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*Pink  
report*

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

# Pink Report 2022

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

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

SARAJEVO, 2022



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# ABSTRACT

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Given the events of the past year and period, it is nearly impossible to provide a comprehensive assessment of the human rights situation of LGBTI people. The lack of a systematic approach by the state and its bodies to addressing the situation of LGBTI people is already a recurring issue, as best exemplified by the drafted but ***still unadopted Action Plan for the Promotion of Human Rights and Fundamental Freedoms in Bosnia and Herzegovina***.

When it comes to recurring issues, the **non-regulation of same-sex partnerships in both entities and the Brčko District** is without a doubt one of the most serious and continues to be an example of institutional discrimination against LGBTI people. Despite the initial progress in FBiH, it is evident that this process has not made significant progress in any BiH administrative unit.

**The medical needs of transgender persons** are still not recognised through the public health care system, and **the administrative procedure for changing the sex marker** in documents still suffers from vague, insufficiently regulated provisions that allow for broad interpretation and arbitrariness in the application. What gives hope for the future is the Sarajevo Open Centre's devoted approach to advocating for these issues, together with parents and their trans children. **Intersex persons** remain marginalised, with no willingness on the side of health professionals or government officials to speak openly about the issue and devote themselves to correcting problematic medical treatments and alleviating excessive administrative burdens on intersex persons.

These issues reoccur year after year, and it is reasonable to predict that we will have to address them in the next Pink Report. However, what has to be highlighted this year is some progress that has been accomplished, which is a contribution to resolving the recurring issues discussed above.

Thus, for the first time in this Pink Report, we can be proud of the fact that **a court in BiH passed a first instance judgement confirming discrimination based on sexual orientation, gender identity and sex characteristics**. This precedent is a significant step toward not only increasing the LGBTI community's trust in institutions but also strengthening standards and legal understanding of discrimination.

There are still challenges regarding freedom of assembly, but the fact that **local and cantonal authorities have agreed to cover the security costs of the third BiH Pride March organisation**, which have so far been passed on to organisers in violation of all international standards, gives hope. **Amendments to the legal framework governing freedom of assembly in Sarajevo Canton and Canton 10** also give hope for more suitable regulation in this area, but they also call for caution and engagement to ensure that the process yields positive solutions. Such examples can serve as process drivers in other administrative units throughout BiH. When it comes to LGBTI people's trust in institutions, significant progress has been made in the work of prosecutor's offices. As of the end of this report, **4 cantonal prosecutor's offices in FBiH, as well as the District Public Prosecutor's Office in Trebinje** have appointed prosecutors as contact persons for crimes against LGBTI people. Also noted should be a prompt, professional and efficient investigation by the police and the Cantonal Prosecutor's Office in Mostar in the instance of threats and risks to the safety of a gay man through social networks. Taking everything into account, the judiciary has made the most progress in the preceding reporting period.

Finally, the past period was marked by negative trends that clearly indicate where we should focus our attention in the coming period. Thus, **political abuse of the topic of LGBTI human rights** and arguing with political dissidents, as well as the pervasive **hate speech**, is becoming increasingly common. These concerns will be especially crucial in the election year of 2022.

Listening to community experiences, but also through our work in the field of mental health, the problem of **so-called conversion therapies** and providing services of sexual orientation or gender identity modification proved to be a great challenge and issue that will be approached with special attention.

# NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS

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## The so-called “conversion therapies”

During the previous period, when one of the Sarajevo Open Centre’s main priorities was the regionalisation of LGBTI inclusive psychosocial support and access to mental health services in Bosnia and Herzegovina, the topic of “conversion therapy” was unintentionally imposed. Testimonies and conversations with associate psychologists, psychotherapists and psychiatrists revealed more and more information concerning the existence of persons who are involved in or offer services that can be summed up as “conversion therapy”. Such confirmations came both from the LGBTI community and their own experiences, as they discussed the treatments they underwent.

Conversion therapy is an umbrella term describing a variety of unscientific and traumatic approaches and treatments aimed at modifying a person’s sexual orientation, gender identity or gender expression. According to information we have, such “services” are provided by certain psychologists, psychotherapists or psychiatrists, as well as individual religious officials in their private capacity. What is also problematic is that there have been reports of LGBTI people having very negative experiences in treatment with mental health professionals in public institutions, ranging from unprofessional and stigmatising treatment to certain procedures that can be classified as “conversion therapy”.

The situation and examples from the field revealed the scope of the problem and its pervasiveness. The fact that the activities of psychologists and psychiatrists are not regulated by law indicates that this issue requires a multisectoral approach. This includes detailed problem mapping, work with mental health professionals and health workers, as well as competent administrative and law enforcement authorities.

## Political Abuses of LGBTI Human Rights

The abuse of LGBTI human rights for the aim of gaining political points and arguing with dissidents has become a concerning trend in recent years. One of the most noteworthy is the example of Milorad Dodik at the Budapest Demographic Summit held on September 23, 2021. The summit, planned as an international forum to discuss demographic challenges and declining birth rates, brought together mostly right-wing, conservative and populist parties

from Europe. Milorad Dodik's speech focused on homophobic messages directed at the LGBTI population, ridiculing same-sex couples and blaming the LGBTI community for Europe's demographic challenges. He stated, among other things, that *he did not want their values imposed on him, that they should not persecute him and should stay away*, and that he ridiculed the *parent 1 and parent 2* titles intended to eliminate discrimination against same-sex couples with children, claiming that *he had not heard that parents 1 and 2 had a child so far*. This example is indicative primarily because this is the first time that Milorad Dodik, one of the leading political figures in BiH, speaks on this topic, clearly to create political allies among populists, right-wing parties and conservatives. This clearly shows that homophobic and so-called *anti-gender* rhetoric is high on the agenda of such political options.

Although this is the most prominent example, it is not the only one. Notable is the case of Jasmin Mulahusić from Luxembourg, who is being investigated by the BiH Prosecutor's Office for inciting racial, religious and national hatred. He publicly propagated xenophobic messages, including those directed at LGBTI people, on social media. He also took advantage of the holding of a pride march to criticise, attack and discredit the Sarajevo Canton authorities.

Another example at the end of 2021 was Ivan Begić, a city councillor of the City of Banja Luka and a member of the PDP, whose alleged intimate video with another man was used for blackmail, extortion and elimination from political life.

More on these two cases in Chapter II *HATE CRIME AND INCITEMENT TO HATRED - Documented Cases*

Having in mind all the above, it will be critical to monitor the announced elections in October 2022, as well as the election campaign.

## Stagnation of the Same-Sex Partnership Regulation Process in FBiH

It has been one year and two months since the publication of the Report on the Work of the Inter-Ministerial Working Group appointed by the FBiH Government to find an adequate legal solution for same-sex couples till the preparation of this report. We believe that same-sex couples' dissatisfaction with the pace of adoption of the "FBiH Law on Same-Sex Partnerships" is fair. The reason why the FBiH Government has not yet adopted and implemented the Inter-Ministerial Working Group's conclusion should be sought in the current political unwillingness to address this issue. From a legal standpoint, the legal regulation of same-sex partnerships is unquestionable. This notion is backed by the fact

that laws equalising same-sex and heterosexual couples are already in place in neighbouring countries<sup>1</sup> that share the same legal tradition as BiH. Furthermore, recent ECtHR practice unquestionably favours the rights of same-sex couples. In reality, activists advocating for the legal recognition of same-sex partnerships have received limited political support from the FBiH government. This is reflected in the conscious ignoring and blocking<sup>2</sup> of the resolution of the legal position of same-sex couples by the political majority represented in the FBiH Government and the FBiH Parliament.

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1 This was done in Slovenia in 2005, in Croatia in 2014 and in Montenegro in 2020.

2 More information about this issue was provided by the MP in the House of Representatives of the FBiH Parliament at the following link: <https://www.facebook.com/miomirka.mila/posts/420984556693816>

# GOOD PRACTICES

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## Support of Local and Cantonal Authorities for the Pride March

During the pandemic, in 2021, the organisers of the third BiH Pride March organised the march as a protest walk through Sarajevo's streets, as opposed to the previous one, which was held in a different format. Nevertheless, the organisers had to deal with ensuring compliance with epidemiological measures, as well as additional measures to be met/provided to secure the march and its participants, which required large financial resources, which, once again, fell at the expense of the organisers, as was the case with the First BiH Pride March, despite the fact that such a practice is contrary to all relevant international recommendations and standards when it comes to freedom of assembly.

Advocacy efforts by the BiH Pride March Organising Committee and supporters brought results, as the competent institutions decided to cover the security costs mandated by the SC Mol to the BiH Pride March Organising Committee. This example clearly symbolises an exceptional activist triumph on the one hand, but also the proactiveness of the representatives of the competent institutions who delivered a message of affirmation to LGBTI citizens on the other hand, without bearing a disproportionate financial burden in this situation. This approach of the competent institutions contributes to building trust and understanding when it comes to equal position and human rights of LGBTI people, which is a positive example that the competent institutions should continue to nurture in the future. The institutions that decided on financing are the Government of the Sarajevo Canton, the City of Sarajevo and the Municipality of Centar.

## The Willingness of Prosecutor's Offices to Become Sensitized Towards LGBTI People

Direct collaboration was established with the cantonal prosecutor's offices of Tuzla, Zenica-Doboj and Herzegovina-Neretva cantons, and the District Public Prosecutor's Office of Trebinje in 2021 and 2022. The successful collaboration led to the training of the prosecutors of the aforementioned prosecutor's offices about LGBTI human rights, with a special emphasis on hate crimes against LGBTI people. It should be emphasised as an exceptionally positive practice in this process that, as a result of collaboration and following the trainings, contact prosecutors were appointed to receive reports of incidents and hate crimes against LGBTI people. Appointing contact persons in charge of receiving reports of incidents and hate crimes against LGBTI people is a great success for the

Sarajevo Open Centre, and prosecutors' willingness to sensitise prosecutors to work with this marginalised group is an example of proactivity and willingness to constantly improve and professionalise their work that judicial institutions should nurture. This approach contributes to building institutional understanding and mechanisms to protect the rights of LGBTI people and directly responding to the mapped and actual needs of LGBTI people.

In addition, as a very positive example of judicial institutions' involvement in the protection of LGBTI human rights, the Cantonal Prosecutor's Office of Herzegovina-Neretva Canton filed an indictment against a male person from Sarajevo who threatened another male (gay) person via a dating application. The actions of the suspect and accused were classified as Endangering Security under Article 183 (1) of the FBiH Criminal Code by the Cantonal Prosecutor's Office of Herzegovina-Neretva Canton. In January 2022, the Municipal Court in Mostar fully validated the indictment of the Cantonal Prosecutor's Office of Herzegovina-Neretva Canton, while in April 2022, the Municipal Court in Mostar declared the accused guilty of the same criminal offence. This case exemplifies a professional, quick, and efficient investigation by law enforcement bodies, particularly the Cantonal Prosecutor's Office and the FBiH Ministry of the Interior, sending a positive message about the safety of LGBTI people.

*More on this case in Chapter II Hate Crime and Incitement to Hatred - Documented Cases.*

## The First Judgement for Discrimination Based on Sexual Orientation in BiH

The first judgement establishing discrimination based on sexual orientation, gender identity and sex characteristics in BiH was passed on April 4, 2022. According to a lawsuit filed and conducted by the Sarajevo Open Centre as one of its strategic lawsuits, the trial lasted a total of two years and six months and is significant because we now have a judgement protecting LGBTI rights in BiH for the first time in 13 years since the Anti-Discrimination Law was passed. Judgement No. 65 0 P 801297 19 P is also significant because the defendant, Samra Ćosović-Hajdarević, acted in a discriminatory manner as a public figure or cantonal representative in the Sarajevo Canton Assembly. The defendant violated the right to equal treatment in relation to members of the LGBTI community whose rights the SOC protects as a plaintiff, by making a statement on the social network Facebook reading: *"...Fifteen of them are sufficient to launch an initiative and organise so-called pride marches aimed at destroying the state and its people. Everyone has the right to live their lives as they like, but we also have the*

*right to choose who we want to live with. 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!"* The judge found that the defendant committed the following forms of discrimination: inciting and issuing an order for segregation, harassment with the intent of violating a person's dignity and creating intimidating, hostile, degrading, humiliating and offensive content based on sexual orientation, gender identity and sex characteristics. The judge emphasises that the text of the statement is extremely discriminatory and degrading, based on extreme negative stereotypes, and that it should be distinguished from statements and posts made by unknown and politically uninvolved individuals because the defendant, as a public official, should protect the freedom and dignity of every individual in a realistic and authentic manner, refraining from expressing views such as "I want people like these to be isolated and put away from our children and society" because it represents a lack of respect for others, and the statement itself is hate speech and direct incitement to hatred, which is altogether discrimination. The defendant's statement harmed the dignity of LGBTI people, i.e., the plaintiff, and created a hostile, degrading and insulting environment, which violates the ADL, the ECtHR and European case law that is binding in BiH.

# PRIORITY MEASURES TO BE UNDERTAKEN

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## Adoption of the 2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina

The adoption of a systematic solution through clearly defined public policy measures and activities of competent institutions aimed at improving the position of LGBTI people in BiH has stood for many years as a priority measure to be undertaken. The draft named *2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina* was completed in early 2021. The document was sent to the BiH Council of Ministers for adoption after it was agreed upon at the entity and BD BiH levels. Given the boycott of state institutions initiated by Republika Srpska in July 2021, the Action Plan had not been adopted by the time this report was completed.

We emphasize that the priority is to adopt the Action Plan at the state level, as such a document would provide a quality political framework as well as a systematic response of the state to the issue of improving the position of LGBTI people. Given that the ministries from both entities and the Brčko District gave a positive opinion, there is no room for political excuses for non-adoption in the BiH Council of Ministers.

## Adoption of the Law on Same-Sex Partnerships

The current legislation of the BiH entities does not allow same-sex couples to exercise the socio-economic rights provided for marital/extramartial unions in BiH. Such discrimination against same-sex couples is a direct violation of the rights guaranteed by the BiH Constitution, as well as the ECtHR, the provisions of which have constitutional force in BiH.

FBiH authorities have reopened this issue and taken a step forward by forming an *Inter-ministerial Working Group*, which has begun work.<sup>3</sup> In 2021, the working group held four meetings and it was expected that in 2021 it would submit official conclusions to the FBiH Government as to which regulations need to be adopted to eliminate discrimination against same-sex couples in FBiH. However, by the time this report was completed, this has not happened. The next steps would be to appoint a working group to draft these regulations and submit them to the parliamentary procedure.

<sup>3</sup> For more information about the work of the working group, see chapter Family Life and Same-Sex Partnerships.

SOC, together with the Gender Centre of the Federation of Bosnia and Herzegovina (GC FBiH), was also part of this working group, along with the representatives of relevant ministries, and insisted on absolute respect and regulation of all aspects of same-sex couples' family life in BiH.

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

### **Legal Recognition of Gender Identity and Coverage of Gender Reassignment Costs through Health Insurance**

It is necessary for BiH, its entities and BD 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 transgender persons to change their sex marker based on their own request and right to self-determination, without requiring any prior medical intervention. Also, it is necessary to implement laws in all three administrative units (RS, FBiH, BD), which would define the duties of medical institutions to form teams, equip health 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.

### **Amendment and Harmonisation of Laws Governing Freedom of Assembly of LGBTI People**

The lack of harmonisation of laws regulating freedom of assembly in BiH creates legal uncertainty for organisers of public assemblies, and it is necessary to harmonise the relevant laws of entities and cantons so that all citizens, including LGBTI people, can equally enjoy the right to free assembly.

The recently adopted BD Law on Peaceful Assembly, which is largely in line with international standards and creates an adequate framework for respecting and protecting freedom of assembly, can serve as a model for these changes.

# I EQUALITY AND ANTI-DISCRIMINATION

## International Legal Standards and Obligations of Bosnia and Herzegovina

The documents presented below are the foundation upon which legislation and public policies in BiH are designed or amended, and a standard that should lead to equality and reduce the discrimination against LGBTI people in BiH.<sup>4</sup> Their significance arises from Bosnia and Herzegovina's membership in these international and regional organisations, as well as from their position in the BiH legal order.

The principle of non-discrimination defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations' International Covenant on Economic, Social and Cultural Rights, as well as the ECtHR,<sup>5</sup> refers to LGBTI people. 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 (SOGI), 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.

## National Legal Framework

The prohibition of discrimination against LGBTI people is regulated by two systemic laws: **Law on Gender Equality in BiH** (LoGE) from 2003 and **Anti-Discrimination Law** (ADL) from 2009. While LoGE, which prohibits discrimination based on "sexual expression and/or orientation", is declarative in nature<sup>6</sup> in the context of protecting LGBTI people against discrimination,

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

5 According to Article 2, point 2 of the BiH Constitution, 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 BiH. These acts have the character of constitutional norms and priority over all other acts.

6 Although the LoGE mentions "sexual expression and/or orientation", it does not set forth the mechanisms for the protection of LGBTI people from unequal treatment, while the ADL 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.

ADL offers comprehensive protection against discrimination in all aspects of public life, including education, employment, healthcare, access to services, etc. ADL explicitly protects LGBTI people 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 harmonise 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 people from discrimination.

In 2021, the **GC FBiH** participated in the work of the Inter-ministerial Working Group for Same-Sex Partnerships, which completed an analysis of relevant regulations and made recommendations to the FBiH Government for further action. In early 2021, the FBiH Government sought the opinion of the GC FBiH on the 2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina and approved the draft version of the document. The CG FBiH issued a press release on the International Day Against Homophobia, Biphobia, Interphobia and Transphobia (IDAHOBIT), as well as a press release on the 2021 BiH Pride March<sup>7</sup>, and regularly informs the FBiH Government Office for European Integration on the position of LGBTI people in the FBiH by answering indicative questions for meetings of the Subcommittee on Justice, Freedom and Security. The GC FBiH responded to the questionnaire for the Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity - Peace, Security, Sexual Orientation and Gender Identity with a focus on the dynamics between sexual orientation, gender identity and armed conflict - for the level Federation of BiH (thematic report for presentation at the 77th session of the UN General Assembly - UNGA77). The GC FBiH participated in the Conference on the Rights of Intersex Children: The Importance of Inclusive Health and Legal Care, organised by the Sarajevo Open Centre.

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<sup>7</sup> <https://www.gcfbih.gov.ba/saopstenje-povodom-odrzavanja-bh-povorke-ponosa-otpor-sa-margine/>

The **Gender Equality Agency of BiH (GEA BiH)** was the body that, on behalf of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina (MHRR BiH), led the process of and coordinated with other state bodies the drafting and development of the 2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina. The Action Plan was completed in the first quarter of 2021 and submitted for adoption to the BiH Council of Ministers. The action plan has not yet been adopted. The Agency emphasised that in cooperation with the entity gender centres they “continuously propose (in the preparation of various documents) the inclusion of topics related to improving LGBTI rights in Bosnia and Herzegovina through awareness-raising, education, creating and publishing handbooks, improving data collection, public advocacy etc.”

**The Gender Centre of the Republika Srpska (GC RS)** gave a positive opinion on the Action Plan for the Equality of LGBTI People in BiH in February 2021. On July 28, 2021, officials from the GC RS attended training for police officers from the police administrations of Bijeljina and Zvornik on “Sensitization of police officers in working with the LGBTI population”<sup>8</sup>, which was organised by the RS Mol Women Network – RS WPON in collaboration with the European Union and the Council Europe.

During the reporting period, the **Institution of the Human Rights Ombudsman of BiH** received no complaints of discrimination based on sexual orientation, gender identity or sex characteristics from citizens. Although the BiH Anti-Discrimination Law specifies the Ombudsman Institution’s responsibility in activities to promote anti-discrimination protection, the Ombudsman Institution only participated in the promotion of LGBTI human rights in BiH once<sup>9</sup> in 2021.

None of the BiH entities provides independent and continuous training for the judiciary representatives with a focus on the LGBTI human rights, although this is one of the recommendations made by the Ombudsman Institution in its 2016 Special Report.<sup>10</sup>

Although the state did not commit to organising trainings, **the SOC continued to train judges and prosecutors on the LGBTI human rights in cooperation with the Judicial and Prosecutorial Training Centre of the Federation of Bosnia and Herzegovina (CEST FBiH) and the Judicial and Prosecutorial Training Centre of the Republika Srpska (CEST RS)**. The two-day training in FBiH was held in November 2021, while in RS it was held in December 2021.

8 For more information, see chapter IX Activities of Organisations Advocating for LGBTI Rights in the Republika Srpska

9 <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1818&lang=BS>

10 Special Report on the Rights of LGBTI People in Bosnia and Herzegovina, Banja Luka, September 2016

Judges and prosecutors were educated on anti-discrimination law and hate crimes. The contents of these trainings were designed in such a way that the bearers of the BiH judicial community received comprehensive training on the protection of LGBTI people using the current legal protection mechanisms in BiH. The education combined criminal and anti-discrimination protection for LGBTI people in civil proceedings. Furthermore, the educators referred to relevant national and European case law on the protection of LGBTI human rights.

## Public Policies for Combating Discrimination Against LGBTI People

At the end of 2020, the final draft of the **2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina** was completed as a comprehensive set of measures and public policies aimed at improving the position of LGBTI people in BiH<sup>11</sup>.

It is noteworthy that the document largely focuses on anti-discrimination issues in all spheres of society. Primarily through training of judicial office holders on discrimination, training of health care professionals and capacity building of relevant institutions, but also a series of proactive measures aimed at raising awareness about discrimination among the general public and relevant representatives of public authorities. However, the blockade of BiH institutions by RS representatives began in July 2021. The work of the CoM BiH, which has the authority to adopt the Action Plan, has also been halted. In that context, we made it to the end of 2021 without having adopted the Action Plan.

In terms of the process of adopting **GAPs** that the GC FBiH is implementing in cantons with the coordination of the SOC, the GAP of Zenica-Doboj Canton and the GAP of Tuzla Canton were adopted in 2021. Both GAPs include three identical measures aimed at improving the position of LGBTI people: organise a thematic session to analyse the situation and gain insight into the situation on domestic violence prevention and protection, including problems faced by particularly vulnerable groups; create a guide for health workers on how to best treat transgender and intersex persons, and legally regulate medical and legal procedures on intersexuality. We emphasize that the Tuzla Canton GAP has provided an additional fourth measure related to the initiation of the Health Workers Program's accreditation in the field of providing gender-sensitive services and sexual and reproductive health services to general and multiple marginalised groups.

<sup>11</sup> For more information, see chapter Good Practices – Progress in the adoption of the Action Plan for LGBTI Equality in Bosnia and Herzegovina.

## Documented Cases

Every third LGBTI person in BiH has experienced discrimination. However, it is worth remembering that only a small number of LGBTI people come out to a wider circle of people. So, the percentage of 38% of LGBTI people who confirmed to have experienced some form of discrimination could be attributed to the fact that LGBTI people 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 BiH, 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>12</sup>

### **The SOC documented five inquiries by LGBTI people about discrimination based on sexual orientation and gender identity.**

One of these five is a complaint about equal participation in public life based on a person's gender identity, another about dismissal based on sexual orientation, a third about health care based on a person's sexual orientation, and a fourth about the work of the judiciary based on the sexual orientation of a person who was a party to the proceedings. The fifth inquiry was about counselling regarding court treatment of potential parties due to a different sexual orientation when their family relationships are resolved in court.

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 people willing to engage in lawsuits is very small, which also applies to other marginalised groups protected by the ADL.<sup>13</sup>

According to a lawsuit initiated and conducted by the Sarajevo Open Centre as one of its strategic lawsuits, in April 2022, after a total of 2 years and 6 months of first instance court proceedings, **the first judgement in BiH was passed confirming discrimination based on sexual orientation, gender identity and sex characteristics**<sup>14</sup>. The first instance judgement was passed in favour of the plaintiff SOC against former cantonal assembly member Samra Ćosović-Hajdarević of the SDA political party. The acting judge ruled, among other things, that *"the defendant's statement encouraged members of the LGBTI community to be*

12 Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 Research on Problems and Needs of LGBTI People in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre

13 Litigations must be initiated independently, without the ex officio actions of the institutions.

14 Judgement no. 65 0 P 801297 19 P of April 4, 2022

*denied their constitutional rights in a way that prevents them from acting as equal citizens in society, or to segregate as a community ..and at the same time encouraged and issued a segregation order.. which also constitutes harassment based on sexual orientation, gender identity and sex characteristics..”<sup>15</sup>*

For more information about the case and the judgement, see chapter *GOOD PRACTICES* - The First Judgement for Discrimination Based on Sexual Orientation, Gender Identity and Sex Characteristics.

At the time of writing this report, the SOC is pursuing another strategic lawsuit related to market discrimination in access to products and services. The case is being appealed at the Cantonal Court in Sarajevo after the court ruled in the first instance that there was no discrimination. The judiciary's passivity and slowness, as well as the executive bodies' lack of proactivity in combating discrimination against LGBTI people, have resulted in community distrust in human rights institutions (87% of LGBTI respondents do not trust the judiciary), which has an impact on the low number of reported cases of discrimination.<sup>16</sup>

The table below summarises SOC's discrimination cases over the past three years. These figures indicate cases monitored by SOC in public or reported by LGBTI people via the internal system of documenting LGBTI human rights violations. Given the lack of trust that LGBTI people have in institutions, there has yet to be a single court judgement determining discrimination. As a result, based on this table, it is impossible to respond to the trends and frequency of discrimination over time. However, it is possible to conclude that discrimination exists and is documented in the vast majority of the areas covered by the law.

<sup>15</sup> See pages 18 and 19 of the Judgement no. 65 0 P 801297 19 P of April 4, 2022

<sup>16</sup> Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 Research on Problems and Needs of LGBTI People in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre

	2019	2020	2021	TOTAL
<b>GROUND<sup>17, 18</sup></b>				
Sexual orientation	3	4	4	11
Gender identity	1	0	1	2
Sex characteristics	0	1	0	1
<b>AREA</b>				
Education	0	0	0	0
Access to goods and services	0	2	0	2
Employment and labour relations	2	2	1	5
Healthcare	0	1	1	2
Other <sup>19</sup>	2	0	3	5
<b>TOTAL FOR THE YEAR</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>14</b>

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

17 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.

18 Sex characteristics (relating to intersex people) have been included in the ADL since 2016, although no discrimination cases have been registered on this basis as of yet.

19 This chapter refers to other, distinct areas specified by the Law, such as public authorities, housing, social protection, goods and services for the public and public places, and the conduct of economic activities and public services.

## Guidelines for Further Action

1. Develop and adopt multi-year public policies for LGBTI equality at the state, entity, and BD levels that include concrete and realistic LGBTI equality measures;
2. Implement relevant recommendations in international and national documents<sup>20</sup> by improving laws and bylaws, and include LGBTI people's rights and needs in all public policies at all levels of government;
3. Include LGBTI-specific modules in future judge and prosecutor trainings;
4. In addition to legal and policy solutions, it is necessary to adopt internal acts and develop internal mechanisms of all legal entities to address cases of discrimination based on SOGIESC;
5. Create an accountability mechanism for the judiciary and other bodies that do not implement the principle of urgency in all alleged discrimination-related proceedings, including SOGIESC-based cases.

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<sup>20</sup> Recommendation CM/Rec(2010)5 of March 31, 2010 of the Committee of Ministers to Member States on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity; Special Report on the Rights of LGBTI Persons in Bosnia and Herzegovina, Institution of the Human Rights Ombudsman of BiH, Banja Luka, 2016; Provisions of the Anti-Discrimination Law (Official Gazette of BiH, 59/09) and provisions of the Law and Amendments to the Anti-Discrimination Law (Official Gazette of BiH, 66/16).

## II HATE CRIME AND INCITEMENT TO HATRED

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### Legal Framework

All three criminal codes, FBiH, RS and BD, recognise hate crimes (in BD, hatred is considered an aggravating circumstance) and protect LGBTI people and other social groups who are typically the target of such crimes.

The criminal offence of incitement to hatred and violence, however, is regulated differently in the Criminal Code of the Republika Srpska (CC RS) than in the criminal codes of the Federation of BiH (CC FBiH) and BD. Public incitement to violence and hatred in the RS is thus prohibited on the grounds of *nationality, race, religion or ethnicity, colour, sex, sexual orientation, disability, gender identity, origin or any other characteristic*; while in FBiH and BD, it is limited exclusively to *inciting intolerance or hatred on national, ethnic and religious grounds*.

As a result, the FBiH and BD criminal codes should be amended, as was done in the RS, to harmonise laws and provide proper protection to LGBTI people as well as members of other groups who are typically the target of such crimes.

### Institutional Action

In 2021, the Sarajevo Open Centre continued with the positive practice of holding trainings for prosecutors of cantonal prosecutor's offices on discrimination and hate crimes against LGBTI people. **In 2021, SOC held three two-day trainings for prosecutors of the cantonal prosecutor's offices of Tuzla, Herzegovina-Neretva and Zenica-Doboj cantons.** Following the trainings, **three contact persons** were appointed at the aforementioned prosecutor's offices to receive reports of incidents and hate crimes against LGBTI people in Tuzla, Mostar, and Zenica.

The willingness of cantonal prosecutor's offices to send their prosecutors on LGBTI human rights training and sensitise them to working with this marginalised group exemplifies the proactivity and commitment to constantly improve and professionalise their work that judicial institutions should nurture. This type of training is an important step toward building trust between the judiciary and LGBTI people. The institutionalisation of this cooperation through the appointment of a contact person, more specifically a contact prosecutor for hate crimes against LGBTI people in these cantonal prosecutor's offices, is a mechanism that will undoubtedly increase the number of reported and prosecuted cases of such crimes.

**The High Judicial and Prosecutorial Council of BiH (HJPC)** organised a round table on LGBTI human rights in May 2021, on its own initiative and in collaboration with the SOC, titled **“Legal Protection of LGBTI Persons: Between Anti-Discrimination and Criminal Laws and Practices”**. According to the previous year’s work plan, the HJPC BiH will finalise the system (CMS) in the context of introducing appropriate new fields into the system, which will show because of which protected characteristic a specific crime has been committed, and create an action plan to improve the automatic case management system for hate crime cases.

Furthermore, in collaboration with the European Union and the Council of Europe, the **RS Mol Women Network – RS WPON** worked to strengthen the capacity of Republika Srpska police officers through a series of one-day trainings on dealing with hate crimes and hate speech cases against LGBTI people in July and September 2021. Through these trainings, we worked on sensitising police officers on how they treat LGBTI people, in accordance with the normative framework and legal procedures for the conduct of police officers of the Ministry of the Interior of Republika Srpska.

The European Union and the Council of Europe organised a training for 20 police officers from ten different local communities in Republika Srpska on July 12 and 13, where they learned how to deal with hate crimes and hate speech against LGBTI people. This training was held as part of the **project “Promotion of Diversity and Equality in Bosnia and Herzegovina”, which was organised in collaboration with the Ministry of the Interior of Republika Srpska and is part of the European Union and Council of Europe’s joint program “Horizontal Facility for the Western Balkans and Turkey 2019-2022”**.

## Documented Cases

**In December 2021, the Banja Luka District Public Prosecutor’s Office** received a report of blackmail directed against PDP councillor in the Banja Luka Assembly Ivan Begić. According to the Sarajevo Open Centre, blackmail contains elements of a crime motivated by prejudice based on (alleged) sexual orientation. Ivan Begić was blackmailed with the release of an intimate video of himself with another man. It is evident that he was specifically targeted because of the recording’s content, and those who blackmailed him took advantage of his vulnerability, resulting in his resignation. Councillor Begić filed a complaint against the responsible persons of Alternativna televizija d.o.o. from Banja Luka for the criminal offences of Infringement of the Equality of Citizens under Article 139, Exposure to Danger under Article 136, Unauthorized Use of Personal

Data under Article 157 and Publicly Inciting and Inflaming Violence and Hatred under Article 359 of the RS CC, in connection with the publication of texts, i.e., information in news programs and the ATV portal. The aforementioned case is currently in the procedure.

**In December 2021, the Cantonal Prosecutor's Office of the Herzegovina-Neretva Canton** filed an indictment in criminal proceedings against a man from Mostar based on a well-founded suspicion that he had committed the criminal offence of Endangering Security under Article 183, paragraph 1 of the FBiH CC to the detriment of another male person from Sarajevo. Specifically, a male person from Mostar sent anonymous threats to a gay man from Sarajevo via dating apps and social networks, threatening him because of his sexual orientation. The gay man who was the victim in the aforementioned case sought help from the Sarajevo Open Centre and received legal assistance in the process. The Cantonal Prosecutor's Office of the Herzegovina-Neretva Canton classified the actions of the suspect and the accused as Endangering Security under Article 183, paragraph 1 of the FBiH CC. In January 2022, the Municipal Court in Mostar fully confirmed the indictment of the Cantonal Prosecutor's Office of Mostar of the Herzegovina-Neretva Canton, while the Municipal Court in Mostar found the accused guilty of the same criminal offence in April 2022. The court passed a judgement imposing a sentence of imprisonment of 3 months, which will not be carried out provided the accused does not commit a new criminal offence within 1 year of the date the judgement becomes final. According to the findings of the investigation, **the criminal offence was not classified as a hate crime in the criminal sense, that is, a criminal offence with the aggravating factor of being motivated, in this case, by the victim's sexual orientation and gender identity.** This was a missed opportunity to recognise a clear motive and prejudice against LGBTI people solely because of their sexual orientation and gender identity, as well as the societal harm that such acts cause.

In 2021, the SOC received a report about the insulting graffiti "**Smrt pederima**" ("**Death to fags**") on one of Mostar's busiest streets, which clearly calls for hatred and violence based on sexual orientation and gender identity. The content of the graffiti was reported to the councillors of the City Council of the City of Mostar, who forwarded the request for graffiti removal to the competent Department for Communal Affairs of the City of Mostar. By the time this report was completed, the graffiti had not been removed. In April 2022, activists added rainbow flags next to the graffiti, which were soon removed, and the graffiti itself was highlighted. SOC sent a letter to the Department for Communal Affairs and Environment of the City of Mostar regarding this case.

## Prominent Cases of Hate Speech

In 2021, Jasmin Mulahusić, a citizen of BiH and Luxembourg, released insulting messages on national and religious grounds from multiple profiles on social networks and the Internet, grossly insulting the religious and national feelings of citizens in Bosnia and Herzegovina, and produced and distributed various photographs and video montages that spread national and religious hatred and intolerance among the peoples of Bosnia and Herzegovina. **The Prosecutor's Office of BiH is conducting an investigation against Mulahusić for the criminal offence of spreading national and religious hatred, discord and intolerance under Article 145a of the Criminal Code of Bosnia and Herzegovina.** In addition, Facebook already blocked his profiles due to the continuous spread of hatred and threats. It should be emphasised that Jasmin Mulahusić has long been under investigation by the Prosecutor's Office of BiH. **In his public statements full of hate speech, Mulahusić frequently targeted the LGBTI community or used it to argue with political dissidents.**

In 2020, **Toni Bašić was accused of repeatedly inciting terrorist activities, anti-Semitism, racism, nationalism, and threats to the LGBTI population via the Internet**, by posting messages such as "Ubij gasom svakog Jevreja" ("Kill every Jew with gas"), "Kreni putem genocida" ("Follow the path of genocide") and similar. The Court of Bosnia and Herzegovina sentenced Toni Bašić to a suspended prison sentence for inciting national hatred. He was sentenced based on a plea agreement, and the Prosecutor's Office of BiH previously changed the indictment by reclassifying the initial criminal offence of "terrorism" into the criminal offence of "inciting national and religious hatred, discord and intolerance".

It is important to note that the investigations in both cases took into account the fact that both of them expressed hate speech towards LGBTI people, even though our laws do not include sexual orientation, gender identity and sex characteristics as prohibited grounds for inciting hatred, discord and intolerance, indicating that the judiciary recognises the need to expand these grounds in criminal codes through the practice of investigations.

In 2021, the Sarajevo Open Centre documented **14 cases of crimes and incidents motivated by prejudice on the grounds of SOGI.**

**Of the 14 cases documented from January to December 2021, seven took place in the public and/or online spheres, and one case was related to domestic violence.**

	2019	2020	2021	TOTAL
<b> GROUNDS</b>				
Sexual orientation	15	12	12	39
Gender identity	0	0	0	0
SOGI <sup>21</sup>	1	2	1	4
<b>TOTAL</b>	16	14	13	43
<b>TYPE OF HATE CRIME</b>				
Domestic violence	2	4	2	8
Peer violence	1	0	0	1
Threats	7	4	8	19
Other	6	6	4	16
<b>TOTAL</b>	16	14	14	44

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

## Guidelines for Further Action

1. Amend the criminal codes of FBiH and BD and expand the provisions on incitement to hatred and violence so that they include SOGIESC as protected grounds;
2. With the aim of fighting homophobia and prejudice within the institutions, constantly train and inform prosecutors, judges, police officers and civil servants on hate crimes, incitement to hatred and violence against LGBTI people;
3. Improve cooperation between the police and the judiciary in the prosecution of hate crimes against LGBTI people and systematically collect data on hate crimes based on gender and SOGIESC;
4. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programs for police officers' training and civil service exams;

<sup>21</sup> Sexual orientation and gender identity

5. Develop a program to combat peer violence in primary and secondary schools, which will include both homophobic and transphobic violence, as well as programs to promote tolerance and create an inclusive education system;
6. Train higher education/academic employees to be more sensitised when working with LGBTI people, as well as to recognise, condemn and avoid hate speech directed against LGBTI people.

## III FREEDOM OF ASSEMBLY

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### Legal Framework

Except for the Law on Peaceful Assembly of Brčko District, adopted in July 2020, the current legal framework (10 cantonal laws and the RS Law on Public Assembly) regulating this area is inconsistent with international standards, unharmonized, and offers different definitions and interpretations of basic terms such as the concept of public assembly, types of public assembly, space provided for public assembly, the content of applications and the granting of permits for public assemblies, the responsibility of organisers and competent organisations, and the decision-making process for public assemblies. Such a legal framework makes it difficult for BiH citizens to exercise their right to freedom of assembly and other constitutionally and legally guaranteed rights<sup>22</sup>.

### Institutional Action

In addition to tendencies to harmonise the legal framework in FBiH<sup>23</sup>, and efforts by civil society and representatives of the international community to encourage amendments to the law in this area and improve cooperation between institutions and civil society, 2021 was also marked by restrictions on freedom of assembly and a narrowing of space for civil society organisations' activities in this area.

Public measures introduced to combat the COVID-19 pandemic had an impact on planned public assemblies of LGBTI people, but, unlike the previous year, they did not prevent them from taking place (Pride March and Kvirhana Festival).

Following the appointment of a working group by the SC Government to work on the Draft Law on Public Assembly of Sarajevo Canton and the Law on Public Events and Other Forms of Assembly in Sarajevo Canton, civil society was included in the drafting through a public consultation process in December 2020,

22 The right to freedom of assembly in BiH is regulated by a number of laws and bylaws: the Constitution of BiH, constitutions of the entities and cantons, the Statute of Brčko District, laws on freedom of assembly of the entities and cantons, but is also protected by international documents ratified or adopted by BiH into its legal system, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23 During 2018, the MoI FBiH worked on a preliminary draft law on public assembly at the level of the Federation of BiH, which the Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) assessed as restrictive, and made recommendations for its improvement. However, the process was stopped due to the delay in establishing the government and no concrete activities have continued to improve the draft.

when the SC MoI invited the professional public and all interested organisations and citizens to participate in public consultations on the Draft Law on Peaceful Assembly in Sarajevo Canton and the Draft Law on Public Events and Other Forms of Assembly in Sarajevo Canton.

SOC responded to the invitation by **submitting a proposal for amendments to the Draft Law on Peaceful Assembly in Sarajevo Canton, which called for** the removal of restrictions on places of assembly, the expansion of the prohibited grounds for incitement to hatred (including SOGIESC), the simplification of the procedure for public assembly notification and the establishment of a single body responsible for the entire procedure, except for the provisions on penalties, which are prescribed in other laws.

**However, in 2021, despite the planned amendments to the relevant legislation, there has been no significant shift in the SC legislation that governs this area.**

The working group process for the Draft Law on Public Assembly of Sarajevo Canton and the Law on Public Events and Other Forms of Assembly in Sarajevo Canton was restarted in 2021. **Again, even at the draft stage, civil society did not have constructive access.** Despite pressure from civil society representatives to meet with members of the working group and participate in the process in 2021, this has not occurred. By the time this report was completed, the Draft Law was still not in the process of public consultation, **nor had there been a major movement in recognising BiH citizens' freedom of assembly, despite the announced amendments to the relevant legislation.**

In 2021, the Sarajevo Open Centre held **a working meeting with the Minister of the Interior of Canton 10**, to provide comments and suggestions for amendments and improvements to the Draft Law on Peaceful Public Assembly in Canton 10, through a public consultation process, which will contribute to the easier enjoyment of citizens' right of assembly in Canton 10, and facilitate the protection of freedom of assembly by the competent institutions and the promotion of this democratic form of communication between institutions and citizens.

It should be noted that **the vast number of solutions contained in the legal text of the Draft Law on Peaceful Assembly in Canton 10 is a significant step forward compared to the current legal solution** in force.

## Documented Cases

The march during the pandemic was planned to include a protest march and a walk through the streets of Sarajevo, they were once again confronted with a voluntary interpretation of the provisions of the current SC Law on Public Assembly.

In addition to the obligation to adhere to epidemiological measures (the number of participants was consistent with existing epidemiological measures), the organisers of the BiH Pride March encountered additional pressures during the organisation of the march. Specifically, the competent institutions imposed additional measures on the organisers, requiring them to fulfil/provide the presence of ambulances, fire brigade presence certificates, iron fences at the assembly's departure and arrival points, as well as concrete barriers, in specific numbers and locations, and based on the assessment of members of the CS Mol. All of this required significant financial resources, which the organisers lacked. Certainly, the SC Mol established the basis for mandating such extra measures in the current SC Law on Public Assembly.

However, despite advocacy efforts and pressure from the BiH Pride March Organising Committee and supporters, the decision of the Sarajevo Canton, the Municipality of Centar and the City of Sarajevo institutions to cover the costs of additional security measures ordered by the SC Mol to the BiH Pride March Organising Committee represents an exceptional activist victory, but so does the proactivity of the representatives of the competent institutions of SC who sent the message that LGBTI people should equally enjoy the right to freedom of peaceful assembly guaranteed by the Constitution as all other BiH citizens.

*For more information, see the chapter Good Practices - Support of Local and Cantonal Authorities to the Pride March*

### Guidelines for Further Action

1. Clearly define that laws/provisions on the 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 BiH and that such public assemblies in public spaces cannot be dependent on permissions of institutions/other legal entities occupying such public space;
2. Improve the existing legislation to clearly define the differences between the protection of citizens' right to freedom of assembly,

and commercial public assemblies and events; and to prevent a shift of responsibility for securing the events from competent ministries of the interior to private agencies, whose engagement presents an additional financial burden on organisers of non-profit assemblies.

3. Adopt a law at the FBiH level that uniformly regulates public assembly for all cantons, as there are no constitutional impediments for doing so, and harmonises solutions at all government levels to ensure equal enjoyment of the constitutional right throughout BiH's territory. The uniform law at the FBiH level should include the following solutions, based on the following principles:
  - The law should clearly state that the authorities must 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 a 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 procedure to contest the ban of public assembly, particularly through emergency court proceedings;
  - The law should clearly stipulate that only ministries of the interior need to be notified when planning a public assembly to simplify the notification procedure and free organisers 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;

## IV FAMILY LIFE AND SAME-SEX PARTNERSHIP

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### Legal Framework

The relationships between same-sex partners and their partnerships are not regulated in any administrative unit in BiH (FBiH, RS, BD). In this way, LGBTI people are unable to claim their constitutionally guaranteed rights to personal 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 BiH to regulate same-sex partnerships arises from BiH membership in the CoE and the decisions of the European Court for Human Rights. Several recommendations by the CoE bind the member states to respect the private and family life of every individual and to enable the rights of same-sex partnerships that would be at least legally equal to the rights of heterosexual extramarital couples.

### Institutional Action

When it comes to same-sex partnerships in BiH, institutional action is only visible in FBiH, where the FBiH Government has raised the issue of regulating the status of same-sex partnerships. Thus, in February 2020, at its constituent meeting, an ***Inter-ministerial Working Group began its work by analysing the existing regulations to suggest new solutions which need to be adopted in FBiH to enable same-sex partnerships to exercise the rights arising from the ECtHR<sup>2425</sup>***. After its constituent session, the Working Group invited representatives of SOC as an organisation that represents LGBTI people and has expertise in this area to join them.

As the constituent meeting coincided with the start of the COVID-19 pandemic in BiH, the Working Group was interrupted until the beginning of 2021. In the period from February to April 2021, the Working Group held three meetings where significant progress was made towards fulfilling its mandate – adopting official conclusions to be presented to FBiH Government as to which regulations need to be adopted and/or amended to eliminate discrimination against same-sex couples in FBiH. In the Inter-Ministerial Working Group, SOC representatives advocated the adoption of a special law that would regulate many areas of interest for same-sex partnership in the same way as granted to marital and extramarital

24 Hereinafter: the Working Group.

25 The working group is composed of representatives of the Office of the Prime Minister of FBiH, the FBiH Ministry of Justice, the FBiH Ministry of Labour and Social Policy, the FBiH Ministry of the Interior, the FBiH Ministry of Health and the FBiH Gender Centre.

partners. For that purpose, the Model Law on Same-Sex Partnerships of the Federation of BiH was presented, which was previously drafted by SOC<sup>26</sup>.

The working group ended its work in 2021 by reaching a conclusion and proposal for the adoption of the FBiH Law on Same-Sex Partnership. The conclusion was communicated to the FBiH government, which had not taken any tangible steps on this subject by the time this report was completed. Following the adoption of the aforementioned conclusions by the FBiH Government, it is expected that a new working group will be formed in charge of drafting the relevant regulations and finally submitting them to the legislative procedure. Looking at the previous process and what lies ahead, it is clear that with this dynamic, same-sex couples will have to wait a long time until their status is regulated in FBiH.

According to SOC's 2017 research, non-regulation of same-sex partnerships is one of the most problematic aspects, but it is also an issue that is equally important for LGBTI people and all other citizens, as two-thirds of respondents said the inability to conclude partnerships is a very serious problem. Furthermore, the fact that more than two-thirds of respondents live or plan to live with their partner, and that more than half would enter into a same-sex partnership if they could, paints a clear picture of the discrepancy between the needs of LGBTI people on one hand, and the government's neglect of this issue on the other.<sup>27</sup>

## Documented Cases

In 2021, **three couples contacted SOC with inquiries regarding same-sex partnerships/marriage**. One inquiry referred to the possibility of concluding a marriage/partnership as BiH citizens abroad. Others were about the status of BiH citizens and their children living in a registered partnership abroad upon their arrival in BiH. The third documented case concerned a registered partnership between BiH and a foreign citizen registered abroad, as well as the method of changing the surname of a BiH citizen, given that BiH does not recognise their registered partnership.

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

26 Outside the Law: Regulation of Same-sex Partnership in Bosnia and Herzegovina, Sarajevo Open Centre, 2016. URL: <https://soc.ba/izvan-zakona-pravna-regulacija-zivotnih-zajednica-parovai-stog-spola-u-bosni-i-hercegovini/>

27 Amar Numanović (2017). Numbers of Equality 2: Analysis of the results of the 2017 Research on Problems and Needs of LGBTI People in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre

28 Names and details are known to Sarajevo Open Centre.

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 BiH, except for LGBTI people.

### Guidelines for Further Action

1. Accelerating the existing legislative procedure in the FBiH and adopting the Inter-Ministerial Group's opinion by the FBiH Government;
2. Initiate legislative proceedings for the adoption of a legal solution on same-sex partnerships in the RS and BD, so that same-sex couples receive equal treatment on this issue throughout BiH.

# V RIGHTS OF TRANSGENDER PERSONS

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## Legal Framework

Transgender persons in BiH can only change the sex marker in their official documents and the Unique Identification Number after undergoing a “complete” medical gender reassignment procedure, which implies mandatory reassignment surgeries of all secondary sex characteristics. These surgeries have to be undergone abroad, as health facilities in BiH lack staff trained to assist persons in transition. Following the review of the documentation brought from abroad, the ministries of the interior annul the previous Unique Identification Number and provide a new one, along with a decision based on which a person can proceed with a change of the rest of their documents. The costs of the medical transition process, which are borne by the trans persons themselves, are not reimbursed by the official health insurance system, which further prolongs the transition process and increases financial costs.

## Institutional Action

Regarding legal recognition of gender identity and medical gender reassignment procedures, no concrete institutional actions have been undertaken in the past period.

None of the SC GAP's planned measures and activities for the period 2019-2022 has been implemented. These are the following measures: the development of a *Guide for Health Professionals on the Best Treatment of Transgender and Intersex Persons* and the adoption of the *Rulebook on Gender Reassignment in Sarajevo Canton Medical Facilities*.

Within the set strategic goals, the draft version of the Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI People in BiH for the period 2021-2023 recognises the need to improve the social inclusion of transgender persons, who are particularly marginalised, and undertakes the following activities that can contribute to the position of transgender persons: *analysis and promotion of existing modalities of gender reassignment for BiH citizens (medical and administrative aspects)*, and training of *professionals in the field of health care, education, social protection, labour and employment on the rights and freedoms of LGBTI people*. The BiH Council of Ministers has yet to adopt the action plan.

In terms of the process of adopting **GAPs** that the GC FBiH is implementing in cantons with the coordination of the SOC, the GAP of Zenica-Doboj Canton and the GAP of Tuzla Canton were adopted in 2021. **Both GAPs, among other things, include measures aimed at improving the position of transgender persons:** creating a guide for health workers on how to best treat transgender and intersex persons. We emphasize that the Tuzla Canton GAP has provided an additional fourth measure related to the initiation of the Health Workers Program's accreditation in the field of providing gender-sensitive services and sexual and reproductive health services to general and multiple marginalised groups.

### Social Reality

In October 2021, SOC began implementing a project that will focus directly on the need to **adequately regulate legal gender reassignment in Bosnia and Herzegovina**, as well as **cover the costs of gender reassignment procedures through the BiH health insurance system**.

Among other things, project activities will advocate for the adoption of legal solutions that will systematically and comprehensively regulate the procedure for changing the sex marker in personal documents and a Unique Identification Number. These legal changes would allow trans persons to change their sex marker at their request and in accordance with their right to self-determination, without the need for prior medical intervention. In parallel, the plan is to jointly develop and offer models with institutions to address the issue of covering the costs of gender reassignment through the health insurance system, which will help to strengthen the knowledge and capacity of relevant institutions to implement current legal solutions in favour of transgender human rights and equality.<sup>29</sup>

### Documented Cases

Through the legal counselling service, SOC receives inquiries from LGBTI people about their human rights. **In 2021, a trans person contacted SOC asking about the possibility of seeking asylum in Spain or Canada. Seven persons sought information on how to begin the transition process (medical gender reassignment), asked about sensitised health professionals, and one person was interested in connecting with similar organisations in European Union countries.**

<sup>29</sup> More about the realised and planned activities available at: <https://soc.ba/programi/lgbt/zagovaranje/trans/>, as well as in the previous Pink Reports.

## Guidelines for Further Action

1. BiH, its entities and Brčko District must regulate legal gender reassignment by enacting laws and other regulations that will systematically and comprehensively regulate the procedure for sex marker change in personal documents and a Unique Identification Number based on the trans person's request and right to self-determination without the need for prior medical intervention;
2. SC, as well as other cantons, should implement GAP activities and goals related to transgender and intersex persons;
3. SC 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. BiH should implement the measures from the Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI people in Bosnia and Herzegovina for the period 2021-2023 concerning the medical and legal aspects of gender reassignment;
5. Adopt and implement laws and/or bylaws in all three administrative units (Republika Srpska, Federation of BiH and Brčko District), which would define the duties of medical institutions to form teams, equip health facilities and train professionals who could monitor the process and perform medical gender reassignment procedures in BiH, as well as the obligation of the health insurance institute to cover the costs of these procedures from the health insurance budget;
6. In parallel to the aforementioned, it is necessary to continuously and systematically train BiH health professionals and health workers in the fields of psychology, psychiatry, endocrinology, gynaecology, urology, plastic, reconstructive and aesthetic surgery on the adequate, trans-inclusive and trans-specific provision of services and support to trans persons in the transition process.

# VI HUMAN RIGHTS OF INTERSEX PERSONS

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## Legal Framework

BiH still belongs to a small number of countries in Europe that explicitly protects 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 that would be applied in all health facilities in BiH and prevent so-called medical sex normalisation, i.e., medical and surgical treatments of new-borns governed by the need to aesthetically adjust the baby's appearance and its sex characteristics to the male or female sex, even though baby's health is not jeopardised. A great number of intersex persons and health professionals are advocating that any aesthetic medical procedure should be postponed until a child can give informed consent.<sup>30</sup>

## Institutional Action

By the time this report was completed, no guide for health workers on the best treatment of transgender and intersex people had been developed, nor had steps been taken to regulate medical and legal procedures in the case of intersexuality, both of which are measures envisaged by the SC GAP for the period 2019-2022.

The Zenica-Doboj Canton GAP and the Tuzla Canton GAP were adopted in 2021, and **they include, among other things, measures to improve the position of intersex persons**, such as the development of a guide for health workers on the best treatment of transgender and intersex persons; and legal regulation of medical and legal proceedings in the case of intersexuality.

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30 For more information on this topic, refer to earlier reports, in particular Chapter VI – Human Rights of Intersex Persons.

SOC released **Research on the Rights of Intersex Children in the Healthcare System of BiH** in 2020 in response to a lack of research and analysis of the human rights situation of intersex persons in the BiH healthcare and legal systems.<sup>31</sup> The goal of the research is to continue and intensify monitoring of the situation of intersex people's rights among health professionals who work with intersex persons to acquire a clear picture of the medical practices that have been used. The research aims to increase awareness of intersex issues and revise outdated medical classifications.

Analysis of responses from health institutions and facilities (ministries of health, health insurance institutes, clinical centres) reveal that the concept of intersexuality is not easily understood by health professionals in BiH, and that there are no records on the number of children born with intersex characteristics or clear, medically established procedures/guidelines for addressing cases of intersexuality, and that it is also unclear how much parents/guardians of intersex children are aware of the risks of certain medical treatments.

The research, and particularly the lack of cooperation between competent health facilities and SOC in its implementation, raised the question of how well the principle of the child's best interests, i.e., the child's right to bodily integrity during medical treatment, is upheld. It is unclear and debatable what happens when intersexuality is discovered later in a child's development (adolescence), and when and to what degree adolescents are involved in making decisions about their bodily integrity. Other methods of providing psychological support to intersex children and their parents remain unknown. Another conclusion of the research is that medical staff is not adequately educated on all aspects of treating intersex children/persons.

**A Handbook on Providing Ethical and Inclusive Healthcare to Intersex Persons** was also published to provide additional training and information to health workers in BiH health facilities on how to effectively treat intersex persons and provide them with inclusive healthcare.<sup>32</sup> The Handbook can be used as a model by BiH's competent authorities in developing guides and guidelines

31 Burić, Vanja (2020). Bodies that Transcend the Binary 2: Research on Human Rights of Intersex Children in the Healthcare System of Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/tijela-koja-nadilaze-binarnost-2-istrazivanje-o-pravima-interpolnedjece-u-zdravstvenom-sistemu-bosne-i-hercegovine/>

32 Vlahović, Erin; Randelović, Kristian et al. (2020). Between the Sexes and Reality: Handbook for Medical and Healthcare Professionals on the Treatment of Intersex Persons. Sarajevo: Sarajevo Open Centre, available at: [https://soc.ba/izmedu-spolova-i-stvarnosti-prirucnik-za-medicinske-strucnjake\\_inje-i-zdravstvene-radnike\\_ce-o-postupanju-s-interpolnim-osobama/](https://soc.ba/izmedu-spolova-i-stvarnosti-prirucnik-za-medicinske-strucnjake_inje-i-zdravstvene-radnike_ce-o-postupanju-s-interpolnim-osobama/)

for the treatment of intersex persons. One of the goals of this Handbook is to foster informed collaboration with leading healthcare facilities - clinical centres, hospitals, community health centres, and their professionals, in order to share information and raise awareness about intersex issues, as well as to contribute to the revision of outdated medical classifications.

Based on the research findings, SOC created an online **campaign** to raise awareness of the problems and needs of intersex persons in the healthcare system<sup>33</sup> and organised a **conference** bringing together professionals from the region and local medical staff of relevant clinics and institutions.<sup>34</sup>

The data collected would allow advocacy for the right of parents to transparent and accessible information on procedures and medical treatments when they have an intersex baby, as well as for the prohibition of medically unnecessary surgical procedures and medical sex normalisation treatments in healthcare facilities that are performed on intersex persons without their full and informed consent.

## Guidelines for Further Action

1. It is necessary to realise cooperation between civil society organisations and health facilities and professionals as well as continue work on informing and sensitising on the intersex issues, along with the revision of medical classifications and abandoning obsolete and offensive terms such as *hermaphrodite* and *pseudohermaphrodite*;
2. SC and other cantons who have adopted them should implement GAP activities, including clear guidelines for health workers on how to treat transgender and intersex persons in BiH, as well as legal regulation of medical and legal proceedings in cases of intersexuality.
3. The SC and all administrative-political units in BiH should ensure that health workers provide gender-sensitive healthcare services as well as sexual and reproductive health improvement services to intersex persons and all other groups/persons;
4. It is necessary to provide transparent and accessible information on procedures and medical treatment in cases of intersex birth, and to prohibit unnecessary surgical procedures and medical sex normalisation treatments in health facilities without the intersex

<sup>33</sup> More information on the campaign available at: <https://soc.ba/izmedu-spolova-i-stvarnosti-kampanja-podizanja-svijesti-o-interspolnim-osobama-stanjima/>

<sup>34</sup> More information on the conference available at: <https://soc.ba/konferencija-o-pravima-interspolne-djece-vaznost-inkluzivne-zdravstvene-i-pravne-zastite/>

person's full and informed consent, until they can understand their significance and consequences, except in situations where objective circumstances require urgent medical intervention, which should be clearly defined in the procedures;

5. In order to define a clearer means of treating intersex children/persons, to define their rights, obligations and responsibilities, ministries of health should develop treatment procedures/guidelines that health workers will be required to follow;
6. In collaboration with non-governmental organisations dealing with these issues, ministries of health should develop a training plan for health workers on the protection of intersex human rights in the healthcare system, and conduct their training in accordance with the highest world standards in the field of trans, intersex, and gender-variant persons.
7. Clinical centres in BiH should systematically and continuously educate and sensitise medical staff involved in the medical treatment of intersex children;
8. Ensure continuous inclusion of government institutions (ministries of health) and state bodies responsible for human rights protection (Ombudsman) in the protection of intersex persons' human rights, self-determination and bodily integrity.

## VII ASYLUM

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### Legal Framework

The legal framework has been largely harmonised 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 recognised as grounds for temporary residence in BiH nor are they recognised by law in the provisions regarding family reunification.<sup>35</sup>

### Social Reality

Despite the fact that regulations of many EU countries mark BiH as a *safe third country of origin*, **LGBTI people from BiH continue to decide to leave the country and seek protection from persecution due to their sexual orientation and gender identity in the 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.

LGBTI people from BiH decide to seek asylum due to psychological difficulties, psychological and physical violence, discrimination in employment and social rejection as a result of their sexual orientation or gender identity.

In addition to the foregoing, **BiH has recently become a transit point for people on the move travelling from the Middle East, parts of Africa, Pakistan, Afghanistan and other countries to EU countries. Among the mentioned migrant population, there is also a certain number of LGBTI people.**

So far, a certain number of LGBTI people on the move have been documented in BiH. The majority of them are in transit through BiH, and just a small number of them decide to stay. The issues they face are related to housing, legal support and information, as well as stigmatisation and violence they experience as a particularly vulnerable group by other people on the move. Precisely for these reasons, the SOC was contacted by LGBTI people on the move who sought help mostly for housing, to avoid the arranged accommodation in camps.

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<sup>35</sup> For more information on this topic, refer to the 2018 Pink Report - Chapter VII - Asylum

## Documented Cases

**In 2021, the SOC received four inquiries from LGBTI people** about asylum opportunities for themselves and/or their partners in EU countries or the US and Canada.

The SOC also documented **one case where LGBTI people from BiH left the country and were granted asylum in the United States**. The case refers to a lesbian from BiH who left the country after being subjected to physical and psychological violence by family members, a lack of protection from competent authorities in cases of attacks on her and her property, and workplace discrimination.

<b>The year of seeking advice and the grounds for seeking asylum</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>TOTAL</b>
Sexual orientation	8	3	3	<b>14</b>
Gender identity	0	2	1	<b>3</b>
Total number of cases	8	5	4	<b>17</b>

Table 7. SOC data on cases of seeking help in the asylum process

Failure to provide safe accommodation for LGBTI people, 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 people who want to seek asylum in BiH.

### Guidelines for Further Action

1. Amend the BiH Asylum Law to explicitly include sex and SOGIESC as grounds for asylum seeking and possible persecution reasons;
2. Recognise same-sex partnerships in the Law on Aliens i.e., family reunification as grounds for granting temporary residence to partners of BiH citizens;
3. Provide training to asylum officials so that LGBTI asylum seekers are treated with respect, in a sufficient, professional, and sensitive

manner, and that their requests are processed effectively and in a timely manner.

4. Provide dignified and efficient treatment and safe accommodation for LGBTI asylum seekers in BiH, with special attention to the fact they belong to a highly vulnerable group prone to violence in accommodation centres.

## VIII SOCIO-ECONOMIC POSITION OF LGBTI PEOPLE

### Legal Framework

The BiH ADL, which provides an equal position and equal opportunity to all citizens, independent of SOGIESC, is the most important law that protects the rights of LGBTI people.<sup>36</sup>

The following **five laws that regulate the field of education at the BiH level have been adopted**: the Framework Law on Preschool Care and Education, the Framework Law on Primary and Secondary Education in BiH, the Framework Law on Secondary Vocational Education and Training in BiH, the Framework Law on Higher Education in BiH and Law on the Agency for Preschool, Primary and Secondary Education. All laws at the level of entities, cantons and Brčko District of BiH should be harmonised with the state-level framework laws in the area of education. Although the SOGIESC Anti-Discrimination Law explicitly prohibits discrimination on any of these grounds, they are generally only partially included within the scope of sex or gender, especially gender identity.<sup>37</sup>

In addition to the area of education, **the area of labour and employment is under the jurisdiction of the entities, BD and cantons**. The exceptions are laws passed by the Parliamentary Assembly of Bosnia and Herzegovina that regulate the work of civil servants in the BiH institutions. Relevant existing laws most often regulate discrimination on the grounds of sex, providing for prohibitions of discrimination based on the sex of workers, which cannot be considered an analogous solution to discrimination on the grounds of SOGI. This is particularly evident in labour legislation, where two laws (FBiH Labour Law and BD BiH Labour Law) use the inadequate term “sexual orientation” as a prohibited grounds for discrimination while excluding gender identity. On the other hand, there is a lack of adequate regulation not only in the domain of prohibited grounds but also of guarantees of certain rights, such as those provided only for women, including areas explicitly indicated in the Anti-Discrimination Law.<sup>38</sup>

<sup>36</sup> BiH Anti-Discrimination Law, Article 2, paragraph (1)

<sup>37</sup> Detailed overview of BiH legal framework in the field of education in the context of human rights and the position of LGBTI people is available in the publication Socio-Economic Position of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Bosnia and Herzegovina, available at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-položaj-LGBTI-osoba-u-BiH-web.pdf>

<sup>38</sup> Detailed overview of BiH legal framework in the field of labour and employment in the context of human rights and the position of LGBTI people is available in the publication Socio-Economic Position of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Bosnia and Herzegovina, available at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-položaj-LGBTI-osoba-u-BiH-web.pdf>

## Institutional Action

The areas of education, housing, work and employment in the context of LGBTI rights are still areas that most competent institutions in BiH continue to ignore: either at the level of research and mapping needs, legal and public policy reforms, or consistent application of existing legal solutions, policies and measures.

However, **initial efforts in these areas have found their place in the 2021-2023 Action Plan for the Promotion of Human Rights and Fundamental Freedoms of LGBTI people in BiH**<sup>39</sup> at the state level. Whereas the Action Plan follows the structure of Recommendation CM/Rec (2010) 5 of the CoE to the Member States on measures to combat discrimination on grounds of SOGI, which explicitly covers the areas of housing, labour and employment, in the version of the Action Plan still pending at the CoM BiH, there were also measures aimed at training *professionals in the areas (among others) of education, social protection, labour and employment on the rights and freedoms of LGBTI people and conducting activities in educational institutions to prevent prejudices and stereotypes towards LGBTI people*. The planned activity of determining the right to free legal aid for underprivileged LGBTI people also points to the position of LGBTI people from a socio-economic point of view, rather than just a legal-formal point of view, which is primarily the result of cooperation between government institutions, international organisations and local civil society organisations on the drafting and shaping of this public policy document.

*For more information on the Action Plan, see chapter I - Equality and Anti-Discrimination*

## Social Reality

To get a complete picture of the lives of LGBTI people in BiH and to contribute to their inclusion and acceptance, SOC researched the socio-economic position of LGBTI people, for which there was previously no relevant data. The research focused on the position of LGBTI people in the education system, employment opportunities in the labour market, socio-economic background, discrimination and other issues that impede their ability to find steady employment.

<sup>39</sup> For more information on the institutions that led the process of drafting the Action Plan, as well as on the process itself, see chapter Good Practices - Progress in the adoption of the Action Plan for LGBTI Equality in Bosnia and Herzegovina.

Research<sup>40</sup> has shown that:

- 38% of LGBTI people who came out during their education noticed a change in attitudes after coming out to their colleagues and teachers,
- 5% of LGBTI people reported discrimination in education,
- 81% of LGBTI people feel that the teaching staff is not sufficiently sensitised,
- for 20% of the general population, it is a problem that people who are known to be LGBTI are part of the teaching staff at educational institutions,
- 16% of LGBTI people work in the “grey” market, while 56% have worked both legally and illegally,
- 44% of LGBTI people have been asked personal questions during job interviews,
- 17% of the general population would mind working with LGBTI people,
- 73% of the general population have never worked with LGBTI people,
- 42% of LGBTI people have not come out at work, with 40% doing so out of fear for their safety,
- 52% of LGBTI people who came out at work experienced inappropriate comments from the work environment about sexual orientation and gender identity,
- 18% of LGBTI people had difficulties renting dwellings,
- 18% of LGBTI people were evicted from rented dwellings.<sup>41</sup>

## Guidelines for Further Action

1. Include topics dealing with gender equality, with a special section on SOGIESC, in the curricula of relevant subjects starting from primary education.
2. Discuss sex, gender and sexuality in the homeroom classes.
3. Develop guidelines/manual for teaching staff to prevent homophobia/transphobia and provide adequate support for LGBTI students.
4. Provide sensitised psychologists and school counsellors to provide psychological assistance to LGBTI students in primary and secondary schools.
5. Expand the articles of FBiH, RS, and BDBiH labour laws that, in addition to prohibiting asking questions about pregnancy during the

<sup>40</sup> Detailed results and research analysis are presented in the publication Socio-Economic Position of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Bosnia and Herzegovina, available at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-polozaj-LGBTI-osoba-u-BiH-web.pdf>

<sup>41</sup> Lejla Gačanica, Socio-Economic Position of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Bosnia and Herzegovina; Sarajevo Open Centre, Sarajevo, 2021.

employment process, also prohibit asking questions about sexual orientation, sex markers and gender identity.

6. Provide legal assistance to LGBTI people who experience labour rights violations or discrimination at work or during the employment process.
7. Work on the improvement of judicial, administrative and inspection procedures in cases of protection or exercise of LGBTI rights in the field of labour, through continuous cooperation and education.
8. Improve the safety of LGBTI people in the workplace, by introducing zero tolerance for violence through internal policies and sanctions.
9. Establish programs to improve family relationships and reduce LGBTI youth homelessness, as well as programs to protect against domestic violence and establish safe houses for LGBTI victims of violence.<sup>42</sup>

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42 Ibid.

## IX ACTIVITIES IN LOCAL COMMUNITIES FOR THE PROMOTION OF LGBTI RIGHTS

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### ACTIVITIES OF ORGANISATIONS ADVOCATING FOR LGBTI RIGHTS IN THE REPUBLIKA SRPSKA

The efforts of organisations dealing with the protection of LGBTI rights in the Republika Srpska are critical for changing people's awareness and attitudes about LGBTI people and developing strategies and programs that will systematically create a safe environment to meet the needs of the LGBTI community.

Centre for Youth KVART is an activist and grassroots organisation whose work and activities are based on uncompromising respect for universal human values such as peace, non-violence, democracy, freedom, equality, and respect for human rights, anti-fascism and justice. The activities of the Centre for Youth "KVART" are focused on young people as the most important component of society and the most capable of achieving positive social change, with the vision of a free and equal society and the mission of combating all forms of social injustice and inequality. One of the key strategic goals of the organisation's work and activities in many strategic fields of the fight for social justice is the empowerment and fight for the rights of the LGBTI community.

Throughout the years of work, they have created a safe environment for LGBTI people to grow personal skills through educational, creative, psychological and other workshops, as well as other programs that provide help and support in cases of violence or discrimination.

By nurturing an activist approach in the fight for LGBTI rights, the organisation has carried out many project and non-project activities that have considerably enhanced the visibility of LGBTI people in Republika Srpska. Although the Centre for Youth KVART is currently the only registered organisation in Republika Srpska that strategically and programmatically deals with issues of LGBTI rights protection through its statutory goals, there is an obvious need that exceeds their capacity to work systematically on various issues of LGBTI rights exercise in this area of Bosnia and Herzegovina. It is worth noting that the organisation's activists actively participate in the organisation of the Sarajevo Pride March.

Prijedor has been equipped with a safe living space for LGBTI people over the past years of work and operation inside the organisation, with LGBTI literature and movies available to users on a daily basis and psychological support groups for LGBTI people to share experiences, feelings and opinions. In a very challenging

period caused by the coronavirus pandemic, this type of support for LGBTI people proved to be very significant and necessary. These activities were carried out in cooperation with the Association of Citizens “New Day” from Banja Luka.

Recognising the issue of mental health professionals’ lack of knowledge and experience in responding to the needs of the LGBTI community, Kwart launched a joint project in 2021, in collaboration with the Sarajevo Open Centre, titled “Regionalising LGBTI Inclusive Psychosocial Support and Access to Mental Health Services in Bosnia and Herzegovina”, where efforts were made over the last year to strengthen the organisation’s capacity for the expansion and introduction of psychological support services for LGBTI people. It is worth noting that in 2021, they published a manual for an affirmative approach in psychotherapeutic work with LGBT people<sup>43</sup>, to provide mental health professionals with basic information about LGBTI identity, tools for counselling, assessment and intervention, as well as pointing to LGBTI affirmative practice when working with LGBTI clients.

One of those activities was the celebration of May 17 - the International Day Against Homophobia, Biphobia, Interphobia and Transphobia (IDAHOBIT), for which they organised an online conference titled “Challenges of LGBTI Human Rights” in cooperation with the Tuzla Open Centre. The goal of this conference was to bring together civil society organisations, line institutions from the local community and the state level, as well as international organisations, to provide relevant answers to questions about working with LGBTI people, institutional support to civil society organisations in combating homophobia, biphobia, interphobia and transphobia in the community, as well as answers questions about the LGBTI human rights challenges that arose during the pandemic.

The continuation of activities related to the May 17 celebration was realised in Banja Luka in cooperation with UNSA GETO and the informal group Oqueerno, where they organised a series of activities for the LGBTI community over two days, including watching short films on LGBTIQ topics, creative workshops and Drag make-up workshops, art exhibitions, Bingay raffle, and the closing party that finalised the two-day gathering and celebration of this date.

<sup>43</sup> <https://centarzamladekvartprijedor.blogspot.com/2022/01/publikacija-afirmativni-pristup-u.html>

## Legal Framework and Institutional Action

Earlier reports also emphasised the need for better implementation of the Anti-Discrimination Law, which has been in force in Republika Srpska since 2009, because certain activities that directly discriminate against LGBTI people are still being implemented through the work of institutions.

One example is the practice of the RS Institute for Transfusion Medicine, which continues to use a discriminatory questionnaire that restricts blood donation to anyone who has “occasional or constant contact with homosexuals”. Although representatives of the Centre for Youth Kwart have repeatedly entered into negotiations to alter the questionnaire and suggested putting risky sexual conduct instead of sexual orientation as a criterion for rejecting potential donors, unfortunately, this has not yet happened.

Although criminal and misdemeanour regulations in the RS have established a normative framework for incriminating and sanctioning behaviours that have the characteristics of criminal or misdemeanour offences with a specific motive for the manifestation of these illegal and violent behaviours where the perpetrator is motivated by prejudice or hatred towards a particular social group, in the RS practice there has been no verdict for hate crime for years, and the problem lies in the inadequate qualification of hate crime by prosecutors, and mostly those who commit these crimes are prosecuted for violating the Law on Public Peace and Order.

In addition to working with the LGBTI community, Kwart has made a significant contribution to the development of an institutional support network to protect the rights of LGBTI people by building the capacity of institutional representatives to take a proactive role in improving the lives of LGBTI people in the RS. Thus, last year, the Council of Europe and its partners joined for the first time in training police officers from Republika Srpska on how to respond to hate crimes and hate speech against LGBTI people.

One of the outcomes of Kwart’s cooperation with the RS Mol Women Network is the development of the textbook “Police and LGBT: Criminal Aspects”, which will be used to train police officers. The textbook is intended to show the particularities of dealing with hate crimes against LGBTI people, as well as procedures for criminal processing of such cases in practice.<sup>44</sup>

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44 <https://www.mrezazena-muprs.org/senzibilizacija-policijskih-sluzbenika-u-radu-sa-lgbt-populacijom/>

## Social Reality in a Local Community

Constant exposure to homophobia, biphobia and transphobia, both through everyday life and the inability to live free and authentic lives, as well as through institutions' poor response to LGBTI rights protection, has serious consequences for each individual. In recent years, there has been an increase in the number of adult LGBTI individuals moving abroad, whether to study at foreign universities or to relocate entirely. The most common reasons for this decision are the inability to cope with everyday life in which they have to hide their sexual orientation, but also the inability to find adequate jobs that will allow them financial independence, while also providing a safe space and protection if their sexual orientation is discovered at work.

Over the past year, Kwart has continued to offer psychological counselling services. The most common issues faced by LGBTI people remained behavioural disorders caused by changing life circumstances, depression and counselling in cases of violence against LGBTI people. Last year, 42 persons from Bosnia and Herzegovina used this service.

### Guidelines for Further Action

1. It is necessary to advocate for the establishment of an LGBTI safe house in the territory of Bosnia and Herzegovina;
2. Adequate prosecution of hate crimes and hate speech against LGBTI people, as well as sanctioning of hate speech on the Internet, to strengthen the trust of LGBTI people in local institutions (police/ judiciary) and build local social cohesion and acceptance of LGBTI people;
3. Adoption of a Law on Same-Sex Partnership that would protect same-sex couples who are currently unable to exercise family rights.

## ACTIVITIES OF ORGANISATIONS ADVOCATING FOR LGBTI RIGHTS IN TUZLA CANTON

Since its founding, the **Tuzla Open Centre** (TOC) has worked to strengthen the LGBTI+ community by proposing and advocating for inclusive policies and legislation, establishing institutional infrastructure support, sensitising the public and conquering public space, and participating in the development and strengthening of local civil society networks.

The importance of local LGBTI organisations is reflected in the Federation of Bosnia and Herzegovina's lack of political will and decentralised governance, which is why adequate implementation of anti-discrimination regulatory and normative legislation is slow or non-existent. Given that the LGBTI+ community lives, exists and works in every region of Bosnia and Herzegovina, we understand the significance and necessity of local LGBTI organisations. In this regard, the Tuzla Open Centre's work is focused on two harmonised directions: cooperation with public institutions and civil society organisations, which creates a network of support for LGBTI people in Tuzla Canton, and strengthening the local LGBTI community through information, education and socialising, with the goal of creating a safe and free space for the local LGBTI+ community.

One of the Tuzla Open Centre's strategic goals and directions for the period 2021-2023 is to improve the social and legal position of LGBTI people in the Tuzla Canton. In 2019, the organisation established the Local Network for the Support of LGBTI Persons in TC, which is comprised of 14 different institutions and organisations, and in 2021 it worked on its sustainability through regular communication with members, bilateral meetings and trainings for representatives of local institutions. Four trainings were held for the following local institutions: the Institute for Psychological and Social Protection of the UCC Tuzla, the Commission for Human Rights and Freedoms of the City of Tuzla, the Tuzla Cultural Centre, and the Service for General Administration and Social Activities of the City of Tuzla. The training topics were focused on the activities and needs of public institutions: the legal regulation of LGBTI human rights, queer art and culture, guidelines for inclusive work with LGBTI+ people and transgender rights. In January 2021, the Tuzla Open Centre and the City of Tuzla<sup>45</sup> signed a cooperation agreement committing to mutual support and cooperation. Through its activities, the Tuzla Open Centre continues to broaden the area of freedom and equality in the Tuzla Canton.

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<sup>45</sup> Available at: <https://grad.tuzla.ba/vijesti/tuzlanski-otvoreni-centar-toc-i-grad-tuzla-potpisali-sporazum-o-saradnji/>

Seven workshops were held to strengthen the LGBTI community in 2021. The workshops were held in a safe and free space and were primarily concerned with protecting LGBTI people's mental health, which has been disrupted due to the COVID-19 pandemic. Thanks to the Sarajevo Open Centre and the European Union, the Tuzla Open Centre is now able to provide free psychological and peer-to-peer support to LGBTI+ service users through the project "Regionalising LGBTI Inclusive Psychosocial Support and Access to Mental Health Services in Bosnia and Herzegovina".

LGBTIQ topics are rare or not mentioned in our community's public space, making it impossible for citizens to form an accurate picture of the LGBTIQ community. This is precisely the reason for everyday prejudices, discrimination, hate speech and violence, all of which impair LGBTI people's economic, social and psychophysical quality of life. It is just as crucial to occupy media space as it is to occupy public space. The media's coverage of LGBTI topics is critical to eliminating stereotypes and prejudices against the LGBTI community. Social networks have become a powerful tool for sensitising the citizens of Tuzla Canton, but also for increasing the visibility of the LGBTI community's problems and needs. In 2021, efforts were made to mark important dates for the LGBTI community by launching campaigns on social networks, continuing the *Tuzla Open Program*<sup>46</sup> on PE "RTV7" Tuzla, publishing articles on social networks and advertising campaigns on LED displays in downtown Tuzla.

Tuzla Open Centre released the first book "*I Tell You Tales in Rainbow Colours: Queer Lifestories*"<sup>47</sup> in 2021, which compiles the lifestories of LGBTI people from all across Bosnia and Herzegovina to sensitise the general public about the lifestories of LGBTI people.

## Legal Framework and Institutional Action

Despite improvements in the legal framework protecting LGBTI rights and ensuring their equality, hate speech, discrimination and violence against the LGBTI community remain prevalent in BiH society.

Article 7 of the Constitution of Tuzla Canton<sup>48</sup> stipulates that "in implementing its Jurisdiction, the Canton ensures and undertakes all necessary measures for protecting human rights and freedoms set forth in the Constitution of Bosnia and Herzegovina and its annexes, Constitution of the Federation

46 [https://www.youtube.com/playlist?list=PLLI4xwRfEn6bgAl6HnWnjzmcjcdhAqfV\\_](https://www.youtube.com/playlist?list=PLLI4xwRfEn6bgAl6HnWnjzmcjcdhAqfV_)

47 Available at: <https://www.toc.ba/post/pri%C4%8Dam-ti-u-duginim-bojama-%C5%BEivotne-pri%C4%8De-queer-osoba>

48 <http://www.vladatk.kim.ba/ustav-tk>

of Bosnia and Herzegovina and its annexes, and this Constitution, paying special attention to ensuring equality of all peoples and citizens in the Canton, municipalities and cities”.

Local communities and local self-government units in the FBiH are also responsible for ensuring and protecting human rights and fundamental freedoms. The Statute of the City of Tuzla<sup>49</sup> (adopted in 2021) states in Article 11 Exercise of Rights and Freedoms: “the City will create conditions for its citizens to fully and democratically exercise all rights and freedoms set forth in the provisions of Article II A 1 to 7 of the Constitution of the Federation of Bosnia and Herzegovina and international instruments contained in the Annex to the Constitution of the Federation, which will be overseen by all city authorities, each within its jurisdiction”. Furthermore, Article 14 Competences of the City, paragraph 2 of the Tuzla Statute states that “the City’s own competencies include: ensuring and protecting human rights and fundamental freedoms in accordance with the Constitution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Tuzla Canton”.

Article 8 of the FBiH Law on Principles of Local Self-Government<sup>50</sup> stipulates that “the competencies of a local self-government unit shall specifically include: ensuring and protecting human rights and fundamental freedoms in accordance with the Constitution”, which is evident in the reasons for adopting the Statute of the City of Tuzla, Chapter I (General provisions - Articles 1 to 12) which states the relationship with human rights institutions.

Despite having a relatively good legal framework and various international regulations, constitutions and laws committing to equal treatment, TC institutions are nevertheless insufficient to support their LGBTI citizens. This is due to a lack of awareness and education among representatives of public institutions on how to work with LGBTI people. As previously stated, the Tuzla Open Centre began offering training for representatives of public institutions in 2021 to establish more inclusive practices within public institutions while working with LGBTI people.

Tuzla Open Centre continued its cooperation with public institutions in 2021, particularly through the **Coordination Group for the Youth Strategy of the City of Tuzla and the Partnership Group for Social Development of the City of Tuzla**, which monitors the implementation of the Strategy for the Development of the City of Tuzla until 2026. Furthermore, financial support was

49 Available on the website of the City of Tuzla; City Council – documents, item 6: <https://grad.tuzla.ba/akti-gradskog-vijeca/>

50 Official Gazette of the Federation of Bosnia and Herzegovina, 49/06

provided from the 2021 Budget of the City of Tuzla for the local festival of queer art and activism “Kvirhana”, which took place in public institutions in Tuzla.

The Tuzla Open Centre made a public policy and analysis of the current Law on Public Assembly of Tuzla Canton<sup>51</sup> at the end of 2021 as part of the project “Access to Justice for LGBTI People in Tuzla Canton”. This document will be produced and distributed to public institutions in TC. The document aims to specify the disputed legal solutions that apply exclusively to the Law on Public Assembly of Tuzla Canton while stressing that all recommendations from the analysis, which relate to the entirety of legal documents in this field, remain legitimate. The Law on Public Assembly of Tuzla Canton also provides for the organisers to delegate the responsibility of ensuring order and peace during the assembly to agencies for the insurance of persons and property. The Tuzla Open Centre covered the costs of hiring a private security agency during the Festival of Queer Art and Activism “Kvirhana”, as well as the cost of 10 private security guards hired for 23 hours for a total of BAM 5,382.00. Finally, the most serious issue is the unfair division of responsibility for ensuring public order and peace between the police and public assembly organisers.

## Social Reality in a Local Community

The social distancing and self-isolation during the COVID-19 pandemic had unforeseen consequences for LGBTI people. Long-term isolation in an unstable and frequently unsupportive environment where LGBTI people have not had the ability to live authentically has resulted in mental health issues. Domestic psychological and physical violence has been particularly prevalent. The Tuzla Open Centre recognised the challenges and obstacles that LGBTI persons encountered during the COVID-19 pandemic and worked to mitigate the consequences by organising psychoeducational workshops for the LGBTI community. As a result, LGBTI people’s ability to cope with the problems caused by the crisis period has been strengthened.

The analysis of the Law on Public Assembly revealed that the amendments introduced in 2015 merely complicated the process of exercising this right. The responsibilities of organisers, managers and wardens in the Law on Public Assembly of Tuzla Canton are far more numerous than those of competent authorities, and they include liability for damage caused by others, the duty to maintain public order and peace, and the obligation to ensure appropriate medical and fire protection measures. The assembly notice procedure is time-

<sup>51</sup> Available on the website of the Ministry of the Interior of Tuzla Canton; Laws and Regulations, paragraph 10: <http://muprk.ba/zakoni-i-propisi/>

consuming and requires extensive documentation and cooperation with several competent authorities. It also does not provide effective legal protection in the event of restrictions imposed by the competent authorities.

Tuzla hosted the first local festival of queer art and activism, "Kvirhana", in 2021. The festival was notified to the Ministry of the Interior of Tuzla Canton as a public event, and a meeting was organised with officials of the Ministry of the Interior of Tuzla Canton's police to communicate visitor safety. Police officers from the TC Ministry of the Interior were not present throughout the Festival, but arrived as needed and merely to obtain the necessary information from the Festival's organiser.

Although the Festival was held without incident, it was once again confirmed that the Law on Public Assembly of Tuzla Canton and police practice regarding the adequate insurance of LGBTI events needed to be amended. Freedom of assembly and the treatment of justice institutions in respect to organisations dealing with LGBTI issues and the promotion of human rights should be prioritised.

#### Guidelines for Further Action:

1. Amend the Law on Public Assembly of Tuzla Canton and police practice in respect to adequate security of LGBTI events and in accordance with international legal standards in this field;
2. Work with public institutions on education, sensitisation and information on the importance of developing inclusive and non-discriminatory practices for working with LGBTI people;
3. Strengthen the capacity of local LGBTI organisations that provide services to LGBTI people to improve the quality and sustainability of these services;
4. Decentralisation of activist efforts and donor policies.

# GLOSSARY OF LGBTI TERMS<sup>52</sup>

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## BISEXUAL PERSON

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

## COMING OUT

The concept is 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 people, as it represents a 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 recognised 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 unfavourable position.

## 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.

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52 The Glossary of LGBTI terms was created through joint work of Sarajevo Open Centre team

## 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 Organisation (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 analyses 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 on discrimination.

## LGBTI

The 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 people 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 behaviours that are considered masculine or feminine in a certain culture or time period (hence, typical for male or female social roles).

## 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 the term sexual orientation is recommended.

## SEX CHARACTERISTICS

A person's sex characteristics, like the chromosomes, gonads and genitalia, can be different from the typical, binary division of male and female bodies. Persons can therefore be divided into 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 other things, the term transgender refers to persons who do not identify themselves as either male or female, transexual, transvestites, crossdressers, 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

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## 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 (the Federation of BiH and the Republika Srpska) and the Brčko District. The Republika Srpska is unitary and made up of municipalities and towns, while the Federation of BiH comprises 10 cantons, each of which is made up of at least three municipalities/towns. The responsibilities and interrelationships between the state, Entities and Brčko District are regulated in the BiH 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 people's equality are under the jurisdiction of the state, Entities, cantons and Brčko District. This complexity points to the need for a coordinated approach, developing capacities and raising awareness of the needs of LGBTI people at all levels of government. The work on improvement of LGBTI people's equality must not be solely under the jurisdiction of the state and entity-level institutions, it is rather important that other institutions, especially at the level of cantons and Brčko District, undertake measures to revoke systematic discrimination against LGBTI people, and work on improving the equality of LGBTI people.

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 BiH Council of Ministers is the Ministry for Human Rights and Refugees, within which the BiH Gender Equality Agency operates. This Ministry and the Agency itself are of great importance for the improvement of the human rights of LGBTI people. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina operates at the level of

BiH - 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 people, 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 the Republika Srpska and the Federation of BiH, both can be classified as bicameral, each with a 'house of representatives' and a 'house of peoples'. Both entity parliaments have parliamentary working bodies for human rights and gender equality/equality of opportunity. Gender centres operate within the executive branch, as government institutions for the improvement of gender equality, which also play a key role in the coordination of entity institutions related to the human rights of LGBTI people, as there are no entity institutions specialized in human and/or minority rights. For example, labour legislation, criminal legislation related to hate crime and family legislation are under the jurisdiction of the Entities.

**Cantons within the Federation of BiH** (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 and healthcare), for which they legislate and produce public policies. Although the Federation of BiH has higher authority than cantons, it sometimes happens that cantons pass legislation that is contradictory to the Federation of BiH regulations and laws, or they fail to implement the existing regulations of the Federation of BiH. 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 the human rights of LGBTI people.

**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 consisting of 10 departments. Laws and other

legislation are passed by the Assembly of the 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 the human rights of LGBTI people 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 Brčko District, and there are ten cantonal police authorities in the Federation of BiH, which share their jurisdiction with the entity police.

## About Sarajevo Open Centre

Sarajevo Open Centre (SOC) works on promoting human rights, particularly the position and human rights of LGBTI people and women in Bosnia and Herzegovina, by interpreting, presenting and representing the authentic experiences of persons suffering from human rights violations and inequalities, and by advocating for legal, political, economic, social and cultural changes in all areas of life.

We will mention only some of the achievements related to the equality of LGBTI people and women. Apart from psychosocial and legal counselling, we continued running the only LGBTI medium in the country – [www.lgbti.ba](http://www.lgbti.ba) portal. We organised training for the police, prosecutor's offices and courts, with a focus on hate crime, hate speech and the application of anti-discrimination law; for medical professionals and health workers, with a focus on trans-specific and trans-inclusive gender reassignment; for the LGBTIQ community. We have worked intensively on creating a local institutional support network for LGBTI people in Sarajevo Canton, improving the regulation of biomedically assisted fertilisation in the Federation of BiH, rights of female workers related to discrimination based on sex and maternity leave, introducing gender-sensitive language in parliaments and universities, adopting and implementing cantonal gender action plans, but also raising awareness about gender-based violence in BiH.

Over the past years, several of our legislative and policy initiatives have entered government or parliamentary procedure. We focused our advocacy activities on policies for equality of women and LGBTI people in BiH, reproductive rights of women and men, parenting in the context of reconciling private and business life, freedom of assembly of LGBTI people, improvement of the institutional framework for the protection from violence and discrimination, and we intend to continue working on issues concerning transgender persons, intersex persons, same-sex partnerships, their social inclusion, but also the position of LGBTI people in education, health, work and employment.

Over the past years, we have carried out media campaigns that have reached over one million citizens of BiH, and we also organized the LGBTI film festival Merlinka, which, in cooperation with Tuzla Open Centre, became the local festival Kvirhana in 2021.

For more information about our work, see [www.soc.ba](http://www.soc.ba).

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