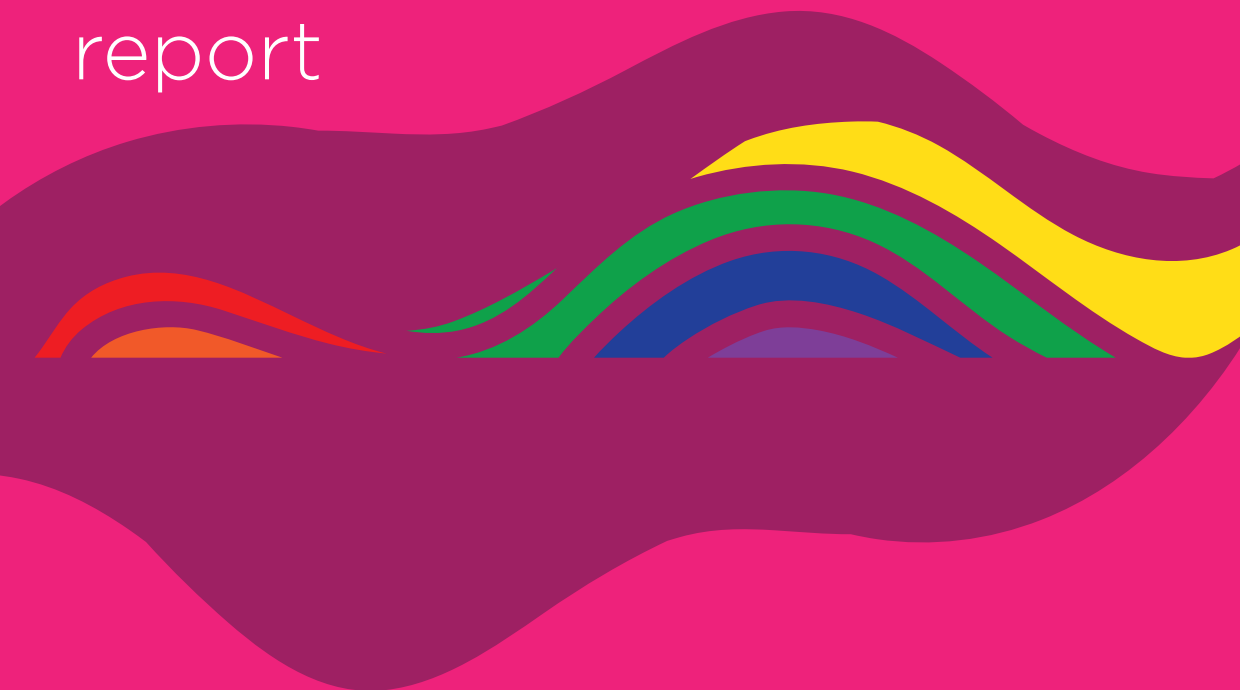


2020

# PINK

report



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

Pink Report 2020

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LGBTI Persons in Bosnia and Herzegovina

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Authors: Darko Pandurević, Delila Hasanbegović,  
Jozo Blažević, Nejra Agić

Editors: Emina Bošnjak and Vladana Vasić

Proofreading (BCS) and Revision: Sandra Zlotrg

Translation to English: Tarik Vukas

Layout and Design: Tanja Ćurić

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# **PINK REPORT 2020**

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

**SARAJEVO, May 2020**

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## LIST OF ABBREVIATIONS

**GEA B&H** – Gender Equality Agency of Bosnia and Herzegovina

**B&H Pride March** – Bosnian-Herzegovinian Pride March

**B&H** – Bosnia and Herzegovina

**BIS** – Brew Imperial Society

**CEDAW** – Convention on the Elimination of All Forms of Discrimination Against Women

**FJPTC** – Judicial and Prosecutorial Training Centre of Federation of Bosnia and Herzegovina

**CMS** – Case Management System in Courts

**FB&H** – Federation of Bosnia and Herzegovina

**FMIA** – FB&H Ministry of Internal Affairs

**FMLSP** – FB&H Ministry of Labour and Social Policy

**FMoH** – FB&H Ministry of Health

**GAP** – Gender Action Plan

**GC FB&H** - Gender Center of Federation of Bosnia and Herzegovina

**GC RS** – Gender Center of Republika Srpska

**CCS** – Croatian Cultural Society

**ICCPR** – United Nations’ International Covenant on Civil and Political Rights

**ICESCR** – United Nations’ International Covenant on Economic, Social and Cultural Rights

**SC** – Sarajevo Canton

**CC of FB&H** - Criminal Code of Federation of Bosnia and Herzegovina

**LGBTI** – lesbian, gay, bisexual, transgender and intersex persons

**LGBTIQ** – lesbian, gay, bisexual, transgender, intersex and queer persons

**SC MoT** – Sarajevo Canton Ministry of Transport

**SC MIA** – Sarajevo Canton Ministry of Internal Affairs

**SC MoH** – Sarajevo Canton Ministry of Health

**P&J** – People and Justice

**OP** – Our Party

**DF** – The Democratic Front

**CA** – Civic Alliance

**OC** – Organizing Committee of Bosnian-Herzegovinian Pride March

**OSCE/ODIHR** – Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights

**CRA** – Communications Regulatory Agency  
**RTV** – radio-television  
**PDA** – The Party of Democratic Action  
**SDP B&H** – Social Democratic Party of Bosnia and Herzegovina  
**SOC** – Sarajevo Open Centre  
**SOGI** – sexual orientation and gender identity  
**SOGIESC** – sexual orientation, gender identity and expression, and sex characteristics  
**RS** – Republika Srpska  
**PCMS** – Case Management System in Prosecutors’ Offices  
**UDHR** – United Nations’ Universal Declaration of Human Rights  
**LoGE** – Law on Gender Equality in Bosnia and Herzegovina  
**ADL** – Anti-Discrimination Law





## ABSTRACT

During the last year, two key events for LGBTIQ persons took place in Bosnia and Herzegovina: the first Bosnian-Herzegovinian pride march (B&H Pride March) was held, and Sarajevo Canton (SC) adopted an LGBTI (lesbian, gay, bisexual, transgender and intersex persons) inclusive Gender Action Plan (GAP).

Although the B&H Pride March was the last to be held in the Western Balkans region, it was the most successful Pride in terms of the number of people marching, as well as in the context of security – not a single security incident occurred. In addition to being a significant event for the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons, it gave hope to many B&H citizens that Bosnia and Herzegovina (B&H) can fulfill its potential as a tolerant and diverse country.

Out of the 18 measures related to women's and LGBTI rights proposed by Sarajevo Open Centre (SOC), 14 of them are included in GAP of SC, including measures concerning prevention and protection against gender-based and domestic violence, and for LGBTI persons, as particularly marginalized groups, introduction of special cooperation procedures between the police and the prosecutor's office in processing of hate crimes, alongside with measures that include trans inclusive standards and protection in the areas of sexual and reproductive health and integrity.

At the beginning of 2020, an inter-ministerial working group was finally formed to analyze the existing regulations and propose new ones that need to be adopted, in order for couples in same-sex unions to exercise the rights arising from the European Convention for the Protection of Human Rights and Freedoms.

However, all this progress has been accompanied by strong opposition and obstruction. After the Pride was announced, hate speech against LGBTIQ persons intensified, and Cantonal MP Samra Hajdarević Čosović called for the segregation of LGBTIQ persons. Several

attacks on LGBTIQ persons had taken place in the public sphere, and none was prosecuted as a hate crime, while only one was prosecuted overall, qualified as a misdemeanor, and the perpetrator was fined. An immense and disproportionate financial burden was placed on the backs of the organizers of the first Pride March, as one of the conditions for holding the Pride. Without the determination and ability, and the backing of partners and supporters, the Pride March would not have been possible.

This development shows there is a bit more freedom and support for LGBTI persons in Bosnia and Herzegovina, but that additional strong efforts are needed to make significant progress towards the equality and acceptance of LGBTIQ persons, particularly in the areas of legal gender recognition, legal regulation of freedom of assembly, and hate speech, as well as processing of incitement to violence and of violence against LGBTIQ persons. Legal recognition of same-sex unions, and also Action Plan for equality of LGBTI persons, are in the early stages of development and, in order for them to really have an impact on everyday lives of LGBTIQ persons, we need to see a clear institutional and political will to adopt and implement them.

In addition to the local LGBTI community, support for the vulnerable LGBTI migrants and asylum seekers in Bosnia and Herzegovina will require much more effort in the years to come. The support of the media, institutions and partners will also be needed, as history has repeatedly shown that minorities become more vulnerable in times of crisis. The new socio-economic reality and undemocratic trends will have a negative impact on the well-being, security and human rights of LGBTI persons in B&H during the next few years.

## NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS

### Restrictions on the Freedom of Assembly of LGBTI Citizens in Bosnia and Herzegovina

The right to freedom of assembly is regulated by a large number of laws and regulations in B&H: Constitution of B&H, constitutions of the entities and cantons, Statute of Brčko District, laws on the freedom of assembly of the entities and cantons, but also protected by international documents that B&H ratified or adopted into its legal system, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. All these documents guarantee the right of B&H citizens to free assembly, and the same may be limited only to protect the safety of people and property.

Unfortunately, despite this, current practice of the competent institutions is very restrictive in some cases.

Namely, SOC, as the organizer of public gatherings aimed at pointing out the unequal position and enjoyment of constitutionally and legally guaranteed and regulated rights of LGBTI persons, throughout the last few years has had a **de facto ban and/or great difficulties in organization of public gatherings**. The practice of the competent institutions very often proves to be homophobic/transphobic, either directly through the resistance to public gatherings of LGBTI persons, or through the reverse logic that potential violence that can happen is “provoked” by LGBTI persons with their protest, and not by potential bullies, which leads to such restrictions/prohibitions. Also, certain representatives of the competent institutions perceive public gatherings related to human rights of LGBTI persons as a blow and/or disagreement with their personal and/or religious beliefs, and use their position to impose additional measures that require a large financial burden, **thus putting the organizers in a very ungrateful position, and who, due to lack of financial resources, potentially have to cancel the gathering.**<sup>1</sup>

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<sup>1</sup> For more information on restrictive practices and additional measures that organizers must comply with, see section Good Practices - The First B&H Pride March and Chapter III Freedom of Assembly - Documented Cases.

In practice, a major problem is the incompatibility and/or lack of legislative framework governing this area in the domestic legal system, and non-compliance with international standards regulating this field, which enables the institutions and their representatives to interpret legal norms in order to restrict the freedom of assembly of citizens.

### **Inadequate Activity and Inefficiency of the Judiciary in Hate Crime and Hate Speech Cases**

The continuous problem of processing and adequate sanctioning of cases of violence against LGBTI persons imposed itself as one of the main issues of protection of human rights of LGBTI persons in 2019. The announcement, and ultimately the holding of the Pride March in Sarajevo, resulted in increase of hate speech against LGBTI persons and cases of violence in public space.

**One of the most prominent examples of hate speech we saw from a member of the Sarajevo Canton Assembly - Samra Ćosović Hajdarević.** After, in April 2019, activists of the B&H Pride March announced it for September 2019, Samra made a post on her public Facebook profile, calling for direct discrimination, i.e. segregation of LGBTIQ persons in B&H society, saying, among other things: „I want people like these to be isolated and put away from our children and society. Let them go somewhere else and make a city, a state, and a law for themselves, and their own rights that no one will dispute. But NOT here!“ This statement was reported by many mainstream online, written and TV media. Despite multiple complaints to the Ethics Committee of the Sarajevo Canton Assembly, the said body did not find it necessary to sanction these statements. For that reason, SOC filed a lawsuit for incitement to discrimination against the MP in October 2019.

SOC documented **four separate physical and verbal attacks on LGBTI persons in public**, which took place immediately after the announcement of the first Pride. All the attacks were reported to the police, and by the time this report was published, only one case had received a court epilogue.

**The attacker in this case was fined a total of 1.000 BAM for two misdemeanors under the Law on Misdemeanors against Public Order and Peace of the Federation of Bosnia and Herzegovina (FB&H), relating to the physical assault or abuse of another and the unauthorized use of weapons and endangering security. In spite of the clear facts that indicate this attack was motivated solely by prejudices based on sexual orientation and gender identity that the attacker had towards the victims, this offense was processed in misdemeanor proceedings.**

**The case was not considered a hate crime in criminal proceedings, under the provisions of the Criminal Code of Federation of Bosnia and Herzegovina (CC FB&H), and the opportunity to recognize a clear motive and prejudice directed against LGBTI persons only because of their sexual orientation and gender identity, and the harmfulness that such acts have for the whole society, was missed.**

## GOOD PRACTICES

### Adoption of the LGBTI Inclusive Gender Action Plan in Sarajevo Canton

In December 2019, the Sarajevo Canton Government adopted the GAP for the period 2019 to 2022.<sup>2</sup> GAP is a public policy that contains a set of measures intended for the realization of strategic goals for improvement of gender equality in government institutions, under the so-called priority areas.

SOC participated in a working group that was engaged in creating the GAP, together with the President of the Gender Equality Commission of the Sarajevo Canton Assembly, who initiated the development of this plan, Gender Center of Federation of Bosnia and Herzegovina (GC FB&H), and representatives of Sarajevo Canton ministries and other civil society organizations.

**SOC proposed a total of 18 initiatives related to the human rights of women and LGBTI persons, of which 14 have been adopted and incorporated into the GAP.**

The GAP defines the goals and activities of all cantonal institutions for this period. One of the goals is the *Prevention and protection against domestic violence and gender-based violence*, and the activity to be implemented - is thematic session aimed at analyzing the situation and insight into the state regarding prevention and protection against domestic violence, involving the problems faced by particularly vulnerable groups, including LGBTI persons, with the responsibility of Gender Equality Commission and the Coordination Committee to oversee the implementation of GAP.<sup>3</sup> The introduction of training programs as part of professional development of the police will also contribute to this goal, on the topic of hate crimes in accordance with the CC of FB&H and their regular implementation; development and

<sup>2</sup> Available at: <https://www.gcfbih.gov.ba/vlada-kantona-sarajevo-usvojila-gender-akcioni-plan-kantona-sarajevo-2019-2021/>

<sup>3</sup> Data on these issues are collected in accordance with the Protocol on the Work and Cooperation of the Coordinating Body for the Prevention, Protection and Fight against Domestic Violence in Sarajevo Canton, and published every year within 16 days of activism in the fight against gender-based violence (November 25 - December 10).

adoption of standard operating procedures for the police and judiciary in case of hate crimes, also in accordance with the CC of FB&H.

Another goal is *Improved sexual and reproductive health*, under the scope of which the development of a guide for healthcare workers on inclusive treatment of transgender and intersex persons is envisaged; legal regulation of medical and legal procedures in cases of intersexuality through the development of the Rule Book on Gender Reassignment in Sarajevo Canton Medical Facilities; initiation of the accreditation of the Health Workers' Program in the field of providing gender-sensitive services and services in domain of sexual and reproductive health to general and multiple marginalized populations, where the holder of responsibility is the Sarajevo Canton Ministry of Health (SC MoH), with a deadline set for the end of 2020.

### Establishment of the Federation of Bosnia and Herzegovina Government Working Group for Same-Sex Partnerships

After the FB&H Government, on its session in October 2018, adopted a conclusion on establishment of a working group that will analyze the regulations *within which same-sex unions can exercise their rights arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms*, and propose regulations to be enacted in FB&H, **the working group was finally established at the beginning of 2020, while it started working on February 6, 2020.** On that date, a constituent session of the Inter-Ministerial Working Group was held, consisted of representatives of the FB&H Ministry of Internal Affairs (FMIA), FB&H Ministry of Health (FMoH), FB&H Ministry of Labour and Social Policy (FMLSP), representatives of FB&H Government and GC FB&H, and representatives of the Council of Europe in B&H, as an observer. Although almost 15 months have passed from the adopted conclusion to the establishment of this working group, continuation of work on this issue represents a concrete step forward in the process of eliminating discrimination and marginalization of same-sex unions in Bosnia and Herzegovina.

As an extremely positive practice in this process, it is necessary to point out the **positive response of the representatives of the working group for the inclusion of SOC members into their work.** SOC insisted on participating in the working group, guided by the expertise



it has in this field, experience in identifying the needs and problems faced by the LGBTI population in B&H, and ensuring increased transparency throughout the entire process. For these reasons, we consider the inclusion of SOC as a relevant organization in this field in direct decision-making processes as a straightforward contribution to the principles of good governance, participatory democracy and, ultimately, genuine determination to improve the position of LGBTI persons in Bosnia and Herzegovina.

## Holding the First Bosnian-Herzegovinian Pride March

Invisibility, isolation, unrecognizability, non-acceptance and violence are problems faced by LGBTI persons, both in public and in private space. Due to fear of violence or rejection, most LGBTI persons still do not choose to disclose their sexual orientation and/or gender identity and sex characteristics to their families, which is why they are forced to hide parts of their lives and the people they love. Public spaces: street, workplace, school, college, institutions, restaurants, cafes, these are all places where LGBTI persons cannot openly live their identities.

The initiative to organize the first B&H Pride March was set in motion in 2019, by a group of activists from all over B&H (Prijeedor, Banja Luka, Sarajevo, Bijeljina, Tuzla). The first Organizing Committee (OC) was consisted of 15 members who joined the OC on their own initiative, and committed themselves to act independently and on a voluntary basis. It should also be emphasized they did not represent any company, domestic or international organization, or political party.

**The first B&H Pride March was scheduled and successfully held on September 8, 2019.** The preparation of the Pride lasted for a year, from the moment when the OC was formed in 2018 and started planning. Even six months earlier, on April 1, 2019, B&H Pride March was announced to the competent institutions: Sarajevo Canton Ministry of Internal Affairs (SC MIA) and Sarajevo Canton Ministry of Transport (SC MoT), although according to the SC Law on Freedom of Assembly (Article 10 of the Law), the organizer is obliged to report a peaceful gathering to the competent institutions no later than 5 days before the event.

From the moment of announcement to the moment of holding, the Pride aroused great media and political interest. B&H Pride March was announced by the organizers as a peaceful gathering of citizens, and the SC institutions were obliged to ensure same, in accordance to the SC Law on Freedom of Assembly. Despite this, political pressure was very much present, and People and Justice (P&J) political party issued a media statement and called on the organizers to cancel the Pride stating they “stand for the rule of law, tolerance and coexistence of all diversities, but oppose the organization of events that will not improve, but can worsen the overall security situation in Sarajevo and beyond.” The Party of Democratic Action (PDA) agreed with this position. With such a statement and position, it is clear to conclude that in this particular case, said political parties made a direct blow to the constitutionally and legally guaranteed and regulated rights, by urging the organizers, among other things, to give up the preparations for the Pride, and thus tried to prevent the freedom of assembly of LGBTI citizens.

On the other side of the political spectrum, representatives of Our Party (OP), Social Democratic Party of Bosnia and Herzegovina (SDP B&H), The Democratic Front (DF) and Civic Alliance (CA) gave their support to the organizers of the Pride through public statements.

**In addition to political pressure, the organizers of B&H Pride March faced other sorts of pressure during the preparations.**

Namely, the cooperation with the competent institutions, primarily with the SC MIA, which was responsible for securing the Pride, lasted a total of six months, from the moment of announcement to the moment of holding the Pride. Meetings were held on a regular basis, and all aspects of Pride security were planned down to the smallest detail. During these meetings, SC MIA obligated the organizers to some additional measures that they had to fulfill/provide.

**In addition to the appropriate number of security guards, presence of ambulance vehicles and confirmation of presence of the fire brigade, the organizers had to provide iron fences at the locations of departure and ending of the gathering.** As one of the biggest burdens, the organizers had to provide a certain number of concrete barriers that were placed in specific locations, in accordance to the assessment of the members of SC MIA, which was a rather

large and unreasonable financial hardship. All of the above required large and disproportionate financial resources, which, at the moment they became aware of, the organizers did not have provided (the basis for putting on such additional measures by the SC MIA is the current SC Law on Public Assembly).

However, despite the aforementioned facts, the representatives of SC MIA approached the planning of the Pride very seriously, did their job professionally and took absolutely all measures to ensure that all participants of the first B&H Pride March could feel safe. Throughout the whole planning and arranging process with the organizer, members of the SC MIA were very cooperative.

**Around 3.000 participants took part in the Pride, and this was definitely the first mass public gathering related to the equal position and human rights of LGBTI persons, which was held without any incidents.**

## PRIORITY MEASURES TO BE UNDERTAKEN

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

Adoption of an adequate public document in the form of an action plan with an overview of the situation, list of measures, obligations and goals of every relevant state body, is one of the priority obligations of all levels of government, entity governments above all others. (For more on the action plan, see *Public Policy section of Equality and Combating Discrimination chapter*.) As such, this document should improve the implementation of the existing anti-discrimination framework, so that the equality of LGBTI persons, guaranteed by legal provisions, declarations and recommendations, is implemented in reality.

### Adoption of the Law on Same-Sex Partnerships

The current legislation of the B&H entities does not allow same-sex couples to exercise the socio-economic rights provided for marital/extramarital unions in B&H. Such discrimination against same-sex couples is a direct violation of the rights guaranteed by the B&H Constitution, as well as the European Convention on Human Rights, the provisions of which have constitutional force in B&H.

The FB&H authorities have reopened this issue and taken a step forward by establishing and initiating the *Inter-Ministerial Working Group*. (For more on the action plan, see chapter *Family Life and Same-Sex Partnerships*.) The next step and task of this body will be the analysis of regulations and proposed legal solutions that would legally define and protect same-sex unions and eliminate the existing discrimination when compared to heterosexual couples. In order for the work of FB&H authorities to be treated as a significant step forward in this field, the proposed legislation should be in the function of regulating most often economic and social issues arising from such unions, and enter the parliamentary adoption procedure.

SOC, together with GC FB&H, is also part of this working group, along with the representatives of relevant ministries, and will insist on absolute respect and regulation of all aspects of same-sex couples' family life in B&H.

The authorities of the Republika Srpska (RS) and Brčko District, which failed to initiate this issue so far, should start the process of same-sex unions regulation as soon as possible.

### **Amendment and Harmonization of Laws Regulating the Freedom of Assembly of LGBTI Persons**

It is necessary to adopt a law on freedom of assembly at the FB&H level, and to regulate in the laws of the entities and Brčko District that only one competent body (internal affairs body) decides on the application of the assembly, which, if needed, coordinates the work of other competent institutions, e.g. ministry of transport.

It should be clearly indicated that laws/provisions on the temporary use of public space cannot apply to non-profit and peaceful gatherings of B&H citizens and associations, and that such public gatherings in public space cannot be conditioned by the consent of the institutions/ other legal entities which use that public space.

An additional burden when organizing peaceful gatherings is the obligation imposed on the organizers by law to ensure the presence of firefighters, ambulances and security agencies when organizing public gatherings.<sup>4</sup> Such an obligation is a financial burden for civil society organizations or informal groups of citizens, especially when they do not enjoy financial support from the state.

Based on all the above, it is clear to conclude that the current legal framework governing freedom of assembly is not satisfactory for many reasons. It is necessary to amend the current laws governing this area, in order to accomplish the harmonization of all laws and enable all citizens in B&H to have equal access to freedom of assembly.

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<sup>4</sup> Article 19 of the Sarajevo Canton Law on Public Assembly.

## International Legal Standards and the Obligations of Bosnia and Herzegovina

The documents presented below are the foundation upon which legislation and public policies in B&H are designed or amended, and a standard that should lead to equality and reduce the discrimination against LGBTI persons in B&H.<sup>5</sup> Their significance arises from Bosnia and Herzegovina's membership in these international and regional organizations, as well as from their position in the B&H legal order.

The principle of non-discrimination defined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations' International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, refers to LGBTI persons<sup>6</sup>. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is particularly relevant for the protection of lesbian, bisexual and transgender women. Finally, Recommendation CM/Rec (2010)51 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on the grounds of sexual orientation and gender identity, is the most concrete international document defining the assessment and revision of current legislative and other measures, their efficient implementation in the combat against discrimination, the collection and analysis of relevant data concerning discrimination, and ways to protect discrimination victims.

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5 This international framework also applies to other areas and is not explicitly mentioned in other chapters.

6 According to Article 2, point 2, the rights and freedoms provided for 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 the character of constitutional norms and priority over all other acts.

## Domestic Legal Framework

The prohibition of discrimination against LGBTI persons is regulated by two systemic laws: **Law on Gender Equality in Bosnia and Herzegovina** (LoGE) from 2003 and **Anti-Discrimination Law (ADL)** from 2009.

While the Law on Gender Equality, which prohibits discrimination on the basis of “sexual expression and/or orientation”, is declarative in nature<sup>7</sup> in the context of protecting LGBTI persons against discrimination, the Anti-Discrimination Law offers comprehensive protection against discrimination in all aspects of public life, including education, employment, healthcare, access to services, etc. ADL explicitly protects LGBTI persons from discrimination by **stating sexual orientation, gender identity and sex characteristics (SOGISC)** among the prohibited grounds for discrimination.

Although the ADL stipulates the obligation to harmonize laws at the state, entity and cantonal levels with it, there is still a large number of laws that do not include SOGISC as grounds on which discrimination is prohibited.

## Institutional Action Aimed at Protection Against Discrimination

Although the institutional anti-discrimination framework remains extremely weak, there has been some progress (although slow, insufficient and reactionary), when it comes to protecting LGBTI persons from discrimination.

**GC FB&H** took an active part in the FB&H Government working group for same-sex partnerships<sup>8</sup> and made a significant contribution to the advocacy activities of the Sarajevo Open Centre for participation in said working group. GC also addressed the public through the statements they issued for International Day Against Homophobia and Transphobia and regarding the Pride March in Sarajevo.

<sup>7</sup> Although the Law on Gender Equality mentions “sexual expression and/or orientation”, it does not set forth the mechanisms for the protection of LGBTI persons from unequal treatment, while the Anti-Discrimination Law through the protection against discrimination covers all areas of the public and some areas of the private life, and also defines different forms of discrimination, in addition to clear mechanisms of protection.

<sup>8</sup> See the section of the same name in the Good Practices chapter.

In 2019, **Gender Equality Agency of Bosnia and Herzegovina (GEA B&H)** presented the manual *Police Procedures in Cases of Hate Crimes against LGBTI Persons: Professional Police Response Training*<sup>9</sup> which is primarily intended for the work of police officers, and developed in cooperation and with the support of the Council of Europe. The agency issued announcements and statements related to important dates for LGBTI persons, such as IDAHOT and Pride March in Sarajevo, and also addressed the public in regards to the case when an LGBTI person was attacked in Banja Luka.

**Gender Center of Republika Srpska (GC RS)** had no significant activities related to the human rights of LGBTI persons in 2019.

**The Institution of Human Rights Ombudsman of Bosnia and Herzegovina**, as the umbrella institution for the protection against discrimination, bases its activities in this field mostly on a reactive approach, through receiving complaints and issuing recommendations for eliminating discrimination. Preventive and promotional activities are still in the background due to insufficient capacities of said institution.

Nonetheless, in the days before the Pride March, on September 6, 2019 to be more exact, the Institution issued a press release<sup>10</sup>, pleading for respect of the human rights of LGBTI persons and freedom of assembly, calling on the authorities to take proactive actions, and drawing attention to its Special Report on the Rights of LGBTI Persons in B&H.<sup>11</sup> This represents a positive step forward directed at proactive and promotional work of said Institution, which indeed is necessary.

**During 2019, Institution of Human Rights Ombudsman of Bosnia and Herzegovina received a total of six complaints, five on the grounds of sexual orientation, and one based on gender identity.**

None of the B&H entities provides continuous training of the judiciary representatives, which would be focused on the human rights of LGBTI persons, although it is one of recommendations made by the Institution of Ombudsman in its 2016 Special Report.<sup>12</sup>

9 <https://arsbih.gov.ba/promocija-prirucnika-policijsko-postupanje-u-slucajevima-krivicnih-djela-pocinjeh-iz-mrznje-nad-lgbti-osobama-obuka-za-profesionalni-policijski-odgovor/>

10 <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1325&lang=BS>

11 For more on the report and the level of decision implementation, see Pink Report 2019.

12 Special Report on the Rights of LGBTI Persons in Bosnia and Herzegovina, Banja Luka, September



In cooperation with Judicial and Prosecutorial Training Centre of Federation of Bosnia and Herzegovina (FJPTC), Sarajevo Open Centre continued the practice of holding trainings for judges and prosecutors, focused on the human rights of LGBTI persons and, in 2019, held a two-day training course for lawyers, prosecutors and judges on discrimination and hate crimes against LGBTI persons.

## Public Policies for Combating Discrimination of LGBTI Persons

During 2019, the issue of the **Action Plan for Equality of LGBTI Persons** at the level of entire B&H was actualized again. The previous Action Plan, submitted to the Governments of the entities for opinion in 2018, was never implemented. The FB&H Government went the furthest, as it gave a positive opinion with certain comments, but the whole process was stopped there. Nevertheless, at the end of 2019, a preparatory meeting was held for the development of an LGBTI Action Plan, supported through the Joint Project (JP) “Promotion of Diversity and Equality in Bosnia and Herzegovina” between the Council of Europe (CoE) and the European Union (EU). Although the working group is not official, as decisions of the entity governments are required for that status to be awarded, the entity, Brčko District and state-level governments nominated the representatives in front of their administrative bodies. SOC also took part in the working group, as a representative of civil society and the voice of LGBTI persons, in a process that is of direct importance to them. One of the guidelines for development of the action plan are the recommendations of the Council of Europe CM/Rec (2010)5, to which SOC refers as well. The task that lies ahead the newly formed working group in the upcoming period will be, above all others, development of an adequate document that will focus on the elimination, prevention, education and information on discrimination of all relevant state actors, as well as sending such a document to different levels of government for opinion and confirmation.

In December 2019, the Sarajevo Canton Government held its 49th session and **adopted the SC GAP for the period 2019 to 2022**. The development of this plan was initiated by Vildana Bešlija, President of the Gender Equality Commission. SOC participated in the working group that developed the GAP, alongside with GC FB&H, and representatives

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2016.

of the SC ministries and other civil society organizations. SOC proposed a total of 18 initiatives related to the human rights of women and LGBTI persons, of which 14 were adopted and incorporated into the 2019-2022 GAP. Some of the adopted initiatives, which directly concern the position of LGBTI persons, are: introduction of training programs, as part of professional development of the police, on the topic of hate crimes, in accordance with the Criminal Code of Federation of Bosnia and Herzegovina, and their regular implementation; development and adoption of standard operating procedures for the police and judiciary in hate crime cases, once again in accordance with the Criminal Code of Federation of Bosnia and Herzegovina.

## Documented Cases

Every third LGBTI person in B&H has experienced discrimination. However, it is worth remembering that only a small number of LGBTI persons out themselves to a wider circle of people. So the percentage of 38% of LGBTI persons who confirmed to have experienced some form of discrimination could be attributed to the fact that LGBTI persons generally conceal their identity. The high percentage of transgender persons who have experienced discrimination is particularly alarming: about 2/3 of transgender persons, included in the 2017 research on problems and needs of the LGBTI community in B&H, experienced some form of discrimination, which only confirms the particularly vulnerable status of this category and suggests a high level of transphobia in the society. To some extent, this can be explained by the fact that transgender persons have a harder time concealing their identities, given that gender expression is usually visible to the environment.<sup>13</sup>

**In 2019, Sarajevo Open Centre documented four complaints from LGBTI persons that they have experienced discrimination.** Of these four cases, two occurred in workplaces, where individuals claimed to have been fired because of their sexual orientation and/or gender identity. There were also two cases of victimization, as a special form of discrimination and unprofessional treatment by the police, when victims came to the police station to report violence. None of the cases had a lawsuit or a complaint to the institution as

<sup>13</sup> Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 research on problems and needs of LGBTI persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

an epilogue. In cases of workplace discrimination, one of the victims claimed to have resolved the situation with the employer internally, while the other was not ready to initiate any formal steps. In both cases of the police discrimination, victims lost their confidence in the work of the institutions, and in one of them, victims left the country.

Although the aforementioned data indicate a small number of discrimination cases, it is impossible to derive definitive conclusions based on these numbers, given that the number of LGBTI persons willing to engage into litigation is very small, which also applies to other marginalized groups protected by the Anti-Discrimination Law.<sup>14</sup>

**There is still not a single final ruling establishing discrimination on the grounds of sexual orientation and gender identity.**

In 2016, SOC filed a discrimination lawsuit before the Municipal Court in Sarajevo, against a company that refused to distribute promotional leaflets for the Merlinka Festival, due to its LGBTI theme. Although the said company cooperated with SOC at other feminist festivals without any problems, the Municipal Court passed a first instance ruling in 2018, determining that no discrimination had taken place. In the same year, Sarajevo Open Centre appealed this ruling before the Cantonal Court in Sarajevo, and by the time this report was written, the Court had not taken the appeal into consideration yet.

Passivity of the judiciary and lack of proactive combat against discrimination of LGBTI persons by executive bodies resulted in the community's distrust in the institutions responsible for human rights protection (87% of surveyed LGBTI persons do not trust the judiciary), which also contributes to the small number of reported discrimination cases.<sup>15</sup>

The following table presents discrimination cases recorded by SOC in the past three years. These numbers represent cases monitored by SOC in public, or reported by LGBTI persons, through the internal system of documentation of human rights violations of LGBTI persons. Considering the fact that the level of confidence of LGBTI persons in institutions is still very low, there is not a single court ruling establishing discrimination. Therefore, it is not possible to give an answer about

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<sup>14</sup> Litigations must be initiated independently, without the *ex officio* actions of the institutions.

<sup>15</sup> Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 research on problems and needs of LGBTI persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

trends and frequency of discrimination over the years based on this table. However, it can be concluded that discrimination is present and recorded in the majority of areas mentioned by the law.

	2017	2018	2019	TOTAL
<b> GROUNDS<sup>1617</sup></b>				
Sexual orientation	3	4	3	10
Gender identity	5	2	1	8
<b> AREA</b>				
Education	2	0	0	2
Access to goods and services	0	1	0	1
Employment	1	3	2	6
Healthcare	2	0		2
Other <sup>18</sup>	2	1	2	6
<b> TOTAL FOR THE YEAR</b>	<b> 7</b>	<b> 6</b>	<b> 4</b>	<b> 17</b>

Table 1. Sarajevo Open Centre's data on SOGI-based discrimination cases

16 Some of the documented cases are related to both sexual orientation and gender identity, which is why the number of cases per ground is higher than the total number of documented cases per year.

17 Sex characteristics (related to intersex persons) have been incorporated in the Anti-Discrimination Law since 2016, but we have not recorded any discrimination cases on this ground yet.

18 This section relates to other different areas specified by the Law, such as public authorities, housing, social protection, goods and services intended for the public and public places, and the performance of economic activities and public services.

## Guidelines for Further Action

1. Implement the ADL through the development and adoption of multi-annual public policies on equality of LGBTI persons on state, Entity and Brčko District levels, which would foresee specific and realistic measures for equality of LGBTI persons;
2. Based on recommendations from the Special Report of the Ombudsman Institution, improve laws and regulations, and include the rights and needs of LGBTI persons into all public policies at all government levels, thereby ending the institutional neglect of this marginalized group;
3. Introduce LGBTI specific modules in education of future judges and prosecutors;
4. In addition to legal and policy solutions, it is necessary to pass internal documents and develop internal mechanisms for all legal entities for solving discrimination cases, including the ones on grounds of SOGIESC;
5. Establish an accountability system of the judiciary and other bodies that do not apply the principle of urgency in all proceedings in which allegations of discrimination are investigated, including the SOGIESC-based cases.

## Legal Framework

All three criminal codes: FB&H, RS and Brčko District, recognize the institute of hate crimes (in Brčko District, hate counts as an aggravating factor), within which they provide protection to LGBTI persons and other marginalized social groups.

When it comes to hate speech, in July 2017, the National Assembly of Republika Srpska adopted the Criminal Code of Republika Srpska. “Public Instigation and Incitement to Violence and Hatred” is one of the criminal offenses regulated by the Code, which makes Republika Srpska the first administrative unit in Bosnia and Herzegovina to penalize incitement to hatred, hate speech and violence against LGBTI persons, as well as other marginalized groups in Bosnia and Herzegovina. The law prohibits public instigation and incitement to violence and hatred on the grounds of “nationality, race, religion or ethnicity, skin colour, sex, sexual orientation, disability, gender identity, origin or other characteristics”.

Criminal codes of FB&H and Brčko District also contain provisions which sanction incitement to hatred, hate speech and violence, but are unfortunately limited to the prohibition of instigation to hatred and incitement to violence on national, ethnic and religious grounds. In practice, this means that the current legal framework cannot penalize incitement to hatred and violence against LGBTI persons.

Therefore, criminal codes of FB&H and Brčko District should be amended as it has been done in Republika Srpska, in order to harmonize the laws, and provide adequate protection to LGBTI persons and members of other marginalized groups.

## Institutional Action

**From the announcement of the First B&H Pride March until the moment of its holding, two lesbian couples were attacked.** In both cases, the attacker was the same person. The attacker physically

attacked, intimidated and harassed one of the couples, while bullying the other couple for their looks, telling them not to hold hands and threatening to attack them with a knife. He then threatened to attack the Pride March, saying it offends his religious beliefs.

These attacks were most likely prompted by the announcement of the First B&H Pride March. Both cases were reported to the Sarajevo Canton Ministry of Internal Affairs. SOC was in constant contact with the prosecutor appointed as the prosecutor in charge of receiving reports on hate crimes against LGBTI persons at the Sarajevo Canton Prosecutor's Office. **The attacker was eventually charged with two misdemeanors under the Law on Misdemeanors against Public Order and Peace of the Federation of Bosnia and Herzegovina, and fined with 1.000 BAM.**

Unfortunately, case ended in misdemeanor proceedings, and the decision was final because the perpetrator did not appear at the oral hearing. This act has not been considered as a criminal offense committed out of hatred (in the criminal law sense), in other words as a criminal offense motivated by prejudice as an aggravating circumstance, in this case, the sexual orientation and gender identity of the victims. This was an opportunity to recognize a clear motive and prejudice directed towards LGBTI persons only because of their sexual orientation and gender identity, and the harmfulness that such acts have for the whole society.

In 2019, Sarajevo Open Centre held one two-day training for lawyers, prosecutors and judges on discrimination and hate crimes against LGBTI persons, another two-day training for police officers on freedom of assembly, and a module on hates crimes, consisted of 50 teaching hours, for cadets of the FB&H Police Academy preparing for the basic rank of police officers and for the rank of junior inspectors. **These trainings were attended by 255 representatives of police agencies and the judiciary.**

**The High Judicial and Prosecutorial Council of B&H (HJPC)** held a work meeting with members of SOC in 2019, to consult on the automatic case management system in courts (CMS) and activities aimed at promoting and supporting the realization of the rights of vulnerable groups, including members of the LGBTI community, when

they get in contact with the judiciary. In regards to the improvement of the CMS system, when it comes to discrimination cases, **the code book has already been supplemented, which enables the entry of data on forms, types and grounds of discrimination, and the HJPC will gather this data in the upcoming period through the project “Improvement of the position of LGBTI persons and women in contact with the judiciary”**. In relation to the improvement of the CMS system, concerning hate crimes, one of the possible options is to introduce new appropriate fields into the system, that will show due to which protected characteristics a specific hate crime was committed. This would be realized as an improvement measure in the upcoming period, but before that, a technical feasibility checkup for such endeavor will have to be made with the IT department and the Working Group for PCMS/CMS.

Also in 2019, the HJPC B&H prepared an analysis of discrimination and hate crime cases (a letter was sent to presidents of all courts, informing them the HJPC B&H intends to conduct an analysis of criminal proceedings that are initiated for hate and discrimination crimes, and asking them to provide information on such proceedings, by filling in the attached form).

From all the above, it is clear to conclude that courts have not been able to collect data so far, as they did not have an adequate system in which a case of discrimination or a crime committed out of hatred towards LGBTI persons could be recorded.

SOC will continue to send inquiries to the courts, to check are there any new reported cases of discrimination, as there has been an improvement in the CMS system when it comes to discrimination. At the same time, SOC will remain persistent in advocating for the improvement of the CMS system in regards to hate crimes.

## Documented Cases

In 2019, Sarajevo Open Centre documented **105 cases of hate speech and incitement to violence and hatred, and 16 cases of criminal offenses and incidents motivated by prejudice on the ground of sexual orientation and/or gender identity.**



Since the First B&H Pride March took place in 2019, as the largest public gathering in the fight for equal position and rights of LGBTI persons held so far, the increase in threats and violence in public places and/or online sphere/social networks tripled, and that emerged as a particularly worrying trend. These trends were evident from the moment the Pride was announced until it was held.

**Of the 16 cases documented from January to December 2019, twelve took place in public place and/or online**, ranging from threats to violence and infliction of bodily injuries. The perpetrators in these cases mostly did not know the persons they threatened or attacked, but recognized them or just assumed they were LGBTI persons.

In 2017 and 2018, seven cases of homophobic and transphobic peer violence were recorded, while in 2019 there was one such case. **Although the capacities of social welfare centers to react in these cases have been improved through the cooperation with the civil sector, lack of a specific systemic response and institutional plan to combat peer violence remains evident, alongside with development of an inclusive and tolerant educational environment, which would include an LGBTI perspective as well.**

	2017	2018	2019	TOTAL
<b> GROUNDS</b>				
Sexual orientation	26	24	15	45
Gender identity	3	7	0	10
SOGI <sup>19</sup>	2	2	1	5
<b> TOTAL</b>	31	33	16	60
<b> TYPE OF HATE CRIME</b>				
Domestic violence	10	9	2	11
Peer violence	7	7	1	15
Threats	10	5	7	22
Other	4	12	6	22
<b> TOTAL</b>	31	33	16	60

Table 2. Sarajevo Open Centre's data on SOGI-based hate crimes

<b> HATE SPEECH</b>	2017	2018	2019	TOTAL
<b> GROUND</b>				
Sexual orientation and/or gender identity	39	39	105	183
<b> TOTAL FOR THE YEAR</b>	39	39	105	183

Table 3. Sarajevo Open Centre's data on SOGI-based hate speech

<sup>19</sup> Sexual orientation and gender identity.

## Guidelines for Further Action

1. Amend the criminal codes in the Federation of B&H and Brčko District, and expand the provisions on incitement to hatred and violence so that they include sexual orientation, gender identity and sex characteristics as protected grounds;
2. With the aim of fighting homophobia and prejudice within the institutions, constantly educate, train and inform prosecutors, judges, police officers and civil servants on hate crimes, incitement to hatred and violence against LGBTI persons;
3. Improve the cooperation between the police and the judiciary in prosecuting hate crimes against LGBTI persons; systematic collection of data on hate crimes on the grounds of sexual orientation, gender identity and sex characteristics; adoption of protocols on joint action between the police and prosecutor's offices in hate crime cases;
4. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes for police officers training and civil service exams;
5. Develop a programme to combat peer violence in primary and secondary schools which will encompass homophobic and transphobic violence, as well as programmes to promote tolerance and create an inclusive educational system;
6. Training of university teachers and the academia to make them more sensitive in working with LGBTI persons - to be able to recognize, denounce and avoid the use of hate speech towards LGBTI persons.

## Legal Framework as an Obstacle to the Exercise of the Right to Freedom of Assembly

The right to freedom of assembly is regulated by a number of laws and regulations: the Constitution of B&H, entity and cantonal constitutions, Statute of Brčko District, entity and cantonal laws on freedom of assembly, but also safeguarded by international documents which B&H ratified or adopted into its legal system, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. All these documents guarantee that all citizens in B&H have the right to freedom of assembly, which may be restricted only with the aim of protecting the security of people and property.

In February 2020, The Institution of Human Rights Ombudsman in Bosnia and Herzegovina issued a Special Report on the Right to Freedom of Peaceful Assembly, which lists the problems that citizen groups and civil society organizations face when organizing public gatherings.<sup>20</sup>

During 2018, the FB&H MIA worked on a preliminary draft of the Law on Public Assembly at the FB&H level, which was assessed as restrictive by the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR). While said institution also gave recommendations for the improvement of the preliminary draft, the whole process was stopped due to delays in establishing government, and no concrete activities were continued in that direction.

Brčko District Government has also started drafting the Brčko District Law on Freedom of Assembly, in accordance with the guidelines of the Venice Commission, the ODIHR, and the Opinion of the European Commission, which would make Brčko District the first administrative unit in Bosnia and Herzegovina to improve this area and harmonize it with international standards.

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<sup>20</sup> For more information, see chapter Analysis of Responses to Questionnaires - Special Report of the Ombudsman Institution in Bosnia and Herzegovina, Banja Luka, February 2020.

Unfortunately, the current legal framework (10 cantonal laws and the Law on Public Assembly of the Republika Srpska) that regulates this area is non-harmonized and offers different definitions and interpretations of basic terms such as: the notion of public assembly, types of public assembly, space provided for public assembly, content of application and issuance of permits for public assemblies, obligations of organizers and obligations of competent bodies, decision making on public assemblies. Such legal framework is an obstacle for B&H citizens in exercising their right to freedom of assembly and other constitutionally and legally guaranteed rights.

### The First Bosnian-Herzegovinian Pride March

During 2019, it turned out that the Sarajevo Canton Law on Public Assembly equals profit/professional events and non-profit and peaceful gatherings of citizens, which *de facto* prevents citizens from fully exercising their right to freedom of assembly.

Namely, when organizing the first B&H Pride March, the organizers had to hire and bear the costs of a security agency, which is hourly paid an average of 20 to 30 BAM per security guard (even more so if the security agency deems it a high-risk event), to ensure presence of an ambulance, which is paid 150 BAM per hour, as well as preparedness of a firefighting service, which is paid 170 BAM in certain cases.<sup>21</sup>

In addition to the above, the organizers had to ensure the presence of their own stewards to maintain order and peace during the assembly. Moreover, the organizers were also obliged to provide iron fences at the locations of departure and ending of the Pride, as well as concrete barriers at certain places, in accordance with the strictly precise instructions given by SC MIA.

**Such additional measures, imposed to the organizers, represent a huge and disproportionate financial burden, having in mind that these are citizens who, as individuals, organize a peaceful assembly.** Same applies to civil society organizations, which do not have any financial support from public institutions, nor the funds or sponsorship contracts that legal entities/institutions have when

<sup>21</sup> In this particular case, SOC paid 170 BAM for organization of a 6-hour public event.

organizing profit or professional events such as sports matches, concerts, music, theater and film festivals, etc. Such measures, laid upon the organizers of peaceful assemblies, may cause the impossibility of holding public assemblies and enjoying the constitutionally and legally guaranteed rights.<sup>22</sup>

Due to the level of homophobia/transphobia in society, which is especially focused on issues of freedom of assembly and visibility of LGBTI persons in public space, and the observed trend of a tripled increase in number of cases of hate speech and incitement to hatred in the period since the announcement of the Pride, assemblies of LGBTI persons must be secured so that LGBTI persons are not exposed to attacks and violence, which is the responsibility of police agencies and relevant institutions, and must not be conditioned by the financial capacities of the organizers.

In anticipation of the first B&H Pride March, **SOC organized a two-day training on freedom of assembly for members of the SC MIA**, attended by the police officers from different units of the SC MIA: Special Police Support Unit of the Police Support Sector, Traffic Unit of the Uniformed Police Sector, Unit for Securing Facilities and Detention of Persons Deprived of Freedom of the Uniformed Police Sector, Blood, Sexual Offenses and War Crimes Unit of the Criminal Police Sector, Old Town and Center Criminal Police Units - First and Second Police Directorate, Police Station of Old Town within the First Police Directorate, Police Station Center within the Second Police Directorate. **The training was also attended by police officers who were in the inner circle of security planning for the first Bosnian-Herzegovinian Pride March, which was held in Sarajevo on September 8, 2019.**

## Documented Cases

In early December 2019, SOC, as the organizer of the Merlinka International Queer Film Festival, contacted The Brew Co. - BIS (Brew Imperial Society) with a request for the Festival to be held on their premises. The entire building where the BIS is located is owned by the Center Municipality Sarajevo, while BIS rents it from the Croatian

<sup>22</sup> For more about the first B&H Pride March, see chapter Good Practices of the report.

Cultural Society (CCS) Napredak. In their negative response to the inquiry, BIS stated that “due to the business and technical cooperation with CCS Napredak, we are not able to organize all sorts of events.”

In accordance with the Law on Access to Information, and in order to verify the allegations from the above-mentioned answer and determine whether they were denied due to the work on the rights and culture of LGBTI persons, SOC requested from Center Municipality to see the relevant contracts, and received two contracts concluded between the Municipality and CCS Napredak. However, the contract on business-technical cooperation between the owner of BIS and CCS Napredak was not submitted under the excuse of personal information protection. SOC filed a complaint, requesting for personal information to be anonymized. However, this was also rejected, because the competent service (in Center Municipality) determined they did not have that document, nor that there was an obligation for the Lessee (Napredak) to submit that information. In the upcoming period SOC will, through direct communication with CCS Napredak, determine in which way the contract between BIS and Napredak defines types of events that can be held on the aforementioned premises.

**Therefore, the trend of limiting the access of LGBTI persons to public space, hospitality/cultural facilities and services available to other citizens, continues in 2019 as well.**<sup>23</sup> Furthermore, the non-transparency and inefficiency of the municipal administration contributes to and facilitates discrimination and refusal to provide services to LGBTI citizens.

In the February 2020 **Special Report on the Right to Freedom of Peaceful Assembly**, of the Institution of Human Rights Ombudsman in Bosnia and Herzegovina, the appeal in the case of the BBI Real Estate Center (BBI) (refusal to grant permission for the performance on the plateau in front of the BBI to commemorate International Transgender Day of Visibility), referred to as Ž-SA-06-378/18, ended as follows:

**The recommendation of the Ombudsman Institution states that SOC’s complaint was unfounded, explaining that BBI Centre, as the owner of part of the plateau, has the right to refuse and/or**

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<sup>23</sup> During 2018, BBI Centre, the National Theater, and the Academy of Fine Arts refused to give a permission necessary to hold events related to the rights and culture of LGBTIQ persons. More information available in Pink Report 2019 - Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina, chapter Freedom of Assembly.

**exclude citizens (in this case LGBTI persons) from using that space**, if not contrary to other people's rights or legal restrictions.

According to the above Recommendation, by prohibiting the use of its premises for the promotion of rights and values it does not support, BBI Centre in this particular case drew on the authorizations given by ownership over the premises in question. **In that way, it is not “allowed to promote certain ideas in the private space of the mentioned legal entity, which disagrees with the ideas and worldviews of the appellant, and this cannot be subsumed under the notion of discrimination or violation of the right to freedom of assembly”**.<sup>24</sup>

Although this Recommendation states there has been no discrimination or violation of the right to freedom of assembly, Special Report on the Freedom of Assembly, in regards to events held at places (premises) used by other institutions, i.e. legal entities, says there is a problem of putting conditions by asking for permission of those who use those places (premises) and give permission on the grounds of their own risk assessment.

This sort of practice enables institutions and legal entities that do not have the authority to regulate freedom of assembly, to restrict and violate the same, stating they made such a decision on the grounds of a risk assessment conduct, which is not their job.

Although the recommendation of the Ombudsman Institution is based on the fact that the square in front of BBI Centre is their property, and it can dispose of it in any way, it neglected two important facts. **The space in front of BBI Centre is not fully their property, but partly belongs to Center Municipality, and was only given for use to BBI Centre. It was precisely that part in regards to which SOC asked for a permission to organize the assembly, but Center Municipality sought permission of BBI Centre as a precondition for giving its consent.**

BBI Centre did not deny SOC and LGBTI persons its primary hospitality and trade services, which would be considered discrimination, because a legal profit entity does not enjoy the protection of “own values and worldviews” as individuals do, but according to the logic set out in the Ombudsman's recommendation, they may be denied

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<sup>24</sup> Taken from the Special Report on the Right to Freedom of Peaceful Assembly of the Ombudsman Institution in Bosnia and Herzegovina, February 2020.



the use of publicly available space offered to B&H citizens under this pretext. Namely, BBI Centre granted SOC a permission to use the entire square (both municipal and private parts) in 2016, after that it continued giving similar permissions to the organizations and citizens who assembled to support women victims of domestic violence, to citizens who gathered to express their disagreement with the war in Syria, Anti-Dayton movement, etc. **Since it is partly a public space and partly a private space available for public use, it is completely clear that BBI Centre, by stating that it “does not agree with these ideas and worldviews of the appellant”, and by deciding not to give SOC a permission, committed discrimination.**

Ownership itself does not exclude the owner from liability for discrimination, and so the landlord cannot refuse to rent an apartment to an LGBTI person without legal consequences; nor can a legal entity deny any publicly offered service (for example access to shops or premises) to only one group of persons.

After a series of key recommendations that went in the direction of protection and promotion of the rights of LGBTI persons in Bosnia and Herzegovina, this decision of the Ombudsman Institution, therefore, not only is not in accordance with the provisions of the Anti-Discrimination Law in B&H, but also implicates the lack of understanding of this Law within the Institution designated to monitor its implementation. This may reduce the level of trust of LGBTI persons and other B&H citizens in this institution, in the context of already weak protection against discrimination and respect of basic human rights.

## Guidelines for Further Action

1. Adopt a law on the level of Federation of B&H uniformly regulating public assembly for all cantons, as there are no constitutional impediments for doing so, and harmonize legislation on all government levels in order to ensure equal enjoyment of the constitutional rights on the entire territory of B&H. The uniform law on the level of the Federation of B&H should contain the following provisions, i.e. rest upon the following principles:
  - The law should clearly state that the authorities have an obligation to protect all types of assemblies, as long as they are peaceful. It should also define the principle of

- proportionality, meaning that banning or restricting an assembly must be proportional to the cause and based on valid, justifiable grounds - i.e. allow the possibility of banning/restricting assemblies only on locations where they pose a real and immediate threat to the well-being and safety of a large number of people or property, all the while respecting the principle of proportionality;
- Banning an assembly should be possible only in a limited number of cases, i.e. when there is real danger; the law should not list individual places that are particularly likely to result in a ban (consistent implementation of the proportionality principle);
  - The law should define efficient and effective legal protection procedures to contest the ban of public assembly, particularly through emergency court procedures;
  - The law should clearly stipulate that only interior affairs bodies need to be notified when planning a public assembly - this would simplify the notification procedure and free organizers from the obligation of seeking permission from other relevant authorities in cases when the assembly takes up roads or public spaces in front of institutions/other legal entities;
2. Clearly define that laws/provisions on temporary use of public space (e.g. Law on Temporary Use of Public Spaces in Sarajevo Canton) cannot apply to peaceful assemblies of citizens and citizens' associations in B&H, and that such public assemblies in public spaces cannot be dependent on permissions of institutions/other legal entities occupying such public space;
  3. Improve the existing legislation in order to clearly define the differences between the protection of citizens' right to freedom of assembly, and commercial public gatherings and events; and to prevent shift of responsibility for securing the events from competent internal affairs institutions to private agencies, whose engagement presents additional financial burden on organizers of non-profit assemblies.

### Legal Framework

The relationships between same-sex partners and their unions are not regulated in any administrative unit in B&H (FB&H, RS, Brčko District). In this way, LGBTI persons are unable to claim their constitutionally guaranteed rights to freedom and safety, private and family life and home, to starting a family, protection of property, or freedom of movement and residence. The obligation of Bosnia and Herzegovina to regulate same-sex partnerships arises from B&H membership in the Council of Europe and from the decisions of the European Court for Human Rights. Several recommendations by the Council of Europe bind the member states to respect private and family life of each and every individual and to enable the rights of same-sex unions that would be at least legally equal to the rights of heterosexual extramarital couples.

### Institutional Action

The first step towards regulation of this issue on the territory of FB&H was made in October 2018. At the FB&H Government session held in October 2018<sup>25</sup>, information of the FB&H MIA was adopted, relating to requests for data entry on same-sex unions in civil registries.<sup>26</sup>

The Government adopted the FB&H MIA proposal for appointing an inter-ministerial working group that would analyze the existing legislation and suggest new solutions which need to be adopted in order to enable same-sex unions to exercise the rights arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms, that are already granted to heterosexual couples in Bosnia and Herzegovina.

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<sup>25</sup> 158th Session of the FB&H Government, October 19, 2018, press release.

<sup>26</sup> Possible cases relate to B&H citizens who have concluded a same-sex partnership abroad, foreign citizens with registered same-sex unions/marriages coming to live in B&H, but also B&H citizens requests addressed to B&H institutions to enable them conclude same-sex partnerships.

**Inter-ministerial working group that would analyze the existing legislation and suggest new solutions which need to be adopted in order to enable same-sex unions to exercise the rights arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms was finally formed and started its work in February 2020.**

This is the most significant step forward that has taken place in Bosnia and Herzegovina in this field. The working group started its work and had a constituent session on February 6, 2020. Members of SOC were also invited to participate in the work of the group. (See section *FB&H Working Group for Same-Sex Partnerships*).

SOC's 2017 research indicates that non-regulation of same-sex partnerships is one of the most problematic aspects, but also the issue which is equally necessary for LGBTI persons and for all other citizens, as two-thirds of respondents said the inability to conclude partnerships is a very important problem. Furthermore, the fact that more than two-thirds of respondents live or plan to live with their partner, and that more than half of them would conclude a same-sex partnership if they were allowed to, gives a clear enough picture of the discrepancy between the needs of LGBTI persons on one side, and the government's neglect of this issue on the other.<sup>27</sup>

## Documented Cases

During 2019, **four couples contacted SOC looking for information on same-sex partnerships/marriage**. The subject of interest are still the issues on the existence of rights and obligations in B&H for persons who concluded a marriage/partnership in another country, and the possibilities of concluding or registering a same-sex partnership in B&H.

**Presently, two cases are active in the B&H courts<sup>28</sup> related to LGBTI persons seeking rights that arise directly from issues of same-sex partnerships and family life.** They refer to the issue

<sup>27</sup> Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 research on problems and needs of LGBTI persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

<sup>28</sup> Names and details are known to Sarajevo Open Centre.

of inheritance and recognition of a same-sex partnership concluded abroad. These are just two examples in which SOC is directly involved, and which concern life issues that are fully regulated for all other citizens of Bosnia and Herzegovina, except from LGBTI persons.

### **Guidelines for Further Action**

1. Proposing legal regulations and solutions by the Inter-Ministerial Working Group of the FB&H Government, which would systematically resolve legal issues of same-sex unions in B&H, and address them to the parliamentary procedure.
2. Initiate processes for the adoption of legislative solutions on same-sex partnerships both in the Republika Srpska and Brčko District, in order to provide same-sex couples with equal treatment on this issue countrywide.

## Legal Framework

Transgender persons in Bosnia and Herzegovina can only change the sex marker in their official documents and the Unique Identification Number after a “complete” medical gender reassignment treatment, which implies mandatory surgeries of reassignment of all secondary sex characteristics. These surgeries have to be undergone abroad, as medical facilities in Bosnia and Herzegovina do not have the staff trained to provide support to persons in the transition process. Following the review of the documentation brought from abroad, the ministries of internal affairs retract the old Unique Identification Number and issue a new one, together with a decision on the grounds of which a person can proceed with a change of the rest of their documents. The costs of the medical gender reassignment treatment are covered by transgender persons, and not the state-funded health insurance. This fact additionally prolongs the transition process and increases the financial costs.

## Institutional Action

At the initiative of SOC, in SC GAP for the period 2019 to 2022<sup>29</sup> in scope of the goal *Improved Sexual and Reproductive Health*, it is planned that the SC MoH will, by the end of 2020, draft *Guide for Health Professionals on the Best Treatment of Transgender and Intersex Persons*; and initiate the accreditation of the *Health Care Workers' Program in the Field of Providing Gender-Sensitive and Sexual and Reproductive Health Services to General and Multiple Marginalized Populations*.

<sup>29</sup> Available at: <https://www.gcfbih.gov.ba/vlada-kantona-sarajevo-usvojila-gender-akcioni-plan-kantona-sarajevo-2019-2021/>

## Social Reality

A research into the needs of the LGBTI community by Sarajevo Open Centre<sup>30</sup> from 2017 showed that around 61% of transgender individuals, who participated in the research, plan to change their sex partially or completely, while 22.2% of them have not made that decision yet. Out of that number, 4 individuals (22.2%) are already transitioning, while 7 of them (38.9%) out of those who are not, would like to begin the transition. Although the decision on gender reassignment means that the respondents have to completely bear the costs of the treatment, most of them are planning to do that since they consider it to be an extremely important step in creating their own identity.

In 2018, SOC developed the gender reassignment cost assessment, and provided recommendations for the improvement of legal and medical approach to transgender persons in Bosnia and Herzegovina. Gender reassignment services needed, depending on whether it is female to male (F2M) or male to female (M2F) transition, and the type of service (psychological counseling, psychiatric counseling, endocrinological counseling and services, surgical procedures) **are ranging from 5 BAM for testosterone hormones to almost 16.000 BAM for gender reassignment surgeries for trans women** (not including the price of implants).<sup>31</sup>

In a situation where state clinics cannot offer the necessary findings and opinions before prescribing hormonal therapies and accompanying health services, there is a possibility of covering the costs of such examinations from the health insurance fund, while the examinations would be performed at private clinics.<sup>32</sup>

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30 Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 research on problems and needs of LGBTI persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

31 Detailed information on all individual costs of certain procedures and services related to gender reassignment is available in Liam Isić (2018). Cost Assessment of Gender Reassignment: Recommendations for Improving the Legal and Medical Approach to Transgender Persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

32 The publication lists the prices of all examinations that can be done at private clinics, whereas the fund would cover only the costs of those that are not offered at public clinics.

Since transgender persons from Bosnia and Herzegovina mostly seek certain healthcare services related to gender reassignment in neighboring countries, **SOC has initiated a series of activities since 2018, to facilitate and provide transgender persons in Bosnia and Herzegovina access to trans inclusive healthcare and services**

Since 2018, SOC has been organizing trainings for B&H medical experts from various branches of medicine, on the medical aspects of gender reassignment, human rights and the needs of trans persons within the healthcare system.

The initial training was held in December 2018, for psychologists and psychiatry specialists, and was led by Iva Žegura, clinical psychologist (Clinic for Psychiatry Vrapče, Zagreb) and Tea Dakić, M.D., Psychiatry Specialist and Master of Bioethics (Clinic for Psychiatry of the Montenegro Clinical Center). Trainings were then held for students of psychology and medicine (February 2019), for urologists and gynecologists (December 2019) and endocrinologists (January 2020), led by Marta Bižić, M.D., urology and reconstructive surgery specialist (Children's University Clinic in Belgrade, Serbia), Katja Dumić Kubat, M.D., specialist in pediatrics at the Pediatrics Clinic of the Pediatric Endocrinology and Diabetes Department (KBC Zagreb), as well as trans persons rights activists, Jovan Ulićević (Montenegro) and Asmira Topal (Croatia).

These trainings brought together medical experts from public healthcare institutions, clinical centers and health centers from Sarajevo, Banja Luka, Tuzla, Goražde and Mostar, as well as non-governmental organizations involved in providing psychological support and counseling. Participants were presented with the perspectives of relevant medical branches in the transition process of gender non-conforming/gender variant, transgender and transexual persons, as well as the experiences of trans persons from Bosnia and Herzegovina, in the form of human libraries. After the trainings, meetings were organized with the managements of clinical centers in Bosnia and Herzegovina, to discuss further possibilities of sex reassignment.<sup>33</sup>

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33 More about the trainings is available at: <https://soc.ba/programi/lgbt/zagovaranje/trans/>



Participants emphasized the need of providing medical sex reassignment services in Bosnia and Herzegovina – education of doctors, and clinics and hospitals capacity building, given the fact they encounter trans persons in their work, and hope to extend their knowledge and continue to exchange experiences on this issue, in order to provide the most adequate response to the needs of trans persons.

**The publication “Medical Aspects of Sex Reassignment: Manual for Medical Professionals and Healthcare Workers on the Provision of Services and Support to Trans Persons in the Transition Process” was also published<sup>34</sup>** which is intended to help the domestic healthcare workers.

The manual combines activist and medical discourse and experiences in working with trans persons, and the authors are trans activists and medical experts from Croatia, Montenegro and Bosnia and Herzegovina.

On the grounds of previous activities, and the needs of training participants and trans persons in Bosnia and Herzegovina, to have the names and contacts of doctors and psychologists in one place, who can be reached for trans-specific care and support, **a list of experts in Bosnia and Herzegovina was also created<sup>35</sup>**. All the experts from the list have undergone training and are sensitized to trans inclusive support and health care. The list is published on SOC website.

## Documented Cases

Through its legal counseling service, SOC receives inquiries from LGBTI persons about their human rights. Trans persons also ask for advice, most often regarding the possibilities of legal gender reassignment in personal documents, how to change names, etc. They also seek information on asylum opportunities in EU countries, and opportunities for concluding marriages/partnerships. Trans persons often report discrimination, incidents or hate crimes based on gender identity, hate speech and verbal attacks, peer and domestic violence.

<sup>34</sup> Asmira Topal, Jovan Ulićević et al. (2018). Medical Aspects of Sex Reassignment: Manual for Medical Professionals and Healthcare Workers on the Provision of Services and Support to Trans Persons in the Transition Process. Sarajevo: Sarajevo Open Centre.

<sup>35</sup> Available at: <https://soc.ba/mapa/>

## Guidelines for Further Action

1. It is necessary for Bosnia and Herzegovina, its Entities and Brčko District to regulate legal gender reassignment by enacting laws that would systematically and comprehensively stipulate the procedure for change of sex marker in personal documents and a change of the Unique Identification Number. Thus, it is necessary to allow trans persons to change their sex marker based on of their own request and right to self-determination, without requiring any prior medical intervention.
2. Sarajevo Canton should implement activities and goals from the GAP, which include the establishment of clear guidelines for health professionals on adequate treatment of transgender and intersex persons in Bosnia and Herzegovina, i.e. adopt the Rule Book on Gender Reassignment in Sarajevo Canton Medical Facilities.
3. Sarajevo Canton should make sure that health workers provide gender sensitive health services and also ensure the improvement and promotion of sexual and reproductive health of trans persons.
4. Adopt and implement laws in all three administrative units (Republika Srpska, the Federation of B&H and Brčko District), which would define duties of medical facilities to form teams, equip medical facilities and train professionals who could follow the process and perform gender reassignment medical procedures in Bosnia and Herzegovina, and which would establish the obligation of health insurance funds to cover the costs of these procedures out of the health insurance budget.
5. In parallel to the above, it is necessary to continuously and systematically educate B&H medical professionals and healthcare workers in the fields of psychology, psychiatry, endocrinology, gynecology, urology, plastic, reconstructive and aesthetic surgery on adequate, trans inclusive and trans specific provision of services and support to trans persons in the transition process.

## Legal Framework

Bosnia and Herzegovina still belongs to a small number of countries in Europe which explicitly protected intersex persons in their anti-discrimination legislation, by prohibiting discrimination on the grounds of sex characteristics.

However, there are still no clear medical guidelines and procedures on practices in different cases of intersexuality, which would be applied to all medical facilities in Bosnia and Herzegovina and prevent the so-called medical sex normalization, i.e. medical and surgical treatments of newborns governed by the need to aesthetically adjust the appearance of the baby and its sex characteristics to male or female sex, regardless of the fact that baby's health is not jeopardized.<sup>36</sup> A great number of intersex persons and medical professionals are advocating that any aesthetic medical procedure should be postponed until the moment when children can provide their informed consent.

## Institutional Action

At the initiative of SOC, in SC GAP for the period 2019 to 2022<sup>37</sup> the goals and activities of cantonal institutions for this period were determined. One of the goals is *Improved Sexual and Reproductive Health*, in the scope of which the following activities were planned: drafting a *Guide for Health Professionals on the Best Treatment of Transgender and Intersex Persons*; *legally regulate medical and legal proceedings in the case of intersexuality by drafting a Rule Book on Gender Reassignment in Sarajevo Canton Medical Facilities*; which Sarajevo Canton Ministry of Health should implement by the end of 2020.

<sup>36</sup> For more information, see Pink Report 2018, Chapter Human Rights of Intersex Persons.

<sup>37</sup> Available at: <https://www.gcfbih.gov.ba/vlada-kantona-sarajevo-usvojila-gender-akcioni-plan-kantona-sarajevo-2019-2021/>

SOC's 2017 research on problems and needs of LGBTI persons indicated that intersex persons are still invisible and it is difficult to reach interlocutors who are willing to talk about their problems. It is also specified that the problem of forced surgical procedures on intersex persons has been taken very seriously within the LGBTI community. Although most of the respondents did not face this problem, it has been identified as a higher priority than the impossibility of concluding same-sex unions, difficult access to services, etc.<sup>38</sup>

**Precisely for these reasons, in 2020, SOC is conducting the research on the rights of intersex children in the B&H healthcare system.** The aim of the research is to continue and deepen the monitoring of the state of the rights of intersex persons among medical professionals who work with these patients, in order to gain a clear overview of the medical practices that have been used. The data collected would enable advocacy for the right of parents to access transparent and available information on procedures and medical treatments when they have an intersex baby, as well as for prohibition of medically unnecessary surgical procedures and medical sex normalization treatments in health care facilities, that are being done without intersex persons' full and informed consent. The research aims at raising awareness on the problems of intersex persons and revising outdated medical classifications.

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<sup>38</sup> Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 research on problems and needs of LGBTI persons in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre.

## Guidelines for Further Action

1. It is necessary to realize cooperation between civil society organizations with medical institutions and professionals, and to initiate activities on informing and raising awareness on the issues intersex persons face, along with the revision of medical classifications and abandoning obsolete terms such as *hermaphrodite* and *pseudo-hermaphrodite*.
2. SC should implement GAP activities, including clear guidelines for health professionals on the adequate treatment of transgender and intersex persons in B&H, and also the legal regulation of medical and legal proceedings in the case of intersexuality, i.e. adopt the Rule Book on Gender Reassignment in Sarajevo Canton Medical Facilities.
3. SC and all administrative-political units in B&H should make sure that health care professionals are providing gender sensitive health care services and sexual and reproductive health improvement services to intersex persons, as well as all other groups/persons.
4. It is necessary to provide transparent and available information on the procedures and medical treatment in cases of birth of intersex persons, and prohibit unnecessary surgical procedures and sex normalization medical treatments in medical facilities, without full and informed consent of the intersex person.
5. There should be continuous inclusion of government institutions (ministries of health) and state bodies responsible for human rights protection (Ombudsman) in intersex persons' human rights, self-determination and bodily integrity protection.

## Legal Framework

The legal framework has been largely harmonized with the EU standards. Law on Asylum and Law on Aliens, adopted in 2015 and 2016 respectively, are mostly transposing provisions of the relevant EU directives. However, the provision stating SOGI as particularities of a certain social group, thus the reason for exile and asylum seeking, has been left out. Same-sex partnerships have also not been recognized as grounds for temporary residence in Bosnia and Herzegovina nor are they recognized by law in the provisions regarding family reunification.<sup>39</sup>

## Social Reality

Despite the fact that regulations of many EU countries mark Bosnia and Herzegovina as a safe third country of origin, **LGBTI persons from Bosnia and Herzegovina continue to decide to leave the country and seek protection from persecution due to their sexual orientation and gender identity in EU and North American countries.** A safe third country of origin is a legal presumption that there is a certain level of functionality of institutions, rule of law, and existence of legal mechanisms for the protection of citizens from any kind of persecution, including SOGIESC grounds. Examples from the *Documented cases* section, which SOC encountered in 2019, demonstrate that Bosnia and Herzegovina is still a country where in practice, LGBTI persons cannot receive adequate protection from the state.

LGBTI persons from Bosnia and Herzegovina decide to seek asylum due to psychological difficulties, psychological and physical violence, discrimination in employment and rejection of society they suffer because of their sexual orientation or gender identity.

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<sup>39</sup> For more information on this topic refer to Pink Report 2018 - Chapter VII – Asylum.

In addition to the above, **in recent years Bosnia and Herzegovina has been a route that migrants from the Middle East, parts of Africa, Pakistan, Afghanistan and other countries cross on their way to EU countries. Among the mentioned migrant population, there is also a number of LGBTI persons present.**

Reasons why LGBTI persons leave their countries and decide on a risky path to the EU lies in the fact that the countries they come from are among the most rigorous countries in the world when it comes to the treatment of LGBTI persons. Common practice in these countries is the criminalization of same-sex relationships, imprisonment or even death penalty, explicit or covert unwillingness of the authorities to protect LGBTI persons, high level of domestic violence but also violence in other spheres of life, and the lack of clear protection mechanisms.

### Documented Cases

**In 2019, SOC received eight inquiries of LGBTI persons** about asylum seeking possibilities for themselves and/or their partners in EU Member States or USA/Canada.

SOC also recorded **two cases where LGBTI persons from Bosnia and Herzegovina left the country and were granted asylum in Germany and in the United States.**

One of those two cases is related to a lesbian couple who was first verbally harassed in public and then physically attacked in July 2019, while sitting in a park in downtown Banja Luka. The victims tried to seek protection from the police, but police officers repeatedly insulted them due to their sexual orientation. They suffered vilification and unprofessional treatment, and felt the police was unwilling to find the perpetrator. They have completely lost confidence in the institutional work and the possibility to receive adequate protection from public authorities. For said reason, they left the country and began the asylum procedure in the United States.

In both of these cases, asylum was granted precisely on the grounds of unprofessional treatment of the police and the absence of sanctions and protection for the victims.

<b>Year of inquiry and asylum-seeking ground</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Sexual orientation	5	6	8
Gender identity	4	1	0
Total number of cases	9	7	8

Table 4. Sarajevo Open Centre’s data on seeking aid cases related to asylum requests

**The case of a young gay man from Pakistan, who came to Bosnia and Herzegovina as a refugee in 2019, showed all the challenges that LGBTI persons in Bosnia and Herzegovina face.** He applied for asylum in October 2019, and by the time this report was issued, in May 2020, the procedure has not been completed yet. During this period, he repeatedly faced physical and verbal violence by other migrants in accommodation centers.

Failure to provide safe accommodation for LGBTI persons, as extremely vulnerable individuals in this situation, as well as failing to provide clear and understandable instructions on how to initiate the administrative asylum procedure, through this case proved to be the biggest problem for all LGBTI persons who want to seek asylum in Bosnia and Herzegovina.



## **Guidelines for Further Action**

1. Amend the B&H Asylum Law so as to explicitly include sex and SOGIESC as grounds for asylum seeking and possible persecution reasons;
2. Recognize in the Law on Aliens same-sex partnerships i.e. family reunification as a ground for granting temporary residence to partners of B&H citizens.
3. Provide training to officers handling asylum so that LGBTI asylum seekers are treated with respect, in an adequate, professional and sensitive manner during the asylum seeking procedure, and that their requests are processed adequately and in a timely manner.
4. Provide dignified and efficient treatment, and safe accommodation, for LGBTI asylum seekers in Bosnia and Herzegovina, with special attention to the fact they belong to a highly vulnerable group prone to violence in accommodation centers.

## Legal Framework

The work of electronic media (radio and television) is regulated by the Code on RTV Standards<sup>40</sup> of the Communications Regulatory Agency (CRA). In cases of violation of the Code's provisions, CRA is authorized to impose certain sanctions: written and oral warnings, fines, suspension of broadcasting and license revocation.

Unlike radio and television, print and online media operate on the principle of self-regulation, i.e. voluntary membership in a self-regulatory body - the Press Council. This means the violation of the Code for Print Media<sup>41</sup> does not entail any legally prescribed sanction, but the Press Council determines whether there has been a violation of the Code on the basis of a complaint against certain media content, and informs the media in question that it is obliged to publish a correction, which the media can, but does not have to do.

The difference between these codes is also reflected in the way in which they regulate hate speech. Article 4 of the Code on RTV Standards prohibits hate speech in the media, and defines same as 'language/speech which aims to humiliate, intimidate or incite violence or prejudice against persons, or a group, based on their sex, race, age, nationality, sexual orientation, disability, moral or political convictions, socio-economic status or profession”.

The Code for Print Media treats hate speech differently, stating in Article 4 - Discrimination:

‘Journalists will do their best to avoid prejudiced and offensive allusions to one’s ethnic group, nationality, race, religion, sex, sexual orientation, physical disability or mental state. Allusions to one’s ethnic group, nationality, race, religion, sex, sexual orientation, physical disability or mental condition will only be made when they are directly related to the case being reported on”, and in Article 4a - Gender equality and respect for personality:

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40 Code on RTV Standards, available at: <http://fmks.gov.ba/stara/kultura/legislativa/bih/27.pdf>

41 Code for Print Media, available at: <https://www.vzs.ba/index.php/vijece-za-stampu/kodeks-za-stampu-i-online-medije>

“Journalists will avoid direct or indirect comments that put individuals at a disadvantage or discriminate against them on the grounds of their sex, gender, sex identity, gender identity, gender expression and/or sexual orientation.”

## Analysis of Media Reporting

The first B&H Pride March, held in Sarajevo in September, was one of the most media-covered events in Bosnia and Herzegovina, which drew attention of the media and journalists to the existence and problems of LGBTIQ persons in B&H society. Unlike previous years, due to the volume of newspaper coverage related to the first B&H Pride March, **the reporting of only 15 Bosnian-Herzegovinian media was analyzed in 2019**, selected according to the criteria of the largest number of articles/features on LGBTIQ topics.

The fact that a total of 1701 articles/features were published in 15 analyzed media shows how much more LGBTIQ topics were present in the media throughout 2019, while in three times larger number of media analyzed in 2018, only 400 more articles/features were published.<sup>42</sup>

In the monitored media - five printed media, five online portals and five TV stations, LGBTIQ topics were mostly covered by online portals – 1176 articles, then printed media – 370 articles and television - 155 features.

**The media that reported most on LGBTIQ topics is slobodna-bosna.ba - 391, among the printed media it is Oslobođenje - 141, while the TV stations that had the largest number of features were N1 and Federalna Televizija - 44 each.**

**Most media content on LGBTIQ topics was neutral, 16% was positive, while 8% was negative.** The media were mainly broadcasters and reporters of events, and although progress has been made when compared to previous years, there was still a small number of articles/features dealing with the rights and problems of LGBTIQ persons and

<sup>42</sup> Towards Positive Practices: B&H Media Reporting on LGBTI Topics in 2018, available at: <https://soc.ba/site/wp-content/uploads/2019/12/analiza-2018-web.pdf>

the reasons for holding the Pride March, and not merely the fact that it was held.

For many media, particularly online portals, the Pride was also an opportunity to increase the numbers, reactions and comments, so the coverage often bordered with sensationalism. An example of this is the most read internet portal in B&H, klix.ba, which, just before the Pride was held, often sided with sensationalism, although it regularly and correctly reported on the LGBTIQ community in B&H in the previous years. The option for leaving readers' comments on klix.ba and their Facebook posts were a discussion ground, which often included hate speech that is not regulated.

Ignorance of terminology is still often present, as well as the use of inappropriate terms, such as *pride parade* and *sexual decision*.

### **Guidelines for Further Action**

1. The media in Bosnia and Herzegovina need to refrain from inciting hatred and need to use gender-sensitive language and politically correct LGBTIQ terminology.
2. The media should use their position to educate the public, to fight against stereotypes and prejudice, and to advocate tolerance.
3. The media in Bosnia and Herzegovina need to report on legislation and the necessity to respect human rights of LGBTI persons; they need to control the comments on their online portals and social networks, with the aim of suppressing criminal offences of inciting to discrimination, hatred and violence.

In early April this year, SOC mapped the needs and difficulties of LGBTIQ+ community during the self-isolation caused by COVID-19, aimed at adapting the services directly offered to the community. The number of responses (34) we received is not necessarily representative of the conclusions at the level of LGBTIQ+ community in B&H, but these responses can provide insights into numerous problems and needs that have arisen during this period.

Most of the responses we received confirm the anecdotal assumption that isolation caused additional psychological difficulties for LGBTIQ+ persons, and that isolation, which is surely present with LGBTIQ+ persons who are not out (i.e. they do not openly live their LGBTIQ identities) and those who are further stigmatized because of their open life, be even more pronounced, and thus its effects on mental health are much stronger.

The specific problems and difficulties we have mapped are, as follows:

- violence (most often parental violence against LGBTIQ children) – physical violence, contact ban, psychological violence (insulting, vilification);
- loss of employment;
- difficulties in partnerships;
- lack of community contact and support („I am locked in a house with my homophobic parents, I miss my girlfriend and my friends.“) as a coping mechanism; this is also a problem for older LGBT persons that are highly likely to be isolated, especially since they were not able to establish a partnership;
- lack of access to adequate resources that trans persons need in the transition process („With and without isolation, I am in an environment that is not supportive. At the same time, I am without my hormone therapy, I have a delay due to closed borders.“)

In addition to the current difficulties, we have also mapped the fear of what the future brings to LGBTIQ+ persons, bearing in mind primarily economic but also political conditions, which suggest that the times are coming when the rights and position of minorities will be endangered.

If we look back at the history of the LGBTIQ+ movement and struggle, there is justified fear that persons belonging to marginalized groups, and especially LGBTIQ persons, will be even less desirable at work, that they will most often be among the first on the cancellation and “waiting” lists, and that the political/public space will become a place where hate speech against LGBTIQ+ persons will flourish, which will be a possible field of further polarization of liberal and conservative political forces.

Therefore, we are facing a period in which, in addition to the so far expressed need for psycho-social support, which the pandemic has further deepened, LGBTIQ persons will also need economic and social support, and the achieved modest progress in the general social acceptance of LGBTIQ persons and the beginnings of social unacceptability of homo/bi and transphobia will have to be firmly defended and guarded. A research on the economic and social position of LGBTIQ persons in Bosnia and Herzegovina that SOC will conduct in 2020 will give a more complete picture of at least the short-term effects of the pandemic on the LGBTIQ community in this context.

## GLOSSARY OF LGBTI TERMS<sup>43</sup>

### BISEXUAL PERSON

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

### COMING OUT

Concept derived from the English phrase *coming out of the closet*, routinely used to describe public or open declarations and affirmations of one's sexual orientation (for lesbians, gay men and bisexuals), gender identity (for trans persons) and sex characteristics (for intersex persons). It occurs on two levels: as a self-discovery and as a (more or less) public notification to others. Coming out is of great importance to LGBTI persons, as it represents public affirmation of their own identity, which is highly significant for the psychological health and quality of life of this minority group.

### DISCRIMINATION

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

#### The principle of non-discrimination

Equal treatment of individuals or groups, regardless of their specific characteristics; used to assess the apparently neutral criteria and practices which can cause effects that systematically put the persons with these characteristics in an unfavorable position.

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<sup>43</sup> The Glossary of LGBTI terms was created through joint work of Sarajevo Open Centre team.

## HOMOPHOBIA

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

## HOMOSEXUAL PERSON

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

### Lesbian

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

### Gay

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

### Homosexual

An outdated clinical term for persons whose sexual orientation is towards persons of the same sex, i.e. persons that are sexually and/or emotionally attracted to persons of the same sex. This term is inappropriate and many gays and lesbians find it offensive. More correct terms are gay (men)/gays and lesbians.

## HOMOSEXUALISM

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



## INTERSEX PERSONS

Persons whose *sex characteristics*, including chromosomes, gonads and genitalia, do not match the typical, binary categories of male and female bodies. There are different forms of intersexuality. Persons can be male, female and intersex. *Intersex persons*, like male and female persons, have their own sexual orientation and gender identity. In the past, these persons were often called hermaphrodites, but this term is considered discriminatory and medically inaccurate.

## INTERSECTIONALITY

An approach stemming from the sociological theory of intersectionality, which analyzes discrimination as a complex system in which different forms of discrimination are based on different categories of identity (gender, sex, race, class, sexual orientation, gender identity). These identities are interconnected and influence each other, and have to be considered together when reflecting discrimination.

## LGBTI

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

## LGBTTIQ

An abbreviation for lesbians, gay men, bisexual, transgender, transexual, intersex and queer persons.

## QUEER

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

## GENDER IDENTITY

Gender identity is associated with an individual's experience and comprehension of one's own sex and gender, which may or may not

correspond to the sex assigned at birth. Among other things, gender identity refers to personal experience of one's own body, clothing and speech. Persons whose gender identity is in accordance with the sex they were assigned at birth are called *cisgender persons*, while persons whose gender identity is not in accordance with the sex they were assigned at birth are called *trans(gender) persons*. Transexual persons, as a sub-group of transgender persons, are persons whose gender identity is not in accordance with the sex they were assigned at birth and who intend to adjust their biological sex, or who are in the transition process.

#### Gender expression

Visual and external presentation of each person, including personality features, appearance and behaviors that are considered as masculine or feminine in a certain culture or time period (hence, typical for male or female social role).

#### SEXUAL ORIENTATION

Emotional and/or sexual attraction or affection towards persons of the same and/or opposite sex/gender. Classification into *heterosexual* (attracted to the persons of the opposite sex), *homosexual* (attracted to the persons of the same sex) and *bisexual* (attracted to the persons of both the same and the opposite sex) is usually being used. In legal texts in Bosnia and Herzegovina, the terms sex orientation, sexual decision, sexual preference, sex preference and sexual choice are often used, but the use of term sexual orientation is recommended.

#### SEX CHARACTERISTICS

Person's sex characteristics, like the chromosomes, gonads and genitalia, can be different than the typical, binary division on male and female bodies. Persons can therefore be divided to male, female and intersex. Intersex persons can be discriminated against, or be targets of hate crimes and prejudices because of their sex characteristics.

#### TRANSGENDER PERSON

A term used for persons whose gender identity is not in accordance with the sex they were assigned at birth. Transgender persons feel, prefer or choose to present themselves differently from traditionally prescribed gender roles assigned to them at birth. This can be expressed through

clothing, way of speaking, manners, makeup or body modifications. Among others things, the term transgender refers to persons who do not identify themselves as either male or female, transexual, transvestites, cross dressers, a-gender, non-binary, gender fluid and other gender variant persons. A *transgender man* is a person who was assigned the female sex at birth, but whose gender identity is masculine, or in the spectrum of masculine gender identities. A *transgender woman* is a person who was assigned the male sex at birth, but whose gender identity is feminine, or in the spectrum of feminine gender identities.

Transexual person

A person who has a clear desire and intent to modify their sex, or who has partially or completely modified their body (including physical and/or hormonal therapy and surgeries).

## TRANSPHOBIA

Irrational fear, intolerance and prejudice against transgender persons.

HATE CRIME (criminal offences perpetrated out of hatred)

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

## ADDENDUM

### The Political System of Bosnia and Herzegovina

The political system of Bosnia and Herzegovina is highly complex and asymmetric. Bosnia and Herzegovina consists of 13 federal units. Bosnia and Herzegovina is administratively divided into two entities (Federation of B&H and Republika Srpska) and Brčko District. Republika Srpska is unitary and made up of municipalities and towns, while the Federation of B&H comprises 10 cantons, each of which is made up of at least three municipalities/towns. The responsibilities and interrelationships between the state, entities and Brčko District are regulated in the B&H Constitution, but in the daily political life we often see different interpretations of these provisions, which directly affects the (lack of) adoption and implementation of laws and other public policy documents (strategies/action plans).

The state and both entities have their own constitutions and different government and political systems. Brčko District has its own administrative system and its own Statute as the supreme legislative act, and in terms of jurisdiction it is almost the same as the entities. Laws and other public policies of importance for the improvement of LGBTI persons' equality are under the jurisdiction of the state, entities, cantons and Brčko District. This complexity points at the need for a coordinated approach, developing capacities and raising awareness on the needs of LGBTI persons at all levels of government. The work on improvement of LGBTI persons' equality must not be solely under the jurisdiction of state and entity level institutions, it is rather important that other institutions, especially at the level of cantons and Brčko District, undertake measures in order to revoke systematic discrimination of LGBTI persons, and work on improving the equality of LGBTI persons.

At the **state level**, there is a three-member Presidency whose members, one Bosniak, one Croat and one Serb, rotate every eight months in presiding over the institution. The executive government is made up of the Council of Ministers, with one presiding member and nine ministries. The state institutions are responsible for foreign, financial and monetary policies, supervision and governance of borders,

foreign trade, immigration, refugees and asylum regulation. One of the ministries within the B&H Council of Ministers is the Ministry for Human Rights and Refugees, within which the B&H Gender Equality Agency operates. This Ministry and the Agency itself are of great importance for the improvement of human rights of LGBTI persons. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina operates at the level of B&H - and its three Ombudspersons are responsible for the entire Bosnia and Herzegovina and all government levels. According to the Anti-Discrimination Law, the Institution of Ombudsman is also the body competent for all issues regarding equality (*equality body*). The legislature (Parliamentary Assembly) is bicameral, and consists of the House of Representatives, as the lower house, and the House of Peoples, as the upper house. The Gender Equality Commission operates within the House of Representatives, while the Constitutional-Legal Commission is the specialized gender-equality body in the House of Peoples. Some of the key laws for LGBTI persons, such as anti-discrimination laws, laws on gender equality, on aliens and asylum, are under the state jurisdiction.

**Both entities** have one president and two deputy presidents. The entity governments have one prime minister and 16 ministers. Although the positions of the upper houses are not identical in the political systems of Republika Srpska and the Federation of B&H, both can be classified as bicameral, each with a 'house of representatives' and a 'house of peoples'. Both entity parliaments have parliamentary working bodies for human rights and gender equality/equality of opportunity. Gender centers operate within the executive branch, as government institutions for the improvement of gender equality, which also play a key role in coordination of entity institutions related to human rights of LGBTI persons, as there are no entity institutions specialized in human and/or minority rights. For example, labor legislation, criminal legislation related to hate crimes and family legislation are under the jurisdiction of the entities.

**Cantons within the Federation of B&H** (ten of them) are guaranteed substantive autonomy. The cantons have their governments and their unicameral parliaments. Although the cantons are the third level of government from the top, they have the status of federal units and therefore they have matters within the scope of their own jurisdiction

(like education at all levels, employment, healthcare), for which they legislate and produce public policies. Although the Federation of B&H has higher authority than cantons, it sometimes happens that cantons pass legislation that is contradictory to the Federation of B&H regulations and laws, or they fail to implement the existing regulations of Federation of B&H. The cantons do not have offices/institutions for gender equality and/or human rights within their governments, and only two cantons have coordination committees for gender equality (a working group consisting of representatives of different ministries). Almost none of the cantons is individually undertaking any coordinated measures for improving human rights of LGBTI persons.

**Brčko District** is practically equal to the entities in terms of jurisdiction, despite the fact it is also a form of a local unit. The District is governed by a Mayor, who presides over the Government consisted of 10 departments. Laws and other legislation are passed by the Assembly of Brčko District. Brčko District does not have an office/institution for gender equality and/or human rights within its government, but there is a Gender Equality Commission operating in the Assembly. The institutions of the District have not undertaken any measures for the improvement of human rights of LGBTI persons so far.

The highest judicial instances are the three constitutional courts, one for each entity and one at the state level. Due to the nature of the political system, Bosnia and Herzegovina does not have a supreme court. The entities have first instance and appellate courts, as well as the entity supreme courts. Brčko District has its own first instance and appellate court. The police are under the competence of the entities and the Brčko District, and there are ten cantonal police authorities in the Federation of B&H, which share their jurisdiction with the entity police.

## About Sarajevo Open Centre

Sarajevo Open Center (SOC) advocates the full respect of human rights and social inclusion of LGBTI persons and women. Sarajevo Open Centre is an independent, feminist civil society organization that 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 legislation and public policies in Bosnia and Herzegovina at the State, European and international level.

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

## Editors

**Emina Bošnjak** (Zenica, 1983) is the Executive Director of Sarajevo Open Centre, a feminist and an activist. She has been working on the management of the organization, annual narrative and financial reporting, preparation and implementation of domestic and international advocacy events, and the production of annual reports on the state of the human rights of women and LGBTI persons. Emina is also active in the field of capacity building in civil society organizations in Bosnia and Herzegovina, for working on human rights of LGBTI persons.  
Contact: emina@soc.ba

**Vladana Vasić** (Sarajevo, 1990) is the advocacy manager in Sarajevo Open Centre. She focuses on issues related to the violation and protection of human rights of LGBTI persons and women in Bosnia and Herzegovina. She advocates the improvement of domestic legislation and policies in line with regional and international standards of human rights. Vladana is a member of the European Commission on Sexual Orientation Law. She graduated from the Faculty of Law of the University of Sarajevo.  
Contact: vladana@soc.ba



## Authors

**Darko Pandurević** (Sarajevo, 1991) has been a programme coordinator at Sarajevo Open Centre since 2018, where he also runs legal counselling for LGBTI persons. He has been involved in SOC's activities since 2015, first as a volunteer in the LGBTI programme, and then as a project assistant on coordination of the Initiative for the Monitoring of EU Integration in B&H activities. The focus of his work and interests in SOC so far have been the human rights of LGBTI persons, legal counselling for LGBTI persons, participation in research and amendment of existing regulations and training activities on the rights of LGBTI persons. He graduated from the Faculty of Law of the University of Sarajevo, where he currently attends master's degree studies.

Contact: darko@soc.ba

**Delila Hasanbegović** (Sarajevo, 1991) is a programme coordinator at Sarajevo Open Centre. She advocates for adequate access of trans persons to healthcare in Bosnia and Herzegovina, and coordinates activities on training and sensitization of medical experts and healthcare workers on human rights and needs of trans persons in the transition process. She also coordinates advocacy activities for gender equality in the field of employment and on the labor market, as well as sexual and reproductive health and rights in Bosnia and Herzegovina. She graduated law, and is currently completing a master's degree in law at the University of Sarajevo.

Contact: delila@soc.ba

**Jozo Blažević** (Zenica, 1986) is a programme coordinator at Sarajevo Open Centre, where he works on training and sensitization of police officers and representatives of the judiciary, on issues of discrimination and hate crimes against LGBTI persons and other marginalized social groups in Bosnia and Herzegovina. He has worked on establishing a local support network for LGBTI persons in Sarajevo Canton, which includes representatives of the judiciary, but also social and healthcare institutions.

Contact: jozo@soc.ba

**Nejra Agić** (Tešanj, 1995) is a communications coordinator at Sarajevo Open Centre. She is the editor of web portal [lgbti.ba](http://lgbti.ba), works on the content production for the organization's website and social networks, and is in charge for communication with the media. She graduated in journalism at the Faculty of Philosophy in Tuzla, and is currently completing a master's degree in communication studies at the University of Sarajevo.