



BOSNA I HERCEGOVINA
Ministarstvo za ljudska prava i izbjeglice
Agencija za ravnopravnost spolova Bosne i Hercegovine

БОСНА И ХЕРЦЕГОВИНА
Министарство за људска права и избјеглице
Агенција за равноправност полова Босне и Херцеговине



2021-2024 ACTION PLAN TO IMPROVE THE STATE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA



**2021-2024 ACTION PLAN TO IMPROVE THE STATE OF
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
OF LGBTI PEOPLE IN BOSNIA AND HERZEGOVINA**



BOSNA I HERCEGOVINA
Ministarstvo za ljudska prava i izbjeglice
Agencija za ravnopravnost spolova Bosne i Hercegovine

БОСНА И ХЕРЦЕГОВИНА
Министарство за људска права и избјеглице
Агенција за равноправност полова Босне и Херцеговине

AT ITS 54th SESSION, HELD ON JULY 28, 2022, THE COUNCIL OF MINISTERS OF BOSNIA AND HERZEGOVINA ADOPTED THE ACTION PLAN FOR THE IMPROVEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF LGBTI PERSONS IN BOSNIA AND HERZEGOVINA

The development of the Action plan was coordinated by the Agency for Gender equality of Bosnia and Herzegovina/Ministry for Human Rights and Refugees BiH

Funded
by the European Union
and the Council of Europe



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Implemented
by the Council of Europe

The Action Plan was developed with the financial support of the European Union and the Council of Europe, through the joint action "Promotion of diversity and equality in Bosnia and Herzegovina" within the joint programme "Horizontal Facility for the Western Balkans and Turkey 2019-2022". The views expressed herein can in no way be taken to reflect the official opinion of either party.

Table of Contents

PART I

INTRODUCTION 4

Background to the Development of the Action Plan 4

Action Plan in the Context of EU Accession and Implementation of Council of Europe Standards 5

PART II

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK 7

PART III

ANALYSIS OF THE STATE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF LGBTI PEOPLE IN BIH 9

Hate Speech 10

Freedom of Assembly 11

Family Law 12

The Rights of Transgender Persons 13

Asylum 15

Prejudices and Stereotypes about LGBTI People 15

PART IV

STRUCTURE OF THE ACTION PLAN 17

PART V

LOGICAL FRAMEWORK MATRIX 19

PART VI

FUNDING AND COORDINATION OF IMPLEMENTATION OF THE ACTION PLAN 23

PART I - Introduction

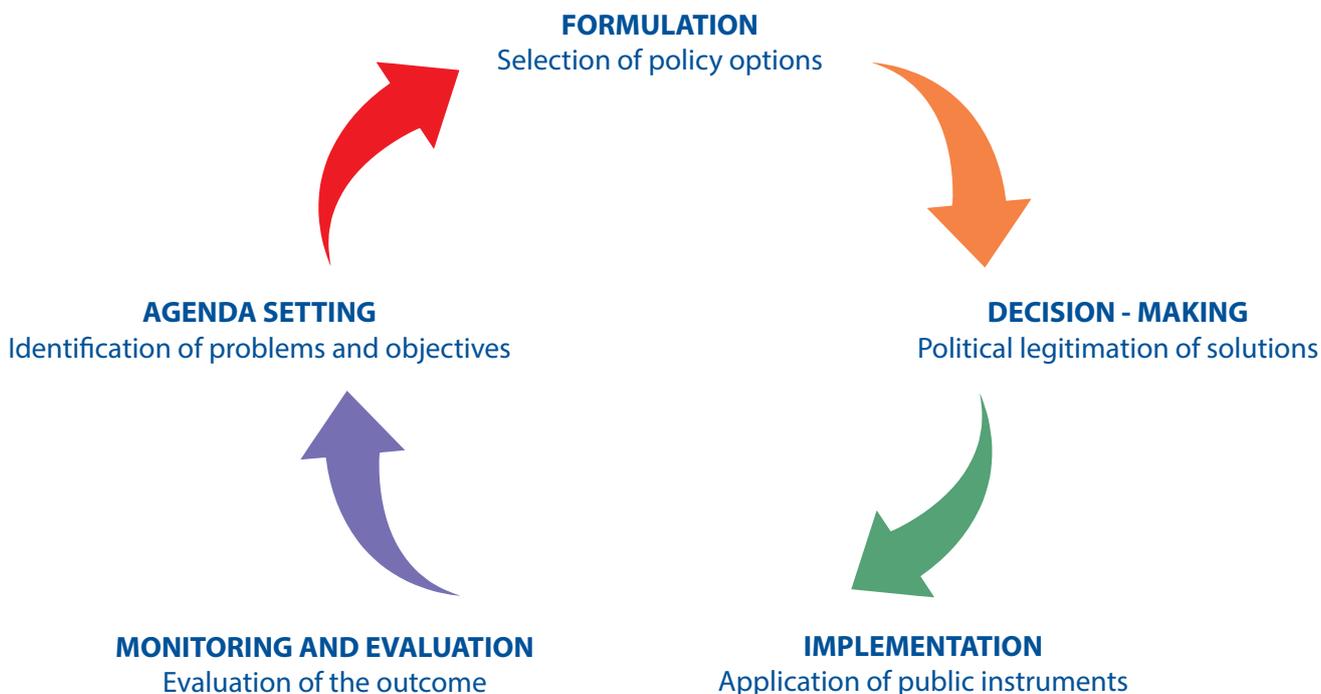
The enjoyment of human rights and freedoms and prohibition of discrimination are enshrined in several international conventions of universal or regional character. Arising from these universally accepted standards are the obligations to respect, ensure the enjoyment of and protection for the rights of all individuals and groups in the society irrespective of their personal or group identity. In Bosnia and Herzegovina, human rights and fundamental freedoms are the foundation of the constitutional set-up, while numerous international agreements in the area of human rights represent not only international obligations but also a pillar of the country's constitutions.

The 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina is a reflection of Bosnia and Herzegovina's commitment to contribute to the respect, protection and exercise of the rights and freedoms of LGBTI people. Its adoption will contribute to a higher level of enjoyment of rights and freedoms by LGBTI people and to the fight against prejudices in the society. Finally, the Action Plan is also Bosnia and Herzegovina's response to the obligations arising from numerous international documents, as well as to its pre-accession obligations towards the European Union.

I a) Background to the Development of the Action Plan

On its session held on 31 August 2016, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina adopted the Report on Occurrences of Discrimination in Bosnia and Herzegovina, together with the Action Plan for the Implementation of Proposed Measures for Preventing Occurrences of Discrimination in Bosnia and Herzegovina. The Action Plan included a section entitled "The Rights of LGBTI People in BiH", which stipulated, as one of the envisaged measures, the development of an Action Plan for the Equality of LGBTI People in BiH.

The draft of the Action Plan was developed by 25 representatives of the relevant administrative bodies of the entities, Brčko District, Institutions of Bosnia and Herzegovina and civil society. Since November 2019, working group members have received initial training and held three meetings with the aim of developing the Action Plan. In their work, the working group applied the approach suggested in the Council of Europe Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, which in a comprehensive manner identifies the needs for action in the area of human rights of LGBTI people. The working group agreed that its structure would be used to assess the current situation and define future actions. In order for this to take place, an approach was adopted which is based on national and international good practices in public policy development, as shown in the graph below. The working group and the development of the Action Plan were supported by the European Union/Council of Europe project "Promotion of diversity and equality in Bosnia and Herzegovina". The working version of the Action Plan was submitted to the Council of Europe Sexual Orientation and Gender Identity Unit and the Delegation of the European Union. The received comments were discussed and integrated into this document.



I b) Action Plan in the Context of EU Accession and Implementation of Council of Europe Standards

Despite the progress reflected in the special place accorded to human rights and freedoms in the constitutional and legal order, there is ample evidence in Bosnia and Herzegovina that lesbian, gay, bisexual, transgender and intersex (LGBTI) people do not enjoy their human rights and freedoms and that they are subject to various forms of discrimination. With respect to human rights of LGBTI people, the EU Analytical Report Accompanying the Opinion on Bosnia and Herzegovina's application for membership of the European Union emphasised the areas in which progress had been made and the areas where challenges existed. Thus, it reads that the four criminal codes are harmonised to include hate crimes on grounds of sexual orientation and gender identity, as well as that sexual orientation, gender identity and sex characteristics are also explicitly prohibited grounds for discrimination since the 2016 amendments to the Anti-Discrimination Law. However, the report states that the number of court cases on these grounds is negligible. Same-sex couples are continuously discriminated against, as the legal system fails to recognise their social and economic rights, including the right to family life. The social inclusion of intersex and especially transgender persons, who are particularly marginalised, also needs to be improved.

The prosecution of hate crimes and hate speech against LGBTI persons is insufficient. Physical assaults have not led to indictments so far. However, law enforcement officials and members of the judiciary have started to receive training on LGBTI issues. Events to raise public awareness on LGBTI issues take place regularly. In 2018 the Constitutional Court recognised that the authorities had violated the right to freedom of assembly of LGBTI persons and the prohibition of torture or inhuman or degrading treatment by failing to ensure the safety of the participants at the 2014 Merlinka Queer Film Festival, as well as by failing to conduct a thorough investigation and sanction the perpetrators of violence. Capacity building is needed for professionals working in healthcare, education, social welfare, judiciary and police agencies in order to provide more adequate support to LGBTI people. In addition to different forms of discrimination and hate crimes, certain rights are

not guaranteed for LGBTI people, such as rights arising from same-sex partnerships, including the rights of their children, healthcare rights and employment rights.

On the other hand, several international documents and agreements establish obligations in terms of enhancing the respect and protection of human rights of LGBTI people. In its Opinion on Bosnia and Herzegovina's application for membership of the EU, the European Commission concluded that the protection and inclusion of vulnerable groups is not yet at the appropriate level, especially in the case of (among others) LGBTI people. Therefore, one of the 14 key priorities for Bosnia and Herzegovina in the pre-accession process is key priority 13, which reads: *“Improve the protection and inclusion of vulnerable groups, in particular (...), LGBTI persons”*. Furthermore, the recommendation of the European Commission from the 5th Meeting of the Subcommittee on Justice, Freedom and Security, held in December 2020 reads: *“Adopt a number of national policy frameworks related to the protection and implementation of human rights, including prohibition of discrimination, protection of persons belonging to minorities, equality of LGBTIQ persons and transitional justice”*. Membership in the Council of Europe obliges Bosnia and Herzegovina to implement both the judgements of the European Court of Human Rights and the Council of Europe's recommendations to its member states. On 31 March 2010, the Committee of Ministers adopted **Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity**, which stipulates, *inter alia*, active engagement to eliminate all the forms of discrimination on the grounds of sexual orientation or gender identity. The recommendation presents **guidelines to members states** to examine the existing legislative and other measures, ensure effective protection against all forms of discrimination and hate crime, including effective legal remedies and especially *to be guided in their legislation, policies and practice by the principles and measures contained in the appendix to the recommendation*.

PART II - International and National Legal Framework

Various international legal documents clearly and consistently oblige Bosnia and Herzegovina to work on improving the state of human rights of LGBTI people. This primarily refers to the documents listed in **Annex I of the Constitution of Bosnia and Herzegovina, as well as the Constitution** of Federation of Bosnia and Herzegovina, the Constitution of Republika Srpska and cantonal constitutions. All these documents consistently prohibit discrimination on grounds of sexual orientation in the access to rights and freedoms enshrined in them.

These obligations have been further confirmed in the practice of the relevant bodies of the United Nations and the Council of Europe. The 2009 **Resolution on Human Rights, Sexual Orientation and Gender Identity of the UN General Assembly**, urges the states to condemn acts of violence and human rights violations against individuals based on their sexual orientation and gender identity, investigate and bring the perpetrators to justice, and ensure adequate protection for human rights defenders who work on the issue of acts of violence and human rights violations committed because of sexual orientation and gender identity. Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international documents and principles of non-discrimination and expressing deep concern of the Council over violence and discrimination based on sexual orientation and gender identity in all parts of the world, the **Resolutions of the United Nations on human rights, sexual orientation and gender identity** of 2011 and 2014 requested the High Commissioner to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and investigating how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

The Yogyakarta Principles plus 10 adopted in 2006 by a group of experts (and updated in 2017) propose basic standards for the protection and promotion of the full enjoyment of all human rights, regardless of sexual orientation and gender identity. Some countries, including the Czech Republic, Denmark, Finland, Ireland, Norway, Sweden and Switzerland have confirmed or referred to the Principles in their statements before the United Nations Human Rights Council (UNHRC). Other countries have confirmed the Principles at the executive level (Germany, the Netherlands, Spain and the United Kingdom) or as part of their legislation (Belgium).

The European Court of Human Rights strongly influenced the creation of a framework of legal protection for LGBT persons **with its judgments and progressive interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms**. Over the past thirty years, the case-law of the European Court of Human Rights has imposed important standards not only in relation to the decriminalisation of homosexuality and the abolition of the different age of consent for sexual acts for homosexuals compared to heterosexual relationships, but also in establishing the protection of LGBT persons from violence and harassment, prohibiting discrimination based on sexual orientation and gender identity, and recognising same-sex couples' right to family life. In fact, in its most recent judgements, the Court not only confirmed that the issue of sexual orientation and sexual identity is protected by the right to private life, and thus any discrimination on these grounds is prohibited, but it also takes the view that same-sex unions

are considered family life and that member states are obligated to legally recognise and allow them to enjoy a minimum of those rights recognised to heterosexual common law partners.

The legal framework for the protection of the LGBTI population in the EU is based on Article 21 of the **Charter of Fundamental Rights**, which prohibits any form of discrimination on the ground of sexual orientation, as well as Article 19 of the **Treaty on the Functioning of the European Union**, which prescribes the obligation of taking action to combat all forms of discrimination. In view of the above, and of the EU accession process and the need to harmonise policies with those of the EU, in the coming period BiH must take measures to fully implement the EU *acquis*. In November 2020, the European Union adopted its **Action Plan on Human Rights and Democracy 2020-2024** setting out EU's priorities in this field in its relations with all third countries including Bosnia and Herzegovina. It identifies five overarching priorities under the motto that “no one should be left behind, no human right ignored”: (1) protecting and empowering individuals; (2) building resilient, inclusive and democratic societies; (3) promoting a global system for human rights and democracy; (4) new technologies: harnessing opportunities and addressing challenges; and (5) delivering by working together. Based on the Action Plan, the EU will step up its actions to prevent and combat all forms of discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons, including LGBTI-phobic violence and hate speech. It will also work to prevent and act against violations of the freedom of peaceful assembly and association.

PART III - Analysis of the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH

For the purpose of development of the Action Plan, an analysis of the state of human rights and fundamental freedoms of LGBTI people was carried out based on the following available sources:

- 2019 Pink Report: Annual Report on the State of Human Rights of LGBTI People in Bosnia and Herzegovina. Human Rights Edition, Sarajevo Open Centre, Publication No. 67)
<https://soc.ba/site/wp-content/uploads/2019/05/Pink-Report-2019-za-web.pdf>
- Life on the Margins: Survey Results of the Experiences of LGBTI People in Southeastern Europe September 2018, World Bank Group
<http://documents.worldbank.org/curated/en/123651538514203449/pdf/130420-REPLACEMENT-PUBLIC-FINAL-WEB-Life-on-the-Margins-Survey-Results-of-the-Experiences-of-LGBTI-People-in-Southeastern-Europe.pdf>
- Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini, Institucija ombudsmana za ljudska prava BiH, Banja Luka, septembar 2016. godine (Special Report on the Rights of LGBTI People, Institution of the Human Rights Ombudsman of BiH, Banja Luka, September 2016)
<https://www.ombudsmen.gov.ba/documents/obmudsmen/doc2016110413333704bos.pdf>
- Proposal of Measures for Equality of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons in Bosnia and Herzegovina for the Period 2017-2019, Human Rights Papers, Sarajevo Open Centre, Issue No. 21
<https://soc.ba/site/wp-content/uploads/2016/05/PROPOSAL-OF-MEASURES-FOR-THE-EQUALITY-OF-LESBIAN-GAY-BISEXUAL-TRANSGENDER-AND-INTERSEX-LGBTI-PERSONS-final.pdf>
- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL – Commission Opinion on Bosnia and Herzegovina's Application for Membership of the European Union
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0261&from=EN>
- Analytical Report accompanying the Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union
<http://europa.ba/wp-content/uploads/2019/05/20190529-bosnia-and-herzegovina-analytical-report.pdf>
- ECRI Report on Bosnia and Herzegovina (fifth monitoring cycle)
<https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602>
- Concluding observations on the sixth periodic report of Bosnia and Herzegovina CEDAW/C/BiH/CO/6)

In Bosnia and Herzegovina, significant progress has been made in the regulation of the system of protection against discrimination. Discrimination on the ground of sexual orientation has been prohibited by the key laws in this field: the **Law on Gender Equality in BiH** – consolidated text (Official Gazette of BiH, 32/10) and the **BiH Law on Prohibition of Discrimination** (Official Gazette of BiH, 59/09, 66/16). Numerous other laws, including the criminal codes, stipulate the same

prohibition. In addition, the BiH Law on Prohibition of Discrimination prohibits discrimination on grounds of gender identity and sex characteristics, but also on any other ground whose purpose or consequence is to deprive a person of or jeopardise the recognition, enjoyment or exercise on an equal basis of rights and freedoms in all areas of life.

In spite of this, the available data show that discrimination on the ground of sexual orientation is widespread. According to World Bank data, 92% of respondents in BiH stated that discrimination on the ground of their sexual orientation is either rather common or very frequent. This percentage is much higher than that in similar surveys in the EU, where 75% of respondents considered discrimination as rather or very widespread. More than 70% of respondents experienced discrimination on grounds of gender expression and gender identity rather or very frequently, which is a percentage lower than that in the EU survey (84%). Discrimination on these grounds was more pronounced than that on other grounds such as ethnic affiliation, religion or age.

III a) Hate Speech

All three criminal codes in BiH recognise hate crimes (in Brčko District, hatred is defined as an aggravating factor in perpetration of crimes), and provide protection to LGBTI persons and other marginalised social groups; the amendments to the part relating to hatred, hate speech and violence demonstrate the legislator's willingness to sanction and prevent similar socially harmful behaviours. The solutions in the criminal legislation are well conceived; however, improvements are necessary when it comes to determining the legal qualification of offences to enable more efficient prosecution.

Apart from the BiH Criminal Code, FBiH Criminal Code, RS Criminal Code, and BD BiH Criminal Code, other laws that include similar provisions, especially in relation to notions and offences causing national, religious or racial hatred are: laws on public peace and order, the Law on Public Assembly of Brčko District, and the Laws on Radio Television of the RS and of FBiH.

With respect to the human rights of LGBTI people in the media context, they are indirectly ensured through regulatory and self-regulatory mechanisms in BiH, but also through the application of codes of ethics. Namely, the programme principles of the broadcasting licensees have been established under the Code on Audio-Visual Media Services and Radio Services (Official Gazette of BiH, 3/16) of the Communications Regulatory Agency of BiH, explicitly prohibiting incitement to hatred and discrimination, and the spread of prejudice based on sexual orientation and gender identity as protected grounds. For established violations of the applicable provisions of the Code, the Agency is authorised to impose measures (verbal and written warnings, fines, revocation of license). In terms of self-regulation, the Press and Online Media Code is in force at the level of the Press Council of BiH. Unlike the Agency, the Press Council does not have the legal power to impose sanctions on print and online media, but the application of self-regulation takes place in a way that the Press Council assesses media content indicated in a complaint and, where it finds a breach, informs the respective media outlet of their obligation to publish a correction, which the media outlet may do, but does not have to.

Recommendations from relevant reports:

| ECRI REPORT ON BOSNIA AND HERZEGOVINA (fifth monitoring cycle) | EC Opinion and Analytical Report | 2019 Pink Report |
|--|--|--|
| <p>The authorities should develop, together with NGOs and international organisations, a comprehensive strategy to combat hate speech as well as activities to promote tolerance towards LGBT persons.</p> <p>ECRI recommends that the authorities, in close cooperation with LGBT organisations, carry out awareness-raising activities to promote tolerance and combat discrimination against LGBT persons.</p> <p>ECRI recommends that the authorities (i) carry out an evaluation of hate crime-related training activities for police officers, prosecutors and judges in order to make any necessary improvements; and (iii) ensure that violence against returnees, religious communities and LGBT persons is adequately covered in these trainings.</p> <p>ECRI recommends that the authorities ensure that the relevant law enforcement agencies take into consideration any homo-/transphobic motivation in cases of violence when investigating them.</p> | <p>Legislation on hate crimes should be adapted and harmonised with the <i>acquis</i>, which penalises the public incitement to violence or hatred based on race, colour, religion, descent or national or ethnic origin.</p> <p>Documented cases of discrimination should receive effective administrative and judicial follow-up, and court rulings need to be enforced.</p> <p>Strengthen the protection of the rights of all citizens, notably by ensuring the implementation of the legislation on non-discrimination and on gender equality.</p> | <p>Amend the criminal codes of the Federation of BiH and Brčko District, and expand the provisions on incitement to hatred and violence so as to also include sexual orientation and gender identity as protected grounds.</p> <p>Media in BiH should refrain from incitement to hatred and use gender sensitive language and politically correct LGBTI terminology; they should use their role in order to educate the public, combat stereotypes and prejudice, and promote tolerance;</p> <p>Media in BiH should point to legislation and the need for respect of human rights of LGBTI persons; they should regulate comments on their online portals and social networks in order to prevent crimes of incitement to discrimination, hatred and violence.</p> |

III b) Freedom of Assembly

The right to freedom of assembly is laid down in the Constitution of BiH, and constitutions of the entities and cantons, Brčko District Statute, laws of the entities and cantons, but it is also protected by international documents that were ratified by BiH or transposed into its legal system, such as the European Convention on the Protection of Human Rights and Fundamental Freedoms. All of these documents guarantee the right of citizens in BiH to free assembly, which can be restricted only for the purposes of protecting the safety of people and property.

Police agencies and academies, judicial and prosecutorial training centres provide, independently or with the support of partners, trainings for police officers and judges on the rights of LGBTI people and on the detection of hate crimes. Freedom of assembly legislation and the restrictions on the use of public spaces for peaceful assemblies continue to place excessive burdens on the organisers and needs to be aligned with the European standards in many ways. This was made evident during the 2019 Sarajevo Pride March. To date, only the BD BiH authorities introduced new legislation in line with the relevant standards.

Recommendations from relevant reports:

| 2016 Report of the Ombudsman Institution | EC Opinion and Analytical Report "Fundamental Rights" | 2019 Pink Report |
|---|---|--|
| <p>Amend the criminal codes of the Federation of BiH and Brčko District, and expand the provisions on incitement to hatred and violence so as to also include sexual orientation and gender identity as protected grounds;</p> <p>With a view to fighting homophobia and prejudices within the institutions, continuously train and inform judges, prosecutors, police officers and civil servants on hate crimes and incitement to hatred and violence against LGBTI people;</p> <p>Enhance the cooperation between the police and the judiciary in prosecuting hate crimes against LGBTI people, and systemically collect data on hate crimes on grounds of gender and sexual orientation, gender identity and sex characteristics;</p> <p>Introduce LGBTI-inclusive modules in the curricula of faculties of law and police academies, as well as in the permanent and specialist training programmes for police officers and in civil service exams;</p> <p>Develop a programme to fight peer violence in primary and secondary schools, which will also cover homophobic and transphobic violence, as well as programmes to promote tolerance and create an inclusive education system;</p> <p>Train higher education/academic staff in order to sensitise them for working with LGBTI people and for recognising, condemning and avoiding hate speech against LGBTI people.</p> | <p>"Freedom of assembly is guaranteed in the Constitution and regulated at entity or cantonal level. The legislation provides for a number of grounds for restrictions, imposes excessive responsibility on assembly organisers (requiring their engagement with multiple authorities), and does not differentiate between gatherings for commercial and non-commercial purposes. Freedom of assembly laws should be harmonised across the country and brought into line with European and international standards. Civil society organisations have also reported increasing attempts by authorities to restrict peaceful assemblies."</p> | <p>To the police agencies in Bosnia and Herzegovina:</p> <p>To act preventatively to protect the rights of LGBT people;</p> <p>To act timely in the cases of LGBTI human rights violations;</p> <p>To continue taking measures to strengthen sensitisation in working with the LGBT population;</p> <p>To take measures within their competences in order to guarantee personal security to anyone exercising their constitutional right to freedom of assembly;</p> <p>To create a comprehensive training programme for the police officers and a Handbook for the education of their employees on LGBT topics in cooperation with the BiH Institution of the Human Rights Ombudsman.</p> <p>For the purpose of combating homophobia and bias within the institutions, constantly train and inform judges, prosecutors, police officers and civil servants about hate crimes and incitement to hatred and violence against LGBTI persons;</p> <p>Improve cooperation between the police and the judiciary on prosecution of hate crimes against LGBTI persons, and systematically collect data on hate crimes on grounds of gender and sexual orientation, gender identity and sex characteristics.</p> |

III c) Family Law

The legislation in Bosnia and Herzegovina, i.e., the provisions of family laws at the entity level and in Brčko District of Bosnia and Herzegovina, govern family relations between spouses. Relations between spouses produce certain rights and obligations, the most significant of which are personal, economic and social, and property-related. The provisions of the family laws regulate issues related to the conclusion of marriage, treat cohabitation, as well as property relations between married or cohabiting partners. A comparative analysis of all the applicable legal

provisions in the area of family law yields the conclusion that throughout the territory of Bosnia and Herzegovina the legislators regulate the issue of marriage in the same manner, prescribing the difference in sex as one of the essential and most important conditions for the conclusion and validity of marriage. A marriage can be concluded only by two persons of different sex – a woman and a man. The difference in sex is a legal requirement for the validity of marriage, but also of common law marriage. By the act marriage, the spouses become the bearers of certain rights and obligations, and there are regulations on the economic, social and property relations that arise between them.

There is no legal option in Bosnia and Herzegovina that enables same-sex couples to register a civil partnership. Consequently, they are denied a number of rights that would arise between partners by the registration of partnership, primarily property rights, the right to inheritance, the right to healthcare, etc. The first step towards regulation of same-sex partnerships in FBiH was made in 2018. At the FBiH Government session held in October 2018, information of the FBiH Ministry of the Interior was adopted relating to requests for entry of data on same-sex partnerships in civil registries. The Government adopted the proposal by the FBiH Ministry of the Interior for appointment of an inter-ministerial working group to analyse existing legislation and propose new pieces of legislation that should be adopted in order to enable couples living in same-sex partnerships to exercise the rights arising from the European Convention for the Protection of Human Rights and Freedoms that are already granted to heterosexual couples in BiH.

Recommendations from relevant reports:

| 2016 Report of the Ombudsman Institution | EC Opinion and Analytical Report | 2019 Pink Report |
|---|--|--|
| Legislative bodies in Bosnia and Herzegovina should regulate civil partnerships of same-sex partners. | Same-sex couples are continuously discriminated against as the legal system fails to recognise their social and economic rights, including the right to family life. | When establishing the inter-ministerial group of FBiH Government for the assessment of existing regulations and the need for adoption of new ones that will enable same-sex couples to enjoy the rights guaranteed in the European Convention on Human Rights and Freedoms, enable participation of experts and civil society representatives (organisations with long-standing experience in the domain of LGBTI rights), in order to make the whole process more efficient and transparent, which will eventually result in a better legislative solution. Initiate processes for the adoption of a legislative solution for same-sex partnerships both in Republika Srpska and Brčko District, in order to provide same-sex couples with equal treatment in this issue countrywide. |

III d) The Rights of Transgender Persons

Transgender people in Bosnia and Herzegovina are not allowed to legally change their gender. The sex marker in personal documents and single identification number can only change after a

“completed” medical gender reassignment treatment. According to laws on civil registries of the entities and Brčko District, and to internal rules of ministries of health and ministries of the interior of the entities and Brčko District, following the review of documents brought from abroad, Mols revoke the old single identification number and issue a new one, as well as a decision based on which the person can change other personal documents. Endocrinological treatment and surgeries must be carried out abroad and the cost is borne by transgender persons themselves because BiH medical institutions do not offer them. There is a possibility to cover the costs under a different right (cost of treatment abroad), but this is decided on a case-by-case basis.

The 2017 survey of the needs of the LGBTI community conducted by Sarajevo Open Centre indicates that around 61% of transgender persons who participated in the survey plan to undergo a partial or complete gender reassignment, whereas 22.2% have not decided yet. Of this number, four (22.2%) persons are already in the transition process, and seven (38.9%) would like to commence the process. Although the decision on gender reassignment means that respondents will have to cover all treatment costs, most of them plan to do it because they believe it is a very important step in their identity building process.

Recommendations from relevant reports:

| ECRI REPORT ON BOSNIA AND HERZEGOVINA (fifth monitoring cycle) | EC Opinion and Analytical Report | 2019 Pink Report |
|--|--|---|
| <p>ECRI recommends that the authorities regulate the procedure and conditions of gender reassignment, in line with Council of Europe guidelines.</p> | <p>The social inclusion of intersex and especially transgender persons, who are particularly marginalised, also needs to be improved.</p> <p>Recommendation of the European Commission from the 5th meeting of the Subcommittee on Justice, Freedom and security in the framework of the Stabilisation and Association Agreement between the European Union and Bosnia and Herzegovina held in December 2020, which reads: “Simplify the process of legal gender reassignment for transgender people and strengthen their social inclusion.”</p> | <p>BiH, its entities and Brčko District should regulate the legal change of sex by adopting laws that will lay down the procedure relating to sex markers in personal documents and single identification numbers in a systematic and comprehensive manner. Therefore, trans persons should be allowed to change the sex marker based on own request and on their right to self-determination, and it should not be dependent on any prior medical intervention.</p> <p>Adopt and implement laws in all three administrative units (Republika Srpska, Federation of BiH, Brčko District), which would define duties of medical institutions to establish teams and train professionals who could follow the process and guide medical procedures for gender reassignment in BiH, as well as the obligation of the health insurance institute to cover the costs of these procedures from health insurance.</p> <p>In parallel to the above, BiH medical experts and health workers in the fields of psychology, psychiatry, endocrinology, gynaecology, urology, plastic, reconstructive and aesthetic surgery should be continuously educated about adequate, trans inclusive and trans specific provision of services and support to trans persons in the transition process.</p> |

III e) Asylum

With respect to LGBTI people as asylum seekers, the legal framework has been largely harmonised with the EU standards. The Asylum Law and the Law on Aliens were adopted in 2015 and 2016 respectively, transposing provisions of relevant EU directives in this field in the largest part. The Analytical Report, together with the Opinion of the European Commission on Bosnia and Herzegovina's application for membership of the European Union, reads that "Legislation in some areas, notably on foreigners and asylum, is broadly aligned with the *acquis*". According to information from the BiH Ministry of Security, when it comes to LGBTI people as asylum seekers, gender and sexual orientation, gender identity and sex characteristics are in practice treated as belonging to a "particular social group", the definition of which is given in the Asylum Law. In this regard, the Asylum Law provides protection for all the above categories if it is established in the asylum procedure that they would be threatened with persecution in the country of origin on any of the above grounds.

Recommendations from relevant reports:

| EC Opinion and Analytical Report | 2019 Pink Report |
|---|---|
| <p>Staff must be better trained to ensure the respect of international standards and procedural safeguards.</p> <p>The implementation of the asylum legislation needs to be improved, in particular to ensure the systematic respect of procedural guarantees for asylum seekers.</p> <p>The access to asylum procedures and mechanisms should be strengthened to ensure faster processing of claims and provide persons in need with international protection.</p> | <p>Amend the BiH Asylum Law in order to explicitly specify gender and sexual orientation, gender identity and sex characteristics as asylum seeking grounds and potential reasons for persecution;</p> <p>The Law on Aliens should recognise same-sex partnerships, i.e., family reunification, as the ground for granting of temporary stay to partners of BiH citizens.</p> <p>Provide trainings for officers working on asylum issues in order to treat LGBTI asylum seekers with respect, in an adequate, professional and sensitive way during the asylum-seeking procedure.</p> |

III f) Prejudices and Stereotypes about LGBTI People

All available research confirms that prejudices and stereotypes about LGBTI people are pronounced, and that LGBTI people are subject to harassment, mistreatment and discrimination. Despite the legislation that prohibits discrimination on the grounds of sexual orientation and gender identity, almost half (49%) of the respondents surveyed stated that they had been discriminated against or harassed in the previous 12 months. Transgender people are more at risk, with 80 percent of respondents reporting such experiences. Discrimination occurs both in the educational system and in the workplace, which prevents LGBTI people from making their full contribution to the development of the society in which they live.

Every third respondent states that they had been a victim of violence in the last five years. Transgender respondents are even more at risk, with more than half of them having experienced violence. The pernicious impact such experiences have on victims is well documented, and such

violence has wider social costs as a result. This is why over 70% of LGBTI people avoid certain public places (such as streets, squares, public transport, cafés, restaurants, clubs, public premises, buildings, parks, etc.) for their own safety, and do not discuss their identity in such places. Nine out of ten respondents said that people often make offensive jokes about LGBTI people in everyday life. For this reason, two-thirds of LGBTI people hide their identity at the workplace, while over 40% of them have witnessed negative comments about LGBTI people at the workplace.

Recommendations from relevant reports:

| <p>Recommendations by UN CEDAW Committee regarding the 6th Periodic Report of Bosnia and Herzegovina on the implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):</p> | <p>2019 Pink Report</p> |
|---|--|
| <p>“Ensure the respect of the human rights of lesbian, bisexual and transgender women and ensure that national action plans on gender equality address stigma and discrimination against them in all spheres of life.”</p> | <p>Introduce LGBTI-inclusive modules in curricula of law faculties and police academies, and in permanent and specialist training programmes for police officers and civil service exams;</p> <p>Develop a programme of combat peer violence in primary and secondary schools, which will also cover homophobic and transphobic violence, as well as programmes to promote tolerance and create an inclusive education system;</p> <p>Train higher education/academic staff in order to become sensitised to work with LGBTI persons, and to recognise, condemn and avoid hate speech against LGBTI persons.</p> |

PART IV - Structure of the Action Plan

The structure presented below is based on human rights standards and the areas listed in the Appendix to Recommendation CM/Rec(2010)5. It provides an overview of measures to be undertaken to ensure the rights of LGBTI people.

Recommendation CM/Rec(2010)5 includes a number of recommendations in the following areas:

- I** Right to life, security and protection from violence, in particular “Hate crimes” and other hate-motivated incidents and “Hate speech”,
- II** Freedom of association,
- III** Freedom of expression and peaceful assembly,
- IV** Right to respect for private and family life,
- V** Employment,
- VI** Education,
- VII** Health,
- VIII** Housing,
- IX** Sports,
- X** Right to seek asylum,
- XI** National human rights structures,
- XII** Discrimination on multiple grounds.

As a common trait, the aforementioned areas include provisions based on key obligations arising for state parties to human rights treaties. Therefore, the majority of recommendations speak of the need:

- to ensure structural changes in line with the constitutional set-up of BiH (adopt appropriate laws, policies or establish competences of institutions),
- to improve the process of application of rights (support in implementation, human rights-based approach),
- to ensure consistent action (monitoring and data collection).

Based on this approach, and on the data informing the analysis of the situation, the Action Plan has set the following *three general goals*:

- I** Equal opportunities and prohibition of discrimination
- II** Equal rights in all areas of life, and
- III** A society of respect for diversity

To achieve progress towards the above general goals, the following four strategic objectives have been identified:

STRATEGIC OBJECTIVE 1 – Ensure efficient mechanisms for the protection of LGBTI people from discrimination and hate crimes

STRATEGIC OBJECTIVE 2 – Ensure equal rights for LGBTI people in all areas of public and private life

STRATEGIC OBJECTIVE 3 – Develop awareness of the need to combat prejudices and stereotypes about LGBTI people

STRATEGIC OBJECTIVE 4 – Monitoring and reporting

With a view to implementing the above strategic objectives, the following activities have been envisaged:

| EQUAL OPPORTUNITIES AND PROHIBITION OF DISCRIMINATION | EQUAL RIGHTS IN ALL AREAS OF LIFE | SOCIETY OF RESPECT FOR DIVERSITY |
|--|--|--|
| <p>STRATEGIC OBJECTIVE 1 Ensure efficient mechanisms for the protection of LGBTI people from discrimination and hate crimes</p> | <p>STRATEGIC OBJECTIVE 2 Ensure equal rights for LGBTI people in all areas of public and private life</p> | <p>STRATEGIC OBJECTIVE 3 Develop awareness of the need to combat prejudices and stereotypes about LGBTI people</p> |
| <p>Activity 1.1. Harmonisation and regular monitoring of criminal codes with respect to hate crimes against LGBTI people</p> <p>Activity 1.2. Training of judicial office holders on discrimination and hate crimes against LGBTI people</p> <p>Activity 1.3. Training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people</p> <p>Activity 1.4. Enhancing the cooperation of relevant bodies in terms of the right to freedom of assembly</p> <p>Activity 1.5. Regular trainings for police officers on the rights and freedoms of LGBTI people and on responding to hate crimes against LGBTI people</p> <p>Activity 1.6 Regular training of civil servants on the rights and freedoms of LGBTI people</p> <p>Activity 1.7 Capacity building activities to effectively support the relevant institutions in the implementation of the AP</p> | <p>Activity 2.1. Analyse legal obstacles that persons living in same-sex partnerships face</p> <p>Activity 2.2. Analyse and promote existing modalities of gender reassignment for BiH nationals (medical and administrative aspects)</p> <p>Activity 2.3. Adopt guidelines for cases of LGBTI people as asylum seekers and train officials</p> <p>Activity 2.4. Establish the right to free legal aid for LGBTI people of poor financial standing</p> | <p>Activity 3.1. Implement activities in educational institutions to prevent prejudices and stereotypes about LGBTI people</p> <p>Activity 3.2. Involve sport associations in the fight against homophobia and transphobia at sport events</p> <p>Activity 3.3. Define guidelines for media reporting about the challenges LGBTI people face</p> <p>Activity 3.4. Publicly react to violations of rights and to prejudices and stereotypes about LGBTI people</p> <p>Activity 3.5. Conduct an analysis of the existing prejudices and stereotypes about LGBTI people</p> <p>Activity 3.6. Implement awareness-raising campaigns on discrimination against LGBTI people</p> |
| <p>STRATEGIC OBJECTIVE 4 Monitoring and reporting</p> | | |
| <p>Activity 4.1. Develop a reporting template</p> <p>Activity 4.2. Report on implemented activities</p> | | |

The key principle in the implementation of these activities is the human rights based approach to programming, which includes collaboration and consultation with LGBTI people in the process of analysing, designing and delivering of the activities.

PART V - Logical Framework Matrix

The logical framework matrix below elaborates the indicators for monitoring the achievements under the Action Plan; identifies, by way of illustration, the responsible administrative bodies, administrative organisations and other institutions; and sets the timeline for implementation.

| STRATEGIC OBJECTIVE 1 | | | |
|--|---|---|-----------------|
| Ensure efficient mechanisms for the protection of LGBTI people from discrimination and hate crimes | | | |
| | Indicator | Responsible authorities | Timeline |
| Activity 1.1. Harmonisation and regular monitoring of criminal codes with respect to hate crimes against LGBTI | # of conducted analyses on harmonisation of criminal codes/impact of existing provisions # proposals for amendments % adopted proposals | BiH Ministry of Justice FBiH Ministry of Justice RS Ministry of Justice Brčko District Judicial Commission | Continuously |
| Activity 1.2. Training of judicial office holders on discrimination and hate crimes against LGBTI people | # developed training curricula # training courses implemented % training coverage of judicial office holders | CEST FBiH CEST RS BD Judicial Commission | Continuously |
| Activity 1.3. Training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people | # conducted training needs analyses (TNA) # developed training curricula # training courses and % coverage of professionals | Responsible educational and health care institutions in partnership with NGOs Pedagogical institutes Public health institutes FBiH Ministry of Education and Science, in cooperation with cantonal ministries of education and educational/pedagogical institutions FBiH Employment Agency, in cooperation with other competent FBiH and cantonal authorities FBiH Ministry of Health, in cooperation with the cantonal ministries RS Ministry of Education and Culture Ministry of Social and Health Care, in cooperation with relevant institutions Ministries in the area of labour and employment Competent authorities of the Brčko District of BiH | Continuously |
| Activity 1.4. Enhancing the cooperation of relevant bodies in terms of the right to freedom of assembly | # meetings held and # protocols on cooperation signed # safely held public events | RS Mol Cantonal Mols BD BiH Police | Continuously |

| | | | |
|---|--|--|---------------------|
| <p>Activity 1.5. Regular trainings for police officers on the rights and freedoms of LGBTI people and on responding to hate crimes against LGBTI</p> | <p># developed training curricula # training courses and % training coverage of police officers</p> | <p>BiH Ministry of Security, BiH Agency for Education and Professional Training FBIH Police Academy RS Ministry of the Interior FBIH Ministry of the Interior, in cooperation with cantonal Mols BD BiH Police</p> | <p>Continuously</p> |
| <p>Activity 1.6 Regular training of civil servants on the rights and freedoms of LGBTI people</p> | <p># developed training curricula # training courses and % training coverage of police officers</p> | <p>BiH Civil Service Agency RS Civil Service Agency FBIH Civil Service Agency</p> | <p>Continuously</p> |
| <p>Activity 1.7 Capacity building activities to effectively support the relevant institutions in the implementation of the AP</p> | <p># of capacity building activities of the BiH Gender Equality Agency/ Ministry of Human Rights and Refugees, FBIH GC and RS GC, in cooperation with other stakeholders</p> | <p>BiH Gender Equality Agency/ Ministry of Human Rights and Refugees, FBIH Gender Centre and RS Gender Centre</p> | <p>Continuously</p> |

| <p>STRATEGIC OBJECTIVE 2 Ensure equal rights for LGBTI people in all areas of public and private life</p> | | | |
|---|---|---|--|
| | Indicator | Responsible authorities | Timeline |
| <p>Activity 2.1. Analyse legal obstacles that persons living in same-sex partnerships face</p> | <p># obstacles identified and #proposals to eliminate obstacles</p> | <p>BiH Ministry of Justice FBIH Ministry of Justice RS Ministry of Justice BD Judicial Commission</p> | <p>Within two years of AP adoption</p> |
| <p>Activity 2.2. Analyse and promote existing modalities of gender reassignment for BiH nationals (medical and administrative aspects)</p> | <p># obstacles identified and # proposals to eliminate obstacles # information materials on gender reassignment possibilities</p> | <p>RS Ministry of Health and Social Policy FBIH Ministry of Health BD Department of Health and other services Relevant ministries of justice and the interior</p> | <p>Within one year of AP adoption</p> |
| <p>Activity 2.3. Adopt guidelines for cases of LGBTI people as asylum seekers and train officials</p> | <p># adopted guidelines % trained officials working on applications # applications processed in line with guidelines</p> | <p>BiH Ministry of Justice BiH Ministry of Security</p> | <p>Within one year of AP adoption</p> |
| <p>Activity 2.4. Establish the right to free legal aid for LGBTI people of poor financial standing</p> | <p># laws establishing the right</p> | <p>Relevant ministries of justice and administration</p> | <p>By the end of AP implementation</p> |

STRATEGIC OBJECTIVE 3

Develop awareness of the need to combat prejudices and stereotypes about LGBTI people

| | Indicator | Responsible authorities | Timeline |
|---|--|---|---------------------------------|
| Activity 3.1. Implement activities in educational institutions to prevent prejudices and stereotypes about LGBTI people | # developed materials # implemented activities | FBiH Ministry of Education and Science, in cooperation with cantonal ministries of education and educational/pedagogical institutions RS Ministry of Education and Culture BD Department of Education | Continuously |
| Activity 3.2. Involve sport associations in the fight against homophobia and transphobia at sport events | # developed materials # implemented activities | BiH Ministry of Civil Affairs RS Ministry of Family, Youth and Sport FBiH Ministry of Culture and Sport BD Department of Economic Development, Sport and Culture | Within two years of AP adoption |
| Activity 3.3. Define guidelines for media reporting about the challenges LGBTI people face | # adopted guidelines # analyses of media acting in line with the guidelines | BiH Ministry of Human Rights and Refugees BiH Ministry of Communications and Transport BiH Regulatory Communications Agency | Within one year of AP adoption |
| Activity 3.4. Publicly react to violations of rights and to prejudices and stereotypes about LGBTI people | # reactions by public institutions | BiH Ministry of Human Rights and Refugees BiH Gender Equality Agency, Ministry of Human Rights and Refugees FBiH Gender Centre and RS Gender Centre, BiH Institution of the Human Rights Ombudsman | Regularly |
| Activity 3.5. Conduct an analysis of the existing prejudices and stereotypes about LGBTI people | analysis conducted | BiH Gender Equality Agency/ Ministry of Human Rights and Refugees, FBiH Gender Centre and RS Gender Centre | Within two years of AP adoption |
| Activity 3.6. Implement awareness-raising campaigns on discrimination against LGBTI people and to promote the freedom of assembly | # activities implemented annually # institutions implementing activities | BiH Gender Equality Agency/ Ministry of Human Rights and Refugees, FBiH Gender Centre and RS Gender Centre | Continuously |

STRATEGIC OBJECTIVE 4

Monitoring and reporting

| | Indicator | Responsible authorities | Timeline |
|---|---|---|----------------------------------|
| Activity 4.1. Develop a reporting template people | AP reporting template developed # information requests submitted to responsible institutions annually | BiH Ministry of Human Rights and Refugees | Six months following AP adoption |
| Activity 4.2. Report on implemented activities | % responsible institutions that have submitted reports to the BiH Ministry of Human Rights and Refugees # annual reports on AP | All institutions responsible under AP | Annually |

PART VI - Funding and Coordination of Implementation of the Action Plan

The funds necessary to implement the activities will be further elaborated by individual institutions responsible for the implementation and inclusion of activities in the regular annual work programmes of the relevant institutions and governments. The assessment of the working group is that the implementation of the activities from the Action Plan will not require significant additional funds. Most of the activities have already been planned or will be implemented using the existing financial and human resources. For a more efficient and more complete implementation of some of the activities, where applicable, international donor funds will support the available budgetary funds.

In order to implement the Action Plan, institutions and bodies responsible for implementing the Action Plan at the level of Institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District will regularly cooperate, exchange information and coordinate activities, and will regularly provide information on achievements and other indicators for the purpose of preparing a single report on the implementation of the Action Plan.

The Gender Equality Agency of Bosnia and Herzegovina of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina will prepare a report on the implementation of the Action Plan based on information collected from institutions and bodies responsible for implementing the Action Plan, and will submit it to the Council of Ministers of Bosnia and Herzegovina for consideration and adoption.

