to inform the public in a way that encourages toleration towards a community that is discriminated against and excluded from the key social strata.

In 2015 the highest percentage of news were world news, which were taken from the world and regional media, and news from BiH are less represented. Precisely because of this approach by the media we are frequently only exposed to sensationalist news, or news on violent crime – usually covering attacks that happened during Pride events, or other LGBTI events. As in previous years the issue of ignorance in the media persists, and often times it is not malicious intent, but rather this lack of knowledge that is apparent in reporting on LGBTI topics, which indicates the need to provide additional training on reporting about marginalized groups, and specifically about LGBTI topics.

In 2014 the news from BiH were second to world news, according to the analysis of the Sarajevo Open Centre, which remained the same in 2015. Most of the information on BiH, focused on activities which had taken place and which were organized by LGBTI organizations, and primarily the Sarajevo Open Centre as the other organizations are mentioned only a few times during the entire year and mostly in May during the marking of the International Day Against Homophobia and Transphobia. On the other hand, most of the news from the region was about Pride parades, which shows that those events have the potential to attract the attention of journalists.

### *Guidelines for Further Action*

- The media in BiH need to refrain from inciting hate and need to use gender-sensitive language and politically correct LGBTI terminology; they need to use their position to educate the public and, to fight against stereotypes and prejudice and to advocate tolerance.

- The media in BiH need to treat LGBTI topics through the prism of affirmation of human rights, they need to choose the images that accompany the articles so that they are topic-appropriate instead of sensationalist, and they need to report more on cultural, legal and political questions concerning LGBTI persons in BiH.

**BISEXUAL PERSON**

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

**COMING OUT**

Concept derived from the phrase **coming out of the closet**, routinely used to describe public or open declarations and affirmation of one's (homo)sexual orientation. It is common on two levels: as a self-discovery, and as a more or less public notification. Coming out from silence refers to the act of coming out from isolation and negation, and it announces to other people the right to a different life. In activism and queer theory, coming out is a political act of resistance and confrontation of traditional views.

**DISCRIMINATION**

Discrimination refers to every distinction, exclusion, limitation and form of putting a person or a group of people at disadvantage. There are various grounds and characteristics by which a person or group of people is led to a disadvantaged position. Lesbians and gay men can be discriminated against on the grounds of **sexual orientation**, trans\* individuals (including transgender and transsexual persons) on the grounds of **gender identity** and gender expression, and intersex persons on the grounds of **sex characteristics**. It is therefore essential that all three grounds (sexual orientation, gender identity and sexual characteristics) be legally recognized as grounds on the basis of which discrimination is prohibited.

**HOMOPHOBIA**

Irrational fear, intolerance, prejudice and/or discrimination against gay men and lesbians. It manifests as an unquestionable belief in heterosexual superiority. This incites violence against people who are not heterosexual, which is justified by a belief in heterosexual superiority (and the inferiority of others). Violence is reflected in verbal and physical attacks, and discrimination.

**HOMOSEXUAL PERSON**

A person who is attracted to person(s) of the same sex.

**LESBIAN**

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

**GAY**

Man who is sexually and/or emotionally attracted to other men. It is also used as an adjective (e.g. gay person), and as such can include both men and women of same-sex orientation

**HOMOSEXUAL**

Outdated clinical term for people whose sexual orientation is towards people of the same sex, i.e. person that is sexually and/or emotionally attracted to people of the same sex. This term is inappropriate and many gays and lesbians find it offensive. Better terms are gay (man) and lesbian.

<sup>1</sup> Glossary of basic LGBT terms is a result of Sarajevo Open Centre's team joint effort.

**HOMOSEXUALISM**

An outdated clinical term that was used to medically mark the same-sex sexual orientation. It is considered offensive because it implies that homosexuality is a disease to be treated. Keeping in mind that the World Health Organization (WHO) confirmed in 1990 that homosexuality is like heterosexuality – a completely normal variation of human sexuality, this term has no longer been used.

**INTERSEX PERSON**

People born with chromosomal, hormonal or genital characteristics that do not match specified standards of male and female categories because of their sexual or reproductive anatomy. There are different forms of intersex. Individuals can be male, female and intersex. Intersex individuals, like male and female individuals, have sexual orientation and gender identity. In the past, these persons were often called hermaphrodites, but this term is considered discriminatory and medically inaccurate.

**LGBTI**

All encompassing term used to denote lesbians, gay men, bisexual, and trans\*(gender) and intersex people. The term denotes a heterogenic group usually identified by the title LGBTI in social and political activism.

**LGBTTIQ**

Abbreviation for lesbians, gay men, bisexual, transgender, transsexual, intersexual and queer people.

**QUEER**

It was used earlier in the English language as a derogatory way to refer to non-heterosexual people. The term was later taken over by LGBTI people as a way to describe themselves. Some people particularly appreciate this term because it signifies defiance and includes diversity – not only gays and lesbians, but also bisexual, transgender, intersexual people, and even heterosexual people living outside the heteropatriarchal gender norms.

**GENDER IDENTITY**

Associated with an individual's experience and comprehension of one's own sex, which may or may not correspond to the sex assigned at birth, and includes personal experience of their body or other gender expression such as clothing and mannerisms. People whose gender identity is in accordance with the sex they were assigned at birth is called **cisgender individuals**, and people whose gender identity is not in accordance to the sex they were assigned at birth are called **trans(gender) individuals**. Transsexual individuals as a sub-group of transgender individuals are persons whose gender identity is not in accordance with the sex they were assigned at birth and who intend to adjust their biological sex, or who are in the process of transition.

***GENDER EXPRESSION***

The external, visible presentation of every person that is reflected through clothing, hair, behavior, and body language.

**SEXUAL ORIENTATION**

Emotional and/or sexual attraction or affection towards people of the same and/or opposite sex. Usually **heterosexual** (attracted to the persons of the opposite sex), **homosexual** (attracted to the persons of the same sex) and **bisexual** (attracted to the persons of both the same and the opposite sex) are used as categories. In legal texts in Bosnia and Herzegovina the terms sexual orientation, sexual decision, sexual preference, but the use of sexual orientation is recommended.

**SEX CHARACTERISTICS**

People's sex characteristics, like the chromosomes, gonads and genitals can be different than the typical, binary division on male and female bodies. People can therefore be male, female and intersex. Intersex people can be discriminated against, or be targets hate crimes and prejudice because of their sex characteristics.

**TRANSGENDER PERSON**

Term used for people whose gender identity is not in accordance with the sex they were assigned at birth. Transgender people feel, prefer, or choose to present themselves differently from traditionally prescribed gender roles assigned to them at birth. This can be expressed through clothing, mannerisms, makeup, or body modifications. Among other things, the term transgender refers to people who do not identify themselves as either male or female, transsexual, transvestites or cross dressers. A **transgender man** is a person who was assigned the female sex at birth, but his gender identity is masculine, or in the spectrum of masculine gender identities. A **transgender woman** is a person who was assigned the male sex at birth, but her gender identity is feminine, or in the spectrum of feminine gender identities.

***TRANSSEXUAL PERSON***

Person who has a clear desire and intent to modify their sex, or who has partially or completely modified (including physical and/or hormonal therapy and operations) their body and presentation, expressing their gender and/or sexual identity and sense of self.

**TRANSPHOBIA**

Irrational fear, intolerance and prejudice against transsexual and transgender people.

**HATE CRIMES**

Refers to criminal acts motivated by prejudices towards a person or group of people. Hate crimes include deterrence, threats, property damage, abuse, homicide or any other criminal act whose victim became a target of the assault because of their actual or assumed sexual orientation or gender identity, or because the victim is connected, supports, belongs to or is a member of an LGBTI group.

## THE POLITICAL SYSTEM OF BOSNIA AND HERZEGOVINA

The political system of BiH is highly complex and asymmetric. BiH consists of 13 federal units. BiH is organized into two entities (the Federation of BiH and Republika Srpska) and Brčko District. Republika Srpska is made up of municipalities and towns, while the Federation of BiH has 10 cantons, each of which is made up of at least 3 municipalities/towns. The responsibilities and interrelationships between the state, entity and Brčko District are regulated in the Constitution BiH, but the daily political interpretations of these provisions result in laws and other public policy documents (strategies/action plans) (not) being passed. The State and both entities have their own Constitutions and different government and political systems. Brčko District has its own regulatory system and its own Statute (as the supreme legislative act) and in terms of jurisdiction it is almost on par with the entities.

At State level there is a three-member Presidency, which is made up of one Bosniak, one Croat and one Serb member who rotate every eight months. The Executive is made up of the Council of Ministers with one Presiding Member and nine ministries. The State institutions are responsible for foreign, financial and monetary policies, supervision and governance of borders, foreign trade, immigration, refugees and regulation of asylum. One of the ministries within the Council of Ministers BiH is the Ministry for Human Rights and Refugees within which the Gender Equality Agency BiH operates. The Institution of the Ombudsman for Human Rights operates at the level of BiH and its three Ombudsmen are responsible for all levels of government. The Legislature (Parliamentary Assembly) is bicameral and consists of the House of Representatives, as the Lower House and the House of Peoples as the Upper House. The Commission for Gender Equality operates within the House of Representatives, while the Constitutional-Legal Commission is the specialized gender-equality body in the House of Peoples.

Both Entities have a President and two Deputy Presidents. The Entity Governments have one Prime Minister and 16 Ministers. Although the positions of the Upper Houses are not identical in Republika Srpska and the Federation of BiH, both can be classified as bicameral, each with a 'house of representatives' and a 'house of peoples.' Both entities have Gender Centers and the Entity Parliaments also have bodies for gender equality/equality of opportunity.

Cantons within the Federation of BiH (ten of them) are guaranteed substantive autonomy. The cantons have their governments and single-chamber parliaments. Although the cantons are the third level of government from the top they have the status of federal units and therefore they have matters within their jurisdiction (like education, employment, healthcare) for which they legislate and produce public policies. Although the Federation of BiH has higher authority than cantons, it frequently happens that cantons pass legislation, which is contradictory to the Federation of BiH regulations and laws, or they fail to implement the existing legislation. The cantons do not have offices/institutions for gender equality within their governments and only two cantons have a coordination board for gender equality (a working group whose members are representatives of different ministries).

Brčko District is practically equal to the entities in terms of jurisdiction, despite

the fact that it is also a form of a local unit. The District is governed by a mayor who presides over the government with 10 units. The Assembly of the District passes laws and regulations. Brčko District does not have an office/institution for gender equality within its government, but there is a Commission for gender equality in the Assembly.

The highest judicial offices are the three Constitutional Courts – one for each Entity and One at State-level. BiH does not have a Supreme Court. The Police is under the supervision of the Entities and the District and there are ten Cantonal Police Forces in the Federation of BiH.

## ABOUT SARAJEVO OPEN CENTRE

The General Election in 2014 resulted in changed composition of legislative bodies at all levels of government. Getting in touch with the new representatives enabled new forms of cooperation and opened up new possibilities for changes and improvements to our existing work. In this context, the Sarajevo Open Centre continued to work towards its mission – advocating for the full respect for human rights and social inclusion of LGBT persons and women.

Sarajevo Open Centre as an independent, nonpartisan, nonprofit organization worked on empowering LGBT persons and women through community building and advocacy. SOC continued to publicly promote human rights of LGBT persons and women and to advocate for the improvement of legislation and for better policies in BiH on State, European and International level.

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counseling we also continued running the only LGBTI media outlet in the state – a web portal [www.lgbt.ba](http://www.lgbt.ba). We organized trainings for the police, the prosecutor's offices and the courts and we worked intensely with journalists and young lawyers. Our advocacy focuses on: a) changes to the Law on Prohibition of Discrimination BiH, b) changes to the Criminal Code FBiH, and c) passing LGBTI-inclusive annual operational plans for gender equality at entity and state-level. During 2015 we had media campaigns that have reached over a million of BiH citizens and we organized the LGBTI film festival – Merlinka.

A detailed overview of all of our activities and achievements will soon be available in our Progress Report for 2015 which will be published at:

**[www.soc.ba](http://www.soc.ba) -> About us -> Izvještaji.**

**Vladana Vasić** (1990, Sarajevo) completed legal studies at the University of Sarajevo. She has been working at Sarajevo Open Centre since April 2012 on issues of advocacy, legal counseling, and monitoring of the work of public institutions. She is the (co) author of different legislative and policy proposals addressed to the BiH institutions. Her focus is on the issues related to discrimination and hate crime. Vladana is a member of the European Commission for Sexual Orientation Law.

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**Saša Gavrić** (Tuzla, 1984) graduated from the Faculty of Political Science in Constance (Germany) in 2007, and gained his masters degree in international relations and diplomacy at the University of Sarajevo. From 2005 to 2011 he worked in German cultural association – Goethe-Institut. He is one of the founders of Sarajevo Open Centre, an organization he has been running successfully since 2011. Sarajevo Open Centre is one of the leading civil society organizations in BiH focused on the human rights of LGBTI persons, gender equality, legal and institutional mechanisms for protection of human rights and EU integrations. He has written/published/edited a great number of journalistic works and professional and scientific articles, publications and books. His research interests include: political systems of Bosnia and Herzegovina, federalism and human rights, legislature and human rights polices, as well as cultural policies.

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**Emina Bošnjak** (1983, Zenica), is a feminist and an LGBT activist. She has been working as a Program Coordinator at Sarajevo Open Centre on different project related to LGBT rights since 2012. In June 2014, she became a Program Manager. In this position, she contributes to the management of the organization, international advocacy, and the production of annual reports on the state of the human rights of women and LGBT people in Bosnia and Herzegovina.

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