

National Human Rights Institutions and the Protection of LGBTI rights in the Western Balkans – Experiences, Challenges and Good Practices

Adrijana Hanušić Bećirović

Sarajevo Open Centre

www.soc.ba

www.lgbti.ba

Sarajevo, September, 2017

ISSN 2303-6079

Content

Introduction	5
I Context: Status, Experience and Problems of LGBTI Persons	7
II The Work of National Human Rights Institutions	
Regarding Issues Relevant for LGBTI Persons	13
II.1. The Mandate of the Institutions / Legislation and the Context in which They Act	13
II.2. Challenges, Obstacles and Factors Facilitating the Work on LGBTI Issues	18
II.3. The Work of Institutions on Creating and Amending Appropriate Public Policies	23
II.3.1. <i>Special Report as a Tool for Influencing Public Policies, Laws, and Practices</i>	25
II.3.2. <i>Legislative Initiatives</i>	29
II.3.3. <i>Advocating for the Protection of Rights of LGBTI Persons in the Context of Acknowledging Same-Sex Unions</i>	31
II.3.4. <i>Influencing Strategies and other Strategic Documents of Importance for the improvement of the status of LGBTI persons</i>	33
II.4. Legal Work of the Institutions	34
II.4.1. <i>Explaining the Low Percentage of Complaints by LGBT Persons</i>	37
II.4.2. <i>Steps Undertaken to Address Low Percentage of Complaints</i>	39
II.4.3. <i>Adopted Recommendations</i>	41
II.4.4. <i>Specific Areas of Life/Specific Limitations to Human Rights Enjoyment of LGBT People Revealed Through Legal Work of Institutions</i>	43
II.4.5. <i>Examples of Cases Processed by the Institutions</i>	44
II.4.6. <i>Multiple Discrimination of LGBTI Persons</i>	49
II.4.7. <i>Addressing Problems of Trans and Intersex Persons – Examples of Good Practice</i>	50
II.5. Research Work of Institutions	52
II.6. Communication Work of the Institutions (Public Relations), and Particular Promotional Activities	54
II.6.1 <i>Specials Objectives in Conducting Activities which Specifically Relate to the LGBTI Population</i>	58
II.6.2. <i>Formal and Informal Cooperation Arrangements between the Institutions, the LGBTI Population and Organizations</i>	59
Conclusion	62
About the Author	66
About Sarajevo Open Centre	67

Human Rights Series of Sarajevo Open Centre
Publication Number: 28

Title:	National Human Rights Institutions and the Protection of LGBTI rights in the Western Balkans – Experiences, Challenges and Good Practices
Author:	Adrijana Hanušić Bećirović
Language Editing:	Sandra Zlotrg
Layout and Design:	Dina Vilić
Translation BHS-ENG:	Aida Spahić
Publisher:	Sarajevski otvoreni centar, www.soc.ba
For the Publisher:	Emina Bošnjak

© Sarajevo Open Centre

Non-commercial copying, photocopying, or any other reproduction of this publication in whole or in part is desirable as long as the publisher is informed thereon in writing at: office@soc.ba.

Print of this publication is financed by Open Society Fund Bosnia and Herzegovina.

It is with great pleasure that I am writing to endorse Sarajevo Open Center's report "National Human Rights Institutions and the Protection of the LGBTI rights in the Western Balkans – Experiences, Challenges and Good Practices" on behalf of ILGA-Europe. The report is an important reminder that legislation alone does not bring about change, and highlights the crucial role National Human Rights bodies should play in ensuring that legislation is translated into real change for gay, lesbian, bisexual, trans and intersex people in the Western Balkans.

Over the last years, important progress has been made in the region. A mere glance at ILGA-Europe's Rainbow map shows that legal protection, ranging from anti-discrimination acts, to hate crime and hate speech legislation explicitly including the grounds of sexual orientation and gender identity, is, with the exception of Macedonia, quite advanced in the Balkans. The EU accession process has played a role in this as in recent years the Copenhagen Criteria, which states are required to fulfil to be able to join the EU, have developed significantly to include protections for LGBTI people. In terms of legislation, the Western Balkans rank higher in the Rainbow Europe map than several EU member states.

However, unfortunately, in and of itself legislation does not lead to change. As the report clearly shows, LGBTI people still face violence, discrimination, and pervasively negative public attitudes throughout the Western Balkans. To ensure the full protection of the rights of LGBTI people and reduce discrimination, effective implementation is necessary across the region. And National Human Rights Institutions have to play a key role in ensuring implementation of legislation. However, not only across the Balkans, these institutions often lack the necessary resources and staff, including relevant knowledge among staff, to effectively carry out this task. As the report shows, worryingly, some even lack the legal mandate to do so.

In order to ensure implementation, we need to ensure that the responsible bodies and institutions are trained and supported, also through the sharing of good practices across the region. Such support is already being provided in collaboration with the Council of Europe through its horizontal facility, but this report certainly shows that much remains to be done to ensure that the potential of achieving real change is not lost in a tick box approach. We need to ensure together now, civil society actors and European institutions, that the progress made leads to actual change for LGBTI people in the region. The report identifies two important steps that are needed now to further LGBTI equality in the Western Balkans: on the one hand, governments should develop clear strategic commitments and action plans that set out a mandate and activities, as well as financial and human resources for National Human

Rights institutions to foster LGBTI rights and work towards implementation, awareness raising and increased social acceptance. And secondly, these institutions need to work in close cooperation with civil society organisations. Organisations such as the Sarajevo Open Centre play an indispensable role in fostering change for LGBTI people, advocating for legislative protection, working tirelessly for effective implementation, raising awareness through reporting discrimination and violence, as well as supporting the communities. Their close link to the communities offers a wealth of knowledge and expertise to actors such as National Human Rights institutions and allow actions to be targeted and effective.

We look forward to a continued collaboration with the Sarajevo Open Center and other civil society organisations across the region, with EU and Council of Europe Institutions, and with National Human Rights bodies to continue to progress the human rights of LGBTI people across the Western Balkans.

Katrin Hugendubel

Advocacy Director

ILGA-Europe

Introduction

This report shows what the national human rights institutions and bodies for the protection of equality can do and have done for the improvement of the protection of rights of LGBTI people in Albania, Bosnia and Herzegovina, Montenegro, Croatia, Kosovo,¹ Macedonia and Serbia.

The objective of the report is to provide, through a comparative overview of legislative frameworks, institutional mechanisms and good practices, incentives and ideas for institutions to improve their work on equality promotion and elimination of discrimination of LGBTI people.

At the same time, the report can serve, both nationally and regionally, as an additional source of information on LGBTI issues as it presents the relevant lessons learnt from the work of the national human rights institutions. Finally, it can contribute to enhance the relations between these institutions and LGBTI people and their organizations through the presentation of their mandate, activities and successes in the promotion and protection of LGBTI rights.

The report mostly relies on the responses to the questionnaire which was sent out to relevant institutions. It covered a number of different segments of their work. Some bodies responded to the questionnaire, while others have not and in such cases we used either the local non-governmental organizations' activists in some countries or the publicly available human rights reports (or specific reports on LGBTI rights) and the annual and special reports produced by some of these bodies, as well as articles, analyses and other relevant documents as information sources. The reports were used as supplemental information also to the received questionnaires.

We would like to thank all the institutions who have taken the time to partially or fully respond to a very extensive questionnaire. These are the Commissioner for the Protection of Equality and the Protector of Citizens of the Republic of Serbia, the Protector of Human Rights and Freedoms of Montenegro, Ombudsman Institution of Albania,² Institution of the Human Rights Ombudsman of BiH, Gender Equality Ombudswoman of the Republic of Croatia, and the Macedonia Commission for the Protection against Discrimination.

We would also like to thank partner non-governmental organizations and their activists – the Subversive Front from Macedonia (Antonio Mihajlov and Viktorija Bondikjova), CEL – Centre for Equality and Liberty Kosovo (Gemza Burgija) – for their selfless contribution to this research. Inela

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

² The questionnaire was not sent to the Albanian Commission for the Protection against Discrimination and the information on its work was collected online.

Hadžić of Sarajevo Open Centre also provided assistance in data collection. Following the introductory presentation of the social contexts in which these bodies address problems faced by the LGBTI population (Part I), the report provides an overview of the experiences, challenges, and good practice examples, as well as other relevant information about the work of these bodies presented by segments of their work, in compliance with the research focus (Part II).

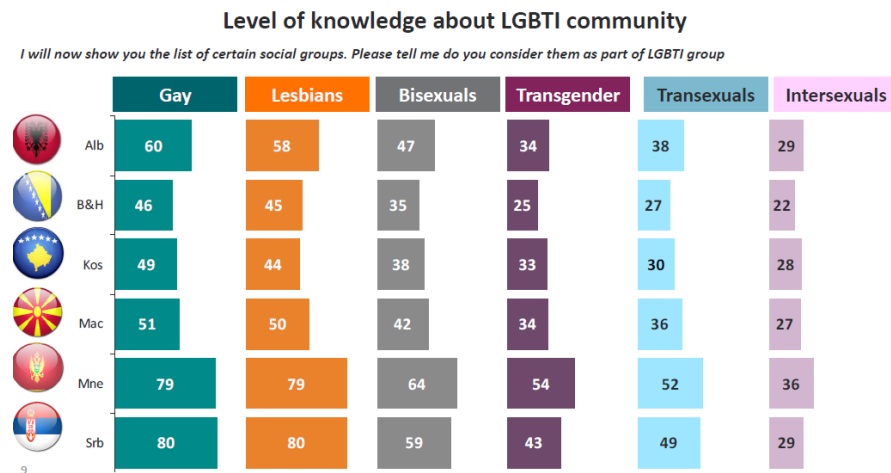
The focus of the questionnaire, as well as additional research activities, which also provides the structure for the report, was on the following segments of the work of the institutions:

- The mandate of the institution i.e. the legislative framework and the social context
- Activities of the institution on policy development and change, based on experience and expertise
- Legal activities of the institution (receipt and review of complaints, provision of legal assistance, decisions in specific cases)
- Research and promotional work of the institution (carrying out research, support to service providers to implement good practices of equality promotion)
- Communication work of the institution / public relations (informing persons who may be potential victims of discrimination, informing decision-makers, building the culture of human rights protection)

I Context: Status, Experience and Problems of LGBTI Persons

In June 2015, the National Democratic Institute (NDI) conducted a research on LGBTI issues in six countries of the Western Balkans.³ On the one side, they conducted a poll encompassing 6,436 people from the overall population, and 655 LGBTI persons, from Serbia, Macedonia, Bosnia and Herzegovina, Kosovo, Albania and Montenegro, while, on the other side, they had three focus groups in each of these countries; two with members of the overall population and one with members of LGBTI population.

GENERAL POPULATION/WESTERN BALKANS 2015

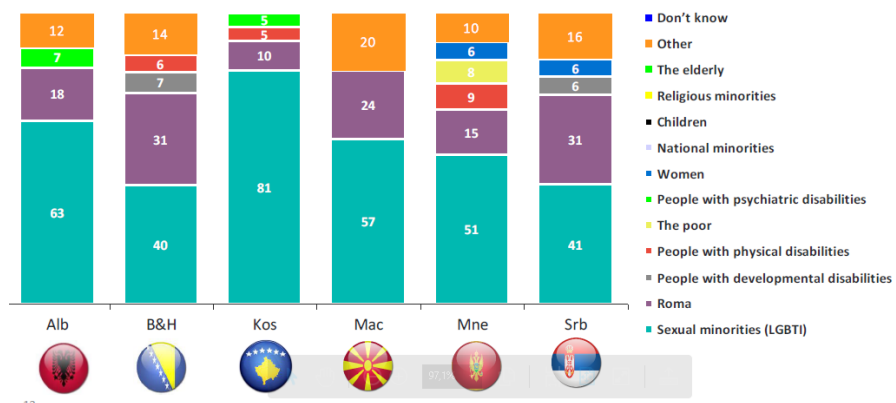


The results of the research give a good contextual introduction into the status of LGBTI population in the countries of the Western Balkans. These results are not overarching and completely representative, but they do present an

LGBTI POPULATION, WESTERN BALKANS 2015

LGBTI people see themselves as most discriminated minority group

Which of the following groups would you say are the most exposed to discrimination in your country?

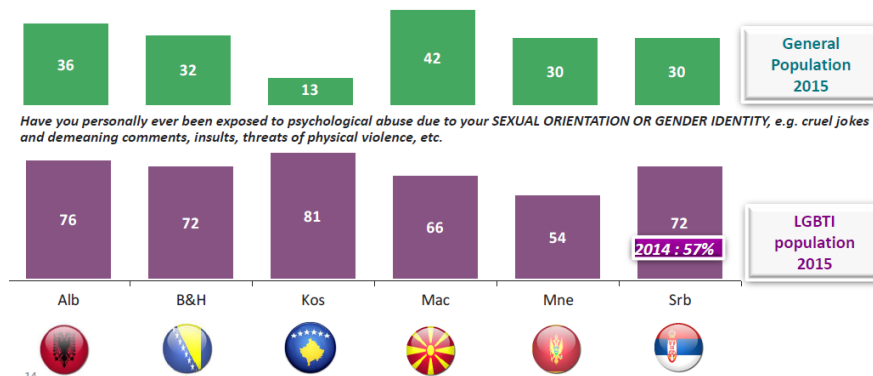


³ Regional LGBTI Public Opinion Poll – Western Balkans, 2015. Conducted by Ipsos Strategic Marketing, supported by USAID through the NDI program REAPPS, and Victory Institute and Civil Rights Defenders. Available at: https://www.ndi.org/LGBTI_Balkans_poll

important source of information on the attitude and public awareness, and the status of LGBTI persons.

Exposure to psychological abuse and verbal harassment: General population Perceptions vs. LGBTI Reality don't match

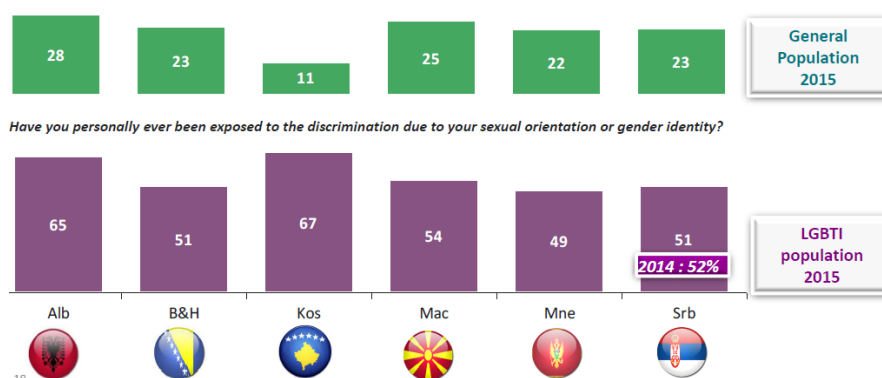
Thinking about LGBTI persons, how often are they denigrated by family, friends and/or colleagues?



The data indicate the existence of several layers of issues. On the one side, ignorance of the general population on LGBTI topics is evident, especially about the problems LGBTI persons face. Even the mere term LGBTI is unknown. Data subjects limit the term to homosexual individuals, not knowing that the LGBTI community includes transgender, transsexual and intersex persons. While citizens in Montenegro and Serbia head the list in knowing this acronym, data subjects from Bosnia and Herzegovina are at the rear. There is significant difference in the perception of the most discriminated social group. For example, in Serbia, only 6% of data subjects in the general population considers it to be the LGBTI community, while 41% of the surveyed LGBTI persons see themselves to be the most discriminated group. In the same manner, there is a discrepancy tendency between the perception of the general population and LGBTI persons on whether LGBTI persons are victims of special psychological abuse and verbal harassment on the count of

Exposure to discrimination: General population Perceptions vs. LGBTI Reality don't match

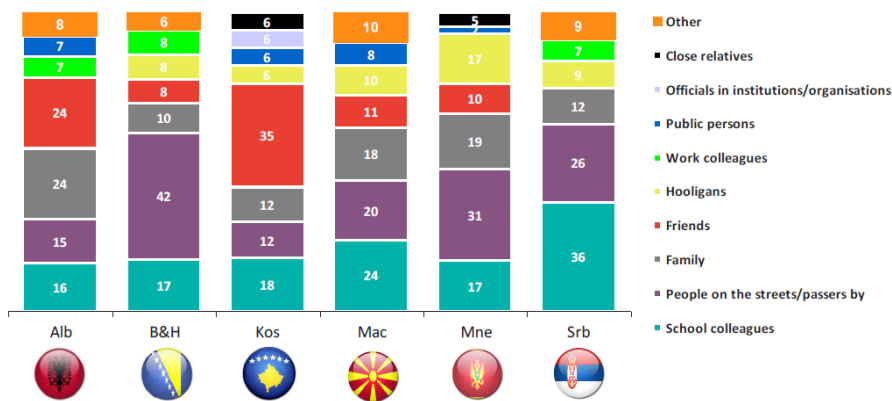
How often do you believe that people receive worse treatment than others because they belong to the LGBTI population?



LGBTI POPULATION/WESTERN BALKANS 2015

Perpetrators of psychological abuse and verbal harassment

Which following groups were MAIN perpetrators of psychological abuse in most cases?



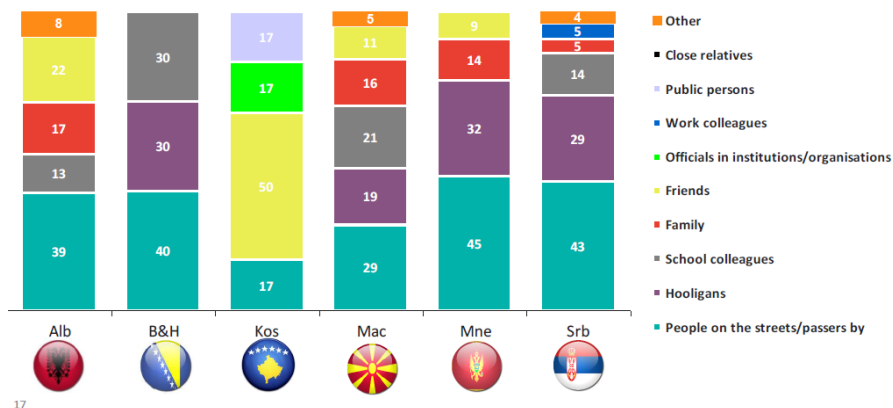
their sexual orientation or gender identity. For example, although only 13% of the general population in Kosovo see it to be the case, as many as 81% of the data subjects who are members of the LGBTI community state that they were victims of such violence. A similar situation can be noticed with the perception of exposure to discrimination. In Albania, only 28% of data subjects from the general population notice the existence of this problem, and 65% of LGBTI data subjects experienced it in real life.

The research further points at a high level of violence and discrimination towards LGBTI persons in all the countries of the Western Balkans. It is interesting to see that in BiH, the most common source of psychological and verbal abuse is unknown, random passers by – as many as 42% (31 in Montenegro, 26 in Serbia, 20 in Macedonia, 15 in Albania, 12 in Kosovo). In Serbia, the main perpetrators are school colleagues - 36% (24 in Macedonia, 18 in Kosovo, 17 in Montenegro, 17 in BiH, 16 in Albania). However, in Kosovo, friends are the main source of violence – in as many as 35% of cases (24 in Albania, 11 in Macedonia, 10 in Montenegro, 8 in BiH, no such cases

LGBTI POPULATION/WESTERN BALKANS 2015

Main perpetrators of physical violence

Which of the following groups were MAIN perpetrators of PHYSICAL violence in most cases?



in Serbia), whereas in Albania the main perpetrators of such violence are family members – 24% (19 in Montenegro, 18 in Macedonia, 12 in Serbia, 12 in Kosovo, 10 in BiH).

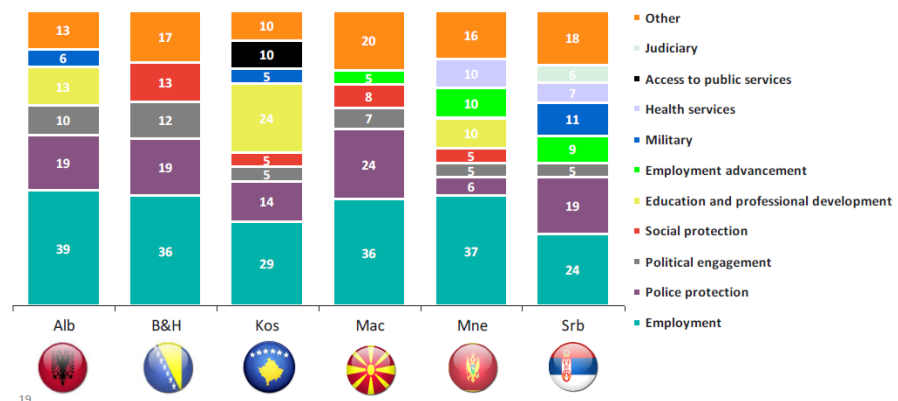
When considering physical violence against LGBTI persons, the example of Kosovo is most interesting of all the countries, with as much as 50% of physical violence originating from friends (22 in Albania, 11 in Macedonia, 9 in Montenegro, no such cases in other countries). In addition, the main perpetrators of physical violence are random passers by as well as hooligans and school colleagues.

Research results indicate the existence of higher levels of discrimination against LGBTI persons primarily regarding employment (39% in Albania, 37 in Montenegro, 36 in BiH and Macedonia, 29 in Kosovo, 24 in Serbia), and police protection (24 in Macedonia, 19 in Serbia, Albania and BiH, 14 in Kosovo, 6 in Montenegro). Discrimination is also present in political engagement (12 in BiH, 10 in Albania, 7 in Macedonia and 5 in Kosovo, Montenegro and Serbia), in education (24 in Kosovo, 13 in Albania and 10 in Montenegro), in social protection (13% in BiH, 8 in Macedonia, 5 in Montenegro and Kosovo) and other areas of life.

LGBTI POPULATION/WESTERN BALKANS 2015

Main areas of discrimination

Based on your personal experience, in which area are LGBTI people most frequently exposed to discrimination?

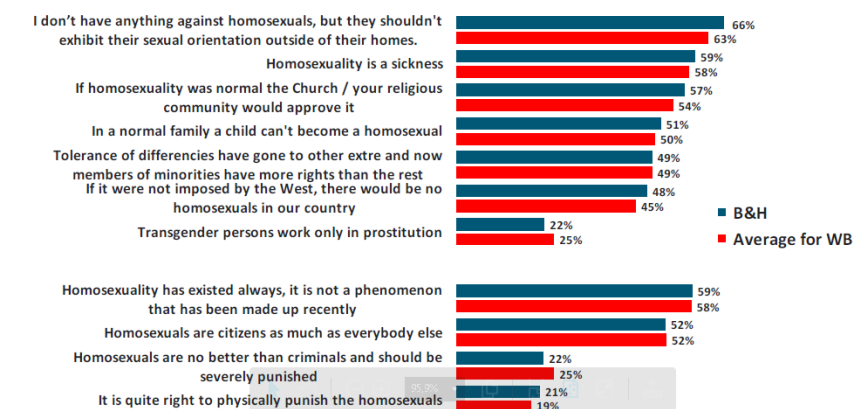


The attitude of the general population towards LGBTI persons in the countries of the Western Balkans is acutely negative, including the opinions that LGBTI persons are sick – 58% on average, and that there are no LGBTI persons in “normal families” – an opinion held by 50% of data subjects of the general population. Ignorance could partially account for that. Namely, due to the invisibility of the LGBTI community and the stigma around announcing one’s identity, on average only one in ten data subjects of the general population in the Western Balkans countries is in touch with LGBTI persons, while research indicates that knowing LGBTI persons enhances the sensibility for their problems.

GENERAL POPULATION/WESTERN BALKANS 2015

Prejudice and stereotypes are deep and widespread!

Now I am going to read to you some statements and I would like you to tell me to which extent you agree with each of them.



The final conclusion of the research is daunting. A large percentage of LGBTI persons does not feel safe in their communities (71 in Kosovo, 66 in Macedonia, 54 in Albania, 48 in Serbia and BiH), which is why a significant number of them is planning to leave their country in the following two years (42 in Montenegro, 38 in Kosovo and Albania, 37 in BiH, 36 in Serbia, 21 in Macedonia).

These results indicate a strong need for quality anti-discrimination legislation, and its consistent implementation. It is in the implementation process that the bodies for equality protection can play an important role. One of these roles is also promoting LGBTI rights.

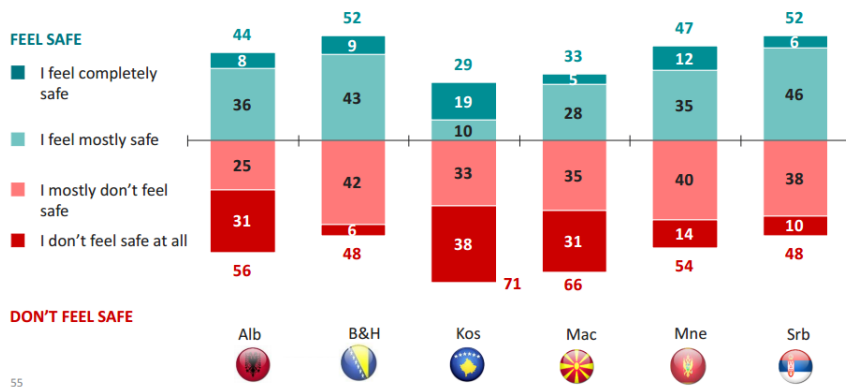
This is supported by the fact that as many as 83% of LGBTI persons in BiH, and 81% in Serbia (69 in Montenegro, 57 in Kosovo, 53 in Albania and 49 in Macedonia) believe that events dedicated to them are invisible.

However, the role of national human rights institutions is not limited to this aspect. It takes a lot of effort to react to the violation of human rights of LGBTI persons with proper protection, while breaking down stereotypes

LGBTI POPULATION/WESTERN BALKANS 2015

LGBTI persons do not feel safe in their communities.

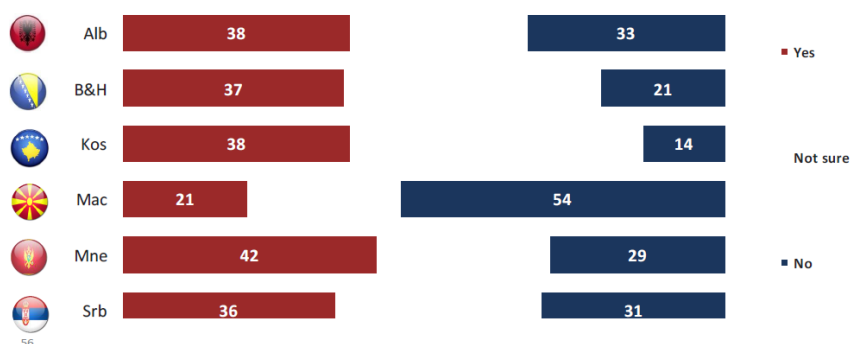
In general, how safe do you feel as a member of LGBTI community in your city?



LGBTI POPULATION/WESTERN BALKANS 2015

Significant number of LGBTI persons plans to leave their country in next two years

Taking everything into account, do you see yourself living in your country after the next 2 years?



and prejudices. A precondition for this is a higher percentage of reporting discrimination and other violations of rights of this population.

In any case, a stronger engagement of these institutions is vital regarding the protection and promotion of the rights of LGBTI persons. Below you can find the examples of previous engagement in the countries of the Western Balkans, especially the positive practice, and thus one can identify the verified means of influencing the improvement of the status of LGBTI persons in these societies.

II The Work of National Human Rights Institutions Regarding Issues Relevant for LGBTI Persons

II.1. The Mandate of the Institutions / Legislation and the Context in which They Act

In the countries of the region, the primary institution for the protection of the rights of LGBTI persons is the institution with the general mandate to protect human rights, mostly named the Ombudsman, as is the case in Bosnia and Herzegovina, Kosovo or Montenegro (the Protector of Human Rights and Freedoms), or alongside there is a special body for the protection against discrimination or equality protection, as is the case in Serbia, where, apart from the Protector of Citizens (Ombudsman), there is also a Commissioner for Protection of Equality. In Croatia, apart from the Ombudsperson, there is also an Ombudsperson for Gender Equality, and in Macedonia and Albania there is a Commission for Protection against Discrimination apart from the Ombudsman.

If there is a regular national institution for the protection of human rights (which is called National Human Rights Institution in English), there are usually special departments in charge of addressing cases of discrimination, as is the case in BiH, Montenegro or Macedonia.

The main legal basis for the institutions in the region to work on the protection of rights regarding the LGBTI population, apart from general constitutional provisions⁴ (but also the influence of certain international documents and some other laws) are mostly the Anti-Discrimination Law⁵, the Law on Gender Equality⁶, and/or laws exclusively dedicated to regulating the work of the given institution, e.g. the Law on the Protector of Human Rights and Freedoms of Montenegro or the Law on the Human Rights Ombudsman of Bosnia and Herzegovina.

In Croatia, the Act on Gender Equality, which the Ombudswoman acts on, forbids discrimination on the grounds of sex and marital/family status and sexual orientation.

When it comes to institutions whose legal basis is the Anti-Discrimination Law, that law stipulates gender identity and sexual orientation as grounds for discrimination (e.g. Serbia). These discrimination grounds are generally envisaged in anti-discrimination laws which are applied in the institutions whose work is regulated by a special law (e.g. Montenegro and Kosovo). In

4 E.g. Article 24 of the Constitution of Kosovo anticipates the prohibition of discrimination, in addition, on the basis of sexual orientation.

5 E.g. in the case of the Commissioner for Protection of Equality in Serbia.

6 E.g. in the case of the Ombudsman for Gender Equality in Croatia.

the case of BiH, in addition to gender identity and sexual orientation, the Anti-Discrimination Law also includes sex characteristics, and in Croatia in addition to gender identity it includes also expression or sexual orientation. The laws which regulate the mandate of the institutions do not explicitly stipulate the protection of the rights of LGBTI persons as an area of activity, but as an activity qualified under the protection against discrimination (e.g. in institutions of the Ombudsman in Albania and Kosovo), or under the review of human rights violations (e.g. BiH) prescribed by such laws.

It is interesting to see that in Kosovo, in the Regulation on Internal Organization and Systematization of Job Positions in the Ombudsperson Institution, cases relating to the rights of the LGBTI community are explicitly listed among the responsibilities of the Sector for Protection from Discrimination, and the rights of LGBTI persons are referred to several times in the Regulation.⁷

On the other hand, in Macedonia, neither the Anti-Discrimination Law nor the Law on the Ombudsman anticipates the protection of the rights of the LGBTI population or the discrimination on the grounds of sexual orientation and gender identity. However, these grounds are, according to the Commission for Protection against Discrimination, anticipated by other laws, e.g. the Labour Law or the Law on the Protection of Patients' Rights. Although they admit that it has to be amended in the future, the Commission states as an answer to the questionnaire that it did not present an obstacle for them to handle discrimination issues on these grounds. Other sources state that in practice, this Commission has nonetheless accepted sexual orientation as a ground for discrimination and decides on such cases (although their practice is still deemed as ineffective protection of the LGBTI community).⁸ Among other relevant laws these bodies apply in their work, the most important are the laws which directly concern the regulation of the rights of LGBTI persons, such as the Life-Partnership Act, where it exists, as well as laws with anti-discrimination provisions regarding the ground of sexual orientation in some countries. This ground is explicitly prescribed e.g. in Serbia in the Labour Law, Law on Social Protection, Law on Higher Education, Law on Public Information and Media and the Law on Broadcasting. In addition, depending on the situation at hand, in the practice of these bodies, other laws become relevant since there can be a violation regarding their application and subsequent need for protecting the rights of LGBTI persons, as is e.g. the Law on Public Assembly or the Criminal Code.

⁷ Regulation No. 01/2016 on Internal Organization and Systematization of Job Positions in the Ombudsperson Institution, article 17, paragraphs 1, 1.2, and article 18, paragraphs 1, 1.9., i 1.15. Available at: http://ombudspersonkosovo.org/repository/docs/Regullorja_01-2016_ang_528820.pdf

⁸ Subversive Front and others, Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in the Former Yugoslav Republic of Macedonia: A Shadow Report to the Human Rights Committee, Geneva, 2015, p. 18, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/MKD/INT_CCPR_CSS_MKD_20814_E.pdf

Regarding **internal organization**, the activities on protecting the rights of the LGBTI population are distributed in different ways.

The Institution of the Commissioner for Protection of Equality in Serbia answers the questionnaire by explaining that a relevant “Rulebook does not prescribe a special internal unit or the job description of government officials who are exclusively in charge of the rights of the LGBTI population or any other group.” The body of the Gender Equality Ombudsperson in Croatia is structured in the same manner. As was stated in the answer in the questionnaire, there is no special department for specific areas of action, so that the counsellors handle several issues – e.g. the Deputy Ombudsperson handles, inter alia, the issues of LGBTI persons.

Regarding the Ombudsman institution in Bosnia and Herzegovina, Montenegro and Macedonia, these issues are handled by all the officials in the “anti-discrimination sector/department”, and in the Institution of the Protector of Citizens in Serbia, LGBTI issues are handled through the Department of Gender Equality. On the other hand, in Albania, the so-called General department is the one protecting also the rights of LGBTI persons since the Institution of the Ombudsman does not have a special department for the protection from discrimination.

In Kosovo, as part of the Department for Protection from Discrimination, there are several “units”, including one for the social issues and rights of LGBTI persons.⁹

The surveyed bodies were also asked about the satisfaction with the **education** level and education opportunities for their officials regarding LGBTI topics and relevant standards for the protection of their human rights. The Institution of the Commissioner for Protection of Equality in Serbia, and the Institutions of the Ombudsman in BiH and Montenegro expressed their satisfaction with the professional development in the field of anti-discrimination, where the Commissioner body specially stressed the importance of exchanging experience in the European Network of Equality Bodies (EQUINET), the Commissioner for Protection of Equality being a member of the network.

Similarly, in the annual report of the Macedonian Commission for Protection against Discrimination there is information that its staff received numerous trainings from the OSCE Mission in Macedonia and that they were included in civil society projects, which was recognized as an opportunity to overcome shortages in education and professional development of appointed members of this body.¹⁰

⁹ Other units are for: children's rights; gender equality; against human trafficking and violence; disabled people; the rights of communities. See the annual report by the Institution of the Ombudsperson for 2014 – Ombudsperson Institution of the Republic of Kosovo, *Annual Report 2014*, No. 14, 2015, Prishtina, p. 33, available at: http://www.ombudspersonkosovo.org/repository/docs/RAPORTI_2014_-_anglisht_21841.pdf.

¹⁰ Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, Country report non-discrimination for Macedonia 2016, p. 95, available at: <http://www.equalitylaw.eu/downloads/3709-2016-mk-country-report-nd>.

At the same time, the Institution of the Ombudsman in Albania expressed the need for education regarding defending the rights of the LGBTI community. In his annual report for 2014, the Albanian Commissioner for Protection from Discrimination points at the importance of the carried-out trainings in the sense of a positive influence on the number of filed complaints and passed strategic decisions regarding discrimination, where he states as an example discrimination in the form of hate speech against LGBTI persons.¹¹ Regarding the **authorization** of the bodies included in the research, most institutions have the mandate to review complaints in the cases of discrimination/human rights violations of individuals, and issue opinions and recommendations in concrete discrimination cases or other forms of human rights violations. In addition, the duty of informing individuals about their rights is also stated.

Some institutions (e.g. Commissioner in Serbia and Protector in Montenegro) can file a claim for protection against discrimination, with the permission of the discriminated person,¹² and institute misdemeanour charges due to an act of discrimination, while others can be included in court procedures as interveners (e.g. the Ombudsperson in Croatia).

Another possibility of the institutions prescribed by the legal texts is for them to warn the public against cases of discrimination, or other forms of human rights violations, to monitor the implementation of laws and regulations, to initiate the passing or amendments of regulations for the purpose of improving the status (of human rights) of vulnerable social groups and the improvement of protection against discrimination and other forms of human rights violations, to express their opinion on provisions of draft laws and other regulations for the purpose of improving the status (of human rights) of vulnerable social groups and the improvement of protection against discrimination and other forms of human rights violations and to conduct research and trainings regarding discrimination and the status of human rights of vulnerable social groups (e.g. Macedonian Commission for Protection against Discrimination, Commissioner in Serbia).

Most institutions can also monitor the state in the area of human rights and equality protection, and can submit an annual report thereon or special reports regarding the status of human rights, discrimination or, more specifically, the status of LGBTI persons.

An important factor to bear in mind while assessing the needs and opportunities for action by the bodies for the protection of human rights i.e. the protection of equality, as well as the existing obstacles to their work, is the

¹¹ *Annual Report of the Commissioner for Protection from Discrimination 2014.*, p. 5-6, available at: <http://www.al.undp.org/content/albania/en/home/library/poverty/annual-report-commissioner-for-protection-from-discrimination-20.html>.

¹² Filing an anti-discrimination suit is mostly discretion, i.e. they decide whether and when to start the court proceedings with the purpose of strategic litigation.

wider **socio-political context** in which they act.

The answers in the questionnaire stress mostly the negative socio-political environment regarding attitudes towards LGBTI persons in all countries, which is confirmed by the results of the general public opinion described in the first chapter. It is stated that in Serbia, the LGBTI population is considered to be the most discriminated group, that homophobia and transphobia are deeply rooted in the society, and that despite a rather good institutional and legal framework, the LGBTI population often does not report cases of violence and discrimination, due to the lack of trust towards the institutions. Similarly, in Montenegro, it is pointed out that the “institutional support of the country is indisputable” but “social circumstances are still complicated, especially regarding the so-called conservative parts of the society and especially religious organizations, ultra-nationalists and extreme hooligan groups”. In the answer to the questionnaire, the Macedonian Commission for Protection against Discrimination assesses that the wider socio-political context in this country is mostly ignorant towards the protection of the rights of LGBTI persons, and that the general attitude towards this topic is hostile. Regarding Bosnia and Herzegovina, it is pointed out that the LGBTI population faces stereotypes and prejudices on a daily basis since the society is not prepared to accept them as equal members of the community. Public officials do not openly stand for the protection of the rights of the LGBTI population, related to specific incidents or in general. Ombudsmen thus describe the social context as unfavourable, stressing that the attitudes towards everything different are at best neutral, and often violent.

At the same time, certain positive changes in some countries were pointed out as well. In Serbia and Montenegro¹³, for example, the following are pointed out as key positive changes: the issues the LGBTI population face are more talked about in public, the status of the LGBTI community is seen as a human rights issue and the perception of the public regarding the LGBTI population is changing. Both Serbia and Montenegro point out as great success the smooth running of the Pride (in Serbia in September 2014 and 2015) as a manifestation of freedom, and rights promotion projects in local communities (Montenegro), with the reservation that the running of such an event is not enough.

¹³ The Protector of Human Rights and Freedoms in Montenegro, *Report for 2015, 2016*, Podgorica, p. 154, available at: http://www.ombudsman.co.me/docs/Final_Izvjestaj_z_2015.pdf.

II.2. Challenges, Obstacles and Factors Facilitating the Work on LGBTI Issues

In the questionnaire delivered to the surveyed bodies, there was also a question about the **obstacles** to the improvement of their work on the LGBTI topics, in the sense of specific internal limitations, legal limitations, limitations in the application of certain concepts in practice, limitations in the socio-political context they work in etc.

Amongst the obstacles impeding the work on LGBTI topics, some institutions emphasized the “lack of social awareness on the equality of LGBTI community members” (Montenegro), and the unwillingness of the society to cast off stereotypes and prejudices and become more tolerant of the events which are not in accordance with the attitudes of the majority (BiH). The Montenegrin Ombudsman also stated that “there are no internal obstructions or ones based on exerting pressure on the Institution”.

The Subversive Front activists from Macedonia clarified that the key obstacle in Macedonia is an inadequate legal framework and the lack of a comprehensive approach in the legal system and public policies in the state regarding different grounds for discrimination. They reckon that the failure to include the grounds of sexual orientation and gender identity in the Anti-Discrimination Law directly affects the activities of the bodies for equality protection in practice. In that sense, they recognized the socio-political context as the “basic obstacle for the work on LGBTI topics, the protection of LGBTI rights and the development of anti-discriminatory policies for the LGBTI population”. In their answer, the Macedonian Commission for Protection against Discrimination lists also the “status of the Commission”, “the status of Commission members” and “the political influence on the process of human rights protection in general” as obstacles.

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina recognized as additional internal limitations the inevitable HR strengthening of the Department for Elimination of all Forms of Discrimination in the area of legal protection against discrimination and law analysis and conducting research, which are obligations under the Anti-Discrimination Law of BiH. Regarding external limitations, they referred to the Special Report on the Rights of LGBTI Persons which states the issues and specific recommendations for the improvement of the status of LGBTI persons in the BiH society. The Ombudsmen in BiH also recognized as an obstacle the fact which is relevant for a number of bodies, and that is a negligible number of complaints by LGBTI persons to the Institution of the Ombudsman, due to the fear of the LGBTI population to contact the Institution. Since it contributes to reduced activity in the area of protecting the members of the LGBTI population, there

are efforts to raise awareness of people about the protection of their rights. Finally, budget limitations which represent a structural issue for the functioning of all the bodies in the region reflect on the implementation of specific activities regarding LGBTI persons. For illustration purposes, several institutions pointed out the lack of human and financial resources as a potential obstacle for the implementation of promotional activities. Furthermore, although the Albanian Institution of the Ombudsman generally stated that there are no limitations in their activities on any account, the European Commission Albania Report 2016¹⁴ states that the Ombudsman Office is still limited by the problem which is probably familiar to most institutions whose work is the subject of this report / the lack of resources and staff.¹⁵

Although the Institution of the Ombudsman in Kosovo did not answer the questionnaire, it is noticeable from other conducted research that there are structural obstacles here as well and they probably influence their work. Although the new Law on the Ombudsman, which clarifies the legal framework for the actions of the Institutions, was passed recently, in May 2015, the Government disabled the Institution from implementing their activities by not securing the necessary resources for implementing the mandate.¹⁶ This issue, as well as the issue of inadequate willingness to implement the recommendations by the Ombudsman, which is also evident in Kosovo, are systemic problems usual in other countries as well,¹⁷ and are affecting, inter alia, the work on protecting the rights of LGBTI persons.

On the other side, as the key factor which **facilitates the work** on LGBTI topics, the surveyed institutions emphasized good cooperation and support from civil society organizations which are engaged in protecting the rights of the LGBTI population or wider, by protecting human rights (e.g. in Serbia, BiH, Albania, Montenegro) as well as the cooperation with international organizations (Serbia) and government institutions engaged in protecting human rights (Albania, Serbia).

Additional research for some institutions, as is the Protector of Citizens in Serbia, showed the importance of the civil sector especially in the area of “empowering the members of all vulnerable groups to turn to institutions and report the violations of their rights” which is one of the previously-mentioned obstacles.¹⁸

14 European Commission, *Albania 2016 Report*, SWD (2016) 364 final, p. 9, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf

15 See e.g. such a review for the Macedonian Commission for the Protection against Discrimination, European Commission, *FYR Macedonia 2016 Report*, SWD(2016)362 final, p. 61, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf.

16 European Commission, *Kosovo 2015 Report*, SWD(2015) 215 final, p. 8-9, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_kosovo.pdf.

17 As is, e.g. in Macedonia: Bogdanovska Aleksandra, *Analysis of the anti-discrimination legislation in the Republic of Macedonia in relation to sexual orientation and gender identity*, 2016, (Skopje: Subversive Front), p. 33., available at: <http://s-front.org.mk/wp-content/uploads/2016/12/Analiza-ENG-UberFinal-CIP-Korica.pdf>.

18 The Protector of Citizens in Serbia, “*Neophodna saradnja i usaglašena primena afirmativnih mera*”,

In the conditions of limited budget resources, the technical and financial support of certain donors proved to be of great importance, such as e.g. USAID, the Council of Europe, European Union, OSCE (Albania). The Serbian Commissioner for the Protection of Equality additionally emphasized the seminars and trainings organized by EQUINET (European Network of Equality Bodies).

Apart from the socio-political environment, the scope of anti-discrimination legislation itself can prove as an obstacle or opportunity for the work of bodies for the protection of human rights, i.e. protection of equality.

In the answer by the Commissioner in Serbia it is clear that the scope of anti-discrimination legislation is not limited regarding the protection of the LGBTI population, but that there are certain laws missing in Serbia which would improve the status of LGBTI population, such as the regulation of same-sex unions.

Some institutions specifically point at problems in implementing the existing laws. Thus, it is stated that the “implementation of the law is still in the manner of opportune approach to sanctions and realization of the fundamental rights of LGBTI persons” (Montenegro), i.e. that “it is not enough to pass laws, but ensure the correct and efficient application of the Anti-Discrimination Law, primarily by strengthening the institutions which can fulfil the new important task of anti-discriminatory protection” (BiH).

However, it is clear that the basic precondition for the protection of rights is the passing of the best possible legal framework for the protection against discrimination, which still has not been done in the countries that are the subject of this research.

Thus, e.g. the amendments to the Anti-Discrimination Law in Bosnia and Herzegovina, passed in July 2016, finally use correct terms of sexual orientation and gender identity as grounds on which discrimination is prohibited. In addition, as was stated earlier, “sex characteristics” were stated as prohibited grounds of discrimination, thus making BiH the first country in Southeast Europe to include the protection of intersex persons against discrimination in all areas of life through its Anti-Discrimination Law.

Simultaneously, in Macedonia there is still a significant limitation – sexual orientation and gender identity are not explicitly stated as special grounds for discrimination, although that law stipulates 20 other discrimination grounds.¹⁹ Although this is an open list of discrimination grounds, it is sub-

03.02.2015., accessed 08.02. at <http://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/3686-2015-02-03-08-35-54>

19 Some analysis explain that it is deliberate, conscious political move based on populist decision and incorrect legal reasoning. Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, *News Report: Equality Body and Civil Society Organizations join to make sure that sexual orientation and gender identity is regarded as a protected ground in Macedonia*, 20.11.2015, available at: <http://www.equalitylaw.eu/downloads/2963-equality-body-and-civil-society-organizations-join-to-make-sure-that-sexual-orientation-and-gender-identity-is-regarded-as-a-protected-ground-in-macedonia-pdf-86-kb>.

ject to criticism by international organizations and civil society as well as the opposition,²⁰ since it means that “the protection of people on the ground of sexual orientation remains uncertain”.²¹

It is interesting to see how the Macedonian Commission for the Protection against Discrimination and the civil society responded to such unwillingness of the government to regulate this issue in an appropriate manner, even if only for the cases which can reach this body for the protection of equality. Thus, sources available online²² point at a good practice which is the result of a joint project by the Macedonian Commission for the Protection against Discrimination and the H.E.R.A. Association²³ which resulted in passing the protocol for this Commission on how to act in discrimination cases on the grounds of sexual orientation and gender identity.²⁴

The surveyed bodies provided in their answers certain **positive practices** which were noted in these countries, such as adopting special obligations for the public sector, policies, strategies, action plans and similar documents, which contribute or have the potential to contribute to the improvement of the situation for the LGBTI population.

For Serbia, the positive fact that was stated was the adoption of the Anti-Discrimination Strategy and the Action Plan for the implementation of this strategy. This plan represents the first strategic document which, inter alia, contains a special part with specific measures and activities dedicated to the protection of LGBTI persons. It has also been noted that the Ministry of Interior of the Republic of Serbia established a point of contact for the LGBTI community, so that the members of the LGBTI population can directly refer to this police officer if they have any problems that the Ministry of Interior has to respond to.

In Bosnia and Herzegovina, the Government of Republika Srpska passed the Annual Operational Plan for the implementation of the Gender Action Plan in December 2015, which, inter alia, includes specific measures for the promotion and protection of the rights of LGBTI persons, which is the first time that a government included the rights of LGBTI persons in their plans. In Croatia, the following documents have been adopted: the National Policy for Gender Equality for the period 2011-2015 and the National Programme of Protection and Promotion of Human Rights for the Period 2013-2016, which are aimed at the improvement of the status of LGBTI persons, and

20 Bogdanovska Aleksandra, Subversive Front, *Analysis of the anti-discrimination legislation in the Republic of Macedonia in relation to sexual orientation and gender identity*, 2016, op.cit., p. 26.

21 Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, *News Report: Equality Body and Civil Society Organizations join to make sure that sexual orientation and gender identity is regarded as a protected ground in Macedonia*, op.cit.

22 Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, *Country report non-discrimination for Macedonia 2016*, op.cit., p. 91-92.

23 Health Education and Research Association (H.E.R.A.)

24 You can find more on this on p. 39.

the protection of the rights of sexual and gender minorities. Lately, however, nongovernmental organizations in Croatia have been warning about a negative tendency of excluding the human rights of LGBTI persons from public policies, thus non-governmental organizations reacted to the new draft of the National Plan to Combat Discrimination from 2017 to 2022 judging it as extremely regressive and dangerous since, inter alia, the term gender²⁵ was excluded from it, as well as any mention of discrimination against lesbians, gays, bisexual and transgender persons.²⁶

In Montenegro, the government adopted the Strategy for Improving the Quality of Life of LGBTI persons 2013–2018. However, reports by international organizations indicate a special challenge regarding this document and similar acts adopted around the region – it is a question of implementation. Thus, e.g. it is assessed that this strategy in Montenegro has not been implemented in a satisfactory manner, due to poor coordination and implementation monitoring.²⁷ It is stressed that it is necessary to establish a new model of coordination and monitoring which would consider individual agreements with the LGBTI community and all state institutions which engage in including the LGBTI community, and that such documents have to be accompanied by appropriate awareness raising campaigns.²⁸

In the answer to the questionnaire it was clarified that in May 2015 in Albania, the Albanian Parliament approved a special Resolution “On Protection of Rights and Freedoms of Persons belonging to the LGBT Community in Albania”. This Resolution provides for several reforms which have to be undertaken by the Albanian government in order to improve the living conditions of LGBT persons. Among the recommendations, there is also the approval of the LGBT Action Plan, training of teaching staff and stronger support for the Ombudsman and civil society organizations. This was followed by consultations and the preparation of the text of the National Action Plan 2016–2020, which was formally launched in October 2016.²⁹ Nonetheless, even regarding this question, in the answer in the questionnaire, the Ombudsman expressed concern about the effective implementation of the Action Plan, allocation of funds, monitoring and evaluation.

25 An open letter by activists of the Women’s Network Croatia and the Lesbian Group Kontra available at: http://www.osijek031.com/osijek.php?topic_id=67040#ixzz4i0633QeM

26 An open letter by the Centre for Peace Studies (CMS) and the Human Rights House available at: <http://dnevnik.hr/vijesti/hrvatska/novi-nacrt-plana-protiv-diskriminacije-regresivan-je-i-opasan---471231.html>

27 Nenad Koprivica, European Network of Legal Experts in gender equality and non-discrimination, *Country Report on Non-Discrimination – Montenegro*, 2016, p. 77, available at: <http://www.equalitylaw.eu/downloads/3747-2016-me-country-report-nd>.

28 *Ibid.*

29 See, e.g., <http://www.coe.int/en/web/sogi/-/the-launching-of-its-lgbti-national-action-plan>

II.3. The Work of Institutions on Creating and Amending Appropriate Public Policies

The answers in the questionnaire and additional online research give an insight into a wide array of activities the surveyed bodies conducted in the past, and which were aimed at the influence of public policies that will improve the status of the LGBTI population.

As one of the more important initiatives, the Commissioner for the Protection of Equality and the Protector of Citizens in Serbia emphasize the initiative regarding transsexual persons which they launched together. As part of that initiative, a joint work group was formed, there was an analysis of regulation of importance for the status of transsexual persons and recommendations were issued, i.e. amendments of existing regulations were recommended since their implementation would significantly improve the status of this vulnerable group (especially regarding legal consequences of gender reassignment and gender identity), but there have also been other comprehensive recommendations issued for the relevant bodies as a response to perceived problems.³⁰

The Serbian Protector of Citizens emphasizes in their answer, inter alia, the intention to influence certain problems from the annual reports, as is the problem young LGBTI persons face who had to leave their homes since their families rejected them after finding out about their sexual orientation or gender identity. As a positive example, they stress the fact that in 2016 for the third time in a row Belgrade organized the Pride Parade without any incidents, as well as Pride Day, which reflected the implementation of the recommendations of the Protector of the Citizens in the Annual Reports 2013, 2014 and 2015, and the Special Report “LGBT Population in Serbia – Human Rights Status and Social Position” from 2011.

The Gender Equality Ombudswoman in Croatia answered in the questionnaire that, in addition to regular participation in the process of drafting and implementing relevant regulations and strategic documents,³¹ they influence the improvement of public policies in many different ways. Thus, e.g. they inform the relevant ministry on the need to change textbook standards due to discriminatory content in the textbooks of ethics or religion referring to sexual orientation or gender identity.³²

The second example that the Ombudswoman gives is the special attention paid to monitoring all homophobic statements and physical violence against the LGBTI population, demanding it to be labelled as hate crime.

³⁰ For further information, see Commissioner for the Protection of Equality, „Analiza propisa od značaja za pravni položaj transpolnih osoba”: <http://ravnopravnost.gov.rs/analiza-propisa-od-znacaja-za-pravni-polozaj-transpolnih-osoba/>, accessed 08.11.2016.

³¹ See more on page 33.

³² For more information on this good practice see page 53.

For the purpose of solving existing prejudices towards LGBTIQ persons, the Ombudswoman “has decided to take on a proactive role, which manifests itself, inter alia, in careful monitoring of police statistics of criminal and misdemeanour offences of violence against LGBTIQ persons, the work and behaviour of police officers and their ability to recognize hate crime, as well as the appropriate legal qualification of individual cases of violence.”³³

Although the Institution of the Ombudsman of Kosovo did not submit their answers to the questionnaire, the annual reports of this body show that it participates in the work of the governmental Coordinating and Advisory Group for the Rights of the LGBT Community, and they state that their contribution was made in the meetings to find the best way to protect LGBT persons from the discrimination in the society.³⁴ The annual report lists some problems of the LGBT population and provides the following recommendation: For the government of Kosovo to include content about the rights of the LGBT population into educational programmes.”³⁵

The Institution of the Ombudsman in Albania has stated numerous examples of influencing the improvement of rights of LGBT persons in their answer. Among these activities are also the issued recommendations to relevant institutions, e.g. recommendations for the Ministry of Social Welfare and Youth, Ministry of Justice and Ministry of Education, on the need for improving legislation (the Labour Law, the Family Law, the Criminal Code), with the aim of removing obstacles regarding the respect of human rights of the members of the LGBTI community.³⁶

Further promotional activities in the Parliament of Albania are stated through their Special Reports which e.g. influenced the adoption of the Parliament Resolution of 7 May 2015 “on the protection of rights and freedoms of persons who are part of the LGBTI community”, and on the adoption of the National Action Plan on this issue.

This Resolution, as the Institution of the Ombudsman clarifies, appoints the Institution to monitor the respect of the lawful rights and freedoms of LGBTI persons in Albania, and defines the measures the relevant institutions should undertake. The Ombudsman has undertaken several initiatives for the implementation of the Resolution. The Ministry of Social Welfare and Youth and the Ministry of Education and Sport have been asked to elaborate on the implementation of the obligations assigned to these institutions through the Resolution.

³³ Croatian Parliament, „Drukčije društvo je moguće: suzbijanje diskriminacije LGBT osoba”, 20.11.2013., downloaded from: <http://www.sabor.hr/drugacije-drustvo-je-moguće-suzbijanje-diskriminac> (accessed 26.02.2017.)

³⁴ Ombudsperson Institution of the Republic of Kosovo, Annual Report 2014, No. 14, 2015, op.cit., p. 148.

³⁵ *Ibid.*, p. 109.

³⁶ See p. 30.

The Ombudsman received an answer from the Ministry of Social Welfare and Youth (MSZO) about several obligations which it fulfilled in order to protect the LGBTI community. Some of the more important measures include the improvements in the Labour Law, regarding guaranteeing the rights of LGBTI persons in the sphere of labour relations. The Ministry stated that it would monitor the application of the Labour Law provisions regarding the direct protection of the rights of LGBTI community through the State Labour Inspectorate. In addition, it is stated that the employees of this inspectorate will constantly be trained regarding the rights of this community.

One of the points of the Resolution on the protection of rights and freedoms of persons who are part of the LGBTI community is encouraging the Ministry of Education and Sport to train teaching staff about the best protection of the rights of LGBTI persons, with the aim of preventing any form of discrimination on the grounds of sexual orientation or gender identity, to conduct cultural activities against homophobia in educational institutions, with the participation of the members of the LGBTI community. The Ministry of Education and Science notified the Institution of the Ombudsman that the new curriculum of pre-university education was created respecting the principles of non-discrimination. It includes information on the LGBTI community, with the aim of creating a proper and safe environment, without violence, insults, social exclusion or inhuman treatment due to sexual orientation or gender identity. Moreover, the Ministry explained that the Institute of Education Development trained first and sixth grade teachers about the new curriculum in the entire Albania.

II.3.1. Special Report as a Tool for Influencing Public Policies, Laws, and Practices

One particularly powerful tool in the protection of human rights / equality with the potential to influence public policies, laws and practices is definitely the preparation of a Special Report, as a comprehensive analysis on the status and rights of the LGBTI population, with the formulation of appropriate recommendations for the competent bodies.

One such example is the Special Report for the protection and respect of the rights of the LGBTI community in **Albania**, which was adopted by the Albanian Commissioner for Protection from Discrimination in 2013.³⁷ This report, inter alia, points at the need for aligning legislation with the existing Anti-Discrimination Law. In that sense, some changes have been recommended in the Criminal Code, the Code of Administrative Procedures and the Labour Law, by aligning it with anti-discrimination legislation, primarily

³⁷ Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, 2013., available at: http://www.equineteurope.org/IMG/pdf/1419266680-special_report_lgbt_2013.pdf

the grounds for discrimination that are stipulated by it.³⁸

In 2011, the **Serbian** Protector of Citizens published a special report “LGBT Population in Serbia – Human Rights Status and Social Position”, which overviews and analyses legal and social situations as well as the status of the LGBT population in Serbia.³⁹ The report covers the topics regarding legal regulations and the status of LGBT persons, freedom of assembly, organizing the Pride Parade, hate speech and inflammatory language aimed at people of different sexual orientation and gender identity, media reports on LGBT topics, negative public perception of LGBT persons and prejudices towards this population, the status of transsexual and transgender persons, activities conducted by the Protector of Citizens as well as recommendations for changes.

A positive example is seen in the comprehensive report on the rights of LGBT persons in BiH which was adopted by the Institution of Human Rights Ombudsman of Bosnia and Herzegovina in 2016. Since the document has recently been published, the amount of influence it will have in practice still remains to be seen. By analysing its content, however, one can already notice an array of elements interesting in the context of studying the potential of this type of activities aimed at improving the status of LGBT persons. Therefore, here you can find exemplary presentation of the segments of its content.

The aim, objective and utility of such reports can be discerned from the text. Thus, the Ombudsmen “express hope that this Report will draw attention to the status of LGBT persons in the BiH society, and the recommendations to relevant bodies to undertake adequate legal and similar measures will represent a concrete step towards the improvement of the status of this population in all aspects of life.” Ombudsmen further on explain that “with the aim of raising awareness in public, primarily with the individuals in public service, (...) they clearly defined the need to create special reports on the approach of vulnerable groups of citizens and minorities, which is a constant challenge for the Ombudsmen, while the limiting resources and the need to ensure equal treatment for all groups demands strategic planning of this activity.”⁴⁰

The creation of this report was thus planned in the Strategy of the Institution of the Ombudsman for the period 2016–2021, while the recommendation for its preparation was first submitted by the non-governmental organization Sarajevo Open Centre in September 2013. An additional incentive for it was the conclusion of the Joint Committee on Human Rights of the Parliamentary Assembly

38 For further details, see Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 6–9., 15; *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 23–25.

39 Protector of Citizens of Serbia, *LGBT populacija u Srbiji – Stanje ljudskih prava i društveni položaj*, Beograd, 2011, available at: <http://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/2107-2012-01-12-14-02-53>.

40 The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izveštaj o pravima LGBT osoba u Bosni i Hercegovini*, 2016, Banja Luka, p. 79, available at: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2016110413333704bos.pdf.

of Bosnia and Herzegovina from June 2015 which invited the Institution of the Ombudsman to start working on the Special Report on the rights of LGBT persons in Bosnia and Herzegovina.⁴¹

This report lists the following as its specific aims: “to ascertain the current status and actual approach to human rights by the members of the LGBT community, to indicate to the competent bodies which measures should be taken for the purpose of improving the position of this population, and to raise awareness of the citizens of Bosnia and Herzegovina and to inform the public on the current level of LGBT persons exercising their rights.”⁴²

The research is based on the starting point of international human rights standards, and the recommendations of UN bodies, UPR and regional mechanisms for the protection of human rights. The Institution of the Ombudsman conducted, inter alia, a comprehensive research by sending an inquiry to the Ministry of Human Rights and Refugees of BiH, and numerous other institutions, relevant non-governmental organizations, individuals and media outlets.⁴³

Basically, it is evident that even in the process of research, i.e. the preparation of Special Reports, asking questions to different institutions can exert certain influence. Thus, the Ombudsmen delivered documents to the Ministries of Interior and the police at different levels of government to reply whether the regulations used by the police are aligned to the Anti-Discrimination Law of BiH; when were the regulations last amended and which regulations were amended; whether there was any training for police officers on the rights of LGBT persons (with additional questions: in what period, to what extent); whether certain officers are specialized to work with the members of the LGBT community and act based on their requests etc.⁴⁴ This was a reminder for the institutions about their obligations and encouragement to carry out those obligations.

In the conclusion of this Special Report, the Ombudsmen from BiH issued a number of recommendations in different domains. They pointed out that “public office holders should more openly come forward when protecting this group of citizens, regarding individual incidents and in general, since we still live in a relatively conservative society with a strong influence of religious organizations.”⁴⁵ It has been pointed out that according to the information by the Ombudsman of BiH there have not been cases of discrimination on the grounds of sexual orientation that ended up in court.

Bearing in mind several incidents in BiH regarding the gathering of LGBT persons and those supporting them, the Ombudsmen have pointed out that “the

⁴¹ *Ibid.*, p. 10.

⁴² *Ibid.*, p. 10.

⁴³ *Ibid.*, pp. 10-11.

⁴⁴ *Ibid.*, pp. 28-29.

⁴⁵ *Ibid.*, p. 78.

right to freedom of assembly does not only mean a passive attitude of the state regarding peaceful assembly, but demands for a proactive role, which means offering protection to groups who exercise their right to peaceful assembly, i.e. ensuring assemblies during which the public display of attitudes of certain groups is not suitable or acceptable for some other groups. Law-enforcement and criminal prosecution bodies in that context should be additionally trained and sensitized for working with the LGBT community for achieving a higher level of tolerance and personal safety.”⁴⁶

In addition to a general conclusion, concrete recommendations were issued to police agencies in Bosnia and Herzegovina.⁴⁷ Issues in the judiciary were pointed out and adequate recommendations were issued to the High Judicial and Prosecutorial Council of BiH and the entity centers for training judges and prosecutors, primarily in the direction of continuous training of the judiciary staff.⁴⁸ Further recommendations were issued for competent Ministries of Justice and all correctional institutions to work with the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina and create a comprehensive training programme for prison officials and start creating manuals for training the employees about LGBT topics.⁴⁹ A recommendation was also issued to all public broadcast services and all media outlets, printed and electronic media in BiH, to work on raising awareness and the promotion of the rights of LGBT persons with the aim of sensitizing the public and raising awareness about their rights.⁵⁰ The Institution of the Ombudsman recommended to political parties to include topics on the protection from discrimination on the ground of sexual orientation and gender identity in their programmes.⁵¹ The Faculties of Law in BiH were recommended to analyse the content of textbooks used in class so that homosexuality is considered as sexual orientation and not a deviation or disease.⁵² Clinical centres and hospitals in BiH were recommended to systematically and continuously train the medical staff to follow the process of transition for transsexual persons and offer adequate medical help, and to undertake measures with the aim of ensuring medical

⁴⁶ *Ibid.*

⁴⁷ „To act in a preventive manner regarding the protection of the rights of the LGBT population; B. to duly react in case of endangering any protected right of LGBT persons; C. to continue undertaking measures aimed at strengthening the sensibility in working with the LGBT population; D. to undertake measures in their competence in order to guarantee personal safety to every person while exercising the freedom to assembly which is guaranteed by the constitution; E. to work together with the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina to create a comprehensive training programme for police officers and to start creating a Manual for training employees about LGBT topics.” *Ibid.*, p. 35.

⁴⁸ „All necessary measures have to be undertaken in order for holders of judiciary functions to be educated about international and national mechanisms and documents about the protection of human rights, decisions of the European Court of Human Rights and ways to apply them in everyday life. The process of education has to be continuous and aligned to the development of mechanisms for the protection of human rights, especially regarding the discrimination issue with sexual orientation being one of the grounds for discrimination.” *Ibid.*, p. 38.

⁴⁹ *Ibid.*, p. 39.

⁵⁰ *Ibid.*, p. 46.

⁵¹ *Ibid.*, p. 54.

⁵² *Ibid.*, p. 54.

staff who could carry out the entire medical process of gender reassignment.⁵³ Other recommendations have also been issued, among which there are also suggestions for amending certain laws.

II.3.2. Legislative Initiatives

As is evident from some previously mentioned examples, the bodies for the protection of human rights can contribute to the necessary protection of the rights of the LGBTI population through initiatives for the adoption of adequate laws or amendments of laws and other similar initiatives. In addition to already mentioned examples of such initiatives given as part of the Special Reports, some bodies can institute these initiatives through recommendations which are the result of the work on specific issues, and beyond.

Thus, it is worth noticing, e.g. the initiative by the Ombudsman in Bosnia and Herzegovina directed at the Parliament of the Federation of BiH for adopting the Law on the Amendments of the Criminal Code of the Federation of Bosnia and Herzegovina⁵⁴ which will treat hate crimes separately, since they cause a sense of insecurity and distrust in every community. Thus, it was demanded that the definition of hate crime be included in the general part of the Criminal Code of the Federation of BiH, qualified forms for specific crimes for which the law stipulates harsher punishments if the offence was committed from “prejudice”, and inserting the motivation by prejudice as aggravating circumstances when deliberating on the punishment for an offence.⁵⁵ Four years following the initiative, on 15 June 2016 the Law on the Amendments of the Criminal Code of the Federation of Bosnia and Herzegovina, which stipulates the demanded amendments, was published in the Official Gazette of the Federation of Bosnia and Herzegovina, number 46/16.⁵⁶

In the previously described Special Report by this institution, there are also recommendations for the amendments to certain laws.⁵⁷ Thus, the Parliamentary Assembly of Bosnia and Herzegovina was recommended to begin amending the Law on Gender Equality of BiH and specifically define the terms of sexual orientation and gender identity, as was done in the Anti-Discrimination Law of BiH. Furthermore, Brčko District Assembly was recommended to begin amending the Law on Registries of Brčko District BiH, to regulate the entry of sex as it is prescribed by the Law on Registries of the

⁵³ *Ibid.*, p. 62.

⁵⁴ Initiative number: Ž-BL-06-879/12 of 26.12.2012.

⁵⁵ Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 25.

⁵⁶ Article 2 was amended in a manner that it prescribes that: „A hate crime is any criminal act committed because of the race, skin color, religious belief, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of the victim. Such action will be taken as an aggravating circumstance of any criminal act unless the code itself stipulates harsher punishments for qualified forms of criminal acts”

⁵⁷ Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 62.

Federation and Republika Srpska, while the entity Ministries of Health and the Department for Health of the Brčko District Government were recommended to consider the possibility of amending the Law on Health Insurance which will stipulate partial or complete cover of costs for the medical procedure of sex reassignment surgery and the obligatory health insurance.

A number of other bodies whose work is the subject of research also tried to influence the protection of the LGBTI population through their work by initiatives for the adoption of adequate laws and amendments of laws. Thus, the Gender Equality Ombudsperson of Croatia has actively advocated for the improvement of the legal framework which regulates the area of the rights of sexual minorities.⁵⁸ In the answer to the questionnaire it was stated that they did this, inter alia, by organizing conferences/seminars. It is also emphasized that they influence the alignment of national legislation through governmental work groups and offering expert opinion in parliamentary councils, and in the public – through statements and public discussions.

The Serbian Protector of Citizens also points out the recommendations issued in the regular annual reports regarding the need for amending certain laws. This includes emphasizing the need for explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in the Law on the Foundations of the Education System and the Law on Police, which in the end, in 2016, explicitly prohibits discrimination on the grounds of sex, gender and gender identity (with sexual orientation still missing).

The Albanian Institution of the Ombudsman emphasizes in their answer, inter alia, that they issued a recommendation to the Ministry of Social Welfare and Youth and the Ministry of Justice about undertaking a legal initiative to consider and adopt the Draft Law “on the legal acknowledgement of gender identity” in 2016, pursuant to the ECRI recommendation, as well as the recommendation on certain improvements in the Anti-Discrimination Law regarding “a larger number of criteria and causes which lead to discrimination, which would affect the protection of LGBTI persons”. Also, they state earlier recommendations, in 2012, relating to the amendments of the Labour Law aimed in including “sexual orientation and gender identity” as grounds for discrimination.

The Albanian Commissioner for the Protection from Discrimination was also active in this matter, as was previously mentioned,⁵⁹ pointing at the need for aligning a number of laws with the Anti-Discrimination Law, such as the Criminal Code, the Labour Law and other laws.⁶⁰ In 2013, this Institution

58 Višnja Ljubičić, the Gender Equality Ombudsperson of RC, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, March 2016., in: *Kriminologija & socijalna integracija: časopis za kriminologiju, penologiju i poremećaje u ponašanju*, Vol.23 No.2 July 2016., p. 254, downloaded from: hrcaak.srce.hr/file/239665.

59 See page 24.

60 *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 100.

submitted two initiatives to amend laws, one of which was related to sexual orientation.⁶¹ Thus, the Commissioner suggested that the Criminal Code include among aggravated circumstances, pursuant to the Anti-Discrimination Law, other grounds, such as sexual orientation; to stipulate a special offence of harassment on the grounds of sexual orientation and gender identity of a person; to criminalize the distribution of homophobic material and insults via electronic means on the above grounds; to criminalize incitement to hatred on these grounds; to include these two grounds as part of the offence of violation of equality by state or public officials; to replace the term “homosexual relations” with the term “sexual relations”.⁶² Two of five recommendations pertaining to the amendments of the Criminal Code have been completely implemented, one partially, while two have been rejected, which prompted the Commissioner to resend the unimplemented recommendations to the Ministry of Justice in 2014.⁶³

II.3.3. Advocating for the Protection of Rights of LGBTI Persons in the Context of Acknowledging Same-Sex Unions

When it comes to advocating for the acknowledgement of same-sex unions, some bodies respond that they carried out specific activities in that direction. The Serbian Commissioner for Protection of Equality answers in the questionnaire that in their regular Annual Reports they point out that it is necessary to enable the registration of same-sex unions by adopting a regulation which enables the registration of same-sex couples and regulate the effect, legal consequences and manner of termination of registered partnerships, pursuant to the recommendations of the Council of Europe. This body also “offered support for the first model of the draft Law on Registered Same-Sex Partnership presented by LGBT organizations”.⁶⁴ The Serbian Protector of Citizens issues the same recommendations in his Annual Reports.⁶⁵

The Montenegrin Protector states that “there has been constant and lengthy work on specific activities such as the promotion of registered partnership and expert highlighting of the issue”. Thus, he explains that at the beginning of 2012, he submitted an Initiative to the Assembly of Montenegro for passing the Law on Same-Sex Unions, which would regulate the status of these persons in an uniform way, but that the Assembly of Montenegro has still not considered this Initiative.

The Institution of the Ombudsman of Albania answers the questionnaire question by emphasizing that they had meetings with the Council of Europe

61 Ibid., p. 68.

62 Ibid., pp. 68, 93

63 Ibid., p. 68.

64 European Commission, *Serbia 2013 Progress Report*, SWD (2013) 412 final, p. 14, available at: <http://europa.rs/upload/RS%20Report%20final.pdf>.

65 E.g. Annual Report 2015

and the Ministry of Social Welfare and Youth to discuss specific recommendations on the amendments of the “Family Code of the Republic of Albania” with regard to “The union of two persons of the same sex, and the conditions and procedures for registration, consequences of the registration, manner of termination of the union and personal and property relations between the persons, which are regulated by a special law”. It is added that the orally issued recommendation received its final form in the recommendation of 22 September 2015 with regard to “co-habitation”, sent to the Ministry of Justice. Nevertheless, the answer lacks information on the concrete content of the recommendation and the success of its implementation.

In its Special Report dedicated to the rights of LGBT persons, with the explanation of relevant international standards, the Institution of the Human Rights Ombudsman in BiH issued a recommendation to legislative bodies in Bosnia and Herzegovina to legally regulate the issue of the union of same-sex partners, and thus, model the examples of Croatia and Serbia and clearly define the rights and obligations with regard to joint property, inheritance of property, retirement, the right to social welfare etc.⁶⁶ The Institution explicitly demanded the rights to be acknowledged equally and to have equal legal effects as with marital partners, recognizing this step as a contribution to greater “visibility” of LGBT persons in the legal system of Bosnia and Herzegovina, in order to prevent further stigmatization and discrimination.⁶⁷ The example of Croatia is noteworthy. Namely, the Gender Equality Ombudsperson states in the answer to the questionnaire that “she has had significant influence on the creation of the new Same-Sex Life Partnership Act and assembling an NGO platform” with whom “they composed the parameters for the creation of the said Act”. In the Ombudsperson’s Annual Report for 2014, the adoption of this Act is saluted as the central event in the area of sexual and gender equality in 2014,⁶⁸ while the following Annual Report already stated that the Act “has completely taken root”.⁶⁹

66 The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 68.

67 Ibid., p. 66.

68 Gender Equality Ombudsperson, *Izvješće o radu za 2014*, Zagreb, 2015, p. 96, available at: http://www.prs.hr/attachments/article/1555/01_IZVJESCE_2014_CJELOVITO.pdf.

69 Ibid., p. 149.

II.3.4. Influencing Strategies and other Strategic Documents

of Importance for the improvement of the status of LGBTI persons

The bodies for the protection of equality/human rights can play a key role in encouraging or creating special national strategies or other strategic documents aimed at (inter alia) the improvement of the status of the LGBTI population in the country they work in.

In the answers, some institutions emphasize their influence on the adoption of strategic documents. Thus, it is stated that due to the Initiative of the Commissioner for Protection of Equality from 2011, the Anti-Discrimination Strategy 2013-2018 was adopted in Serbia. The main segments of the Strategy handle the improvement of the status of nine vulnerable social groups which are exposed to discrimination and discriminatory behaviour the most, including LGBT persons.⁷⁰

The Ombudsman Institution in Albania pointed out in the answer, that due to their recommendation directed at the relevant Ministry, the Action Plan 2016-2020 was launched on the measures of protecting the rights of LGBTI persons,⁷¹ and that the Institution contributed by expressing its opinion to this document. In the Annual Reports by the Institution of the Ombudsman in Albania, the participation in work groups charged with drafting such documents is regularly emphasized.

Simultaneously, the Albanian Commissioner for the Protection from Discrimination states in the Annual Report 2014 that the Commissioner's Office staff was part of the work group for the creation of the Plan of Measures for Combating Discrimination on the grounds of Sexual Orientation and Gender Identity, and that they contributed with their suggestions to the change of the legal framework and anti-discriminatory policies in the area of employment, education and the access to goods and services.⁷²

The answer of the Croatian Gender Equality Ombudsperson emphasized that they always participate in work groups for drafting national strategies, and that they have also influenced the draft of the document "The National Policy of Gender Equality for the period 2011-2015", and "National Programme of Protection and Promotion of Human Rights for the Period 2013-2016", which contributed to the improvement of the status of the LGBTI population, "primarily due to its aims and measures, trainings, prejudices, public campaigns, the creation of a legislative framework etc." In addition, they state their active participation in thematic sessions of the Parliament, when

⁷⁰ After this, the Government of the Republic of Serbia adopted the Action Plan for the Implementation of the Anti-Discrimination Strategy for the period 2014-2018. The problems in the implementation of these documents have been pointed out in a different part of the report.

⁷¹ For more information see p. 22.

⁷² *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 25.

they debate about the above documents, and they point to the obstacles the LGBTI population faces.

The surveyed institutions, apart from initiating the adoption or participating in the drafting, can also play a role in monitoring the implementation of the measures stipulated by such documents. Thus, e.g. the Protector of Citizens of Serbia points out that in his regular Annual Report in 2015, he stressed the fact that some of the activities, such as amendments of laws, and the improvement of curricula and textbooks, the importance of which was stressed by the Protector of Citizens in his recommendations, have still not been implemented, although the deadline set forth in the Action Plan for the Implementation of the National Anti-Discrimination Strategy expired. This role is very important because of the common issues regarding the implementation of assumed responsibilities in the region.

II.4. Legal Work of the Institutions

Estimates of how much of the work of institutions is taken up by issues concerning the LGBTI population in relation to other human rights violations vary from country to country.

In its annual report for 2015 the Institution of the Ombudsman of **Kosovo** stated that even though “it has established contacts with representatives of organizations dealing with issues affecting the LGBT population and encourages members of the LGBT community to report violations of their human rights”, it received just one complaint concerning violations of LGBT rights in 2015.⁷³ In order to conduct investigations and monitor the work of state institutions in cases related to the LGBTI community, such violations must be reported, the 2014 report states.⁷⁴ Interestingly, in its 2016 Progress Report, the European Commission stated that in 2015, when a total of 1995 complaints were filed, the number of complaints for discrimination doubled, whereas the number of *ex officio* investigations more than doubled.⁷⁵ However, the data presented in the annual report seemed to suggest no investigations were launched for discrimination against LGBTI persons.

Data provided by the **Serbian** Commissioner for Protection of Equality show that the number of complaints on the ground of sexual orientation is low in comparison to the total number of all complaints. The percentages vary from 3.7% in 2013, 2.6% in 2014 to 4.8% in 2015, which is significantly higher than last year.

⁷³ Ombudsperson Institution of the Republic of Kosovo, *Annual Report 2015, No. 15, Prishtina, 2016*, p. 69, available at: http://www.ombudspersonkosovo.org/repository/docs/English_Annual_Report_2015_351292.pdf

⁷⁴ Ombudsperson Institution of the Republic of Kosovo, *Annual Report 2014, No. 14*, op.cit., p. 117.

⁷⁵ European Commission, *Kosovo 2016 Report*, SWD (2016) 363 final, p. 26, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf

*Number of Complaints for Discrimination on the Grounds of Sexual Orientation
Filed with the Commissioner for Protection of Equality of Serbia:*

2011	2012	2013	2014	2015
10	8	25	18	31

Of the ten complaints in 2011, four were filed by natural persons, while six were filed by non-governmental organizations. In 2013, two-thirds of the 25 complaints were filed by organizations dealing with the protection of human rights of LGBTI persons. A shift occurred in 2014 when most complaints for discrimination on the ground of sexual orientation were filed by natural persons, mostly for discrimination in the area of employment and labour relations, as well as treatment in public media. The trend was once again reversed in 2015 when most complaints (over 50%) were filed by civil society organizations.

In its response to the questionnaire, the Institution of the Ombudsman of **Bosnia and Herzegovina** claimed that LGBTI-related issues comprised 30% of all activities of the Department for Elimination of all Forms of Discrimination during 2015-2016, and at least 10% of the entire legal workload of the Ombudsman Institution.

Furthermore, both the response and the Special Report of this Institution emphasized the low, almost marginal number of complaints filed by members of the LGBT community in comparison to the total number of complaints from citizens, adding that this contributed to a lower engagement with issues concerning the protection of LGBT persons.⁷⁶ The Institution receives no more than 10 complaints for discrimination on the grounds of sexual orientation and gender identity annually, which is 0.3% of the average total number of roughly 3000 complaints per year. Since 2009, when the Anti-Discrimination Law entered into force, the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina has had roughly 40 cases of discrimination on the grounds of sexual orientation. Most of the cases were launched *ex officio* or from complaints by non-governmental organizations⁷⁷ dealing with human rights protection for this category of citizens.⁷⁸

*Number of Cases of Discrimination on the Grounds of Sexual Orientation
Filed with the Institution of the Ombudsman of BiH, since the Adoption of
Anti-Discrimination Law of Bosnia and Herzegovina.*⁷⁹

⁷⁶ See: Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 69.

⁷⁷ Most of them were filed by Sarajevo Open Centre. Investigations were launched for each of the complaints brought forth by this organization. Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 69.

⁷⁸ Ibid., p. 68.

⁷⁹ Ibid., p. 69.

2010	2011	2012	2013	2014	2015	2016 ⁸²
1	3	4	10	11	4	5

According to the response to the questionnaire from the **Montenegrin** Protector of Human Rights, the number of these complaints is as low as 0.5%, which is attributed to “the size of the country, as well as the social and economic crisis.” So far, three non-governmental organizations have filed most of the requests for protection and the people involved are mostly men, either LGBTI persons, or advocates of LGBTI rights.

Looking at the annual reports of this institution reveals they received a total of 54 complaints in 2014, nine of which were for discrimination on the grounds of sexual orientation. In 2015 the Protector received a total of 83 complaints, five being related to sexual orientation.⁸¹

The **Albanian** Institution of the Ombudsman has received just six complaints in the last five years, concerning police mistreatment of trans persons.

According to the annual 2014 report of the Albanian Commission, just 1%, i.e. three complaints for discrimination were filed on the grounds of sexual orientation and gender identity in this year.⁸² The special report on LGBTI persons states that 12 cases of alleged discrimination on these grounds were launched in 2012-2013, characterising it as a very low number when compared to the total of 295 cases.⁸³ (Discrimination was found in seven of the 12 cases, while three cases resulted in fines due to failure to abide by the Commission’s recommendations.)

As for statistics in **Macedonia**, the situation is quite alarming. Although the Macedonian Commission for Protection against Discrimination stated in its response to the questionnaire that it possessed no statistical data because the Law did not recognize discrimination on the grounds of sexual orientation and gender identity, Internet sources reveal that the Commission received its first complaint related to sexual orientation in 2011. Three complaints were filed the following year, none of which had a positive outcome. In 2013, the Commission received a complaint from a member of a “marginalised group”, but the group was not specified. In 2014 the Commission found there was harassment on the grounds of sexual orientation.⁸⁴

As for the Ombudsman as the other institution combatting discrimination, just one case of discrimination on the grounds of sexual orientation and gender identity has been mentioned in annual reports – the same case that

⁸⁰ Up to and including April 2016.

⁸¹ See annual reports of the Protector of Human Rights and Freedoms of Montenegro, available at: <http://www.ombudsman.co.me/>.

⁸² *Annual Report of the Commissioner for Protection from Discrimination 2014*, op.cit., p. 35 and 40.

⁸³ Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 15.

⁸⁴ Bogdanovska Aleksandra, Subversive Front, *Analysis of the anti-discrimination legislation in the Republic of Macedonia in relation to sexual orientation and gender identity*, op.cit., p. 29-30.

was filed with the Commission back in 2011.⁸⁵ The latest report for 2016 mentions a complaint filed by a non-governmental organization concerning discrimination on the grounds of sexual orientation and gender identity in textbooks used by some institutions of higher education.⁸⁶

The **Croatian** Gender Equality Ombudsperson stated in her response to the questionnaire that the institution received a relatively low number of complaints from LGBTI persons – up to 10% of the total number – but that it established a very good cooperation with legal teams of LGBTI organizations. They were interveners in a court case together with the legal team, and acted as interveners in a total of six court cases related to sexual orientation.

The Ombudsperson “received 8 complaints related to discrimination on the grounds of sexual orientation in 2009 and 2010. The numbers almost tripled in 2011 when 23 complaints were filed, and nearly quintupled in 2012 rising to 39.”⁸⁷ In 2013 the numbers dropped to 27, and continued to drop in 2014, 2015 and 2016 down to 18 complaints related to sexual orientation per year, making up 4.6%, 4.5% and 3.3% of total complaints in each of the respective years.⁸⁸ Lately, “it has become apparent that the growing trend of citizens filing complaints related to sexual orientation has stopped, indicating that they need to be empowered to actively use the available mechanisms of legal protection, including addressing the institution of the Ombudsperson.”⁸⁹

Number of Complaints for Discrimination on the Grounds of Sexual Orientation

2008	2009	2010	2011	2012	2013	2014	2015
8	8	-	23	39	27	18	18

Filed with the Office of Croatian Gender Equality Ombudsperson:

At the same time, the 2016 annual report emphasized the positive, growing trend of “complaints related to gender identity and gender expression,⁹⁰ indicating growing usage of legal protection mechanisms, including the institution of the Ombudsperson.”⁹¹

II.4.1. Explaining the Low Percentage of Complaints by LGBT Persons

In her response to the questionnaire, the Croatian Ombudsperson explained the low percentage of complaints by LGBTI persons by saying that “they do

⁸⁵ *Ibid.*, p. 30.

⁸⁶ Republic of Macedonia, Naroden Pravobranitel, *Annual report (Godišen Izveštaj) 2016*, p. 108, available at: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf>

⁸⁷ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 254-255.

⁸⁸ *Ibid.*, p. 255; Gender Equality Ombudsperson of the Republic of Croatia, *Izješće o radu za 2016*, Zagreb, March 2017, p. 8, 14.

⁸⁹ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 255; Gender Equality Ombudsperson of the Republic of Croatia, *Izješće o radu za 2016.*, op.cit., p. 14.

⁹⁰ 14 cases in 2016, compared to five in 2015

⁹¹ Gender Equality Ombudsperson of the Republic of Croatia, *Izješće o radu za 2016.*, op.cit., p. 14.

not trust the institutions and wish to protect their privacy out of fear of being scorned by the public, their loved ones, etc.”

According to the Protector of Human Rights and Freedoms of Montenegro “there are not a lot of cases simply because the work of the institution stops when the court proceedings begin, so most of the activities of the institution revolve around promotion and prevention.” This institution denied there was a problem with a low number of complaints concerning the LGBTI population.

Similarly, the Albanian Institution of the Ombudsman explained the reluctance of the LGBTI community to file complaints by saying that “this community wishes to retain its anonymity. The few complaints that did end up being filed came from non-governmental organizations involved in protecting LGBTI rights.” Additional Internet sources reveal fear of retaliation and lack of trust in civil servants as causes of the low percentage of complaints for discrimination.⁹²

The Macedonian Commission for Protection against Discrimination also noted the widespread stigma attached to LGBTI persons as a cause for the lack of filed complaints, emphasizing it was thanks to non-governmental organizations that the Commission received cases of discrimination on the grounds of sexual orientation.

Similarly, the response to the questionnaire by the Serbian Commissioner for Protection of Equality revealed that most complaints in 2015, over 50%, were filed by civil society organizations, “which is understandable, considering the fear of victimization and stigmatization among LGBTI persons. This is also the cause of the insufficient number of complaints for discrimination on the grounds of sexual orientation, since LGBTI persons are often worried about their safety.”

Echoing the same sentiment, the Serbian Protector of Citizens noted that LGBTI persons seldom exercised their right to contact the Protector of Citizens, because “research has shown that persons of a different sexual orientation and gender identity do not trust the competent institutions and are not sufficiently empowered to reach out to the Protector of Citizens when their rights are being violated by the actions or non-actions of governing bodies.” Another mentioned factor is that LGBTI persons believe contacting the authorities might put their sexual orientation and gender identity out in the open and therefore have a negative instead of a positive impact.

In their responses to the questionnaire and in the Special Report, the Ombudsmen of BiH emphasized the unfavourable social climate, adding

⁹² See: <http://www.lgbti-era.org/countries/albania>, accessed on 19/1/2017

that members of the LGBTI community rarely initiate proceedings before the Institution of the Ombudsman or other authorities when their rights are violated "because they mistrust the institutions and fear judgement or even retaliation if their sexual orientation comes out."⁹³ Furthermore, they raised the issue of the efficiency of protection mechanisms and the usefulness of reporting discrimination and going through the arduous process of court hearings and appearances for the sake of achieving compensation or satisfaction, with slight chances of a favourable outcome, something that is a problem with human rights protection in general.⁹⁴

II.4.2. Steps Undertaken to Address Low Percentage of Complaints

A potential way of addressing the low numbers of filed complaints for violations of the rights of LGBTI persons is to establish efficient communication and cooperation with civil society organizations. For example, the Croatian Ombudsperson considers her work to be successful because the number of complaints has increased due to greater awareness among discrimination victims of legal protection mechanisms (partially brought about by the Ombudsperson), a development which could be attributed to "public visibility of the Ombudsperson's work" and "good cooperation with civil society organizations that informed the Ombudsperson of rights violations against people of same-sex orientation and passed along several cases of discrimination."⁹⁵

The Institution of the Ombudsman of BiH has reached similar conclusions. One of the key activities emphasized by the Institution of the Ombudsman of **Bosnia and Herzegovina** in its response to the questionnaire refers to raising awareness among citizens on their rights as well as the mechanisms and institutions that are in charge of protecting them when they are targeted in any way. On the other hand, the Special Report on LGBT Rights rightfully points out that "although significant, raising awareness is not enough in and of itself. It is necessary first to raise awareness among those employed in the institutions, which needs to be a long-term process. Creating a positive environment for the underprivileged, openly talking about their problems is a good starting point to change the social mind-set and this should encourage members of vulnerable groups to contact the institutions and seek protection."⁹⁶ Consequently, raising awareness on the need to protect the rights of LGBT persons is one of the goals defined in the Special Report.⁹⁷

⁹³ See: Institution of the Human Rights Ombudsman of Bosnia and Herzegovina *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, *ibid.*, p. 68.

⁹⁴ *Ibid.*, p. 78.

⁹⁵ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 259.

⁹⁶ See also: Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 72.

⁹⁷ *Ibid.*, p. 78.

Initiating research and issuing recommendations *ex officio*, when possible, could be used as an important strategy to address this problem. The Institution of the Ombudsman of BiH says it regularly follows the reporting in key print media outlets, also stating that “the Ombudsmen initiated proceedings and launched investigations *ex officio*, as well as adopted decisions regarding every violation of the rights of LGBT persons reported in the media.”⁹⁸

In its special report on the rights of the LGBTI community the **Albanian** Commission for Protection from Discrimination emphasized the efficient cooperation with non-governmental organizations in identifying potential cases of discrimination, with the organizations bringing forth complaints or providing the information necessary for the Commission to initiate an *ex officio* investigation.⁹⁹

In her response to the questionnaire, the **Serbian** Commissioner said she used every opportunity to encourage the LGBTI population, as well as organizations, to file complaints, because the institution can act only after a complaint has been filed. Although “the number of complaints for discrimination on the grounds of sexual orientation has somewhat risen (...) it still does not reflect the actual position of the LGBT population in Serbia.” The Serbian Protector of Citizens stated in the response: “We make sure to emphasize the authority of the Protector of Citizens in annual reports, press releases, media and public statements, appearances in public events and conferences, to encourage LGBTI persons to report rights violations to the authorities and, if they suspect any irregularities in their work, to contact the Protector of Citizens by filing a complaint.”

The **Montenegrin** Protector reported the following implemented activities: “encouraging the formation and participating in joint bodies of the police and the LGBT community.”

The Commission for Protection against Discrimination in **Macedonia** reported that no steps have been undertaken to solve the problem.

However, Internet sources reveal measures that could somewhat improve the situation in Macedonia as well as other similar countries. For example, in the absence of political will to explicitly include discrimination on grounds of sexual orientation and gender identity in the Anti-Discrimination Law, civil society organizations and the equality body joined forces to draft a protocol that would serve as an instrument to improve the visibility of these two

⁹⁸ *Ibid.*, p 41.

⁹⁹ Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 15.

grounds.¹⁰⁰ The biggest success is not the protocol itself, but rather the annex to the protocol that represents a new, amended way of reporting discrimination cases to the Macedonian Commission since it now includes sexual orientation and gender identity as grounds of discrimination.¹⁰¹ Although a symbolic act, it most likely will encourage people to file complaints for discrimination on these grounds.¹⁰² Also, it serves both as an internal, procedural guarantee for processing these cases, as well as a guideline for the successors of members of the Commission whose term of office was close to expiring at the time the protocol was prepared. This is an important factor due to the limited scope of the anti-discrimination legislation and the uncertainty regarding the status of these two grounds after the expiration of the term of office.¹⁰³ Furthermore, the protocol includes a list of CSOs that may serve as a guideline for potential victims to know which organizations they can turn to for help, as well as being useful to successors of Commission members who do not necessarily know who to contact for expert advice and assistance.¹⁰⁴

II.4.3. Adopted Recommendations

In the response to the questionnaire the **Montenegrin** Protector of Human Rights revealed that a total of three recommendations regarding the LGBT population have been adopted in the past two years, which is characterised as very low, due to a low number of cases.

As for the success rate in LGBTI cases, the Montenegrin Protector stated in the annual report that rights violations were found in two of the five cases related to sexual orientation in 2015 and opinions were adopted together with recommendations; one case resulted in the Protector issuing a warning to a legal person to steer clear of actions and statements that might be regarded as homophobic in the future; two cases ended in the Protector not finding evidence to corroborate claims in the complaint.¹⁰⁵ The Protector of Human Rights of Montenegro emphasized in his response that the institution was relatively happy with the implementation of LGBT-related recommendations, although there was “a problem with issuing recommendations to natural persons since such recommendations from the Ombudsman are

¹⁰⁰ Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, *Country report non-discrimination for Macedonia 2016*, op.cit., p. 91.

¹⁰¹ *Ibid.*, p. 92.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*; News Report, Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, 20/11/2015, available at: <http://www.equalitylaw.eu/downloads/2963-equality-body-and-civil-society-organizations-join-to-make-sure-that-sexual-orientation-and-gender-identity-is-regarded-as-a-protected-ground-in-macedonia-pdf-86-kb>

¹⁰⁴ Biljana Kotevska, European network of legal experts in gender equality and non-discrimination, *News Report: Equality Body and Civil Society Organizations join to make sure that sexual orientation and gender identity is regarded as a protected ground in Macedonia*, op.cit.

¹⁰⁵ Protector of Human Rights and Freedoms of Montenegro, *Izveštaj o radu za 2015. godinu*, op.cit., p. 154.

not legally binding and ensuring implementation is therefore hard.”

The response we received from a local, partner non-governmental organization seemed to suggest that the Institution of the Ombudsman of **Macedonia** has not issued a single LGBTI-related recommendation in the past five years. As for the Macedonian Commission for Protection against Discrimination, the European Commission’s Progress Report for 2016 indicated several factors obstructing the work of this body and emphasized the extremely low number of closed cases in which discrimination on various grounds was found, i.e. 3 out of a total of 66.¹⁰⁶ The shadow report submitted to the UN’s Human Rights Committee by local non-governmental organizations revealed that the Commission not only failed to heed the call of organizations and condemn the obvious, public hate speech against LGBTI persons by Spiro Ristovski, Minister of Labour and Social Policy, but that the head of the Commission, who was also an employee of the Ministry, even managed to justify the Minister’s statements. The report also mentioned the failure to rule discrimination in cases related to the homophobic and transphobic content of textbooks.¹⁰⁷

According to the response of the Institution of the Ombudsman of **Bosnia and Herzegovina**, six recommendations were issued concerning discrimination on the grounds of sexual expression or orientation in the period from 2011 to 2016. One recommendation was issued in 2011, 2012 and 2013, three were issued in 2015, while 2014 and 2016 saw no recommendations.

Three of the six recommendations have been implemented, one resulted in establishing cooperation, whereas two have elicited no reaction. The Institution therefore considers the implementation rate for recommendations related to discrimination against LGBT persons to be over 50%. A training on handling the LGBT community organized for members of the Ministry of Interior, adoption of amendments to Regulations on Transfusion Medicine of FBiH, lifting the ban on blood donations from LGBT persons in the Cantonal Hospital of Zenica and issuing an amended diploma at the University of Sarajevo to a person who has undergone a sex change are all listed as positive examples. It is also noted that many cases are resolved during the investigation phase, e.g. removing a homophobic sign from an overpass in Vogošća and preventing discrimination against LGBT persons in the Armed Forces of Bosnia and Herzegovina. Negative examples include homophobic articles in “Saff” magazine that have not been removed following the recommendation of the Ombudsman and the decision of the Press Council of Bosnia and Herzegovina.

¹⁰⁶ European Commission, *FYR Macedonia 2016 Report*, op.cit., p. 61.

¹⁰⁷ Subversive Front & al., *Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in the Former Yugoslav Republic of Macedonia: A Shadow Report*, op.cit., p. 8-9, 18.

II.4.4. Specific Areas of Life/Specific Limitations to Human Rights Enjoyment of LGBT People Revealed Through Legal Work of Institutions

According to the Institution of the Ombudsman of **Bosnia and Herzegovina**, most complaints are “general complaints regarding homophobia, related to hate speech, threats and acts of violence.” Very few of these complaints concern transgender persons, whereas there has not been a single complaint involving an intersex person. Most of the complaints refer to violations of human rights on the grounds of expressing one’s sexual orientation publicly, denying one the opportunity to donate blood, as well as hate speech and violence.

The Serbian Commissioner for Protection of Equality explained in the response that most complaints filed on the grounds of sexual orientation and gender identity concerned treatment in public media. Analysis of complaints on the grounds of sexual orientation has led the Commissioner to conclude that the biggest challenge to achieving equality of LGBTI persons is to “ensure personal safety and efficient protection from violence against LGBT persons, protection from discrimination at the workplace as well as protection of their dignity in the public sphere. As for trans persons, issuing personal documents, i.e. legally recognising their gender identity is an additional factor in ensuring equal participation in society.”

The Institution of the Ombudsman of **Albania** explained that “in general, members of the LGBTI community face pressure at the workplace, problems with access to the health care system, mistreatment in terms of housing, domestic violence, non-recognition of gender identity, co-existence, etc.”

In the annual 2014 report, the Albanian Commissioner for Protection from Discrimination identified homophobia in schools, at work and in service provision, e.g. in the health care system that proved to be ill-equipped to meet the needs of the LGBTI population, as the main problem,¹⁰⁸ also emphasizing the need to report hate speech, especially from public figures – politicians, journalists and authors of textbooks.¹⁰⁹

The **Montenegrin** Protector of Human Rights identified “the limited presence in the public life of local communities, limited right to public assembly, violations of the physical and mental integrity of LGBT persons” as the most problematic areas.

¹⁰⁸ *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 22.

¹⁰⁹ *Ibid.*, p. 81.

The **Macedonian** Commission for Protection against Discrimination said in its response that it has received complaints regarding textbook content, media treatment and access to public goods and services, “which does not mean discrimination does not occur in other areas as well.”

In its annual 2015 report, the Institution of the Ombudsman of **Kosovo** listed “rejection, stigmatisation and prejudice directed against LGBT persons by the society and their families, inability to freely assemble to express their views, and constant fear of the reaction from the social community” as everyday problems of the LGBT population in Kosovo.¹¹⁰ The 2014 report especially highlighted problems experienced by teenagers, which included harassment and discrimination motivated by sexual orientation, as well as violence both from peers and from teachers.¹¹¹

II.4.5. Examples of Cases Processed by the Institutions

Thanks to the questionnaire and additional research it was possible to identify key cases of human rights violations against LGBTI persons that were processed by the polled institutions. They represent examples of good practice in the countries that were part of the research when it comes to solving the problems faced by LGBTI persons in all spheres of life.

The Commissioner for Protection of Equality of **Serbia** presented a case related to *discrimination in public media*.

In 2015, the Commissioner “brought criminal charges against an unidentified perpetrator, the editor of the online newspaper ‘Sandžak PRESS’, published at: <http://sandzakpress.net/>. There were reasonable grounds to suspect that a text published on this web portal constituted a criminal offence of racial or other discrimination defined by Article 387 Paragraph 4 and in relation to Paragraph 1 of this Article of the Criminal Code of RS. On 24 December 2014 the abovementioned newspaper ran an article titled ‘Istina o homoseksualcima’ (*Truth about the Homosexuals*), proposing a series of ideas, opinions and theories that could be seen as directly propagating and inciting hatred and discrimination against persons of a different sexual orientation, thereby violating their fundamental human rights and freedoms”. The case is on-going.

The Protector of Citizens of Serbia shared with us an example of successful implementation of a recommendation concerning *violations of human rights in education*. After receiving a complaint from a high school student who claimed he was bullied by his peers after coming out to the point of having to discontinue his full-time education and was further attacked by a group

¹¹⁰ Ombudsperson Institution of the Republic of Kosovo, *Annual Report 2015*, No. 15, op.cit., p. 69.

¹¹¹ Ombudsperson Institution of the Republic of Kosovo, *Annual Report 2014*, No.14, op.cit., p. 26.

of students while taking his supplemental examinations, the Protector of Citizens initiated proceedings to review the work of the school. It was found that the school had failed to undertake the necessary measures prescribed by the law and by-law to protect its student from the violence he had been exposed to due to his sexual orientation. Upon receiving recommendations from the Protector of Citizens¹¹² the school board analysed its conduct and designed an Action Plan for prevention of peer violence, with a special focus on preventing violence and reducing intolerance against persons of a different sexual orientation. The school also carried out an internal disciplinary review and the principal sent a written note to the student, apologising for the school's failure to ensure an unobstructed education process in a safe environment. The school thus managed to implement all recommendations issued by the Protector of Citizens.

As an example of its work the **Macedonian** Commission for Protection against Discrimination mentioned in its response to the questionnaire a complaint filed in 2016 when *a trans person was denied access to a pool*. The perpetrator was found guilty of discrimination and was ordered to pay damages to the victim in the amount of 700 euros.

The second case is related to textbooks used by the University “Sv. Kiril i Metodij”. The Commission found the content of the textbooks to represent harassment on the grounds of sexual orientation and issued a recommendation to remove the offensive text and called upon several authors to issue apologies.¹¹³

The **Albanian** Commission for Protection from Discrimination reacted to the complaints of non-governmental organizations concerning discrimination against the LGBTI community in online posts published on the Facebook page of a political party. The posts were characterised as hate speech. The Commission found discrimination on the grounds of sexual orientation and gender identity, issuing a recommendation to the political party to publicly apologise within 15 days and refrain from using language that incites and spreads hatred and other forms of discrimination on these grounds in the future.¹¹⁴

The **Montenegrin** Protector of Human Rights listed cases related to banning the Pride Parade and determining rights violations by the police, promotion of equality by public officials (the Ombudsman's inquiry into protocol rules and prioritising certain non-governmental organizations and whether this constituted discrimination), as well as “acts motivated by hatred, such as putting up graffiti containing hate speech”.

¹¹² Recommendation of the Protector of Citizens 13–3785/12 issued on 8/8/2013, available at: http://www.ombudsman.rodunaravnopravnost.rs/attachments/058_058_preporuka%20ekonomska%20skola%20-%20kursumlija.doc.

¹¹³ Subversive Front & al., *Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in the Former Yugoslav Republic of Macedonia: A Shadow Report*, op.cit., p. 9,

¹¹⁴ *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 22.

The institution's annual report recounts in detail the first case. Since the Nikšić Security Centre adopted a decision banning *the public assembly of members of the LGBT community* purely for security reasons, "the Protector concluded that the ban constituted a violation of the right to peaceful assembly since the Police Department, having banned the peaceful assembly twice before, had ample opportunity to remove any security risks and enable the organization of the Parade the third time around. Furthermore, the Protector found no evidence of alternative solutions having been proposed, or any measures undertaken against the leaders of the counter-protest whose only goal was clearly to stop the Pride Parade. The Protector noted that the statement issued by police authorities had the effect of confirming prejudice, i.e. stigmatising the LGBT population since it proclaimed that the Pride Parade constituted a security risk because other social groups might be offended by the overt expression of the freedom to assembly of members and advocates of the LGBT population."¹¹⁵

Also worth noting is the Protector's reaction to *hate speech* – individual, public statements of representatives of religious communities, in this case the Serbian Orthodox Church, and some political parties directed against the right to sexuality. A priest from the abovementioned church spread hate speech against the LGBTI community during the 2016 New Year celebration. The non-governmental organization Queer Montenegro filed a complaint with the Protector of Human Rights and Freedoms and the latter issued a recommendation, asking the priest to apologise to the LGBT community within two weeks.¹¹⁶

The Institution of the Ombudsman of **Bosnia and Herzegovina** was faced with a similar situation concerning the media and reacted in a slightly different manner. By 2014 the institution had received several complaints regarding the offensive content frequently published in the magazine and web portal SAFF. The Institution of the Ombudsman issued a recommendation, instructing the magazine to publicly apologise to members of the homosexual minority and graduates of the MA program in gender studies due to statements directed against them in one of the articles. The magazine was also instructed to uphold the Anti-Discrimination Law of BiH in its future work.¹¹⁷ The Press Council also dealt with the case, but SAFF refused to implement the recommendation, a fact that was pointed out in the annual report submitted to parliamentary bodies of BiH.¹¹⁸

¹¹⁵ Protector of Human Rights and Freedoms of Montenegro, *Izveštaj o radu za 2015. godinu*, op.cit., p. 157.

¹¹⁶ Nenad Koprivica, European Network of Legal Experts in gender equality and non-discrimination, *Country Report on Non-Discrimination – Montenegro*, 2016, op.cit., p. 52.

¹¹⁷ *Ibid.*, p. 69.

¹¹⁸ *Ibid.*

The Institution of the Ombudsman also issued recommendations to the Institute for Transfusion Medicine of the Federation of Bosnia and Herzegovina and Republika Srpska, acting upon several complaints from the non-governmental organization Sarajevo Open Centre related to *questionnaires for blood donors* containing discrimination on the grounds of sexual orientation. In 2012 the Federal Institute was instructed to immediately introduce an amended questionnaire, i.e. an amended consent form for donors of blood and blood components, which it did. In 2014, the Institute of Republika Srpska was also instructed to amend the controversial questionnaire so as not to exclude blood donors on the grounds of sexual orientation. Responding to the recommendation, the Institute of Republika Srpska claimed that the “exclusion affected not only homosexuals but all persons engaged in risk behaviour in accordance with the Directive 2002/98/EC of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components.” The donor questionnaire was amended in December in accordance with the Guide to the Preparation, Use and Quality Assurance of Blood Components of the European Directorate for the Quality of Medicines and Health Care.¹¹⁹ The non-governmental organization SOC claims the issue still has not been resolved.¹²⁰

The Ombudsman of BiH also presented a case launched ex officio related to *discrimination in public media*. In 2014 it took the opportunity to remind the authorities in Bosnia and Herzegovina that same-sex sexual activity has been decriminalised and that the Anti-Discrimination Law prohibits all forms of discrimination on the grounds of sexual orientation. This was prompted by a statement from the Chairman of the Joint Staff of the Armed Forces of BiH published in “Dnevni avaz” newspaper. The Chairman said he would launch a thorough investigation into the case of two pilots who were allegedly seen kissing and were consequently “reported for homosexuality” by a member of the military police. The Institution of the Ombudsman demanded clarification of the statements published in the media, emphasizing that LGBT persons enjoyed all rights guaranteed by the Constitution, including freedom of expression and assembly. The Chairman responded that he had no intention of launching an investigation, after which the case was closed.¹²¹

Also worth mentioning are the interventions of the Ombudsman regarding the appearance of *offensive graffiti* in public space. One such incident,

¹¹⁹ *Ibid.*, p. 70.

¹²⁰ Author’s archive. The question: “Have you ever had intercourse with a person of the same sex?” was replaced by two questions: “Have you ever had intercourse with a person of the same sex?” for men, and: “Have you had intercourse with a male person who has had sex with men in the past 6 months?” for women.

¹²¹ *Ibid.*

a homophobic sign found on an overpass in Vogošća in 2015 prompted the Institution of the Ombudsman to demand firm action from the authorities, especially the police and the prosecutor's office, explaining that such signs, although symbolic and marginal, created an atmosphere of fear and incited violence and should therefore be promptly removed. The institution also emphasized the importance of prevention in such cases.¹²²

It is also important to note the reaction to a regionally widespread practice of the *inadequate response of police officers and prosecution bodies* to violations of safety and the right to assembly of LGBT persons. In 2011, the Institution of the Ombudsman of BiH launched an ex officio investigation into the conduct of competent authorities concerning the prosecution of persons who participated in riots and attacks on participants and visitors of the Queer Sarajevo Festival in 2008. The Ministry of Interior of the Sarajevo Canton, the Cantonal Prosecutor's Office in Sarajevo and the Municipal Court in Sarajevo were all contacted and asked if any misdemeanour or criminal proceedings had been initiated and with what outcome. Based on the responses, the Ombudsman concluded that the authorities acted according to their duties and responsibilities and adopted decisions in accordance with the law, which the Institution of the Ombudsman is not authorised to question. However, in the Special Report on LGBT Rights, the Ombudsman highlighted the fact that most incidents went unprosecuted or else were treated as misdemeanours instead of criminal offences motivated by hatred.¹²³

The work of the **Croatian** Gender Equality Ombudsperson provided a rare example of protecting LGBTI persons by *acting as an intervener in a court case* involving the plaintiff Dario Krešić. The case is described below:

“Assistant professor Dario Krešić initiated court proceedings claiming discriminatory treatment at the School of Organization and Informatics (SOI) in Varaždin, part of the University of Zagreb. The plaintiff claimed his professional advancement was sabotaged after he reported two professors of SOI for harassment and sought protection. The Ombudsperson found the plaintiff's claims of discrimination on the grounds of sexual orientation justified, and proceeded to contact the Rectorate of the University of Zagreb and the Ministry of Science, Education and Sports, after which she used the authority conferred upon her by the Anti-Discrimination Law and intervened in the court proceedings. During the proceedings at the court of first instance, the prosecutor and the intervener filed a motion to disqualify the judge due to personal bias. The motion was granted. The case ended with the final verdict of

¹²² *Ibid.*, p. 71.

¹²³ *Ibid.*, p. 27.

the Municipal Court in Varaždin (2013) confirming the first-instance verdict which found that Krešić was subjected to harassment on the grounds of sexual orientation by his colleagues and that the School treated him unfairly, denying him the opportunity for professional advancement after he exercised his legal right to complain to the board of the School.”¹²⁴ Although the end result of this case was not entirely positive, since the plaintiff continued to work in a hostile atmosphere after the proceedings, ultimately leaving Croatia for employment in Germany, the Ombudsperson emphasized the final verdict “was proof that anti-discrimination provisions can be effectively implemented in practice. The job of the Ombudsperson is to make sure they do. Also, the case and its result had an important impact on the institutional status of the Gender Equality Ombudsperson. It proved the Ombudsperson could successfully intervene in court cases and contribute to the implementation of anti-discrimination legislation, by putting her expertise and experience at the victim’s and court’s disposal.”¹²⁵

The Ombudsperson also successfully intervened in appellate proceedings concerning the homophobic media statements made by the president of the Croatian Football Federation (CFF) Vlatko Marković. After the appeal, the Supreme Court annulled the verdict of the Municipal Court of First Instance and ruled there was discrimination. The final verdict confirmed Marković violated the principle of equal treatment on the grounds of sexual orientation. He was warned against using his position as the president of CFF to discourage and prevent persons of same-sex orientation to play for the Croatian national team in the future. The Supreme Court ordered the defendant to publish the verdict confirming the violation of the equal treatment principle in the media at his own expense, which Marković did on 12/11/2012, publicly apologising for “saying that homosexuals will not play for the national football team as long as he is the president of CFF.”¹²⁶

II.4.6. Multiple Discrimination of LGBTI Persons

The Croatian Gender Equality Ombudsperson and the Institution of the Ombudsman of BiH and Albania stated in their responses to the questionnaire that they have not dealt with cases of multiple discrimination against LGBTI persons so far. The Montenegrin Institution of the Ombudsman emphasized such cases did exist, but they were not “processed as such, but rather as instances of prejudice and hatred (e.g. against the national and LGBT identity of a person at the same time).”

The Serbian Commissioner for Protection of Equality has had more

¹²⁴ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 260.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, p. 261.

experience with multiple discrimination. The institution explained that “94 complaints claiming discrimination on multiple grounds, including gender identity and sexual orientation, were filed in 2015. In the Commissioner’s experience, multiple discrimination mostly affects women, due to their sex and their marital or family status, and is mostly related to the area of employment and work, as well as discrimination against women with disabilities and Roma women.”

However, the Commissioner warns, “as in previous years, we should keep in mind that not all reported cases necessarily entail actual multiple discrimination. The claimants often list several personal characteristics if they are not sure which one motivated discrimination.”

II.4.7. Addressing Problems of Trans and Intersex Persons – Examples of Good Practice

In addition to the abovementioned positive examples of adopting recommendations that influence policies concerning trans and intersex persons, there are also other positive examples of good practice when it comes to resolving complaints.

In the response to the questionnaire, the **Serbian** Commissioner for Protection of Equality gave an example of legally addressing the problems affecting trans and intersex persons. The case concerned a former major in the Serbian Army who had undergone sex reassignment. The complaint was filed for discrimination at the workplace on the grounds of gender identity. Acting upon the proposal of the Chief of Joint Staff of the Serbian Army who claimed “the major was diagnosed with a psychiatric disorder that could damage the reputation of the Serbian Army”, The Ministry of Defence adopted a decision terminating the military service of the individual in question. The Commissioner issued an opinion claiming violation of the Anti-Discrimination Law, i.e. the provision prohibiting harassment and degrading treatment, recommending the Joint Staff of the Serbian Army and the Ministry of Defence to issue a written apology to the claimant and undertake measures to reduce transphobia, increase tolerance and prevent discrimination against transsexual and transgender military personnel and employees of the Ministry of Defence.¹²⁷

Another important example concerned successfully changing the name marker on the university diploma of a person who underwent sex reassignment.¹²⁸ The Institution of the Ombudsman of **Bosnia and Herzegovina** described in

¹²⁷ See full text: Commissioner for Protection of Equality, *Pritužba Ug.E. protiv VRS i ministra odbrane zbog diskriminacije po osnovu rodnog identiteta u oblasti rada*, accessed on 1/3/2017 at: <http://ravnopravnost.gov.rs/pritužba-ug-e-protiv-vrs-i-ministra-odbrane-zbog-diskriminacije-po-osnovu-rodnog-identiteta-u-oblasti-rada/>.

¹²⁸ For more information see: Commissioner for Protection of Equality, *Pritužba M.D. protiv Pravnog fakulteta zbog diskriminacije na osnovu pola u oblasti pružanja usluga*, 23/2/2012, accessed on 1/3/2017 at: <http://ravnopravnost.gov.rs/pritužba-m-d-protiv-pravnog-fakulteta-zbog-diskriminacije-na-osnovu-pola-u-oblasti-pruzanja-usluga/>.

its Special Report a case concerning the change of the name and sex markers on a diploma.¹²⁹ Before transitioning and changing the personal name, the person in question had enrolled at a university, successfully completed all exams and became eligible to receive a diploma. Since the competent authorities were in the middle of processing the request to change the name and sex markers on personal documents, the person asked the university to postpone the issuing of the diploma until the matter was settled. Once the request was successfully processed, the person asked the University of Sarajevo to issue a diploma corresponding to the new identity and sex.

The Centre for Human Rights of the University of Sarajevo contacted the Institution of the Ombudsman, after having corresponded with the University of Sarajevo, asking for clarification of the matter, so as to avoid making a discriminatory decision.

The Ombudsman issued a recommendation clarifying that persons who change their personal name and their sex have the right to seek amended personal documents, such as education certificates and diplomas, with the name and sex marker adjusted to their new identity. This enables them to use the documents in legal procedures and fully integrate their sex reassignment into their personal and professional life. The Institution also noted that the name usually betrayed the sex, so any discrepancy between the name on the diploma and the personal documents used to confirm the identity of a person in legal procedures might result in violations of the right to privacy and discrimination in cases when the person submits its diploma as proof of the level of education attainment when applying for employment, further education, etc.

Since the competent ministry and the registry already approved, i.e. changed the sex marker on personal documents, the University of Sarajevo was advised to respect the new legal circumstances and issue a diploma with personal information that corresponded to the information in the Registry of Births, warning that any other action would constitute a violation of the decision adopted by the competent authorities, as well as a violation of fundamental human rights on the grounds of sex and sexual expression protected by Article 2 Paragraph 1 of the Anti-Discrimination Law. The Centre for Human Rights notified the Ombudsman that the recommendation was implemented.

The **Croatian** Ombudsperson informed us of her participation in the process of drawing up *Regulations on Collecting Medical Documents and Establishing Circumstances and Conditions for Sex Reassignment or Life with New Gender Identity* in 2014, and her proactive and constructive approach to ensuring efficient implementation of provisions regulating the rights of transgender

¹²⁹ Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 61-62.

persons in practice. In 2016 the Ombudsperson strengthened her cooperation with the Ministry of Health and the National Health Council – the institution in charge of issuing the *Opinion on Sex Reassignment*, a necessary document for transgender persons who want to start or continue the process of transitioning.¹³⁰

The Ombudsperson issued recommendations to the Government and the Croatian Parliament on the need to establish an efficient system of health care and medical treatment for transgender persons, providing swift and effective solutions to persons who have requested sex/gender reassignment, in order to protect their dignity and human rights. The Government and the Parliament were also advised to issue clear instructions to education institutions on how to proceed with issuing an amended certificate or diploma after a person's sex marker has been changed in the registry.

II.5. Research Work of Institutions

Other than drafting special reports on LGBTI rights with the aim of influencing policies, practice and laws, which we have already discussed,¹³¹ little is done in the way of research on LGBT persons and the social problems they usually encounter (e.g. no research related to LGBTI persons has been conducted in Macedonia and Montenegro).

From 2011 to 2016, with the help of international organizations, the Serbian Commissioner for Protection of Equality carried out three public opinion polls, a survey among government officials on discrimination, as well as a research on media and discrimination conducted for the purpose of designing a guide for the media. However, the research was not focused exclusively on LGBTI issues. It was about the views of citizens, government representatives and the media on discrimination and the level of (in)tolerance, stereotypes and prejudice. In the response to the questionnaire, the Commissioner noted that research of this kind might provide an incentive for similar research initiatives focused solely on issues concerning LGBTI persons. According to the Commissioner, research results enabled the institution to adequately identify key areas and priorities for effectively combatting discrimination and removing its sources. Furthermore, the Commissioner noted that the results of the research were also valuable to authorities in charge of promoting, protecting and advancing human rights, as well as civil society organizations, the media and all other social actors capable of bringing about a change in the attitudes of the society, increasing tolerance and advancing equality.

¹³⁰ According to data of the *National Health Council*, a total of 34 requests for an opinion on sex/gender reassignment were filed in 2016, 24 of which had a positive outcome.

¹³¹ See p. 25..

The Institution of the Ombudsman of Albania mentioned a positive example of cooperating with the organization “Alijansa protiv diskriminacije” (*Alliance against Discrimination*) on preparing a report concerning health care provision and the frequent problems and discrimination experienced by members of the LGBT community in hospitals, health care centres and the health care system in general.

Polling was used as the main research method in both Serbia and Albania. The institutions cooperated with other organizations – in the case of Serbia, two research projects were conducted together with UNDP and one was conducted as part of the IPA twinning project in 2013. As for Albania, research was conducted together with non-governmental organizations involved in protection from discrimination, especially the protection of LGBTI persons. Speaking about the challenges in conducting research of this kind, the Commissioner for Protection of Equality of Serbia noted the need to recognize and avoid entanglement in political issues that might distort the results. In order to avoid this problem, the institution made sure to carefully plan the dates on which data would be collected, i.e. reduce the time necessary to collect data by hiring more pollsters. The second challenge concerned collecting data from government representatives who were not always available to the pollsters.

It is interesting to look at some of the research on LGBTI issues conducted in the past in Albania and Croatia.

In 2014, the Albanian Commissioner for Protection from Discrimination conducted a research and published a study on “Protecting and Respecting the Rights of the LGBT Community in Albania” dealing with the social context and the issue of discrimination against LGBT persons. The aim was to encourage more complaints for discrimination, as well as the introduction of policies and strategies for promoting LGBT rights and communicating with the public.¹³²

Using the authority conferred upon her by the Gender Equality Law related to conducting independent research and publishing independent reports, the Croatian Gender Equality Ombudsperson carried out a gender analysis of textbooks used in primary and secondary schools.¹³³ Results of the analysis of religious studies textbooks used by the three religious communities in the Republic of Croatia in 2012 revealed discriminatory content that needed to be revised and removed. The Ombudsperson issued a recommendation

¹³² *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 79.

¹³³ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 273.

to the Ministry of Science, Education and Sports to remove the offensive content and the Ministry responded that it would keep it in mind when authorising new religious studies textbooks.¹³⁴

Also, another research conducted by the Ombudsperson (2012) on “Gender Aspects of Ethics Textbooks for Secondary Schools” found five instances of discriminatory/negative content.¹³⁵ Thanks to the initiative of the Ombudsperson, the controversial textbook was withdrawn from circulation. Furthermore, the Guide on Implementing Health Education in Secondary Schools (2014) contained the following statement: “It is important to let students know they have the right to support any of these views, but they must respect the right of others to choose their sexual orientation and live a life free from violence and discrimination.” The Ombudsperson issued a recommendation advising the Ministry of Science, Education and Sports to change the wording from “right to choose sexual orientation” to “right to sexual orientation.”¹³⁶ The Ministry obliged. Finally, after conducting a research (2013) on “Gender Aspects of Integrated Science Studies and Biology Textbooks for Elementary Schools”, the Ombudsperson issued a recommendation to the Ministry to make the issue of sexual orientation more visible, without exclusively tying it to taboos related to AIDS.¹³⁷

II.6. Communication Work of the Institutions (Public Relations), and Particular Promotional Activities

All the bodies that responded to the questionnaire stated that they had conducted some activities in the field of communicating with the public in order to support the LGBTI community. However, the intensity and manner of organizing these activities varies from one institution to the other.

The exception seems to be the **Macedonian** Institution of the Ombudsman, which does not mention troublesome issues regarding sexual orientation either in the press releases or the Annual Reports. In the case of the Macedonian Commission for the Protection Against Discrimination, which submitted the answer to the questionnaire, it seems that they handle these issues exclusively in the Annual Reports.

In other countries, it is a somewhat established practice. The special importance of these activities is expressed in areas where the public support for some issues is still not as apparent. Thus, it is necessary to support the

¹³⁴ *Ibid.*, p. 273-274.

¹³⁵ “Trivialising and reducing homosexuality to a ‘matter of taste’, i.e. a matter of free choice, coupled with prior characterisation of it as a ‘problem’ and, finally, prompting students to choose one of these two descriptions completely denies the fact that a multitude of different factors, including inborn characteristics, play a role in forming a person’s sexual orientation (framing it instead as either a ‘problem’ or a matter of free choice).” *Ibid.*, p. 274.

¹³⁶ *Ibid.*, p. 274-275.

¹³⁷ *Ibid.*, p. 274.

pioneer steps, like the one when the Serbian Protector of Citizens, as the first state body, publicly supported the LGBT groups and their efforts to realize their right to visibility and acceptance in public space.¹³⁸

From the communication channels with the public, the bodies mostly mention **press releases**. Thus, the Serbian Institution of the Commissioner for Protection of Equality emphasizes in the answer to the questionnaire that they use press releases and warnings to address the public in all situations regarding the status of LGBT persons. In the warnings for the public, the Commissioner points at the discriminators, manner of discrimination, individual groups or individuals exposed to the most common, typical and severe forms of discrimination, and the consequences of discrimination. In 2014, 20 press releases and six warnings were issued, which were published in the media and the internet presentation of the Commissioner, five of which are in connection with the status of the LGBTI population. In 2015, this number rose to 35 press releases and nine warnings, three of the press releases and two of the warnings were in connection with the status of the LGBTI population.

The press releases are visible on the site of the Serbian Protector of Citizens, mostly during the International Day Against Homophobia and Transphobia or the Pride Day. The Montenegrin Protector states in the answer to the questionnaire, that very often, i.e. whenever the rights of LGBT persons are threatened, they react in public. In their Annual Report, it is explained that he reacted several times through press releases and announcements on the website of the Institution, expressing condemnation and urging with relation to current events causing heightened public attention, which endangered human rights and freedoms, as well as through interviews in which the emphasized events are of immediate importance for the system of protection against discrimination. Thus, as examples of response, they list harsh condemnation and urge to discover and process the attacker on the members of the LGBT population and advocates for their rights.¹³⁹

A similar example is the Institution of the Ombudsman of **Bosnia and Herzegovina** which, for instance, issued a press release in which it condemned the attack on the members of the Banja Luka Association of Queer Activists on 29 March 2014, inviting all “authorities to strengthen their capacities in order to respond duly to all forms of violence and physical attacks on the members of the LGBT population.”¹⁴⁰

The activism of the **Croatian** Gender Equality Ombudsperson is praiseworthy. In a published article on the activities on combating homophobia, she

138 See: The Protector of Citizens of the Republic of Serbia, *LGBT populacija u Srbiji – Stanje ljudskih prava i društveni položaj*, op.cit.

139 The Protector of Human Rights and Freedoms of Montenegro, *Izveštaj o radu za 2015. godinu*, op.cit., p. 10.

140 The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izveštaj o pravima LGBT osoba u Bosni i Hercegovini*, op.cit., p. 28.

emphasizes that she “regularly pointed at public announcements in which she condemned violence caused by homophobia and discriminatory messages urging at the wider social condemnation of violence against the members of the same-sex orientation. She supported numerous campaigns directed at the sensitizing of the public to the rights of sexual minorities, such as queer Zagreb and Zagreb Pride. It is necessary to emphasize the duly engagement connected with public escalations of homophobia which the Ombudsperson problematized in her public announcements, urging for tolerance but also the strengthening of institutional mechanism for the protection from violence against sexual minorities. In latter cases, she showed not only great awareness but also accurate monitoring of public discrimination cases and great empathy and understanding of their precarious position. Moreover, an insight into the official website of the Ombudswoman shows a dispersed but rich information system, announcements and statements by the Ombudswoman which are often displayed, together with basic information on her jurisdiction, on the official sites of civil society organizations dedicated to combatting the discrimination of people of the same-sex orientation.”¹⁴¹

In addition to directly contacting the media, the bodies state that they use the **websites of the Institutions** for informing the public, and some even use **Facebook** and **Twitter** (e.g. Serbia). They further on mention press-conferences, **appearances** in TV shows, participation in conferences covered by the media (e.g. Montenegro). There is also some mention of regional offices, for the purpose of outreach, and **brochures** which are distributed to citizens. The Institution of the Ombudsman of Bosnia and Herzegovina, in addition to unsolicited press releases, emphasizes in their answer to the questionnaire numerous statements to the media as a means of communication regarding in particular the rights of the LGBT population. It is particularly pointed at regular research which the portal LGBT.ba organized following the election of the ombudsman, where the interviews with the ombudsmen were published. These interviews contain their answers to the questions regarding the status and rights of LGBT persons in Bosnia and Herzegovina and their attitudes on activism in that sector, the Pride Parade in Bosnia and Herzegovina, same-sex unions, legal solutions, and their action plan in the mandate that is ahead of them and concrete action regarding solving the existing issues and the future ones. It was also stated at this time that it is necessary to adopt a special law which will regulate the same-sex partnership, that public function holders should definitely be more forward about protecting the rights of LGBT persons, and that LGBT persons are not a category that is visible enough in the BiH legislation.

¹⁴¹ Višnja Ljubičić, *Iskustva Pravobraniteljice za ravnopravnost spolova u suzbijanju homofobije*, op.cit., p. 257-258.

The **Albanian** Commissioner for Protection from Discrimination used brochures as a means of communicating with the public and promoting the protection of the rights of LGBT persons. Thus, in cooperation with state institutions and the Pink Embassy, they published a brochure “Information for Public Officials on LGBT Issues” and the informative brochure “How Does the Anti-Discrimination Law Protect the LGBTI Community from Discrimination?”, which were widely distributed.¹⁴² The Albanian Commissioner published in printed media, inter alia, several articles particularly on the topic of protecting the LGBT community, and presented recent discrimination cases on the grounds of sexual orientation on different television shows.¹⁴³

The Institution of the Ombudsman of Albania emphasizes in his answer the publishing of their own magazine as a means of communication, with the aim of publicly presenting various problems of citizens and different groups and categories and to attract the attention of central and local government on the necessity of improving human rights and freedoms. This joint work with the media has thus brought forth a stronger partnership between the Ombudsman and all types of media. It is not clear in the answer whether and how much space in the magazine is devoted to LGBTI issues.

The Albanian Institution of the Ombudsman states in their answer to the questionnaire a rather interesting example of condemnation of public statements by a high government official about the LGBTI community which we present below. Namely, with regard to expressed homophobic attitudes in the society, as was ascertained in the research by NDI,¹⁴⁴ such actions by Institutions for the protection of human rights and equality are very important and praiseworthy.

In two press releases it was demanded that a high government official publicly apologize and take over the responsibility with regard to the position he holds, due to degrading and offensive words directed at the LGBTI community several times. There was also strong condemnation of every statement or expression of this form, which has nothing in common with the spirit of tolerance, coexistence and difference, which are traditional values of the Albanian society. In addition to this, the press release states that such attitudes, apart from disorienting and misleading the Albanian society, openly endanger the fundamental human rights and freedoms, guaranteed by the Constitution, including

¹⁴² *Annual Report of the Commissioner for Protection from Discrimination 2014.*, op.cit., p. 75; Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 22.

¹⁴³ Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 20.

¹⁴⁴ See chapter I

the freedom to peaceful assembly. Moreover, the Ombudsman expressed the opinion that such statements call upon and instigate hatred by one part of the Albanian people for the other, denying them the protection of fundamental freedoms, that other parts of the society enjoy. For the Albanian society, everyone is equal under the law, therefore, everyone, irrelevant which social group or community they belong to, no matter how small it is, have equal rights and freedoms without discrimination. The Ombudsman believes that the Albanian society does not have any reason to feel homophobic, that, on the contrary, it is time for it to engage in dialogue and civic debate on the rights and freedoms of this community, thus sending out a message of an open and advanced society, one accepting of difference. Judging this kind of mentality as completely unacceptable, the Ombudsman urged all public officials at all levels to mind the flagrant incompatibility of such statements with the EU integration process of Albania and the European values conveyed through this process, values which categorically exclude such behavior and mentality.

In the end, it is important to emphasize that, regarding communication work, **cooperation of the institutions with the media, training and sensitizing the media** for these topics is very important. In this context, the proactive approach of the Commissioner from Serbia is praiseworthy, since in the answer to the questionnaire, they state that apart from regular contact with the media, for the purpose of better communication with the public, they organized workshops for journalists and editors as well as a regional media conference on the manner of reporting about discrimination. The general aim of all these activities is the sensitizing of journalists for reporting on discrimination, and they thus made a media manual, and they also award an annual prize for a journalistic text or feature story on the topic of discrimination. The aim is to raise awareness and sensitize the media for reporting on every vulnerable social group, including the LGBTI population. In the workshops, and all the listed activities, they handle the problems of LGBTI persons, the manner of solving the problems, presenting good practice, etc. These activities do not only improve the cooperation of institutions and the media and create a better framework for communicating with the public, but also have a positive influence on the way discrimination is treated in the media space.

II.6.1 Specials Objectives in Conducting Activities which Specifically Relate to the LGBTI Population

As objectives in conducting the activities in connection with the LGBTI population, the bodies mostly state raising awareness of the public on the importance of respecting their rights, eliminating stereotypes and prejudices as an important element in discriminating LGBTI persons, improving the

awareness on discriminatory behaviour, promotion and protection of the rights of LGBTI persons, responding to certain negative incidents of violating their rights, and in that regard, urging bodies to improve the status of LGBTI persons. In the end, the enhanced visibility of the institution which conducts or takes part in the promotional activities or the communication with the public is an important factor, since in certain cases it is the precondition for a more efficient protection of rights of LGBTI persons.

II.6.2. Formal and Informal Cooperation Arrangements between the Institutions, the LGBTI Population and Organizations

In the responses of the bodies, with some exceptions, there is no mention of formal cooperation arrangements with LGBTI associations and non-governmental organizations, such as special advisory or similar bodies with LGBTI representatives.

Relationships with the LGBTI population and organizations, if they exist, are built through meetings with the representatives of the LGBTI community, through the participation of representative of bodies in different meetings, round tables and similar events, through project activities, i.e. the participation in joint projects,¹⁴⁵ conferences and the presence and support for events promoting the rights of LGBTI persons.

The Serbian Institution of the Commissioner also responded to the questionnaire by stating that several organizations dealing with the rights of LGBTI persons received funding from the Institution to organize situational testing via open call.

The Albanian Commissioner for the Protection from Discrimination stated in his Annual Report that one of the priorities for the following year (2015) was strengthening the cooperation with the organizations working with marginalized groups, such as, inter alia, LGBTI persons, in order to identify situations which raise the issue of discrimination and the rise in number of *ex officio* initiated cases.¹⁴⁶

Similarly, the **Macedonian** Commission for the Protection from Discrimination clarifies that joint activities of the Commission and non-governmental organizations, such as round tables, seminars and workshops help establish communication between the Commission and the LGBT population or non-governmental organizations. Thus, the Commission has a chance to understand some specific developments in the fields, whether they are connected to the legislation or discriminatory practices.

¹⁴⁵ E.g. the participation of the Albanian Commissioner for the Protection from Discrimination in the Pink Embassy project "Improving the Life of LGBT Person at the Local Level": Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 85.

¹⁴⁶ Republic of Albania Commissioner for the Protection from Discrimination, *Special Report for the protection and respect of the rights of LGBTI community in Albania*, op.cit., p. 88.

It is interesting to see that the Annual Report of the Protector of Human Rights and Freedoms in **Montenegro** for 2015 stated that as a response to previous criticism on the lack of ambition to cooperate, directed at them, several steps were undertaken. Thus, the representatives “answered all the calls of the civil sector and participated in numerous promotional and strategic activities on raising awareness on the importance or protection from discrimination. (...) The attitude of the Institution was to answer all the calls and campaigns, starting with the promotional ones, leading to different forms of participation in public gatherings which supported the vulnerable groups and their fight for equality”, which includes LGBT persons. “During the reporting period, the representatives of the Institution participated in events organized by LGBT organizations, (...) and individual and collective initiatives for the protection of certain groups were carried out in coordinated activities (in cooperation with civil society organizations such as (...) Queer Montenegro, LGBT Forum “Progress” (...)).¹⁴⁷ The following promotional activities were also listed: flying the rainbow flag in front of the headquarters of the Institution as a sign of support for the LGBT civil sector, giving lectures to the members of the community, and joint promotion of LGBT rights in local communities with non-governmental organizations.

The **Albanian** Institution of the Ombudsman clarifies that there is an Advisory Board for Human Rights, created as a consulting body, one of its kind, which enables consultation with non-governmental organizations on a great number of important issues regarding human rights, especially of vulnerable groups, such as, inter alia, LGBT persons. They also state that while organizing “Diversity weeks” they were not only partners of non-governmental organizations protecting the rights of the LGBTI community, but they also participated in the activities, such as the information fair and exhibition dedicated to the LGBTI community and the Parade of Diversity Week. As a promotional activity, they particularly stress organizing the meeting with the auditorium on the rights of LGBTI persons in Albania, together with a network of civil society organizations which defend the rights of the LGBT community, having the State Department’s Special Envoy for the Human Rights of LGBTI Persons as the honorary panellist. Immediately after the auditorium, a recommendation was issued for the Ministry of Justice in relation with the amendments of the Family Code concerning same-sex unions. According to the assessment of this Institution, the promotional role of the Ombudsman regarding the rights of LGBTI persons was the main factor which contributed to the improvement of Albanian legislation and the life of this community.

¹⁴⁷ The Protector of Human Rights and Freedoms of Montenegro, *Izveštaj o radu za 2015. godinu*, op.cit., p. 143.

The **Serbian** Protector of Citizens also states that a Council for Gender Equality was formed in this Institution which offers expert and advisory support to the Protector of Citizens. The members of the Council are people with knowledge and experience in the area of improving the status of women and LGBTI persons. Their task is to point at the problems of vulnerable social groups with the aim of improving their status. The Council holds sessions once a month in the premises of the Protector of Citizens.

In several instances, the delivered answers show an emphasis on the support of the representatives of the bodies in the fight for LGBTI rights by attending the Pride Parades. Thus, the Serbian Commissioner emphasizes that he supports the work of the civil society organizations which handle the protection of LGBT rights by attending the Pride Parade, the Trans Pride and other promotional activities organized by the civil society. In addition to attending the Pride Parade, the Protector of Citizens in Serbia states that they fly the LGBT flag every year on the International Day Against Homophobia and Transphobia and the International Day of Pride. The Annual Report by the Montenegrin Protector states that in 2015, the Deputy Protector and all the Counsellors from the Sector for Protection from Discrimination attended the Pride Parade promoting the idea of equality of LGBT persons.¹⁴⁸ The Albanian Institution of the Ombudsman also states in the response that they attend the parades organized for the purpose of protecting the LGBTI community.

Conclusion

The results of the research on the experiences of bodies for the protection of human rights or equality in Albania, Bosnia and Herzegovina, Montenegro, Croatia, Kosovo, Macedonia and Serbia with the activities on the protection of LGBTI rights presented in this report, show several common features. The same or similar challenges in all societies have been identified, such as the unfavourable social and political environment, systemic problem of the lack of implementation of their recommendations, ensuring their independence, budgetary constraints, lack of sufficient staff training. All these systemic problems are reflected in the protection of the LGBTI community.

On the other hand, different degrees of development of practices and activities on the improvement of the LGBTI rights in different countries have been recorded. It is evident that these states are at different levels of the rule of law, culture of human rights protection and respect for differences, and this directly impacts their work and its potential in tackling LGBTI issues. For instance, the Anti-Discrimination Law of Kosovo was adopted only in 2015 – therefore, the baseline is different and should be taken into account in any analysis. The Anti-Discrimination Law of Macedonia, on the other hand, lacks the discrimination grounds of sexual orientation and gender identity because of the resistance to introduce them into the law, which is an indicator of a particularly hostile environment for the protection of LGBTI rights in this country. Some of the institutions work in societies with regular Pride Parades, while in other contexts this is still hardly imaginable. Those institutions, however, although aware that it is an important step, understand that such events are not sufficient and that additional effort must be made in combating prejudice and discriminatory views through the educational sector and joint action of state authorities, institutions, civil society and the media. In this light, the good practices shared in this report can certainly be useful primarily as an inspiration and a guideline to those bodies which have not reached that level of development yet.

The positive examples of the engagement of these institutions, through legal activities, impact on public policies, research work, communication, and other measures, can, however, be used as mutual inspiration to those bodies which have been active but in other ways and have not used all the tools available for combating discrimination and improvement of equality of LGBTI people.

Many lessons can be taken from all the presented and analysed examples and it is difficult to summarise them all in one conclusion. However, we will list some of the key steps in the achievement of the goal of improving the

protection of LGBTI rights.

One of them is the creation of quality legislative framework for the institutional work and protection of LGBTI people in as many areas as possible, as well as the adoption of relevant strategic documents and action plans for the protection of LGBTI people or due care for their rights in other similar documents which refer to a broader domain of anti-discrimination and human rights protection. There are numerous examples of the impacts these bodies made both on the adoption of laws, amendments to laws or other documents and on their contents. This is done by recommendations provided in decisions and various reports, legislative initiatives, press releases, opinions to drafts and by participation in governmental and parliamentary working groups. Therefore, it should be recognized how important it is to ensure an active role of these bodies in the development of public policies, laws, and other strategic documents which will contribute to the due protection of LGBTI rights. As the mere adoption of these acts is not sufficient, special attention needs to be devoted to their implementation and to possible failures thereon.

The implementation of these documents but also the relevant international standards, in broader terms, includes the continuous and appropriate training and sensitization of all stakeholders, including the staff of these bodies. Ensuring the protection of LGBTI rights primarily means identifying the problems that LGBTI people face and formulating appropriate recommendations.

In this light, research – as one of the ways for the institutions to identify the areas of action and the priorities of combatting discrimination – is a very important segment of their work. Research results can be used to inform the public and to make an impact on the relevant public policy development, especially in environments in which the public support is not as visible, but also to shape their own work on LGBTI issues which is particularly relevant in the very start of dealing with this topic.

It has been verified in a number of countries that a special report on LGBTI issues is a particularly powerful tool for a comprehensive approach to solving the problems of the LGBTI population. These reports can analyse various aspects of violations of LGBTI rights in a single document, raise awareness on the issue of the protection of their rights and, in their recommendations, identify the key steps to be taken to influence public policies, practices, and laws which should address the problems.

Many problems are identified and addressed through complaints of LGBTI rights violations, i.e. through concrete legal action. The report presents some of the key cases of LGBTI human rights violations which the bodies handled as examples of good practice for addressing various problems that LGBTI

people may face.

However, we have to be aware of the prevailing problem of the insufficient reporting of LGBTI rights violations – and this requires serious work. The tactic which has been efficient is the cooperation with civil society organizations as it enhances the trust in institutions and informs the public on the legal mechanisms of protection. In this way, the institutions can find out about the violations in order to initiate *ex officio* investigations and provide recommendations. The continuous monitoring of media reporting is an equally important tactic.

The visibility of these bodies and strengthening the trust in their work can be achieved, in addition to quality cooperation with civil society organizations which deal with LGBTI rights, by increasing their communication efforts. Appropriate media features, public support, and discussion on LGBTI issues and problems in the public have the potential of raising the awareness about the LGBTI rights and contribute to development of a positive environment in which the awareness of people will slowly change and a culture will develop which supports the right to equality and respect of differences.

In communication work, the cooperation of the institutions with the media and training and sensitization of the media with regard to this topic proved useful.

The cooperation with other stakeholders, primarily the media and civil society organizations, has been recognized as a crucial aspect of work in many segments of the report, as it often provides for an opportunity to respond to existing problems and restrictions which characterize the work of these institutions. Ideally, the cooperation should be formalized through special advisory bodies active within certain institutions. Different types of cooperation may constitute a consultations platform for important LGBTI issues, provision of expert assistance, and overcoming problems of the lack of reporting of LGBTI rights violations. In this way, the technical and financial support could be ensured needed for various activities, such as research or necessary staff training, as has been done in some cases with non-governmental and international organizations, as part of Twinning projects, through the EQUINET, and other relevant processes.

Especially in the context of budgetary restrictions which all of these bodies face, the support of organizations such as the UNDP, OSCE, the Council of Europe, the European Union and USAID is key in making sure that individual activities will be implemented.

To lead to the best possible effect, these activities should be implemented in appropriate moments, to the extent stipulated by the mandate of the institution, in order to comprehensively respond to problems that LGBTI people

face in our societies in different areas of life. The first step in that direction is an insight into the practice of bodies which operate in similar social, political, and economic contexts and learning from their mistakes and successes.

About the Author

Adrijana Hanušić Bećirović obtained her MA with honours in 2009 in the field of International Public Law at the Faculty of Law of the University of Strasbourg as a French Government scholarship holder. In 2008, as a visiting student she attended a summer semester at the Faculty of Law, Humboldt University of Berlin. She graduated in 2007 from the University of Sarajevo. Her work experience involves practice of law, Council of Europe Venice Commission, German Bundestag, Parliamentary Assembly of BiH, UNDP BiH legal expert position, and the Institution of Human Rights Ombudsman of BiH. She is currently employed as a senior legal advisor in the nongovernmental organization TRIAL. She works as a consultant, holds lectures and conducts research activities for other nongovernmental organizations, and publishes papers on international standards of human rights protection, transitional justice, constitutional and anti-discrimination law.

Contact: a.hanusic@trialinternational.org

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 organization 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 legislation and 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.lgbti.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 organized the LGBTI film festival Merlinka.

You can find out more about our work at: www.soc.ba.

This publication part of the Human Rights Papers Series of Sarajevo Open Centre. Human Rights Papers include general and thematic reports, as well as other relevant publications on human rights in Bosnia and Herzegovina. The reports and publications serve as basis for advocacy activities directed at both the state of Bosnia and Herzegovina and international bodies.

The publications relative to the work of national human rights institutions / bodies for the protection of equality published in this Series are:

Saša Gavrić and Adrijana Hanušić (authors): Model Law on the Institution of Human Rights Ombudsman of BiH, Sarajevo: Sarajevo open centre for Initiative for Monitoring the European Integration of BiH, 2015. Available at: <http://soc.ba/site/wp-content/uploads/2015/08/Zakon-o-Instituciji-ombudsmana-za-ljudska-prava-BiH.pdf>

Komentar na prijedlog Zakona o ombudsmenu za ljudska prava Bosne i Hercegovine i prijedlozi amandmana za unaprjeđenje prijedloga zakona. Sarajevo: Sarajevski otvoreni centar, 2016. Dostupno na http://soc.ba/site/wp-content/uploads/2016/03/HRP-20_ombudsmani-komentaR_02.pdf