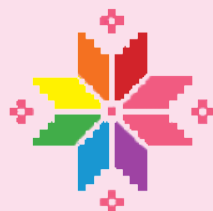




ANNUAL REPORT ON THE STATE OF HUMAN RIGHTS OF LGBTI PEOPLE IN  
BOSNIA AND HERZEGOVINA



PINK REPORT 2017

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

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*This report covers the period between January 2016 and end of April 2017. In Section III Freedom of Assembly and Association we have included the most recent events which took place in May 2017.*

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## THE LIST OF ACRONYMS

ARSBiH	Gender Equality Agency of Bosnia and Herzegovina
BD	Brčko District
BiH	Bosnia and Herzegovina
CC	Criminal Code
CSO	Civil Society Organizations
FBiH	Federation of Bosnia and Herzegovina
LGBTI Persons	Lesbian, Gay, Bisexual, Trans* and Intersex Persons
MI	Ministry of Interior
OSCE Europe	Organization for Security and Cooperation in Europe
RS	Republika Srpska
SOC	Sarajevo Open Centre
SPUS Sarajevo	Students' Parliament of the University of Sarajevo
ToT	Training of Trainers
UNSA	University of Sarajevo



## ON-GOING PRACTICE OF HUMAN RIGHTS VIOLATIONS

### *Failure to Prosecute the Attack on 2014 Merlinka Festival and Attack on Art Kino Kriterion on 4 March 2016*

On 1 February 2014, a group of 14 masked men burst into Art Kino Kriterion in Sarajevo with the intention of attacking the people attending a panel discussion on Merlinka Festival. The attack lasted less than a minute and resulted in minor injuries for three people and severe psychological damage for all attendees. The perpetrators fled the scene unharmed. Although the event was announced 20 days earlier, the police were not present in Art Kino Kriterion to prevent the attack. Following the attack, Sarajevo Open Centre filed criminal charges to the Prosecutor's Office of Sarajevo Canton as well as to the Internal Affairs of the Ministry of Interior of Sarajevo Canton. No indictments have been issued against the perpetrators in the three years since the attack. In November 2016, Sarajevo Open Centre appealed to the Constitutional Court of Bosnia and Herzegovina regarding the violation of the right to assembly of LGBTI citizens in the case of the attack on Merlinka Festival.

Art Kino Kriterion has gained a reputation of an LGBTI inclusive place and as such came under attack on 4 March 2016 when four young men barged into the cafe. They began shouting slurs and used hate speech against LGBTI individuals, insulting them and threatening violence, throwing bottles, ashtrays and glasses and threatening to burn down the cafe. A young man had to undergo a medical examination for the injuries he sustained, and a young woman was also physically attacked. Roughly thirty people who happened to be in Kriterion at the time suffered psychological abuse. A year later, the attack has yet to be brought to trial and the police are still carrying out an investigation without any visible results.

Failing to sanction violence motivated by homophobia and transphobia opens the space for future violent acts and convinces the perpetrators that their behaviour is socially acceptable. Attacks on public events related to LGBTI rights and the increase in attacks against activists recorded from 2008 onwards are proof of this. The police and the Prosecutor's Office must take on a more active role in

prosecuting attacks against LGBTI individuals and activists in order to send a message to the perpetrators that homophobia and transphobia will not be tolerated.

*Incitement to Discrimination and Violence against LGBTI Individuals by the President of the Student Parliament of University of Sarajevo*

In March 2016, the president of the Student Parliament of Sarajevo University Haris Zahiragić voiced a series of discriminating views on LGBTI individuals in his posts on social networks and later on in media statements. He employed hate speech, calling for LGBTI people to be "marked" and "cured". With his public outbursts Zahiragić violated not only the Statute of the Student Parliament of Sarajevo University and the University's Code of Ethics but also the Anti-Discrimination Law. Zahiragić gave statements such as: *"Normal people were in danger as well, why are you discriminating them? They were there 100%, how could these four guys have known who was a faggot and who wasn't. It's not like it's written on their faces or anything. Maybe, though, they should be marked, so people could keep away (not attack them), but keep away from them and whatever disease they carry."* Or: *"I am normal, but faggots, rapists, those who copulate with children and animals – these are sick people."* Zahiragić concluded that *"faggotry is a systemic and infectious disease"* and that LGBTI individuals need *"medical and social assistance"*, thereby clearly affirming the view that LGBTI people need to be medicalised and segregated from the rest of the society.

Sarajevo Open Centre reported the incident to the Student Parliament Assembly of Sarajevo University, the Ethics Committee, the Senate and the Rectorate of the Sarajevo University, asking these institutions to denounce the views expressed by Mr. Zahiragić and relieve him of his duty as president. The case was also reported to the Gender Equality Agency of Bosnia and Herzegovina and the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina.

The Senate of the Sarajevo University did not react until April 2017 when it released a letter saying that the Senate members convened for a meeting on 29 March 2017 and *"unanimously condemned any public statement or action that violates human rights and dignity, including actions that demean the dignity of LGBT individuals."*

Furthermore, the letter states that Sarajevo University “has always supported and promoted human rights, encouraged tolerance and mutual respect, insisting on fairness and equality regardless of nationality, race, sex, financial standing, origin, disability, family status etc.” Other than paying lip service, the Senate has not undertaken any other measures to sanction the homophobic statements and behaviour of the president of the Student Parliament.

### *Limiting Freedom of Assembly for Protest March “Violence is Not Normal”*

On 30 March 2017, Sarajevo Open Centre contacted the Ministry of Interior of Sarajevo Canton to announce a protest march scheduled for 13 May. The purpose of the march was to commemorate the International Day against Homophobia and Transphobia and raise awareness on the unacceptable violence against LGBTI people. On 11 April 2017 a permit was also requested from the Ministry of Traffic of Canton Sarajevo since the planned march route stretched down the traffic road from Eternal Fire to the Parliamentary Assembly of BiH. According to the Law on Fundamentals of Traffic Safety of BiH, this permit should be sought no later than 15 days prior to the event. According to the Law on Public Assembly of Sarajevo Canton, a request to hold a public assembly should be filed no later than 7 days prior to the event, with the permit of the Ministry of Traffic enclosed with the application if the assembly is to obstruct traffic.

From 4 May to 11 May members of Sarajevo Open Centre communicated with the representative of the Ministry of Traffic via telephone and were given contradictory information. Meanwhile, there was no official response from the Ministry. A lot of effort and funds had already gone into organizing the assembly but it soon became clear that the march could not be lawfully held since the Ministry of Traffic failed to issue the permit. On 11 May 2017, 48 hours before the event, representatives of Sarajevo Open Centre met with the police in what was supposed to be a final meeting to settle the details regarding the organization of the march on 13 May, and announced instead a protest assembly in front of the building of the Government of Sarajevo Canton on the same day. The Ministry delivered the permit at 16:08h on 11 May 2017 by which time it was too late to continue with the organization of the march and meet the legal requirements, i.e. too late for Sarajevo Open Centre as the organizer to inform the

public of street closures through the media, which should be done no later than 48 hours prior to the assembly, according to the Law on Fundamentals of Traffic Safety of BiH. Failure to abide by this provision rendered the permit inconsequential and prevented the organization of the march. The permit came 5 hours after members of Sarajevo Open Centre held a press conference to announce the cancellation of the march, characterising the administrative silence of the Ministry of Traffic as violation of the freedom to assembly and announcing a new protest.

By ignoring the request of Sarajevo Open Centre and persisting in its administrative silence, the Ministry of Traffic of Sarajevo Canton violated LGBTI people's right to assembly in Canton Sarajevo.

## GOOD PRACTICES

### *Amendments to the Anti-Discrimination Law of Bosnia and Herzegovina*

At last, in July 2016, Bosnia and Herzegovina (BiH) improved its legislative anti-discrimination framework by adopting the Amendments to the Anti-Discrimination Law.

The amendments include a terminologically accurate definition of sexual orientation and gender identity as prohibited grounds of discrimination. Furthermore, sex characteristics have also been included as prohibited grounds of discrimination, by which BiH became the first country in Southeast Europe to have a comprehensive anti-discrimination law that provides protection for intersex people in all areas of life. The Law now offers adequate protection from discrimination to lesbian, gay, bisexual, trans\* and intersex (LGBTI) people.

Having been recognised as a leading organization for advocating human rights in Bosnia and Herzegovina, Sarajevo Open Centre was heavily involved in the process of drafting and adopting these amendments and participated in a working group formed by the Ministry of Human Rights and Refugees of BiH, as well as public discussions on the proposed Law on Amendments to the Anti-Discrimination Law of BiH in 2015 and 2016.

### *Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina*

The Law on Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina was adopted in April 2016 and entered into force in June 2016. The amendments to the Criminal Code of FBiH define hate crime as *any crime committed on the grounds of race, skin colour, religion, national or ethnic origin, language, disability, sex, sexual orientation or gender identity of another person*. The Law also foresees taking these characteristics as aggravating circumstances in cases when the Law does not overtly prescribe harsher punishments for aggravated crime motivated by hate.

This legal definition finally recognises homophobia and transphobia as aggravating circumstances and sets harsher punishments for the perpetrators.

Sarajevo Open Centre has proposed and advocated these amendments since 2012 as a member of the Coalition for Combatting Hate Speech and Hate Crime. The first initiative of this kind was launched in 2010 when criminal codes of Republika Srpska and Brčko District were amended.

Now that it has an adequate legislative framework for combatting hate crime, FBiH should not stop there. It should introduce mandatory training programmes for police staff and representatives of judicial institutions so that the new regulations are adequately implemented in all future cases.

### *Action Plan for Implementing the Proposed Anti-Discrimination Measures in Bosnia and Herzegovina*

In April 2016, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina adopted the Report on Discrimination in Bosnia and Herzegovina together with the Action Plan for Implementing the Proposed Anti-Discrimination Measures in Bosnia and Herzegovina drafted by the Ministry of Human Rights and Refugees of BiH. The Report on Discrimination in BiH was composed using data from competent institutions and data from annual reports published by the Institution of the Human Rights Ombudsman of BiH. The Ministry included measures concerning the human rights of LGBTI people in the report.

The Action Plan of the Council of Ministers of BiH adopted together with the Report contains 32 measures and activities, 6 of which are directly related to reducing discrimination against LGBTI people. These are:

1. Initiate the procedure of amending the Law on Health Protection in order to enable sex reassignment
2. Initiate the procedure of amending the Law on Registers of Brčko District BiH
3. Harmonise provisions defining sexual orientation and gender identity in the Law on Gender Equality and

#### Anti-Discrimination Law

4. Draw up an action plan to reduce discrimination against LGBT people
5. Organize institutional trainings on combating homophobia and prejudice, as well as discrimination of LGBT people, especially for judges, prosecutors, police officers and civil servants
6. Initiate the procedure of amending the criminal codes of the entities and BDBiH in order to include a provision on hate crime on the grounds of sexual orientation and gender identity.

None of these measures have been fully implemented so far, except for the introduction of the correct terms *sexual orientation* and *gender identity* in the Anti-Discrimination Law. The Action Plan is just a starting point for improving the human rights of LGBTI people, and even though it prescribes only a handful of measures for eliminating discrimination against the LGBTI population, it is a good example for institutions to follow.

## EXECUTIVE SUMMARY

The years 2016 and 2017 brought about significant changes in the context of the number of violations of LGBTI human rights documented by Sarajevo Open Centre. The number of cases of discrimination and violence on the ground of sexual orientation documented by Sarajevo Open Centre did not decrease, neither did the number of LGBTI persons who contacted Sarajevo Open Centre in search of assistance in asylum seeking, changing the sex marker in documents, adequate psychological support or help in obtaining documents required for marriage/same-sex partnership in countries which allow it.

Of particular concern is the increase of domestic violence and peer violence motivated by sexual orientation or gender identity, and the growing number of open and public instances of homophobic and transphobic views in the academic institutions and the academia as a whole. It is clear that, in addition to amendments to laws and public policies, it is necessary for the institutions in BiH to develop specific programmes and measures of action to combat intolerance, xenophobia, violence, and discrimination and to encourage social inclusion of LGBTI people.

The improvement of the legal framework in BiH – the amendments to the Anti-Discrimination Law and introduction of sex characteristics as a protected ground, the amendments to the Criminal Code of FBiH and regulation of hate crime – is certainly commendable but these legal novelties should however be introduced into the mandatory training of civil servants, the judiciary and the police. The general public should also be informed about them to contribute to their implementation and the achievement of their purpose. The first step in that regard has already been made in the Gender Action Plan operational plans of entity governments and the Council of Ministers, but this type of action with regard to LGBTI human rights must continue and become more comprehensive.

The Special Report on LGBTI Rights in Bosnia and Herzegovina produced by the Institution of Human Rights Ombudsman of BiH is the first of its kind and certainly serves as basis for the change of attitude towards LGBTI human rights in BiH. In its analysis of the situation and recommendations, the report departs from the



practice of healing the consequences and takes a proactive approach to the improvement of human rights of LGBTI citizens in BiH with the overall goal to improve the conditions of their everyday life in BiH and to respect their human dignity.

## PRIORITY MEASURES TO BE UNDERTAKEN

### *Adequate Regulation of Hate Crime and Incitement to Hatred and Violence in Entity and Brčko District Criminal Codes*

As a member of the Coalition for Combating Hate Speech and Hate Crime, Sarajevo Open Centre has been advocating the regulation of hate crime, but also incitement to hatred and violence since 2013. In 2016, Sarajevo Open Centre together with the Gender Centre of Republika Srpska worked to include the amendments of the Coalition into the Draft Law on Amendments to the Criminal Code of Republika Srpska and it established a successful cooperation with the members of the working group which was drafting the Law. In the beginning of 2017, Sarajevo Open Centre and the Association for Democratic Initiatives held a meeting with a representative of the Ministry of Justice of FBiH at which they presented the Coalition amendments to the Criminal Code of FBiH and advocated their adoption.

The amendments proposed by the Coalition include the broadening of the criminal offence of *incitement to national, racial and religious hatred, discord and hostility* in the criminal codes of the entities and Brčko District so that it includes any incitement to hatred, discord or hostility among the various social groups in BiH and to encompass, in addition to the current three grounds, all the protected characteristics stipulated for the criminal offence of hate crime.

It is imperative that incitement to hatred and violence become adequately regulated through entity and Brčko District criminal codes, to prevent impunity in relation to these criminal offences motivated by homophobia and transphobia as well as to prevent the escalation of such behaviour into hate crime.

### *Action Plan for Equality of LGBTI Persons in Bosnia and Herzegovina*

Despite the fact that 2016 annual gender equality operational plans of the Government of Republika Srpska and the Government of the Federation BiH included for the first time the specific activities that

refer to LGBTI human rights, the fight for the equality of LGBTI people requires more intensive activities and a systemic approach.

Therefore, we recommend that a periodic Action Plan for Equality of LGBTI persons be devised, in line with Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe on the Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity and governed by the commitment to implement the measures from the Anti-Discrimination Action Plan in BiH. The Plan would specify the activities to be undertaken by the State, entities, Brčko District and the cantons.

To achieve that change and activities no longer depend on civil society individuals' initiatives and certain well-meaning (individuals from within the) institutions, it is necessary to develop a clear plan of activities and related responsibilities.

### *Regulation of Same-Sex Partnerships*

LGBTI persons and same-sex couples are a reality in Bosnia and Herzegovina and a part of its society. Unfortunately, the existing legal framework does not engage in protecting these relationships. 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 striving 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 and prevails over all other laws, it also legally binds its entities. Therefore, the institutions of BiH and its entities are bound to regulate same-sex partnerships to improve their legislations, ensure equality and better protect citizens' human rights.

## *The Law(s) on Gender Identity*

Trans\* persons in BiH are discriminated against in many 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 marker change and Unique Master Citizen Number in all personal documents, and they need to enable trans\* individuals to change their sex marker while still undergoing transition, without waiting to complete the medical aspects of transition, in order to end the discrimination they face.

# I EQUALITY AND COMBATING DISCRIMINATION

## *Legal Framework*

Art. 2 of the Constitution of BiH prohibits discrimination on different grounds. Unfortunately, sexual orientation, gender identity and sex characteristics – the grounds important for LGBTI people - 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. The 2009 Anti-Discrimination 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. By adopting the amendments to its Anti-Discrimination Law, Bosnia and Herzegovina got an improved legal framework for the protection from discrimination at last. Through these amendments, **sexual orientation and gender identity have finally been accurately formulated** as prohibited grounds for discrimination. In addition, “sex characteristics” have been introduced as a prohibited ground making **BiH the first country in South-East Europe to have a comprehensive Anti-Discrimination Law which protects intersex persons from discrimination in all areas of life**. Finally, the Law regulates the protection of lesbian, gay, bisexual, trans\* and intersex (LGBTI) persons from discrimination in the appropriate way.

Although there is an obligation to harmonize all laws with the Anti-Discrimination Law, many laws at the state, entity and cantonal level do not include sexual orientation, gender identity and/or sex characteristics as the grounds protected from discrimination. It is of particular concern in the context of LGBTI human rights that laws on labour and employment, social and health insurance, *inter alia*, provide for a much more restrictive list of characteristics protected from discrimination than is the case with the Anti-Discrimination Law of BiH.

## *Institutional Action*

Institutional framework for protection from discrimination is still extremely weak. **Information on discrimination** is neither being collected **nor analysed**. 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 Anti-Discrimination Law 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. 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 Anti-Discrimination Law envisions special budget to be provided to the Division for Eliminating All Forms of Discrimination within the Institution of the Ombudsman, this was never realized. In general, the Institution of Ombudsman does not have the capacities to adequately advocate the rights of LGBTI persons. As is stated in the Special Report on LGBTI human rights in BiH drafted by the Institution of Human Rights Ombudsman, since the Anti-Discrimination Law entered into force, **from 2009 to 2016, the Institution registered around 40 cases of discrimination on the ground of sexual orientation**. However, the majority of cases have been opened “ex officio” or based on reports of non-governmental organizations.

**Judges and prosecutors** across the country receive very little or no training on the BiH Anti-Discrimination Law. The biggest problem is the lack of mandatory formal training for judges and prosecutors on LGBTI discrimination and rights. Without the trainings organized by civil society there would be no education on LGBTI people’s rights. In 2016 Sarajevo Open Centre trained 20 judges.

### *Special Report on the State of LGBT Rights in Bosnia and Herzegovina by the Institution of Human Rights Ombudsman of Bosnia and Herzegovina*

In September 2016, the BiH Institution of Human Rights Ombudsman published a **Special Report on the State of LGBT Rights in Bosnia and Herzegovina**. The aim of the report was to analyse the

current state of affairs and the actual level of access to human rights available to members of LGBT community, to inform the competent bodies on the measures they need to take to improve the position of this population, and to raise the awareness of citizens in Bosnia and Herzegovina and inform the public about the degree to which LGBT rights are exercised. The starting point for the report were international human rights standards, UN bodies' recommendations, the UPR and regional human rights protection mechanisms.

The conclusion of this special report brings **a range of recommendations provided by the Ombudsmen in various areas**. They state that the holders of public functions should be more open in protecting LGBTI citizens both in cases of incidents and generally, as we still live in a relatively conservative society strongly influenced by religious organizations. The report states that, according to knowledge of BiH Ombudsmen, there have been no cases of discrimination on the ground of sexual orientation which ended up in court. The Ombudsmen especially pointed to the fact that "the right to freedom of assembly means not only the passive attitude of the state towards peaceful gatherings, but a proactive role reflected in protection provided to groups exercising their right to peaceful assembly and securing the gatherings expressing views of certain groups that some other groups find inappropriate or unacceptable. In this context, the police and criminal prosecution bodies should be additionally trained and sensitized to work with LGBT community in order to achieve a higher degree of tolerance and safety." Specific recommendations have been issued to police agencies in Bosnia and Herzegovina. The problems in the judiciary have been addressed and appropriate recommendations provided for the High Judicial and Prosecutorial Council of BiH and the entity Judicial Training Centres primarily focusing on the continuous training of the judicial staff. Furthermore, recommendations have been issued to competent ministries of justice and all penitentiary institutions that they should, in cooperation with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, draft a comprehensive training programme for prison officers and initiate the drafting of the Staff Manual on LGBT topics. Another recommendation was for all public broadcasting services as well as all media outlets, print and electronic media in BiH to work on awareness-raising and promotion of LGBT rights with the goal of making the public more sensitive and aware of their rights. The Ombudsman Institution recommended to political parties to introduce into their programmes the topics of protection from discrimination on the grounds of sexual orientation or gender identity.

The recommendation for law schools was to make an analysis of textbooks used in studies in order to ensure that homosexuality is treated as a natural variation of sexual orientation, not as deviation or illness. Clinical centres and hospitals in BiH were recommended to systemically and continuously train their medical staff to monitor the transition process of transsexual persons and provide necessary medical assistance, and to undertake measures to ensure medical staff capable of carrying out the entire sex reassignment process. There are other recommendations in the report, among which the suggestions to amend certain laws to regulate same-sex partnerships and to simplify and facilitate the legal change of sex marker and personal documents.

### *Public Policies for Combating Discrimination of LGBTI Persons*

In 2016, Gender Equality Agency of BiH, Gender Centre of Republika Srpska and Gender Centre of the Federation of BiH provided significant support to equality of LGBTI persons; in their annual 2016 **Gender Action Plan Operational Plans**, they included specific measures related to LGBTI rights. The three institutions cooperated with Sarajevo Open Centre on needs mapping with regard to the Recommendation CM/Rec(2010)5 of the Council of Europe to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity which resulted in the introduction of specific measures into annual operational plans of entity governments and the Council of Ministers of BiH.

In April 2016, the Council of Ministers of BiH adopted a **one-year Anti-Discrimination Action Plan** which includes six measures having the aim of improving LGBTI human rights.

The successful advocacy of civil society organizations resulted in the commitment of the Ministry of Human Rights and Refugees of BiH to work **on human rights and anti-discrimination strategies**. Both strategies should include issues related to LGBTI rights and the working groups drafting them involve civil society representatives. Although it was planned for both strategies to be finished by the end of 2016, there has been no progress in this regard by April 2017 other than the few initial meetings. The Ministry did not provide any information to working group members as to the future work plan or activities.



In the end of 2016 and beginning of 2017, Gender Equality Agency started working on **the establishment of the working group for the development of an Action Plan to Improve LGBTI Equality**. However, at the time of finalising this report, the entities still have not appointed their representatives to this working group and the process is therefore pending. The drafting of this Action Plan was also stipulated by the Ministry of Human Rights and Refugees of BiH in its BiH Anti-Discrimination Action Plan.

### *Discrimination of Same-Sex Couples*

Family laws in the Federation of BiH, Republika Srpska and Brčko District define marriage and civil partnership 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 legislation so that it recognizes the 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.

### *Documented Cases of Discrimination*

Sarajevo Open Centre documented **four cases of discrimination in 2016 and three cases in the first quarter of 2017**. Three cases referred to discrimination of LGBTI persons in the service sector, prohibition to enter or discriminatory rules in bars. Of the other documented cases, one referred to discrimination in the workplace, two to discriminatory contents in textbooks used in higher education and one to public incitement to discrimination of LGBTI persons.

In January 2016, the company that Sarajevo Open Centre worked with refused to put up posters announcing the Merlinka Festival. Sarajevo Open Centre instituted a court case for discrimination on the ground of sexual orientation in the provision of services. In 2017, the preliminary hearing took place and the main trial and further proceedings are expected.

## *Guidelines for Further Action*

- Implement the Anti-Discrimination Law of BiH by drafting and adopting a 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.
- Based on recommendations of the Special Report of the Ombudsmen Institution, improve laws and regulations, and include the rights and needs of LGBTI persons into all public policies at all levels, ending thus the institutional neglect of this minority and de-privileged group.
- Introduce LGBTI-specific modules in education of future teachers, police officers, judges and prosecutors.
- Pass and implement laws in all three administrative units (Republika Srpska, Federation of BiH, 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 CRIME AND INCITEMENT TO HATRED

### *Legal Framework*

In April 2016, the Parliament of the Federation of BiH adopted the Law on Amendments to the Criminal Code of FBiH which, *inter alia*, regulates hate crime in FBiH. Six years after the first initiative to regulate hate crime, both entities and Brčko District stipulate more severe sanctions for these criminal offences in their criminal codes.

**Provisions which sanction incitement to hatred, hate speech and violence** are included in the criminal codes of both entities and Brčko District, but they are unfortunately limited exclusively to prohibition of incitement to hatred and violence on national, ethnic and religious grounds. With this legal framework, it is impossible to sanction incitement to hatred and violence against LGBTI persons, which proliferate on internet portals and social networks and frequently grow into discrimination and hate crime. Criminal codes of both entities and Brčko District should therefore be amended with the aim of introducing additional grounds on which the incitement to hatred, hostility and discord is prohibited, which would be in line with the ground currently recognized by the hate crime institute which encompasses, *inter alia*, sexual orientation and gender identity.

### *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 sex characteristics. In 2016, Sarajevo Open Centre sent a memo requesting all the Prosecutor's Offices in the FBiH cantons and Republika Srpska to provide information on the number of hate crime cases on the grounds of sexual orientation and gender identity. It is clear from their responses that they do not keep such records (the records are kept according to the type of criminal offence) and that in 2016 they have not encountered cases of criminal offences on the ground of sexual orientation and/or gender identity.

**Training of police officers, judges and prosecutors** still depends

on the civil society sector and international organizations. Hate crime on the ground of sexual orientation, gender identity and sex 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 trainings of judges and prosecutors do not address hate crime in a systematic and coherent way.

Sarajevo Open Centre, in cooperation with the OSCE Mission to BiH, continued working on **trainings for the police and interns at the courts and the prosecutor's offices** in 2016. Sarajevo Open Centre conducted a *training the trainer* programme for police officers of 9 cantonal ministries (Sarajevo Canton Ministry received a similar training previously). After the ToT, cantonal MIs announced that police officers who completed the training will train their colleagues in the area of appropriate prosecution of hate crime as part of their 2017 permanent training.

The European Commission against Racism and Intolerance (ECRI) published its third report on Bosnia and Herzegovina in which it states that the authorities should develop, together with NGOs and international organizations, **a comprehensive strategy to combat hate speech** as well as activities to promote tolerance towards LGBT persons. Based on the findings of its third BiH Report, European Commission against Racism and Intolerance (ECRI) recommends that the BiH authorities: (i) carry out an evaluation of hate crime related training activities for police officers, prosecutors and judges in order to make any necessary improvements; (ii) continue to roll out and expand these training programmes; (iii) ensure that violence against returnees, religious communities, and LGBT persons is adequately covered in these trainings.

At the 1141<sup>st</sup> meeting of the OSCE Permanent Council, European Union expressed its concern about reports and claims of violence against gay men in Chechnya and said that such acts constitute crimes and violation of the Russian Federation's international committees. The authorities were requested to dissociate themselves from such behaviour and to put an end to violence ensuring safety and respect for human rights to all citizens of Chechnya. As a potential candidate state, Bosnia and Herzegovina also joined the European Union statement.

## *Documented Cases*

In 2016, Sarajevo Open Centre documented **123 cases of hate speech and incitement to hatred and violence, and 20 cases of criminal offences and incidents motivated by prejudice on the ground of sexual orientation and/or gender identity.** From January to April 2017, Sarajevo Open Centre documented **42 cases of hate speech and incitement to hatred and violence, and 12 cases of criminal offences and incidents motivated by prejudice** on the ground of sexual orientation and/or gender identity.

From the very start of 2017, we have seen some tendencies of special concern – **growing domestic violence, homophobia and transphobia and peer violence in educational institutions.** The trend of homophobia and transphobia in educational institutions and inadequate responses of the ministries of education and the competent institutions to homophobic and transphobic peer violence that we have witnessed over the last two years unfortunately continue.

Of the 12 cases documented from January to April 2017, **5 have been cases of domestic violence,** ranging from threats to blackmailing, unlawful deprivation of liberty and prohibition of movement, violence and bodily injury, forced medical treatment. The perpetrators in all cases have been parents or siblings with the support of extended family.

**Homophobic and transphobic peer violence** is a continuous problem also in 2 cases from 2017. These cases have been reported to the competent ministries of interior and social work centres and, although the institutions did take action together with schools to put an end to the violent behaviour in the specific cases, **there is an evident lack of a concrete institutional plan to combat peer violence and develop an inclusive and tolerant educational environment which would include the LGBTI perspective as well.**

Homophobia and transphobia in educational institutions remain to be a large problem. **Only at the session on 29 March 2017, the Senate of the University of Sarajevo condemned the homophobic and transphobic speech of the former President of the Student Parliament of the University of Sarajevo from March 2016.**

In April 2017, a book entitled *Nelagoda s medijima* (Unease with the Media) by Fahira Fejzić-Čengić was promoted at the Faculty of Political Sciences. The author has been promoting xenophobia, homophobia and transphobia not only in this book but also in her other books and she is teaching at the Faculty.

In her 2014 book ***Stvarnost i mediji: vrijeme istrošenih ideologija*** (Reality and the Media: The Time of Worn Out Ideologies) the author describes homosexuality as a “modern kitsch” and homosexual persons as “people behind the curtain” making a reference to the Islamic mystique Ibn Arebi. Mrs Fejzić-Čengić claims that homosexual persons are unable to accept their own boundaries, their human finiteness and that they truly are *people behind the curtain* as they, according to the author, have their mind, eyes, sight and all other senses covered. The cover on their senses explains why homosexual persons cannot comprehend the substance of things or the substance of the world, as she claims. In addition, the book underlines that human rights are only those rights having historical and vertical foundation; on the other hand, she says that a homosexual relation is a right and freedom of human choice but that a homosexual person, “covered and ignorant”, must consume it in intimacy and privacy. To explain the *historical and vertical foundation* of human rights, the author takes into account that “such consummation” have always existed but such a “sexual state” should be kept within the intimacy of four walls. By these contradictory claims, the author says that the right to a homosexual relation is a human right and, at the same time, that this human right can be practiced exclusively “within the intimacy of four walls” – showing a lack of understanding of the legal, political, and philosophical idea of this type of a right. The claim is followed by other contradictions, stating that homosexuality or the need of homosexuals to “exit the four walls” is a novelty of the 21<sup>st</sup> century which again shows the ignorance of the essential needs of homosexual people which in no case refer to sexual “exits” beyond four walls. To explain what she means by these exits from four walls, the author describes the manner in which this “perversion” came about – namely, she says, this “novelty” of the 21<sup>st</sup> century is based on shock, it shocks, reshapes and halts the natural development. In the conclusion of this section based on hate speech, Mrs. Fejzić-Čengić writes that homosexual persons get “sexually discharged” in a way not practiced either by wild or domestic animals.

In **Unease with the Media** published in 2016, the author explains

the term pair logos and says that a pair is man and woman and that creation in pair is meaningful *only in pair*. The book also reads that "routine modernisation" constitutes an imitation of the Sheitan/Dajjal.

Sarajevo Open Centre requested from the Dean's Office of the Faculty of Political Sciences of the University in Sarajevo to denounce the homophobic and transphobic statements and to clearly confirm its commitment to protection of LGBTI human; it also requested from the Senate of the University of Sarajevo to jointly organize a training for the University staff to sensitise them in the work with LGBTI persons in order to maintain the reputation of the University as a higher education institution which fosters the principles of humans rights respect and protection.

### *Guidelines for Further Action*

- Amend the criminal codes in all three administrative units (Republika Srpska, the Federation of BiH, Brčko District) and expand the provisions on incitement to hatred and violence so that they include sexual orientation and gender identity as protected grounds.
- With the aim of fighting homophobia and prejudice within the institutions, keep training and informing the judges, prosecutors, police officers and civil servants on hate crime and incitement to hatred and violence against LGBTI persons.
- Improve the cooperation between the police and the judiciary in prosecuting hate crime against LGBTI people; systematic collection of data on hate crime on the grounds of gender, sexual orientation, gender identity or sex characteristics.
- Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes of police officers training, and civil service exams.
- Develop a programme to combat peer violence in primary and secondary schools which will encompass homophobic and transphobic violence, as well as programmes to promote tolerance and create an inclusive educational system.
- Training of university teachers and the academia to make them more sensitive in working with LGBTI persons – to be able to recognize, denounce and avoid the use of hate speech against LGBTI persons.

## III FREEDOM OF ASSEMBLY AND ASSOCIATION

### *Legal Framework*

**The right to freedom of assembly and association** is regulated by the Constitution of BiH, entity and cantonal constitutions, Statute of Brčko District, and entity and cantonal laws. This right is additionally safeguarded by international documents which BiH ratified or adopted in its legal system, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms. All these documents guarantee that all citizens in BiH have the right to freedom of assembly which may be restricted only with the aim of protecting the security of people or property.

Although the state has not created a nurturing environment for the development of civil society, nor does it have strategies for the development of civil society, **LGBTI activism is still growing**. There is a number of organizations currently active in protection and promotion of LGBTI rights. An increasing number of civil society organizations are including LGBTI human rights into their action portfolios in addition to their primary activities. Such development of activism and activities is an indicator of growing awareness of civil society that LGBTI human rights are not special rights and that they belong to a wide range of human rights these organizations advocate.

**Three years after the attack on Merlinka Festival the indictment against the responsible persons is still pending**. In 2016, Sarajevo Open Centre filed an appeal to the Constitutional Court of BiH for the violation of the right to freedom of assembly of LGBTI citizens in the case of Merlinka Festival.

### *Documented Cases*

Large and visible LGBTI events take place in Bosnia and Herzegovina on a regular basis. Sarajevo Open Centre hosted the Merlinka Queer Film Festival in 2015 and in the beginning of 2016. After the attacks in 2014, the 2015, 2016 and 2017 festivals were organized with adequate support and protection from the police. Merlinka Festival was also organized in Tuzla in 2015, 2016 and 2017. Although the 2016 Festival



in Tuzla 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.

Several public protests and events addressing LGBTI human rights took place in 2016 organized with the support and presence of police officers without any violence or incidents.

However, a case stands out which happened in April/May 2017. On 30 March 2017, Sarajevo Open Centre contacted the Ministry of Interior of Sarajevo Canton to announce a protest march scheduled for **13 May to mark the International Day against Homophobia and Transphobia** and raise awareness on the unacceptable violence against LGBTI people. On 11 April 2017 a permit was also requested from the Ministry of Traffic of Canton Sarajevo since the planned march route stretched down the traffic road from Eternal Fire to the Parliamentary Assembly of BiH. According to the Law on Fundamentals of Traffic Safety of BiH, this permit should be sought no later than 15 days prior to the event. According to the Law on Public Assembly of Sarajevo Canton, a request to hold a public assembly should be filed no later than 7 days prior to the event, with the permit of the Ministry of Traffic enclosed with the application if the assembly is to obstruct traffic.

From 4 May to 11 May members of Sarajevo Open Centre communicated with the representative of the Ministry of Traffic via telephone and were given contradictory information. Meanwhile, there was no official response from the Ministry. A lot of effort and funds had already gone into organizing the assembly but it soon became clear that the march could not be lawfully held since the Ministry of Traffic failed to issue the permit. On 11 May 2017, 48 hours before the event, representatives of Sarajevo Open Centre met with the police in what was supposed to be a final meeting to settle the details regarding the organization of the march on 13 May, and announced instead a protest assembly in front of the building of the Government of Sarajevo Canton on the same day. The Ministry delivered the permit at 16:08h on 11 May 2017 by which time it was too late to continue with the organization of the march and meet the legal requirements, i.e. too late for Sarajevo Open Centre as the organizer to inform the public of street closures through the media, which should be done no later than 48 hours prior to the assembly, according to the Law on

Fundamentals of Traffic Safety of BiH. Failure to abide by this provision rendered the permit inconsequential and prevented the organization of the march. The permit came 5 hours after members of Sarajevo Open Centre held a press conference to announce the cancellation of the march, characterising the administrative silence of the Ministry of Traffic as violation of the freedom to assembly and announcing a new protest.

**By ignoring the request of Sarajevo Open Centre and persisting in its administrative silence, the Ministry of Traffic of Sarajevo Canton violated LGBTI people's right to assembly in Canton Sarajevo**

### *Guidelines for Further Action*

- Create a framework to support civil society organizations which are working on improving LGBTI human rights.
- It is important to take public LGBTI events as high-risk events and to adequately and timely secure them by the police. The police and all other institutions involved must approach these events more seriously and take timely necessary actions given that the freedom of assembly may be restricted only based on the law and in case of one of the legitimate goals as stipulated in Article 11(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms: national security or public safety; prevention of disorder or crime; protection of health or morals; protection of the rights and freedoms of others. In addition, any restriction of the right to freedom of peaceful assembly must be proportionate to the goal for which it had been established.

## 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 constitutionally guaranteed 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 or necessary 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 Article 4(2) of the Constitution of BiH and in Article 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 aspiring to accede to the EU, BiH will have to amend its legal framework to regulate the 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 marriage, it implies the right to same-sex partnerships that would be legally equal to heterosexual civil partnerships at least.

The European Court for Human Rights has ruled on multiple occasions, and particularly in the recent judgments in the cases *Valianatos v. Greece* and *Oliari v. Italy*, that same-sex unions are considered family life and that, with the aim of rectifying the violations of the right to family life guaranteed by the European Convention on Human

Rights and Fundamental Freedoms, the state must regulate same-sex union and ensure at least the same scope of rights and duties as granted to civil partnerships.

Having in mind that the Constitution of BiH stipulates direct application of the European Convention on Human Rights and Fundamental Freedoms and that it shall prevail over any other law – this obligation refers also to its entities. Therefore, it is clear that the institutions of Bosnia and Herzegovina and its entities must regulate same-sex unions both to improve its legislation and to achieve equality and a high standard of protection of human rights of its citizens.

The 2016 Bosnia and Herzegovina Report of the European Commission recognizes that same-sex couples are continuously institutionally discriminated against because there is no legal framework that provides them any social and economic rights.

In the mentioned ECRI 2016 report, it is recommended to the authorities in BiH to ensure a legal framework which provides same-sex couples the possibility to have their relationship be recognized and protected in the resolution of practical problems they face in their lives.

### *Documented Cases*

**In 2016, 8 couples contacted Sarajevo Open Centre looking for information on registering their partnerships in the countries of the region and in the European Union. In the beginning of 2017, two couples contacted Sarajevo Open Centre in search for such information.**

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

## *Guidelines for Further Action*

- Pass and implement laws in all three administrative 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 particular focus on social and economic rights).

# V RIGHTS OF TRANS\* PEOPLE

## *Legal Framework*

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 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 ministries of health and ministries of interior of the entities 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, this 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 with them all the time 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 and comprehensively regulate the procedures of changing one's name, sexual identification in the birth certificate 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 prevent their additional discrimination and marginalisation. 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.

In April 2017, in the case of *A.P. v. France*, the European Court of Human Rights decided that the sterilization requirement imposed on trans\* persons as a condition for legal recognition of gender constitutes a violation of human rights, specifically Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This decision is a great step forward in the protection of trans\* human rights and is the basis for all countries in Europe to amend their legislations so as to enable full respect of human rights of trans\* persons, particularly in the context of the right to gender recognition and the right to bodily integrity.

Another decision from 2017 which represents a significant progress in human rights is the decision of the Government of Sweden according to which all trans\* persons who had been forcefully sterilized are to receive compensation of damages.

The most recent European Commission Progress Report for Bosnia and Herzegovina recognizes the fact that transgender persons remain marginalized and that nothing has been done to simplify the sex marker change procedure so as to encompass the persons living a different gender identity without having completed the full medical transition.

ECRI, in its third report on Bosnia and Herzegovina, also recommends that the authorities should regulate the procedure and the conditions for sex change in accordance with Council of Europe guidelines. The guidelines encourage the member states, including BiH, to make possible the change of sex marker in documents based on life with a different gender identity.

### *Documented Cases*

The necessity of harmonizing identification documents with appearance became clear through the research entitled: *Life outside of norms: Transgender in BiH*, which was conducted by 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 healthcare providers and when they were crossing the border. For the majority of them finding a place to rent was a challenge (75%), as was proving their identity at educational institutions and 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 2016 Sarajevo Open Centre was contacted by five and in 2017 by two trans\* persons** who inquired about the possibility of changing the sex marker in 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 a framework law at the state level which would clearly define the term *sex change* and would simplify and make more accessible the procedure of legal sex change based on the life with a different gender identity without



setting the condition of having completed the full medical transition.

- Pass and implement laws in all three administrative units (Republika Srpska, the Federation of BiH and Brčko District) that would simplify and make more accessible the procedure of legal sex change and which would enable the legal change based on life with a different gender identity without setting the condition of having completed the full medical transition.
- Pass and implement laws in all three administrative units (Republika Srpska, 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 health insurance institutes to cover the costs of these procedures out of the health insurance budget.

## VI HUMAN RIGHTS OF INTERSEX PEOPLE

### *Legal Framework and Social Reality*

By introducing sex characteristics as a ground for discrimination through the Amendments to the Anti-Discrimination Law in BiH, the legislator recognised and safeguarded intersex persons. **Bosnia and Herzegovina thus joined a small number of countries in Europe which explicitly protected intersex persons in their anti-discrimination legislation**, which is a very positive step in the fight for protection of intersex persons. However, despite this progress, there is a range of problems and obstacles that intersex people face and that make them an extremely vulnerable group. The wider public does not talk about intersexuality almost at all which, in addition to the lack of information about intersexuality and the problems they face, makes intersex persons almost invisible and excluded in the society of Bosnia and Herzegovina. Reference literature, school and university textbooks, but also medical workers, still sometimes use the terms *hermaphroditism* and *pseudohermaphroditism* to denote intersex persons despite the fact that these terms are inaccurate, scientifically unfounded, and stigmatizing for intersex persons.

Furthermore, **the medical procedures for the treatment of various intersexuality cases are still not clearly defined or known to the public**. There is a significant concern that the so-called sex normalisation surgeries are performed in public health institutions – the medical and surgical treatment of newborns governed by the need to aesthetically adjust the appearance of the baby and its sex characteristics to male or female sex in line with social expectations, without jeopardising baby's health. This is contrary to what the human rights organizations are advocating, but also a great number of medical professionals – when there is no medical urgency, any aesthetic medical procedure should be postponed until the moment when children can provide their informed consent.

### *Research*

In the 2016 research conducted about the position of intersex persons<sup>1</sup>, Sarajevo Open Centre contacted **27 health institutions in**

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<sup>1</sup> Tijela koja nadilaze binarnost: Preporuke za unapređenje pravnog i medicinsk-

**the Federation of BiH, Republika Srpska and Brčko District** asking them about the number of newborns that could have been classified as intersex; the procedure in such cases; and, whether sex normalisation aesthetic surgeries are performed. **Seven health institutions sent their responses:** University Clinical Centre Tuzla, Cantonal Hospital Orašje, Cantonal Hospital Goražde, University Clinical Centre of Republika Srpska in Banja Luka, "Dr. M. Stojanović Hospital" in Prijedor, "Sv. A. Luka Hospital" in Doboј, and Brčko District public institution "Health Centre Brčko".

The responses informed that 4 out of 7 institutions have had cases of intersex newborns. Although this information provides only the partial insight into the overall number of intersex cases in BiH, it does confirm the assumption that such cases are more common than has been assumed. According to some medical estimates, but also activist data, **1 intersex person is born in 2000 births of the typical male or female sex.** If we take into account that the annual number of newborns in BH is around 30,000, we can assume that in BiH around 15 babies are born annually with variations in sex characteristic – i.e. 15 intersex persons.

Another conclusion drawn from the received responses is that **intersex newborns are referred to larger clinical centres in Sarajevo, Tuzla, Banja Luka, and also abroad.** One of the hospitals said that it is a common practice for parents and the child to be sent to Belgrade to University Children's Clinic Tiršova and the Mother and Child Institute. This leads to a conclusion that the focus of future action in terms of intersex people should be on the above larger clinical centres in Sarajevo, Banja Luka and Tuzla.

The issue of the procedure and transparent treatment in cases when children are born with sex characteristics that depart from the medically established definitions of male and female sex remains unclear. It is **certain from the responses that there is no clear and regulated procedure envisaged for these cases.** This leaves space for doctors to easily make decisions on surgical interventions or other medical treatments which are not necessary for the health of the child. It is unknown whether parents are provided adequate support of psychological and medical counselling which is necessary for them to make a decision which will be in the best interest of the child. Therefore, this is one of the issues that will require a lot

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og pristupa interspolnim osobama u BiH (Bodies that Transcend the Binary: Recommendations for the Improvement of the Legal and Medical Approach to Intersex Persons in BiH), available in BCS at:- [http://soc.ba/site/wp-content/uploads/2017/01/HRP\\_tijelo\\_01\\_18.01.2017.\\_web.pdf](http://soc.ba/site/wp-content/uploads/2017/01/HRP_tijelo_01_18.01.2017._web.pdf)

of work. Primarily, with regard to stronger contacts and cooperation with clinical centres, sensitization of medical staff, but also the involvement of relevant institutions such as ministries of health and the Institution of Human Rights Ombudsman.

### *Guidelines for Further Action*

- Cooperation with medical institutions and experts, sharing information and raising sensitivity regarding the problems of intersex persons and revising medical classifications to remove outdated terms such as *hermaphrodite* and *pseudohermaphrodite*.
- Transparent and accessible information about the procedures and medical treatments in case of birth of an intersex baby and prohibition of medically unnecessary surgical procedures and medical sex normalisation treatments in health institutions performed on intersex persons without their full and informed consent.
- Involving public authorities (ministries of health) and public bodies competent for the protection of human rights (ombudsmen) in the protection of intersex persons.

## VII SEEKING ASYLUM

### *Legal Framework*

In the beginning of 2016, a new **Law on Asylum** was adopted in Bosnia and Herzegovina. Despite the advocacy of Sarajevo Open Centre and other civil society organizations, the adopted amendments to the Law on Asylum of BiH did not encompass sexual orientation and gender identity as possible reasons for persecution and they have not been explicitly recognised as grounds for asylum seeking. The amendments to the **Law on Aliens** also failed to recognise same-sex partnerships as a ground for temporary residence in BiH.

The Institution of the Human Rights Ombudsman **issued recommendations to competent authorities relative to treatment of asylum seekers and aliens** in their Special Report on the Rights of LGBTI People in BiH. It was recommended, among other things, that officers working on asylum and other related professions should be provided trainings and that LGBTI asylum seekers should be treated with respect and sensitivity and provided information in the course of the asylum procedure. The procedures need to be established which shall make possible for LGBTI asylum seekers to feel safe to speak about their sexual orientation or gender identity, and to remedy the social isolation and discrimination that LGBTI asylum seekers experience in asylum centres in an appropriate and systemic manner.

On the other hand, we see the constant increase in the number of persons from BiH seeking asylum in the European Union or the United States of America on the ground of their sexual orientation or gender identity. The reasons for asylum seeking include most often the psychological difficulties of living in a homophobic and transphobic environment, psychological and physical violence, employment discrimination and persecution due to sexual orientation and gender identity – i.e. the impossibility to enjoy basic human rights.

### *Documented Cases*

**In 2016**, Sarajevo Open Centre **received five inquiries regarding either information or assistance, and as of 2017, 7 inquires**

**have already been received for assistance and provision of information to LGBTI persons in BiH in the process of claiming asylum in the EU and the United States of America.**

*Guidelines for Further Action*

- Amend the Asylum Law of BiH so as to explicitly include sexual orientation and gender identity as grounds for asylum seeking and possible persecution reasons.
- Recognise in the Law on Aliens same-sex partnerships i.e. family reunification as a ground for granting temporary residence to partners of BiH citizens.
- Provide training to officers handling asylum so that LGBTI asylum seekers are treated with respect and sensitivity and provided information.

## VIII THE MEDIA

### *Legal Framework*

The codes of professional journalist ethics in BiH exist at the level of Communications Regulatory Agency BiH, the Press Council BiH and at the level of certain journalist associations. **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.** The biggest difference between these two codes lies in the fact that the Communications Regulatory Agency BiH is authorised to impose certain sanctions (written or oral warnings, fines, revocation of licence) in case of violation of the Code on RTV Standards, while the violation of the Code for Print Media does not entail any legally prescribed sanction. The content of print media is subject to self-regulation after the action of the Press Council – the Press Council assesses the media content it received a complaint about and, if it establishes a breach, informs the media outlet that the complaint refers to that it is obliged to publish a correction which they may 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 2016*

In 2016, Sarajevo Open Centre monitored **the reporting of 93 media outlets:** electronic (radio – 10 and television – 24), print (the dailies, weekly and biweekly magazines – 35) and online media (news portals and print media portals – 24). In total, 1299 texts/features have

been published about LGBTI topics in all the media: print – 546 texts, television – 87 features and online media – 666. The daily newspaper which reported most on LGBTI topics is *Oslobodenje* – 86, TV station Federalna televizija – 27 and online portal Klix.ba – 118.

Of the total number of texts published in print media (546 articles), 194 were news from the region, 183 referred to BiH, and 169 news from around the world. The majority of texts were neutral in their tone (399), followed by positive (112), and then negative (35), which is the **lowest number of negative texts recorded** since Sarajevo Open Centre monitors and analyses media reporting. Of the total number of articles in online media (666), most of them reported on events in BiH (249), then the region (216), and finally the world (201). Of the total number of articles, there have been 240 positive, 380 neutral, and 45 negative ones.

In 2016, Sarajevo Open Centre monitored also the **media reporting on intersex persons**. It is important to emphasise that the media started reporting also on intersex persons, the invisibility and challenges that the face.

### *Guidelines for Further Action*

- The media in BiH need to refrain from inciting hatred 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 should not convey hate speech and 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 treat LGBTI persons equally as heterosexual and cisgender and not view them exclusively through the prism of their sexual orientation or gender identity; the need to report more on cultural, social, legal and political matters concerning LGBTI persons in BiH
- The media in BiH need to report on legislation and the necessity to respect LGBTI human rights; they need to control the comments on their online portals and social networks with the aim of suppressing criminal offences of inciting to discrimination, hatred and violence.



## GLOSSARY OF LGBTI TERMS<sup>2</sup>

### 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 sexual orientation (for lesbians, gay men and bisexuals), gender identity (for trans people) and sex characteristics (for intersex people). It is common on two levels: as a self-discovery, and as a (more or less) public notification. Coming out is a very important process for LGBTI persons as it represents public affirmation of their own identity which is highly significant for the psychological health and quality of life of this minority group.

### 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, gay men, and bisexuals 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 sex characteristics) be legally recognized as grounds on the basis of which discrimination is prohibited.

### HOMOPHOBIA

Irrational fear, intolerance, prejudice against gay men and lesbians. It manifests as a conviction in heterosexual superiority. Such conviction incites violence against people who are not heterosexual, which is justified by a belief in one's own superiority (and the inferiority of others). Violence is reflected in verbal and physical attacks, and discrimination.

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<sup>2</sup> Rječnik LGBTI pojmova nastao je zajedničkim radom tima Sarajevskog otvorenog centra.

## HOMOSEXUAL PERSON

A person who is attracted to persons of the same sex.

### *Lesbian*

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

### *Gay*

A man who is sexually and/or emotionally attracted to other men. It 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.

## 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 is no longer in use.

## INTERSEX PERSON

People born with *sex characteristics*, which include chromosomes, gonads or genitalia, that do not match the typical, binary categories of male and female bodies. There are different forms of intersexuality. 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, trans\*(gender) and intersex people. The term denotes a heterogenic group usually identified by the acronym 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

Gender identity is 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. Among other things, it refers to personal experience of one's own body, clothing and speech. People whose gender identity is in accordance with the sex they were assigned at birth are 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 subgroup 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*

Visual and external presentation of every person that is reflected in clothing, hair, behavior, and body language.

## SEXUAL ORIENTATION

Emotional and/or sexual attraction or affection towards people of the same and/or opposite sex/gender. 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 sex orientation, sexual decision, sexual preference, sex 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 their body (including physical and/or hormonal therapy and surgeries).

## TRANSPHOBIA

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

## HATE CRIME

Refers to criminal acts motivated by prejudices towards a person or group of people. Hate crimes include intimidation, 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, gender identity, or sex characteristic, or because the victim is connected, supports, belongs to or is a member of an LGBTI group.

## APPENDIX

### *The Political System of Bosnia and Herzegovina*

The political system of BiH is highly complex and asymmetric. BiH consists of 13 administrative units. It is organized into two entities (the Federation of BiH and Republika Srpska) and Brčko District. Republika Srpska is unitary and made up of municipalities and towns, while the Federation of BiH comprises 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 in the daily political life we often see different interpretations of these provisions which directly affects the (lack of) adoption of laws and other public policy documents (strategies/action plans). The state and both entities have their own constitutions and different government and political systems. Brčko District has its own administrative 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 whose members 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 – national institution for the protection and promotion of human rights - 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 Gender Equality Committee operates within the House of Representatives, while the Constitutional-Legal Committee 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 centres and the entity parliaments also have parliamentary working bodies for gender equality/equality of opportunity. The entities do not have any specialized government human rights centres/offices.

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 human rights or gender equality within their governments. The cantonal parliaments have human rights/gender equality committees which have not proven to be particularly efficient.

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 of 10 departments. Brčko District does not have an office/institution for human rights and/or gender equality within its government, but there is a Gender Equality and Human Rights Committee operating in the Assembly.

The highest judicial instances 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 competence of the entities and the Brčko District and there are ten cantonal police authorities in the Federation of BiH.

## *About Sarajevo Open Centre*

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

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counselling we also continued running the only LGBTI media outlet in the state – a web portal [www.lgbt.ba](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, as well as other future professionals. In 2016, several of our legislative and policy initiatives have been submitted to governmental or parliamentary procedures. We also started working with the local level institutions – the level most important for LGBTI persons. Our advocacy focuses on anti-discrimination regulation, as well as regulations relevant for the protection of LGBTI person from violence. We intend to continue working on matters important for trans\* people, same-sex partnerships, social inclusion, but also the position of LGBTI persons in education, health, labour and employment. Over the recent years, we had media campaigns that have reached over a million of BiH citizens and we organised the LGBTI film festival Merlinka.

You can find out more about our work at: [www.soc](http://www.soc).

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