

Sarajevo Open Centre

**Hate crimes against LGBTI persons and activists
in Bosnia and Herzegovina**

*Submission for the 62nd session of the Committee Against Torture and the review of
BiH's Country Report*

Sarajevo, October of 2017

1. Executive summary

Though the improvement of the legal framework in BiH – the amendments to the Criminal Code of FBiH and regulation of hate crime which now exists in both entities (Federation of BiH and Republika Srpska) and Brčko District – is certainly commendable but these legal novelties should however be introduced into the mandatory training of civil servants, the judiciary and the police to enable their adequate implementation in practice.

The years 2015, 2016 and 2017 brought about a significant concern in the increase of hate crimes, especially cases of domestic violence and peer violence motivated by sexual orientation or gender identity, and the growing number of open and public instances of homophobic and transphobic views in the academic institutions and the academia as a whole.

Judiciary and law enforcement are still failing to prosecute the severe attacks, threats and incitement to violence against individual activists as well as towards all LGBTI persons, LGBTI friendly places. Since 2008 and the first attack on Sarajevo Queer Festival, no case of violence or threats reported to the police and prosecutor's office's in charge has been processed before courts. The only case currently being discussed before court is the one in which the police officers used violence against an activist.

It is clear that, in addition to amendments to laws and public policies, it is necessary for the institutions in BiH to develop specific programs and measures of action to combat intolerance, xenophobia, violence, bullying and discrimination and to encourage social inclusion of LGBTI persons.

2. Description of the situation regarding hate crimes against LGBTI persons in the country

A. Overview of the legislative and institutional framework

In April 2016, the Parliament of the Federation of BiH adopted the Law on Amendments to the Criminal Code of FBiH which, inter alia, regulates hate crime in FBiH, including hate crimes towards LGBTI persons.

Provisions which sanction incitement to hatred, hate speech and violence are now included in the criminal codes of both entities (Federation of BiH and Republika Srpska) and Brčko District, but they are unfortunately limited exclusively to prohibition of incitement to hatred and violence on national, ethnic and religious grounds. With this legal framework, it is impossible to sanction incitement to hatred and violence against LGBTI persons, which proliferates on web portals and social networks and frequently grows into discrimination and hate crime.

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

Training of police officers, judges and prosecutors still depends on the civil society sector and international organizations. Hate crime on the ground of sexual orientation, gender identity and sex characteristics are either covered superficially or not at all in the curricula at the police academies, while the permanent and specialist police training and the trainings of judges and prosecutors do not address hate crime in a systematic and coherent way. Sarajevo Open Centre, in cooperation with the OSCE Mission to BiH, continued working on trainings for the police and interns at the courts and the prosecutor's offices in 2016. Sarajevo Open Centre conducted a training the trainer programme for police officers of 9 cantonal ministries (Sarajevo Canton Ministry received a similar training previously). After the ToT, cantonal MIs announced that police officers who completed the training will train their colleagues in the area of appropriate prosecution of hate crime as part of their 2017 permanent training.

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

B. Cases of hate crimes against LGBTI people documented by Sarajevo Open Centre

In 2014 and 2015 an activist from BiH faced backlash and threats from citizens of BiH after a photo of him holding a provocative sign from Belgrade Pride was published in domestic newspapers. The threats were so severe that he had to leave Banja Luka and relocate to Sarajevo for a few months. After he returned to Banja Luka the threats and incitement to hatred towards him, members of his family and his friends continued to the point that he was unable to travel to work and continue leading his life normally, and in the end he left the country in 2015 and applied for asylum in USA.

In 2016 an activist dealing with peace building activism and human rights of LGBTI persons was assaulted by police officers in Prijedor. The police officers that came to regulate "the noise" at the private party he was attending. The police officer then apprehended him, physically assaulted him and took him to the police station, forcing him to stay quiet because "he talks too much about things he shouldn't talk about.". He was then hit and held in the solitary confinement in the police station and was released only after he was forced to sign a statement omitting the violence that happened and accept to pay a fine for "arguing, yelling and rude behavior" and "disturbing state institutions while performing public duties". The case has been reported to the internal affair and to the prosecutor's office in charge and the trial is currently in process.

In 2015, 2016 and 2017, activists of Sarajevo Open Centre reported to the police, on several occasions, severe and serious threats of violence they personally received via social networks, as well as serious cases of incitement to violence and hatred towards them and other LGBTI persons, however no investigations were conducted and no responsible person was ever sanctioned for such behavior.

A fourteen year-old boy from Sarajevo committed suicide in December 2015 after suffering verbal and physical bullying in school over an extended period of time. The boy's parents and peers have claimed that the boy was a victim of violence and that his classmates had forced him to kiss a male friend while they were recording it, and that they had tied them and raped them with a rolling pin. The Institution of Ombudsman and the Prosecutor of Canton Sarajevo announced that they would conduct a detailed investigation of the incident. In March 2016 they published that no evidence was found which would confirm the claims made by the parents and that nothing in this case indicates that a crime was committed. However, this case clearly demonstrated that there is a link between xenophobia, homophobia and violence, and peer-to-peer violence.

In 2016, Sarajevo Open Centre documented 123 cases of hate speech and incitement to hatred and violence, and 20 cases of criminal offences and incidents motivated by prejudice on the grounds of sexual orientation and/or gender identity. From January to October of 2017, Sarajevo Open Centre documented 45 cases of hate speech and incitement to hatred and violence, and 24 cases of criminal offences and incidents motivated by prejudice on the ground of sexual orientation and/or gender identity. From the very start of 2017, we have seen some tendencies of special concern – growing domestic violence, homophobia and transphobia, and bullying in educational institutions. The trend of homophobia and transphobia in educational institutions, and inadequate responses of the ministries of education and the competent institutions to homophobic and transphobic bullying, witnessed over the last two years unfortunately continue. Of the 24 cases documented from January to October of 2017, 9 have been cases of domestic violence, ranging from threats to blackmailing, unlawful deprivation of liberty and prohibition of movement, violence and bodily injury, forced medical treatment. The perpetrators in all cases have been parents or siblings with the support of extended family. Homophobic and transphobic bullying is also a continuous problem, and it was documented in 4 cases from 2017. These cases have been reported to the competent ministries of interior and social work centres. Although the institutions did take action together with schools to put an end to the violent behaviour in the specific cases, there is an evident lack of a concrete institutional plan to combat bullying and develop an inclusive and tolerant educational environment that would include the LGBTI perspective as well.

Homophobia and transphobia in educational institutions remains a large problem. The Senate of the University of Sarajevo condemned the homophobic and transphobic speech of the former President of the Student Parliament of the University of Sarajevo from March of 2016, a year after it happened, at the session on 29 March 2017. This statement of the Senate was never released publicly. In April 2017, a book *Unease with the Media* by a faculty professor Fahira Fejzić-Čengić was promoted at the Faculty of Political Sciences of the university of Sarajevo. The author has been promoting xenophobia, homophobia and transphobia not only in this book but also in her other books used by the students. The faculty was invited by Sarajevo Open Centre to condemn homophobia and transphobia expressed in these books, but they never replied.

C. Hate crimes and violations of the freedom of assembly of LGBTI persons

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

Art Kino Kriterion has gained a reputation of an LGBTI inclusive place and as such came under attack on 4 March 2016 when four young men barged into the cafe. They began shouting slurs and used hate speech against LGBTI individuals, insulting them and threatening violence, throwing bottles, ashtrays and glasses and threatening to burn down the cafe. A young man had to undergo a medical examination for the injuries he sustained, and a young woman was also physically attacked. Roughly thirty people who happened to be in Kriterion at the time suffered psychological abuse. A year later, the attack has yet to be brought to trial and the police are still carrying out an investigation without any visible results. Failing to sanction violence motivated by homophobia and transphobia opens the space for future violent acts and convinces the perpetrators that their behaviour is socially acceptable. Attacks on public events related to LGBTI rights and the increase in attacks against activists recorded from 2008 onwards are proof of this. The police and the Prosecutor's Office must take on a more active role in prosecuting attacks against LGBTI individuals and activists in order to send a message to the perpetrators that homophobia and transphobia will not be tolerated.

3. Recommendations for the government

- Amend the criminal codes in all three administrative units (Republika Srpska, the Federation of BiH, Brčko District) and expand the provisions on incitement to hatred and violence so that they include sexual orientation and gender identity as protected grounds.
- With the aim of fighting homophobia and prejudice within the institutions, keep training and informing the judges, prosecutors, police officers and civil servants on hate crime and incitement to hatred and violence against LGBTI persons.
- Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes of police officers training, and civil service exams.
- Judiciary and law enforcement must take on a more active role in prosecuting attacks against LGBTI gatherings, individuals and activists in order to send a message that homophobia and transphobia will not be tolerated in BiH society.

- Improve the cooperation between the police and the judiciary in prosecuting hate crime against LGBTI people; systematic collection of data on hate crime on the grounds of gender, sexual orientation, gender identity or sex characteristics.
- Organize institutional trainings on combating homophobia and prejudice, as well as discrimination of LGBT people, especially for judges, prosecutors, police officers and civil servants.
- Develop a programme to combat bullying in primary and secondary schools which will include homophobic and transphobic violence, as well as programmes to promote tolerance and create an inclusive educational system.
- Organize trainings for university teachers and the academia staff to make them more sensitive in working with LGBTI persons – to be able to recognize, denounce and avoid the use of hate speech against LGBTI persons.

4. Information about Sarajevo Open Centre

Sarajevo Open Centre (SOC) is an independent feminist civil society organization that strives to empower lesbian, gay, bisexual, trans* and intersex (LGBTI) people and women through community empowerment and activist movement building. SOC advocates the full respect of human rights and social inclusion of lesbian, gay, bisexual, trans* and intersex (LGBTI) people and women on national, European and international level, as well as for improved legislation and policies in Bosnia and Herzegovina. By working on European integration issues, SOC is improving human rights in general and encouraging further the development of civil society.

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to providing psychosocial and legal counseling 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. Our advocacy focuses on a wide range of issues of importance to LGBTI persons and women but in 2016 we have focused and influenced a) the changes to the Law on Prohibition of Discrimination BiH, b) the changes to the Criminal Code FBiH in regards to hate crime regulation, and c) passing LGBTI-inclusive annual operational plans for gender equality at entity and state-level. During 2015 and 2016 we had media campaigns that have reached over a million BiH citizens and we organized the LGBTI film festival – Merlinka.

A detailed overview of all of our activities and achievements will soon be available in our webpage www.soc.ba.