

Monitoring of the Implementation of Committee of Ministers' Recommendation CM/Rec (2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity

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Executive Summary

Year 2010 was a crucial year for the global LGBTI community because the Committee of Ministers of the Council of Europe adopted the Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity. This important document lists measures that the countries should adopt to combat discrimination on these grounds. These measures are in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and as Bosnia and Herzegovina (BiH) is a signee of the Convention it should apply these measures despite the fact that the Recommendation is not a binding document.

In 2012, Bosnia and Herzegovina presented a report entitled Monitoring of Implementation of the Committee of Ministers' Recommendation CM/Rec(2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity as part of an ILGA Europe re-granting project. It was the first time that our country seriously approached the position of LGBTI community in all areas of life. The report showed that BiH protected LGBTI people only by its Anti-Discrimination Law and hate crime regulation in Republika Srpska (RS) and Brčko District (BD), but there had been no trainings for competent institutions to equip them with adequate knowledge relevant for addressing the problems of this population. Participation in the first monitoring project provided the necessary information to formulate future action. As a result, Sarajevo Open Centre intensified its cooperation with the relevant institutions and, thanks to their work and the work of other non-governmental and civil society organisations, BiH adopted amendments to the Anti-Discrimination Law, which now includes (properly listed) sexual orientation and gender identity, as well as sex characteristics, as grounds for prohibition of discrimination. Gender Equality Law also guarantees equal treatment to all persons regardless of their sex or sexual orientation.

Even though the legislative framework improved over the past three years, discrimination, hate speech and violence against LGBTI community are still present in our society, preventing LGBTI people from leading a normal life and engaging in all kinds of social activities.

Recommendations to member states for priority action

I Recommendations regarding hate crime and hate speech

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.
6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian,

gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.
8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II Recommendations regarding freedom of association, expression and peaceful assembly

9. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.
10. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.
11. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.
12. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.
13. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of

expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

III Recommendations regarding the right to respect for private and family life

14. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.
15. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.
16. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.
17. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.
18. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.
19. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.
20. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their

rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

21. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.
22. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.
23. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.
24. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

IV Recommendations regarding employment

25. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.
26. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

V Recommendations regarding education

27. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.
28. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VI Recommendations regarding health

29. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.
30. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.
31. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender healthcare, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

32. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VII Recommendations regarding housing

33. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.
34. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

VIII Recommendations regarding sports

35. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.
36. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.
37. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

IX Recommendations regarding the right to seek asylum

38. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

39. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.
40. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

X Recommendations regarding national human rights structures

41. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XI Recommendations regarding discrimination on multiple grounds

42. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Introduction

The Recommendation recognises that the LGBTI community has been subject to homophobia, transphobia and other forms of discrimination and violence for centuries; this is an ongoing state in a great number of countries. That is why the Recommendation includes a number of measures to be implemented to overcome discrimination, intolerance and social exclusion. Member states should review the existing legislation and collect relevant data to monitor the implementation of these measures, and to make sure that victims of discrimination and violence have access to effective legal remedies.

Methodology

The new questionnaire was drawn up on the basis of the 2012 version, containing sets of questions formulated against the structure of the Recommendation. The Questionnaire was divided in several parts, in accordance with the competences of ministries and institutions it was addressed to. It was disseminated to seventy relevant institutions. Only twenty-seven (27) of them responded, which is not satisfying but is more than in 2012 (21 responses from the same number of institutions). After the amendments to the Anti-Discrimination Law, there has been no further review of existing legislation, nor were there any measures taken to redress discrimination.

The first method was collecting the responses to the questionnaire from institutions, whereas the second method was gathering information and relevant data from research conducted by Sarajevo Open Centre and other civil society organisations, such as the 2017 and 2018 Pink Reports – annual reports on the state of human rights of LGBTI people in BiH, 2017 Numbers of Equality - research on problems and needs of LGBTI persons BiH, both published by Sarajevo Open Centre. General conclusion will be drawn based on all the information we collected from these sources.

The political system: Bosnia and Herzegovina's complex political structure is an obstacle in itself, since it comprises two Entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) – and one District – the Brčko District (BD). The Federation is divided into 10 cantons; the Republika Srpska is centralised. Each of these structural units has its own constitution, whereas the Brčko District has a Statute. Laws and institutions exist at all of these levels: entity/district and cantonal. Therefore, the implementation of the Recommendation depends on ministries and institutions at state, entity/district and cantonal level, which makes the entire decision-making process slower than in the neighbouring countries.

However, despite the complexity, our country adopted the Anti-Discrimination Law which lists sexual orientation and gender identity as grounds for prohibition of discrimination, as do the criminal codes of RS and FBiH, and the Law on Sports in BiH; there are also other laws which stipulate only sexual orientation as a ground for prohibition of discrimination, such as the entity labour laws. A lot of work is still ahead of us, especially regarding the implementation of these laws and amending the existing ones. It is also necessary to make legislation more intersex inclusive, since the rights of intersex people remain in the shadow of LGB and transgender people's rights. The Anti-Discrimination Law is the only law which lists sex characteristics as a ground for prohibition of discrimination, but all other laws should accordingly be harmonised with it.

1. Hate crimes and hate related incidents

“Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.”

In the BiH legal system, hate crimes have been differently regulated in the Entities (RS and FBiH) and in BD. Instigation to violence and hatred towards any group of people, including gay, lesbian, bisexual and transgender persons, is considered a criminal offence, according to the RS Criminal Code¹, which makes it the first administrative unit to guarantee this type of protection to LGBTI people. The Criminal Codes of FBiH and BD do envisage sanctions for incitement to hatred and violence, but only on national, ethnic and religious grounds, making it impossible to prevent hate crime against LGBTI people in its roots.

According to the Ministry of Justice, Public Administration and Labour of Bosnian Podrinje Canton Goražde, the only ministry in this remit that responded to the questionnaire, there has been no review of legislation in terms of discrimination on grounds of sexual orientation or gender identity. However, in 2016, the amendments to the FBiH Criminal Code² have been adopted introducing hate crime defined as every crime committed because of person's race, skin colour, religious beliefs, national and ethnic origin, language, disability, sex, sexual orientation or gender identity. No laws or other measures for collecting data on discrimination on grounds of sexual orientation or gender identity were adopted/implemented. Laws/measures for combating discrimination based on sexual orientation or gender identity have not been adopted/implemented, nor are there any national action plans or cross-sectoral working groups for the implementation of the Recommendation. In response to the question about effective legal remedies for victims of discrimination on grounds of sexual orientation or gender

1 Criminal Code of RS, Article 359., paragraph 1: “Anyone who through press, radio, television, computer system or social network, on public gathering or public place or otherwise publicly invites, incites or encourages or makes publicly available leaflets, pictures or other material invoked against violence or hatred directed towards a particular person or groups because of their national, racial, religious or ethnic origin, colour, sex, sexual orientation, disability, gender identity, origin or other characteristics, shall be punished by a fine or imprisonment for a term not exceeding three years.”

2 Criminal Code of FBiH, Article 2, paragraph 11: “Hate crime is any criminal offense committed because of racial affiliation, skin colour, religious beliefs, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person. Such action will be taken as an aggravating circumstance if this law does not explicitly provide more severe punishment for a qualified form of hate crime.”

identity, they answered that these has been “partially” provided, meaning that measures and laws have been adopted, but their implementation is ineffective. We got responses from 9 ministries of interior, with more or less generic answers, such as “*We apply standard measures for the protection of human rights and fundamental freedoms guaranteed by constitution, laws and other general documents*”. In some cantons, they had an opportunity to take part in trainings for raising awareness and sensitisation of police officers. Sarajevo Open Centre conducted a Train the Trainer programme for police officers from every cantonal ministry, which means that police officers who completed the training will train their colleagues to appropriately prosecute hate crime as part of their permanent training.³ These trainings were organised by Sarajevo Open Centre with financial support from the OSCE Mission to BiH. In some cantons, such as Posavina Canton, the ministry stated they had not recorded any cases of violence towards LGBTI persons and they did not have an LGBTI community at all. The reason is probably that LGBTI people do not trust the legal system sufficiently so they do not report cases of violence and discrimination; since it is a small environment, they risk coming out to the entire community. According to a research conducted by Sarajevo Open Centre, only 12.6% of the respondents trust the police and 14.5 % the judiciary. The main reason for distrust is possible homophobia/transphobia of police officers (82.6% of respondents) and judiciary (75.5% of respondents).⁴ There is a lack of action when it comes to conducting investigations in cases of crimes and others incidents on grounds of sexual orientation and gender identity. Sexual orientation and gender identity are not being taken into consideration as a motive for crime, so relevant ministries and the police do not record hate crimes separately. Sarajevo Open Centre sent out an inquiry to courts in BiH in order to ascertain the number of hate crime cases on grounds of sexual orientation and gender identity. From the information we received, most courts have not dealt with such cases yet. Out of 33 respondents, only 8 cases were tried in court, of which one is still ongoing, which confirms the inefficiency of institutions in protecting LGBTI persons from violence. But it is important to mention that outcomes of cases which ended up in court are highly satisfying: five out of seven processed cases resulted in punishment of the perpetrator of violence. So, the main problem is to get to the court because once that happens the positive outcome is almost guaranteed.⁵

In 2017, Sarajevo Open Centre documented 83 cases of hate speech and incitement to hatred and violence, and 31 cases of criminal offences and

3 Pink Report 2017 – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina

4 Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

5 Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

incidents motivated by prejudice on grounds of sexual orientation or gender identity. Special concern is a growing trend of domestic and peer violence against LGBTI people. From 31 documented cases of offences, 11 have been domestic violence cases. The perpetrators in all cases were parents or other family members. In 2017, there were 8 cases of homophobic and transphobic peer violence. These are continuous problems in our system, and they are happening among the youngest population, so there should be a fast and effective intervention in form of programmes, education, trainings and curricula which should be LGBTI inclusive.⁶

1.1. Hate speech

“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.”

Measures for combating all forms of hate speech against lesbian, gay, bisexual or transgender persons have been partially taken, but we did not get any examples of their implementation in practice. The RS Criminal Code⁷ penalises incitement to hatred, hate speech and violence against LGBTI people. The Criminal Codes of FBiH and BD do criminalise incitement to hatred, hate speech and violence, but only if based on national, ethnic or religious grounds. All three criminal codes recognise hate crimes and provide protection to LGBTI people.

Sarajevo Open Centre tried to fill in the gaps revealed during the first monitoring project, so it started with trainings on discrimination and hate crime against LGBTI persons for judiciary and law enforcement. In 2017 SOC organized a training solely for the Prosecutors' Office of Canton Sarajevo. This was the first time a judicial institution organised a training for such large number of its own employees. The result was the appointment of a contact person for LGBTI hate crime victims in the beginning of 2018 – a cantonal

⁶ Pink Report 2018 – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

⁷ Criminal Code of RS, Article 359., paragraph 1: “Anyone who through press, radio, television, computer system or social network, on public gathering or public place or otherwise publicly invites, incites or encourages or makes publicly available leaflets, pictures or other material invoked against violence or hatred directed towards a particular person or groups because of their national, racial, religious or ethnic origin, colour, sex, sexual orientation, disability, gender identity, origin or other characteristics, shall be punished by a fine or imprisonment for a term not exceeding three years.”

prosecutor in Sarajevo Canton, so that now any LGBTI person who has been a victim of hate crime can address the prosecutor's office directly and report the incident.⁸

Measures to be taken:

1. Amend the Criminal Codes of FBiH and BD to include sexual orientation and gender identity as grounds for incitement to hatred and violence; include sex characteristics a ground in all three criminal codes.
2. Introduce mandatory trainings for judges, prosecutors, police officers and civil servants to inform them on discrimination, hate crimes and incitement to hatred and violence against LGBTI persons.
3. Develop a unique system for tracking hate crimes against LGBTI persons, in form of a specific register to collect data on crimes motivated by hatred towards LGBTI persons.
4. Introduce LGBTI inclusive modules in curricula of law schools and police academies, the permanent and specialist programmes for police officer trainings, and civil service exams.
5. Develop a programme to combat peer violence in primary and secondary schools as well as programmes to promote tolerance and create an inclusive educational system. It is highly necessary to recognise the need to tackle LGBTI-phobic bullying.
6. Organise trainings for teachers and university professors to sensitise them in working with LGBTI persons and raise awareness about hate speech against LGBTI people and its avoidance.
7. Amend the existing legal framework, especially the entity family laws and entity laws on protection from domestic violence to include sexual orientation, gender identity and sex characteristics as grounds for prohibition of violence.

⁸ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

2. Freedom of association, expression and peaceful assembly

“Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.”

Freedom of assembly is a constitutional right guaranteed by the Constitution of BiH, in accordance with the European Convention on Human Rights⁹, Entity constitutions, Statute of BD, cantonal constitutions¹⁰ and laws¹¹, as well as international documents which BiH signed and ratified and which have the legal power of a constitution in our legal system. These documents guarantee freedom of assembly to every citizen of BiH and the only way it can be restricted is if it can be proven that such a freedom might cause damage to society or property. In practice, however, this constitutional right is being restricted more often than it should be. When it comes to LGBTI organisations, the main holders of activism and advocacy for human rights of LGBTI persons, freedom of association feels more like a privilege that should be earned than a constitutional right. They have to overcome a great number of legal formalities to register and keep functioning, and they have never been funded by the state. In 2017 and the first half of 2018, there have been several violations of the freedom of assembly in Sarajevo Canton. **One of those cases will be presented as illustration:** On 30 March 2017, Sarajevo Open Centre contacted the Ministry of Interior of Sarajevo Canton to announce a protest march scheduled for 13 May to mark the International Day Against Homophobia and Transphobia. On 11 April 2017, a permit was also requested from the Ministry of Transport of Sarajevo Canton. According to the law, a permit was to be requested at least 15 days prior to the event. As an official response from the Ministry was never received, Sarajevo Open Centre cancelled the march 48 hours before it was supposed to take place. The decision

⁹ Constitution of BiH, Article 2, paragraph 2: “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly applicable in Bosnia and Herzegovina. These acts have priority over all other laws.”

¹⁰ Constitution of Canton Sarajevo, article 7, paragraph 1: “The Cantonal area provides full protection of human rights and freedoms established by the Constitution of Bosnia and Herzegovina and the Constitution of the Federation, as well as in the instruments provided in the Annex to the Constitution of the Federation.”

¹¹ Constitution of Tuzlanski kanton, article 7: “In exercising its competencies, Canton ensures and implements all measures for the protection of human rights and freedoms established by the Constitution of Bosnia and Herzegovina and its annexes, the Constitution of the Federation and its Annex and this Constitution, taking into account the equality of all peoples and citizens in the Canton, municipalities and cities.”

of the Ministry of Transport arrived five hours after Sarajevo Open Centre held a press conference to inform the public that the march had been cancelled due to administrative silence of the Ministry of Transport. The activists of Sarajevo Open Centre filed an application before the Cantonal Court of Sarajevo because of the violation of the right to freedom of assembly.¹² The Ombudsman confirmed that there had been a violation of the right to freedom of assembly and issued a recommendation presenting steps to be undertaken by the FBiH Parliament, the Ministry of Transport and the Ministry of Interior. The Institution requested from the Parliament to amend the Law on Roads and set a specific deadline for obtaining permits for “sports events and other events taking place on public roads”. It was also recommended that the Ministry should act with due diligence whenever they receive requests for this kind of events, especially from LGBTI organisations, and should refrain from preventing the applicants to exercise their right to freedom of assembly by failing to respond. The relevant ministries should take every necessary step to ensure adequate protection from violence for LGBTI persons and to continue raising awareness on how to work with LGBTI population.

Measures to be taken:

1. Adopt a law at FBiH level to uniformly regulate public assembly for all cantons in order to ensure equal enjoyment of rights on the entire territory of BiH. The law should state a clear obligation of authorities to guarantee equal treatment of every person and organisation when it comes to organising public assemblies, as long as they are peaceful. Restricting freedom of assembly should be possible only in a limited number of cases explicitly stated by the Law, and the Law should stipulate that only the authorities competent for interior affairs should be notified of planning a public assembly without obliging the organisers to go through unnecessary administrative procedures in other institutions.
2. Abolish the provisions in every law which require permission seekers to get an approval from relevant transport authorities if the assembly takes up road surface. This means that the law should envisage only one competent authority for the decision-making.

¹² Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

3. Right to respect for private and family life

“Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.”

According to the European Convention on Human Rights, every individual has the right to respect of their private and family life (Article 8); state authorities should hold themselves from any interferences, unless the interference is in the interest of national security, public safety or economic well-being of the country, etc. BiH is one of many signatories of this Convention of international importance and it is a part of our constitution, therefore it should be implemented as a document which has the legal power of a constitution. But none of the family laws (Entity, BD or cantonal) regulate the relationship of same-sex couples. Sarajevo Open Centre conducted a research in which over two-thirds of respondents stated that they would be a part of same-sex partnerships if it were possible, therefore the impossibility of registering a same-sex partnership represents an important issue.¹³ A trace of hope was given by a municipal court verdict in one of the FBiH cantons, where a judge described same-sex relationship as a partnership between two people whose purpose is mutual life. This was the first time, as far as Sarajevo Open Centre is informed, that a court in Bosnia and Herzegovina classified same-sex relationship as a union of life between two people.¹⁴

On 6 May 2018, the House of Peoples of the FBiH Parliament adopted a proposal of the Law on Treatment of Infertility by Biomedical Assisted Fertilisation which regulates the right of married and unmarried couples who live together to treat infertility at the expense of health insurance.¹⁵ This is the first law of this kind, but it refers only to couples, which means that the national law does not permit assisted reproductive treatment for single women, lesbian or heterosexual. Since the Family Law defines marriage and cohabitation as a life community between man and woman, it means that same-sex couples do not fall under this regulation. The Law has been

¹³ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

¹⁴ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

¹⁵ Law on Treatment of Infertility by Biomedical Assisted Fertilisation, Article 29, paragraph 1: *“Right to treatment by biomedical assisted fertilisation at the expense of compulsory health insurance belongs to a woman by age of 42 who is in marriage, or in an extramarital community, as follows: a) three attempts of intrauterine insemination, b) five attempts of extruterine insemination, with obligation to make two attempts by natural cycle.”*

adopted recently, but is still pending a political procedure. Sarajevo Open Centre was advocating for its adoption for over a year¹⁶. We can only hope that the relevant institutions will take all necessary measures to implement it. Of course, this is not the end of advocacy, but the adoption of this law is a good starting point for future advocacy to expand the spectrum of rights guaranteed by it.

With respect to adoption, there are no restrictions of this kind and a single person can theoretically adopt a child through the institute of incomplete adoption but the procedures are too long and the formalities make it difficult for couples and single people to make that decision. (The Family Law recognises complete and incomplete adoption: in the first case, the adopted child is treated as a blood relative and ends all connections with the biological family; whereas in case of incomplete adoption, the adopted child still has the same rights and obligations towards the biological family.)

When it comes to transgender people, they can change their gender marker in official documents and their unique identification number only after they have completed the medical transition, which means that a transgender person has to go through psychological evaluation, hormonal therapy and a series of surgeries, such as genital reconstruction surgery, chest reconstruction, breast augmentation or reduction and hysterectomy, before being able to do so. After the medical treatment, the ministry of interior retracts the old unique identification number and issues a new one based on which the person can proceed with changing the rest of their documents. To make things even harder for this population, transgender people have to go abroad for endocrine therapy and surgical procedures, since these cannot be performed in Bosnia and Herzegovina and the health insurance does not cover the costs. This kind of practice discriminates transgender people because legal gender recognition is not based on self-determination and therefore transgender people are required to fulfil invasive requirements. It forces them to reveal their personal information and have their medical documentation with them all the time to avoid administrative problems, thus making them more vulnerable to discrimination and violence.

In 2017, Sarajevo Open Centre conducted a research about the needs of LGBTI people. A total of 61% of transgender individuals in the research plan to undergo gender affirming procedures, completely or partially, while 22.2% have not made that decision yet.¹⁷ Of those who want to change their sex, 4 individuals (22.2) are already transitioning, meaning they initiated the medical process of gender reassignment, while 7 of them (38.9%) would like to begin the transition. Those who want sex reassignment are aware that

¹⁶ <http://soc.ba/en/the-draft-law-on-infertility-treatment-with-bio-medically-assisted-fertilisation-in-the-federation-bih-established-improvements-needed/>

¹⁷ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

they have to bear the costs of the treatment, but they still plan to do it because it is an extremely important step in creating their own identity. Two-thirds of respondents would change their sex marker in personal documents even before completion of the transition process if they had such an option because that would eliminate the need for transgender persons to explain their identity. Also, two-thirds of respondents believe that the third gender category should be introduced by law, in addition to binary female and male sexes. This kind of regulation would provide a formal gender marker for non-binary transgender people, who do not experience their gender within the existing categories.¹⁸

Intersex people are an extremely vulnerable social group and there is a lack of information about intersex people and the ways their human rights are violated. UN Special Rapporteur on Torture criticised practices of states as cruel, inhumane and degrading. He called upon all states to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilisation, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced without the free and informed consent of person concerned.¹⁹ Regardless of these recommendations and the fact that they can cause a permanent, irreversible infertility and severe mental suffering, intersex people in BiH are still subjected to these treatments. Terms such as *hermaphroditism* and *pseudo-hermaphroditism* are still used in literature, textbooks and among medical workers, even though these terms are inaccurate, scientifically unfounded and stigmatizing for intersex persons. Data that Sarajevo Open Centre collected in a 2016 research showed that 1 in 2000 new-borns is an intersex person. A total of 27 health institutions were contacted in the research and only seven of them responded. Four confirmed that they have had cases of intersex new-borns. One institution claimed that it is a common practice for parents and children to be sent to Belgrade to Children's Clinic Tiršova and the Mother and Child Institute.²⁰ There is no data on whether parents were provided with adequate psychological or medical counselling or necessary human-rights based information for them to decide in the best interest of the child. Sarajevo Open Centre organised trainings for the Prosecutor's Office of Sarajevo Canton, the Ministry of Labour, Social Policy, Displaced People and Refugees and institutions under the Ministry: Gerontology Centre, Social Welfare Centre, Psychiatric Hospital Jagomir, Disciplinary Centre for Juveniles, Therapeutic Community Kampus and Family Counselling Centre. Intersex people are still an invisible category and it is difficult to find a person

¹⁸ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez; February 2013.

²⁰ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

who is ready to face these problems and speak openly about her sex characteristics and experiences.²¹

Measures to be taken:

1. Adopt and implement laws in all administrative units to legally recognise same-sex partnerships and define rights and obligations of cohabitating same-sex couples.
2. Adopt the Law on Treatment of Infertility by Biomedical Assisted Fertilisation to ensure that single women and lesbian couples have access to reproductive treatment.
3. Adopt and implement a law at state level to clarify the term *sex change* and make sex change procedure more accessible to transgender people and base it on their self-determination.
4. Abolish the provisions which condition the change of gender marker in documents by complete medical transition, and by that ensure that legal gender recognition is accessible for transgender people on the basis of self-determination.
5. Adopt and implement laws in all administrative units to establish an obligation of health insurance institutes to cover the costs of medical procedures of sex reassignment and to define duties of medical institutions to form teams of trained professionals who can perform these procedures in Bosnia and Herzegovina.
6. Engage medical institutions to cooperate and share relevant information with the civil society, thus raising awareness about intersex persons and removing outdated terms such as *hermaphrodite* and *pseudo-hermaphrodite*.
7. Make information about intersex new-borns accessible and prohibit medically unnecessary surgical procedures without a full consent of the intersex person.
8. Continuously involve public authorities and other public bodies competent for protection of human rights (ombudsperson).

²¹ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

4. Employment

“Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.”

The Labour Laws of FBiH²² and Brčko District (Article 4, paragraph 1) prohibit discrimination on grounds of sexual orientation, but gender identity and sex characteristics are not included as prohibited grounds. The RS Labour Law lists in Article 19 the grounds for prohibition of discrimination in the employment area, but those grounds do not include sexual orientation, sex characteristics or gender identity. The Anti-Discrimination Law²³ prohibits discrimination on grounds of sexual orientation or gender identity and establishes an obligation of the state to harmonise all other laws with this one.²⁴ Both direct and indirect discrimination is prohibited by this law and by labour laws at entity and cantonal levels, and the burden of proof is laid on the person who allegedly committed discrimination. These laws guarantee equal treatment of LGBT persons in employment in private and public sectors. We received 4 responses from the relevant ministries and three of them (Ministry of Health, Labour and Social Welfare of West Herzegovina Canton, FBiH Ministry of Health and Social Welfare, and Ministry of Labour, Health, Social Welfare and Refugees of Canton 10) confirmed these

22 Labour Law of FBiH, Article 8, paragraph 1: *“Any discrimination of a worker or a person seeking employment is forbidden, regardless of their gender, sexual orientation, marital status, family responsibilities, age, disability, pregnancy, language, religion, political or other opinions, nationality, social origin, property status, birth, race, skin colour, membership or non-membership in political parties and unions, health status, or any other personal feature.”*

23 Law on Prohibition of Discrimination, Article 2, paragraph 1: *“For the purposes of this Law, discrimination shall be considered to be any different treatment including any exclusion, restriction or advantage based on actual or assumed grounds against any person or group of persons and those who are with them in a relative or other relationship based on their race, skin colour, language, religion, ethnicity, disability, age, national or social origin, political or other beliefs, property status, union membership or other association, education, social status and sex, sexual orientation, gender identity, sex characteristic, as well as any other circumstance having the purpose or effect of preventing or threatening to recognise, enjoy or exercise on an equal basis, rights and freedoms in all areas of life to any person.”*

24 Law on Prohibition of Discrimination, Article 24, paragraph 1: *“In the case of failure to comply with other laws with this Law in the proceedings under this Law, this Law shall apply.”*, paragraph 2: *“All laws and general regulations will be harmonised with the provisions of this Law within one year from the day this Law enters into force.”*, paragraph 4: *“All public bodies and other legal entities are obliged to regulate the principles and principles of equal treatment in their general legal acts, or through special legal acts, and to ensure effective internal anti-discrimination procedures.”*

regulations, but only by mentioning prohibition of discrimination in general. Despite the prohibition of discrimination, LGBT persons are often subjected to discrimination in employment, which is confirmed by a research conducted by the National Democratic Institute²⁵ in 2015 – 36% of LGBT respondents reported to have had experienced some kind of discrimination in the workplace, while 30% of the general population stated that they would cease every communication with a co-worker if they found them to be of different sexual orientation or gender identity.²⁶ Even though the existing legislation guarantees equality in employment to every person regardless of their sexual orientation, the reality differs in many ways. LGBT persons are still being stigmatised and their sexual orientation or gender identity are having a negative impact on economic aspects of their life.²⁷

Measures to be taken:

1. Include gender identity as one of the grounds for prohibition of discrimination in the existing labour laws.
2. Organise mandatory trainings for ministries of labour, representatives of unions and associations of employers to raise awareness about problems LGBTI persons face in this field.
3. Conduct additional research in order to examine this field in greater details, since there are some differences in different researches.
4. Take concrete steps to ensure better implementation of existing provisions.

²⁵ NDI Public Opinion Poll in the Balkans on LGBTI Communities, https://www.ndi.org/LGBTI_Balkans_poll

²⁶ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

²⁷ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

5. Education

“Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.”

Anti-discrimination legislation specifically prohibits discrimination on grounds of sexual orientation or gender identity in all domains of life, including education.²⁸ No person should be denied the right to education on any ground. But not having a unified law at state level makes discrimination more likely to happen. Primary, secondary and higher education in BiH are fragmented: RS has its own education system, as does BD, whereas FBiH has 10 systems regulated by laws adopted and implemented differently in every canton. The Law on Higher Education of Sarajevo Canton expressly prohibits discrimination on ground of sexual orientation, but it does not include gender identity. The same provision is found in laws on higher education of Zenica-Doboj Canton, Bosnian Podrinje Canton, Una-Sana Canton, and Tuzla Canton, whereas laws on higher education in the remaining five cantons cover neither sexual orientation nor gender identity as grounds for prohibition of discrimination. Most cases of discrimination take place in education institutions (up to 41.2% in schools and 19.1% in universities),

²⁸ Law on Prohibition of Discrimination, Article 2, paragraph 2: *“The prohibition of discrimination applies to all public bodies, as well as to all natural or legal persons, in the public and private sectors, in all areas, and in particular: employment, membership in professional organisations, education, training, housing, health, social protection, goods and public services and public places, as well as carrying out economic activities and public services.”*

followed by hospitality establishments/stores with 34.6 %.²⁹ In 2017, eight cases of homophobic (6) and transphobic (2) peer violence were recorded. In one high school in Sarajevo Canton, a pupil was subjected to physical and verbal violence by the peers and the school suspended the perpetrator obliging him to attend sessions with the school pedagogist and advised the victim to attend support sessions. Unfortunately, this case is an exception; in most cases, education staff fails to react properly and sometimes even joins in mocking the victim. School curricula and textbooks still contain harmful information about LGBTI people and use gender stereotypes which promote cisheteronormativity.

Measures to be taken:

1. Change school curricula and textbook so they become LGBTI inclusive, and avoid using homophobic and transphobic language.
2. Develop an institutional plan to combat peer violence and a teacher training programmes to raise awareness on how to work with this social group and promote tolerance and inclusion of minorities, including LGBTI people.
3. Education institutions should work with social welfare centres psychologists/pedagogists and relevant ministries in providing adequate protection for victims and rehabilitation of perpetrators.

6. Health

“Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.”

According to the FBiH Ministry of Health, one of the ministries which responded to our questionnaire, all measures have been taken to ensure equal treatment of LGBTI people in healthcare and all individuals have access to health education, care and treatment programmes irrespective of their sexual orientation or gender identity. The Law on the Rights, Obligations and Responsibilities of Patients prohibits discrimination of patients on ground of their sexual orientation.³⁰ It is an important legal instrument which provides a list of rights of patients, some of which are significant for the work with LGBTI persons. It guarantees to them the right to healthcare in accordance with their health condition, needs and financial means. But this right is not fully implemented since BiH does not have specialised health services for transgender persons and the needs of LGBTI people have not been adequately processed. Healthcare workers are obligated to respect the right to privacy of patients, which means they are not supposed to reveal to others personal information about patient's sexual orientation, gender identity or sex characteristics. The reality is that LGBTI persons are invisible in our health system. They are not being recognised as a vulnerable social group, while health workers share the same opinions, convictions and norms as the majority of society which leads to provision of inadequate healthcare.³¹ Healthcare staff can be the first contact of LGBTI persons with the health system so they need to take all necessary measures to help their patients (i.e. they can talk to parents and explain to them that homosexuality is not a disease).

³⁰ Law on the Rights, Obligations and Responsibilities of Patients, Article 3: *“Any form of discrimination based on race, skin color, gender, sexual orientation, genetic heritage, language, religion or belief, political and other beliefs, national and social origin shall be prohibited during the conduct of activities pursuant to this Law and the regulations adopted pursuant to this Law.”*

³¹ Responsible and Professional Treatment of Lesbian, Gay, Bisexual, Transsexual and Intersexual Persons – Handbook for institutional representatives who work on municipality, city and canton levels; Sarajevo Open Centre 2017.

Measures to be taken:

1. Sensitise healthcare workers so they can understand and acknowledge the problems of LGBTI persons; provide trainings to share the knowledge required to work with transsexual and intersexual persons.
2. Take all measures needed to ensure the respect for patient's privacy, such as providing a space where the patient will be able to have private consultations with a doctor in a safe environment without the concern that they will be heard by the rest of the staff.
3. Healthcare workers are often uninformed about sexual orientation, gender identity or sex characteristics, and ignoring such relevant information can lead to misdiagnosis or inadequate treatment. They need to refrain from subjective opinions and stop using misguiding and offensive terms (i.e. saying homosexuality is a disease, etc.).
4. Unburdening the health system would enable doctors to focus on every single patient and decide on diagnosis and treatment not based on their assumptions drawn from short and superficial conversations with patients.
5. Make sure that healthcare workers respect patient's right to privacy, especially when it comes to minor LGBTI patients, since their coming out process requires special approach towards parents.

7. Housing

“Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.”

“Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.”

The Anti-Discrimination Law of Bosnia and Herzegovina prohibits discrimination on grounds of sexual orientation, sex characteristics or gender identity in the field of housing.³² It is the only law which prohibits discrimination on these grounds in this area of life. FBiH and RS laws on housing do not address discrimination on grounds of sexual orientation or gender identity. The ministries of health, labour and social care of West Herzegovina, Central Bosnia and Canton 10 and the FBiH Ministry of Labour and Social Policy stated in their responses to the questionnaire that every citizen is equally treated regardless of their sexual orientation or gender identity and that LGBTI persons enjoy full protection from discriminatory eviction, but they did not provide any positive examples to support these claims. The main reason for homelessness of LGBTI persons is the non-acceptance of their sexual orientation or gender identity by their family members, and these young people have no one to refer to. Sarajevo Open Centre received multiple calls for help from LGBTI victims of their family or environment because of sexual orientation or gender identity who had no place to go to. This shows that there are no functioning programmes for the prevention of homelessness or shelters/other appropriate emergency accommodation for LGBTI persons. Although there are civil society organisations ready to provide shelter to lesbians and bisexual women in safe houses, there is no accommodation for gay

³² Law on Prohibition of Discrimination, Article 2, paragraph 1 and 2: *“For the purposes of this Law, discrimination shall be considered to be any different treatment including any exclusion, restriction or advantage based on actual or assumed grounds against any person or group of persons and those who are with them in a relative or other relationship based on their race, skin colour, language, religion, ethnicity, disability, age, national or social origin, political or other beliefs, property status, union membership or other association, education, social status and sex, sexual orientation, gender identity, sex characteristic, as well as any other circumstance having the purpose or effect of preventing or threatening to recognise, enjoy or exercise on an equal basis, rights and freedoms in all areas of life to any person.”* *“The prohibition of discrimination applies to all public bodies, as well as to all natural or legal persons, in the public and private sectors, in all areas, and in particular: employment, membership in professional organisations, education, training, housing, health, social protection, goods and public services and public places, as well as carrying out economic activities and public services.”*

or bisexual men or transgender persons victims of domestic violence. This problem should be properly addressed by the state because it could lead to homelessness among young LGBTI persons.

Measures to be taken:

1. Homelessness of LGBTI persons should be recognised as a specific problem of our society which needs to be solved. Relevant institutions should ensure that every victim of violence has access to safe houses, regardless of their sexual orientation or gender identity.
2. LGBTI persons need safer housing options that will respect their sexual orientation or gender identity, as well as provide a safe environment. This includes trainings for shelter staff on how to be an ally to LGBTI individuals and written policies to prevent discrimination.
3. Establish programmes which improve family relationships and reduce homelessness of LGBTI youth, as well as programmes of protection against domestic violence and safe houses for LGBTI victims of violence.
4. Conduct additional survey in this field and take into consideration the needs of targeted population. Ensure safe environment in schools and take all necessary measures to prevent bullying and ensure that homeless LGBTI youth can continue their education. Design a programme which will include these measures (staff training, special safe houses for homeless youth etc.) and propose it to relevant ministries.

8. Sports

“Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.”

None of the relevant ministries responded to our questions regarding particular measures that have been taken to prevent the risk of exclusion from participation in sports on grounds of sexual orientation, gender identity or sex characteristics. Inaction of ministries suggests that nothing is being done to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events. The Law on Sports in BiH³³ guarantees equal access to sports regardless of one's sexual orientation or gender identity and prohibits incitement to hatred and violence based on sexual orientation or gender identity, but the respective laws at cantonal and entity levels do not mention sexual orientation or gender identity. Sex characteristics are still absent from all of these regulations.

Measures to be taken:

1. Conduct a research on the needs of LGBTI persons in sports and ascertain their specific needs in physical education and sports.
2. Adopt and implement rules of conduct in sports which would prohibit discrimination based on sexual orientation, gender identity and sex characteristics.
3. Raise awareness among sports and physical education specialists by organising trainings about specific needs of LGBTI people.
4. Get support and encouragement from the relevant ministries of sports.

³³ Law on Sports in Bosnia and Herzegovina, article 6: „The basic principles on which sports are organised in Bosnia and Herzegovina are: ..equal access to sport irrespective of race, skin color, national or ethnic origin, social status, religious, political or other belief, disability, health status, age, sex, gender, sexual orientation, gender identity or any other personal property. Discrimination in sport is prohibited in accordance with the Law on Prohibition of Discrimination (“Official Gazette of BiH”, No. 59/09) and the Law on Gender Equality in Bosnia and Herzegovina (“Official Gazette of BiH”, no. 32/10).”

9. Right to seek asylum

“In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.”

“Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.”

“Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.”

The Law on Asylum in BiH contains no provisions which recognise well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for seeking asylum. In 2016, the new Law on Asylum was adopted, but it did not include sexual orientation or gender identity as possible reasons for prosecution and asylum seeking,³⁴ despite the advocacy³⁵ of Sarajevo Open Centre and other civil society organisations. In January 2018, a gay asylum seeker from Syria had to be relocated from the asylum centre due to violence and treatment he suffered from other asylum seekers. He contacted Sarajevo Open Centre to get information and assistance and, with the help of other civil society organisations, he managed to get asylum in Germany. In 2017, Sarajevo Open Centre received nine inquiries regarding either information or assistance about the process of claiming asylum in EU countries, and as of 2018, 4 inquiries have already been received for assistance and provision of information to LGBTI persons in BiH about the process of claiming asylum in EU and the USA. In 2017, the Ministry of Foreign Affairs of BiH registered 2 people, and since the beginning of 2018, 1 person seeking asylum on grounds of sexual orientation or gender identity.³⁶ Sarajevo Open Centre tried to contact the Ministry for Human Rights and Refugees of BiH multiple times, but they never answered. Their silence

³⁴ Law on Asylum in BiH, article 19: „The refugee status will be granted to an alien who, because of founded fear of persecution for his race, religion, nationality, affiliation to a particular social group or political opinion, lies outside of the country of his nationality, and cannot or because of that fear does not want to be put under protection of that country, as well as a person without citizenship outside of the country of his former habitual residence, and cannot, or for such fear, not wish to return to that country.”

³⁵ <http://soc.ba/en/advocating-amendments-to-law-on-foreigners-and-law-on-asylum/>

³⁶ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

suggests that there are no measures to ensure asylum seekers are not sent to countries where their life or freedom might be threatened because of their sexual orientation or gender identity, or measures which would prevent the risk of violence, sexual abuse or any other form of aggression against asylum seekers deprived of their liberty.

Measures to be taken:

1. Amend the existing laws to ensure that person's sexual orientation and gender identity are being considered valid grounds for fear of persecution.
2. Establish cooperation with relevant ministries and institutions to recognise the problems of LGBTI asylum seekers. States should ensure that reception centres, as well as interview procedures, are sensitive to LGBTI people. Asylum seekers should not be afraid to tell officers in asylum centres about their sexuality or gender identity, while interviewers should ask the right questions and address the problem properly.

10. National Human Rights Structures

“Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.”

The Human Rights Ombudsman Institution and its Department for Elimination of All Forms of Discrimination works on cases of discrimination based on sexual orientation and gender identity. The Anti-Discrimination Law defines in Article 7(1) that the Ombudsman Institution is the central institution competent for protection from discrimination.³⁷

Its competence is laid down in the aforementioned law, as follows:

1. receiving individual and group complaints regarding discrimination,
2. providing necessary information on rights and obligations of physical and legal persons who have filed an appeal for discrimination,
3. deciding on whether to accept an appeal or to initiate an investigation procedure in accordance with special regulations,
4. suggesting an initiation of mediation proceedings in accordance with provisions of Law on Mediation,
5. collecting and analysing statistical data on cases of discrimination,
6. submitting annual, and if necessary, extraordinary reports on the occurrences of discrimination to the Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of Federation of Bosnia and Herzegovina, National Assembly of Republika Srpska and the Assembly of Brčko Distrikt of Bosnia and Herzegovina,
7. informing the public about occurrences of discrimination,
8. conducting research in the field of discrimination, on its own initiative,
9. giving opinions and recommendations in order to prevent and repress discrimination, and suggesting adequate legal and other solutions to the relevant institutions of Bosnia and Herzegovina,
10. has the right to initiate and participate in procedures for protection against discrimination for offences prescribed by law,
11. monitoring of legislation and providing advice to legislative and executive bodies,

³⁷ Law on Prohibition of Discrimination, article 7, paragraph 1: “The Central Institution responsible for the protection of discrimination shall be the Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter: the Ombudsman of Bosnia and Herzegovina).”

12. raising awareness, conducting campaigns and in other ways actively promoting fight against discrimination for the purpose of its prevention,
13. promoting policies and practices aimed at ensuring equal treatment.

The Ombudsman Institution prepared a Special Report³⁸ on the access of LGBT persons to their rights. The Institution is aware that reports do not represent an actual portrayal of the position of LGBT persons in BiH, who face stereotypes and prejudices in their everyday life because the public is not ready to accept them as equal members of society. The report highlights the need for stronger prevention and promotion of the role of the Ombudsman Institution in this segment, as well as other state institutions and law enforcement. In 2017, the Ombudsman issued a public announcement calling on the general public for the protest planned for 13 May 2017 to be dignified in the spirit of tolerance towards different political, social and cultural practices and beliefs and in the spirit of respect for human rights.³⁹ At the same time, the Ombudsman urged all relevant institutions, in particular the Ministry of Interior of Sarajevo Canton, to take all measures needed to ensure that the announced protest passes without incidents. The Ombudsman received an appeal in 2018 regarding the alleged violation of LGBT persons' right to freedom of assembly and initiated an investigation. The Ombudsman Institution does not have the mandate of the National Mechanism for prevention of torture and other cruel, inhuman or degrading treatment or punishment, but if amendments to the Law on the Human Rights Ombudsman of BiH get adopted, the Ombudsman Institution should take over this mandate. The amendments to the Anti-Discrimination Law strengthened the role of the Ombudsman Institution so that the recommendations of the Ombudsman now need to be taken into consideration during judicial proceedings and the department for combating discrimination is supposed to get additional funding; however, these provisions have never been fully implemented.

Special unit formed as part of the Ministry of Labour and Social Affairs, of FBiH, also responded to the questionnaire. The Gender Centre monitors the position of women and exercise of their rights guaranteed by domestic and international legislation, while cooperating with the RS Gender Centre. They assessed the status of the implementation of the Recommendation as insufficient. In 2016, the FBiH and RS Gender Centres and the Gender Equality Agency of BiH provided support to the equality of LGBTI persons by including specific measures relevant to the rights of LGBTI persons into their operational plans. These three institutions cooperated with Sarajevo Open

³⁸ Special report on the rights of LGBT persons in Bosnia and Herzegovina, 2016.

³⁹ <http://ombudsmen.gov.ba/Novost.aspx?newsid=724&lang=BS>

Centre on mapping needs for implementation of the Recommendation, which resulted in inclusion of measures into the annual operational plan for the implementation of Gender Action Plan. They organised a series of thematic sessions, round tables, info sessions and trainings in cooperation with the Gender Equality Agency and RS Gender Centre. This process has just been initiated, therefore, despite some significant progress, the current situation still is not satisfactory.

11. Discrimination on multiple grounds

“Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.”

In 2016, the House of Peoples of the Parliamentary Assembly of BiH adopted amendments to the Anti-Discrimination Law which defined severe forms of discrimination, including discrimination on multiple grounds. This qualification of unauthorised treatment directly refers to all actors, especially courts and specialised equality bodies, to employ a more severe reaction in cases of such unauthorised behaviours (Article 4(6): *“As a severe form of discrimination will be considered a discrimination perpetrated against a person based on multiple grounds under Article 2, paragraph 1 of this Law (multiple discrimination), repeated discrimination and long-term discrimination (prolonged discrimination)”*). The legislator’s clear intention was that perpetrators of these forms of discrimination should be punished more strictly, regardless of what kind of protection against discrimination is concerned. Discrimination on multiple grounds needs further clarification because it is a new concept and there are certain doubts about recognizing, understanding, proving and adequately sanctioning multiple discrimination. It will be a challenge for judges and attorneys to fully understand and even recognise cases of discrimination on multiple grounds, but it is expected of judges to consider the overall status of a discriminated person and to take it into account when deciding. The law requires someone you can compare your case to, so proving discrimination on multiple grounds will be much more difficult than proving discrimination on just one ground (i.e. if a person did not get a promotion because she was a woman, she will compare herself with her male colleagues, but if she states that she has been discriminated on multiple grounds, it would be more difficult to find a person she can compare to). That is why judges need to find a different approach when dealing with these forms of discrimination and realise that strict application of rules about comparison cannot be adequately applied to cases of discrimination on multiple grounds.⁴⁰

⁴⁰ Commentary on Protection Against Multiple Discrimination: A New Challenge for Courts and the Ombudsman Institution in Bosnia and Herzegovina; Kosana Beker, Analitika-Centre for Social Researches, 2016.

About the author

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About Sarajevo Open Centre

Sarajevo Open Centre (SOC) advocates the full respect of human rights and social inclusion of LGBTI persons and women. Sarajevo Open Centre is an independent, feminist civil society organisation which strives to empower LGBTI (lesbian, gay, bisexual, trans and intersex) persons and women by strengthening the community and building the activist movement. SOC also publicly promotes human rights of LGBTI persons and women and it advocates the improvement of public policies in Bosnia and Herzegovina at the State, European and international levels. Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counselling we also continued running the only LGBTI media outlet in the state – a web portal www.lgbti.ba. We organised trainings for the police, the prosecutor's offices and the courts and we worked intensively on creating a local institutional network of support for LGBTI persons in Sarajevo Canton, improving the recommendation of regulating bio-medically assisted fertilisation in FBiH, the rights of working women regarding discrimination on grounds of sex and maternity leave, but also on raising awareness about gender-based violence in BiH. In 2017, several of our legislative and policy initiatives have been submitted to governmental or parliamentary procedures. Our advocacy focuses on issues of policies for the equality of women and LGBTI persons in BiH, the issues of reproductive rights of women and men, parenthood in the context of conciliating the private and the business life, the freedom of assembly of LGBTI persons and improving the institutional framework for the protection against violence and discrimination. In the previous year, we had media campaigns that reached over a million of BiH citizens and we organised the LGBTI film festival Merlinka.

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

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