

2023

# *Pink report*

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

# 2023 Pink Report

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LGBTI People in Bosnia and Herzegovina

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# 2023 PINK REPORT

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

SARAJEVO, 2023



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## EXECUTIVE SUMMARY

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2022 was a year that marked several key steps forward in BiH with respect to the human rights of LGBTI persons. One of the steps was the **adoption of Action Plan to Improve the State of Human Rights of LGBTI People in BiH**. It is the first time that a public policy adopted at the state level aims to systematically and comprehensively respond to the various challenges faced by LGBTI people and to give clear instructions to and impose obligations on competent institutions at all levels of government. The period ahead of us will be a period of insisting on its implementation and reporting on the extent to which we, as a state, truly meet and fulfil what we committed to.

The joint efforts of activists, Sarajevo Open Centre and a group of parents and their LGBTI children, placed **the problems and challenges related to healthcare and administrative gender change** under the radar of the cantonal and entity authorities; we hope that 2023 will ride that wave to lay the foundation for new regulations and practices that will fully respect the human rights of trans people. Unfortunately, **the needs and position of intersex people** still remain unrecognised by most health institutions.

The extremely slow **process of regulating same-sex partnership in FBiH** received a small boost at the end of 2022, with the official conclusion of the expert meeting in the form of a public debate organised by the FBiH Ministry of the Interior; the meeting brought together representatives of the departments of social protection, the interior and justice from the entire Federation of BiH. The conclusion reads that *it is necessary for the Federation of BiH to pass a law on same-sex partnership that will include the widest possible range of partner rights*. Now that the new FBiH Government was formed in 2023, they inherit the obligation to continue the process by establishing a working group to draft the law. In the past period, several couples demonstrated readiness to seek protection through the courts and they have initiated or are planning to initiate court proceedings.<sup>1</sup>

All cantonal prosecutor's offices in the Federation have appointed **a contact person for hate crimes**. This is the result of long-term work of Sarajevo Open Centre through advocacy, trainings and meetings.

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<sup>1</sup> Some of these proceedings are led by Sarajevo Open Centre, while others were initiated independently in consultations with SOC.

However, **the attacks on LGBTI community and activists** from March 2023 overshadowed to some extent all the above advances and once again showed the prevalence of homophobia in the public, political and institutional spheres. Despite significant steps forward in 2022, problems such as lack of security, domestic violence, peer violence, unsanctioned hate speech in public, and complete marginalisation in smaller areas of BiH remain. All the challenges, presented in detail in this report, also tell us in which directions we need to act. We hope that institutions and society will be ready to follow the pace necessary for social changes, the pace kept so far solely by human rights organisations and civil society activists.

# NEGATIVE PRACTICES AND HUMAN RIGHTS VIOLATIONS

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## Attacks on LGBTI Community and Activists in Banja Luka

Although the events took place in 2023, due to their relevance and seriousness, and for the sake of timeliness, it is necessary to mention them in this reporting period. The attacks and hate speech against LGBTI activists in Banja Luka, as well as violation of the right to peaceful assembly happened in March 2023. When the activists of the BH Pride March announced an event for LGBTI community in Banja Luka, the local media sensationally disseminated the news, especially in the Republika Srpska. Such sensationalism caused populist and discriminatory statements by politicians in the RS to the detriment of the human rights of LGBTI persons. The planned event for LGBTI community was not approved by the RS Ministry of the Interior for the reason that the police “is not able to adequately secure the public assembly”.

That same night, a group of citizens – football fans and hooligans – took to the streets of Banja Luka, carrying torches and flares and shouting “Kill the faggot!”; the police did absolutely nothing, sending a clear message that public areas are not for human rights and freedoms, but for hate speech, homophobia and fascism.

Everything that happened is a direct result of hate speech and discriminatory statements by representatives of the government, holders of the highest executive functions, the President of the Republika Srpska, Milorad Dodik, and the Mayor of Banja Luka, Draško Stanivuković, who consciously, using targeted statements about the protection of patriarchal, religious and traditional values and calling for a ban on the event, threatened the rights to public assembly of LGBTIQ+ community not only in Banja Luka, but also throughout the entity of RS.

## FBiH Ministry of Health and Trans People

During the course of 2022, the issue of sex change in personal documents in the Federation of BiH was raised – a trans person from Tuzla Canton requested information from the TC MoI regarding which “mandatory medical documentation” they must submit in the administrative procedure for sex marker change in personal documents. This application was a step that would help trans people in terms of strengthening the legal certainty of future gender change processes, which are not sufficiently clear or transparent. TC MoI failed to provide a clear response and requested an opinion from the TC Ministry of

Health, which is competent for this issue. The Ministry of Health requested an opinion/instruction from the FBiH Ministry of Health, given that the cantons do not regulate the issue, about **medical documents required and the health institution competent to establish the fact of gender change**. In parallel to this, TC Ministry of Health sent an initiative to the FBiH Ministry of Health to pass a by-law establishing a clear procedure in such cases and uniform treatment by administrative bodies on the territory of the Federation of FBiH.

At the time of this Pink Report, there exists a conflict of competence to resolve this issue between the Ministry of Health and the Ministry of the Interior of the Federation of BiH, which further complicates procedures for trans people.

### Negative Regulation of Health Insurance for Trans People in the Republika Srpska

In September 2022, the RS Health Insurance Fund announced that the RS National Assembly adopted amendments to the RS Mandatory Health Insurance Law. This Law entered into force in January 2023. Article 71 (13) of the Amended Law stipulates: *"Insured persons under the framework of mandatory health insurance shall not be provided with healthcare that includes the following: ... (13) diagnosis and treatment of sexual dysfunction or sexual inadequacy, including impotence, health services, drugs and medical devices related to gender reassignment or reversal of previous voluntary surgical sterilisation"*.

The intention of the RS legislature is clear in light of health rights of transgender people – to prevent and disable any form of systemic support for healthcare of transgender persons. This kind of regulation places an additional and disproportionate burden on transgender people, who anyway enjoy a minimum of legal rights compared to the general population.

# GOOD PRACTICES

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## Cooperation with Cantonal Prosecutor's Offices in FBiH

In 2022, direct cooperation was established with all cantonal prosecutor's offices in FBiH. The cooperation resulted in the appointment of contact prosecutors at all cantonal prosecutor's offices; this happened after the trainings for prosecutors about human rights of LGBTI people, with a special focus on hate crimes against LGBTI people. Every cantonal prosecutor's office in FBiH appointed a contact prosecutor who receives reports of incidents or crimes committed out of hatred towards LGBTI people. This is the result of SOC's long-term work, and also a positive practice that contributes to building institutional understanding and mechanisms for the protection of the rights of LGBTI people and directly responds to the mapped and real needs of LGBTI people.

## Adoption of the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH

The long-awaited 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH was adopted at the 54<sup>th</sup> session of the BiH Council of Ministers on 28 July 2022. The text of the Action Plan<sup>2</sup> was proposed by the BiH Ministry of Human Rights and Refugees. The document was drafted by an expert group made up of 25 representatives from the competent administrative bodies of the entities, Brčko District, institutions of Bosnia and Herzegovina and civil society. SOC also participated in its preparation, and our Pink Reports were used as one of the starting points for the elaboration of the specific goals and activities foreseen in the document.

The action plan sets three general goals: 1) Equal opportunities and prohibition of discrimination, 2) Equal rights in all areas of life, and 3) A society of respect for diversity. Furthermore, the Action Plan foresees four strategic goals and as many as nineteen activities to achieve them. The Action Plan also elaborates the indicators for all activities, stipulates the responsible implementer and the timeframe for the activities.

The plan demonstrates Bosnia and Herzegovina's commitment to contribute to respect, protection and realisation of the rights and freedoms of LGBTI people. The adoption of the Action Plan will contribute to a greater degree of enjoyment of the rights and freedoms of LGBTI people; the fight against discrimination in

<sup>2</sup> Available in English at: <https://soc.ba/site/wp-content/uploads/2022/10/AP-LGBTI-ENG-FINAL-2750-4243-3030.1.pdf>

all spheres of society; capacity building in the institutions; various trainings; and a series of proactive measures intended to raise the awareness of the general public about prejudices and stereotypes in our society. Finally, the Action Plan represents Bosnia and Herzegovina's response to obligations arising from numerous international documents, but also to pre-accession obligations in the process of joining the European Union.

In light of SOC's strategic orientations, the Action Plan will be an adequate basis and tool for continuing to advocate, among others, the legal regulation of same-sex partnership, combating hate speech, respect for the right to freedom of assembly, legal recognition of gender, healthcare and social inclusion of transgender people and many others issues related to equality of LGBTI people.

In any case, SOC will actively monitor and participate in the implementation of the Action Plan, in cooperation with the competent institutions, and we hope that such an important document will speed up the long-pending processes of improving human rights and equality of LGBTI people in BiH.

### The Role of the FBiH Ministry of the Interior in the Process of Regulating Same-Sex Partnership

With respect to family life of same-sex partners in FBiH, one institution plays an important role in the efforts to adequately regulate this matter. It is the FBiH Ministry of the Interior, which already in 2018 alerted the FBiH Government to take concrete steps towards the rights of same-sex couples. From that time, an interdepartmental working group was formed that analysed the regulations, made recommendations to the FBiH Government, and FBiH MoI urged the Government to finalise the process of adopting regulations as soon as possible. The FBiH Government adopted the conclusions of the interdepartmental working group at the end of October 2022 and tasked the FBiH MoI to organise a public debate in cooperation with the FBiH Ministry of Justice and the FBiH Ministry of Labour and Social Policy to ensure a "broader consensus" regarding family life of same-sex partners.

Speedy and proactive approach of the FBiH MoI resulted in a public debate in December of that year, with over 120 participants present that contributed to general conclusions corresponding to those of the interdepartmental working group. FBiH MoI submitted a report to the FBiH Government on the public debate, however, the FBiH Government has not yet taken any concrete steps to implement the conclusions of the report. Once the Government adopts that report, it will instruct the FBiH Ministry of Justice to draft the FBiH Same-Sex Partnership Law.

It is noteworthy that the process of regulating family life of same-sex partners has been ongoing for 4 years and 5 months. During that period, new requests from same-sex partners were submitted to the FBiH MoI, relating to recognition of parental care and the rights of children of same-sex partners. FBiH MoI actively advocated that this area must also be regulated by the future legal solution.

# PRIORITY MEASURES TO BE UNDERTAKEN

## Adoption of the Law on Same-Sex Partnership

Almost five full years have passed since the start of the process of analysing regulations and designing a solution to legally improve the position of same-sex partners in FBiH. The results and recommendations of the process are clear: adopt a *lex specialis* as was done in neighbouring countries and ensure equality of family rights between same-sex and heterosexual couples. FBiH Government should, following the report on the public debate (see chapter Family Life), urgently instruct the FBiH Ministry of Justice to draft the FBiH Law on Same-Sex Partnership and submit it for the parliamentary procedure. We emphasise this especially considering all court proceedings currently led in FBiH, which point to systemic discrimination of same-sex partners compared to heterosexual partners.

On the other hand, these processes in the RS and the BD BiH have yet to begin, as foreseen by the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH. It is extremely important that in these administrative units the processes of analysing regulations and proposing solutions are not indolent and slow, given the aim of harmonising and simultaneously regulating this field in all administrative units of BiH.

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

It is not clear in the existing regulations in BiH whether legal change of sex marker is conditioned by “complete” or “partial” (medical) gender reassignment. It is therefore necessary for BiH, its entities and the Brčko District to regulate legal gender change by adopting laws and other regulations to systematically and comprehensively regulate the procedure for changing the sex marker in personal documents and the unique identity number **based on trans person’s request and pursuant to the rights on self-determination**, without any need for prior medical intervention.

This means that it is necessary to define by law or by-law in the entities and the District what **gender change** is as performed by a health institution, what constitutes **medical documentation** proving gender reassignment, and which is the competent **health institution** to interpret it. Furthermore, it is necessary to recognise **life in a different gender identity** as a ground for administrative gender change procedures.

Trans people can access gender reassignment (hormone therapy, surgical procedures) only abroad, because medical institutions in Bosnia and Herzegovina do not have staff trained to support them in the transition process. The costs of medical transition, borne by trans people themselves, are not being reimbursed by the health insurance system, which further prolongs the transition process and increases financial costs.

In addition to legal gender recognition, it is necessary to enable gender reassignment (hormone therapy, surgical procedures) for trans people in Bosnia and Herzegovina, by stipulating an obligation of medical institutions to establish teams, equip health facilities and train experts who could monitor the process and conduct medical procedures of gender reassignment in BiH, as well as an obligation of the health insurance institute to cover the costs of these procedures.

These steps include continuous and systematic training of BiH medical experts and health workers in the fields of psychology, psychiatry, endocrinology, gynaecology, urology, plastic, reconstructive and aesthetic surgery on adequate, trans inclusive and trans specific provision of services and support to trans people in the transition process.

### **Amendments to 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 pass a law at the level of the Federation of BiH and harmonise the relevant cantonal laws thereon, so that all citizens, including LGBTI people, can equally enjoy the right to 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.

### **Establishing Responsibility of and Imposing Sanction on All Participants in Attacks against LGBTI People and Activists in Banja Luka**

It is a priority that all persons responsible for attacks on LGBTI people and activists be punished in accordance with the laws of the RS and BiH as soon as possible, so that a clear message is sent to society and future perpetrators, but also to provide as much satisfaction and security as possible to LGBTI

community in Banja Luka and the Republika Srpska. Members of the RS MoI must also be held accountable. It is necessary to investigate in detail their role and their unprofessional treatment of the attacked LGBTI people and activists.<sup>3</sup> Furthermore, the responsibility also lies with individual politicians, as well as organisations and groups that have delivered speeches that can be characterised as hate speech and that have contributed with their incendiary statements. Activists of BH Pride March and SOC have filed several reports and initiated a number of procedures; the coming period will show how ready the institutions are to address to amounts of hatred, violence and unprofessional behaviour demonstrated in relation to this event.

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3 BH Pride March, March 2023, [www.povorkaponosa.ba](http://www.povorkaponosa.ba)

# 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 discrimination against LGBTI people in BiH.<sup>4</sup> Their significance arises from Bosnia and Herzegovina's membership in 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 listing **sexual orientation, gender identity and sex characteristics (SOGISC)** among 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 Anti-Discrimination Action

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 2022, **GC FBiH** did not receive any reports from citizens complaining of discrimination on the grounds of SOGISC. GC participated in the Presentation of the adopted Action Plan for Equality of LGBTI People in BiH on 12 October 2022.

The **Gender Equality Agency of BiH (GEA BiH)** did not receive any complaints from citizens based on SOGISC in this reporting period. In October 2022, GEA BiH participated in the Round Table entitled "The right to a safe life and protection from violence: the fight against hate crimes against LGBTI persons in Europe" organised by the Council of Europe Sexual Orientation and Gender Identity Unit in Dublin. In addition, at the 6<sup>th</sup> meeting of the Subcommittee on Justice, Freedom and Security within the framework of the Stabilisation and Association Agreement, held in December 2022, GEA BiH informed representatives of the European Commission about the situation and strategic framework in the field of LGBTI human rights, including activities related to the regulation of same-sex partnership in FBiH and adoption of LGBTI AP in BiH.

During 2022, the **RS Gender Centre** did not receive a single complaint on the ground of SOGI. This institution did not report that it organised or participated in any other activities related to the human rights of LGBTI persons in 2022.

During the reporting period, the **Institution of the Human Rights Ombudsmen of BiH** received one citizen complaint related discrimination based on sexual orientation, gender identity or sex characteristics. Based on the aforementioned grounds, two cases were resolved positively by the intervention of the Ombudsmen even before the recommendation was issued, while one case

is still pending. On 12 October 2022, representatives of the Institution of the Human Rights Ombudsmen participated in the presentation of the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH, in the premises of the BiH Parliamentary Assembly, as they had previously participated in the development of the Action Plan. In addition, in 2022, the representatives of this Institution made statements in the media about the rights of LGBTI people in BiH, as they did in previous years.

None of the BiH entities provides independent and continuous training for the judiciary representatives with a focus on LGBTI human rights, although this is one of the recommendations made by the Ombudsmen Institution in its 2016 Special Report<sup>7</sup> as an activity<sup>8</sup> that should be implemented according to the recently adopted 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH.

Although the state did not commit to organising trainings, **SOC continued to train judges and prosecutors on 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)**. A two-day training in FBiH was held in May 2022. The topics were designed in such a way that judicial office holders of BiH are provided with a comprehensive training on the protection of LGBTI people applying the existing mechanisms of legal protection. The training combined criminal law and anti-discrimination protection of LGBTI people in civil proceedings. Furthermore, the trainers referred to the relevant national and European case law on the protection of human rights of LGBTI people.

## Public Policies to Combat Discrimination of LGBTI People

As we underline in the chapter Good Practices, the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina was adopted at the end of July 2022.

The consistent implementation of this document will contribute to combating societal prejudices and stereotypes towards LGBTI people. Furthermore, the Action Plan represents Bosnia and Herzegovina's response to obligations arising from numerous international documents, but also to pre-accession obligations in the process of joining the European Union.

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

8 Activity 1.2. of the Action Plan.

After the adoption of the Action Plan, GEA BiH organised its public presentation on 20 October 2022 in the Parliamentary Assembly of BiH. The Agency distributed the Action Plan to the institutions of Bosnia and Herzegovina that are recognised by the Action Plan as being able to contribute to its implementation, each within the framework of its competences. In addition, GEA BiH sent letters to the competent institutions to foresee the implementation of the relevant activities provided for in the Action Plan and pointed out that it is available for cooperation and assistance in the implementation of the relevant activities – by way of joint planning, coordination, necessary trainings, promotional activities or similar. GEA BiH also made preparations for individual meetings with institutions and entity gender centres that will be organised in the first half of 2023.

With respect to adopting **GAPs** that the GC FBIH implements in the cantons in coordination with SOC, the Una-Sana Canton GAP was adopted in 2022. From the perspective of the human rights of LGBTI people, this document foresees the activity of developing a guidebook for health workers on how to best treat transgender and intersex people.

## 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 people who have experienced discrimination is particularly alarming: about 2/3 of transgender persons, included in the 2017 research on problems and needs of 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 people have a harder time concealing their identities, given that gender expression is usually visible to the environment.<sup>9</sup>

**In 2022, SOC documented ten complaints from LGBTI persons that relate to discrimination on the ground of sexual orientation and gender identity.** Three complaints refer to discrimination in the workplace, three to discrimination in the provision of various services, one to discrimination in public space. Discrimination against a student at school was also reported to us. The remaining two complaints refer to harassment within family.

<sup>9</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

Although the above 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>10</sup>

In April 2022, after a total of 2 years and 6 months of first instance court proceedings in a case initiated by Sarajevo Open Centre as one of its strategic litigations, **the first judgement in BiH was passed confirming discrimination based on sexual orientation, gender identity and sex characteristics.**<sup>11</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 the denial of LGBTI people’s 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>12</sup>

Since August 2022, this case is being handled at the second instance upon the defendant’s appeal.

At the time of writing this report, SOC is pursuing another strategic litigation 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. Although anti-discrimination procedures require urgent decision-making, this case is still being handled at the second-instance, 4 years and 9 months later. 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>13</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>10</sup> Litigations must be initiated independently, without the ex officio actions of the institutions.

<sup>11</sup> Judgement no. 65 0 P 801297 19 P of 4 April 2022.

<sup>12</sup> See pages 18 and 19 of the Judgement no. 65 0 P 801297 19 P of 4 April 2022.

<sup>13</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

	2020	2021	2022	TOTAL
<b>GROUND<sup>14, 15</sup></b>				
Sexual Orientation	4	4	9	17
Gender Identity	0	1	1	2
Sex Characteristics	1	0	0	1
<b>AREA</b>				
Education	0	0	1	1
Access to Goods and Services	2	0	3	5
Employment and Labour Relations	2	1	3	6
Health	1	1	0	2
Other <sup>16</sup>	0	3	3	5
<b>TOTAL FOR THE YEAR</b>	<b>5</b>	<b>5</b>	<b>10</b>	<b>20</b>

Table 1. SOC Data on SOGI-based Discrimination

## Guidelines for Further Action

1. Implement the activities provided for in the 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH in a consistent and prompt manner;
2. Implement relevant recommendations in international and national documents<sup>17</sup> by improving laws and bylaws, and include LGBTI people's rights and needs in all public policies at all levels of government;
3. Introduce LGBTI-specific modules in future trainings for judges and prosecutors;

14 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.

15 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.

16 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.

17 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).

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 on the grounds of 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 cases on the grounds of SOGIESC.

## II HATE CRIME AND INCITEMENT TO HATRED

### 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 2022, 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 2022, SOC held a two-day training for prosecutors of the cantonal prosecutor's offices of Una-Sana, Posavina, Bosnian Podrinje, Central Bosnia, Canton 10 and West Herzegovina cantons. Following the training, six contact persons were appointed at the aforementioned prosecutor's offices to receive reports of incidents and hate crimes. Together with the previously appointed contact persons, SOC has appointed contact persons at all cantonal prosecutor's offices in FBiH with the training held in 2022.

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 cooperation of CEST FBiH and SOC continued last year through a two-day training for prosecutors and judges on discrimination and hate crimes against LGBTI people.

In 2022, the High Judicial and Prosecutorial Council of BiH (HJPC BiH), within the framework of the project Improving Court Efficiency and Accountability of Judges and Prosecutors in BiH - Phase 3, prepared an Analysis of hate crime cases and cases of inciting hatred at courts in BiH. The analysis pointed to the need for systematic collection of data on hate crimes, and improvement of identification of and reporting on such cases, and, accordingly, the improvement of the CMS/TCMS system. More specifically, a technical solution is being proposed, to enable the marking of data on protected characteristics – grounds for committing hate crimes in BiH, both in CMS and in TCMS. HJPC BiH and SOC held a working meeting in 2022 and created an activity plan to improve the automatic case management system.

In an effort to improve the position of LGBTI people and women in Bosnia and Herzegovina, Sarajevo Open Centre held three working meetings in 2022 with representatives of the Assembly of BD BiH and the civil society in Brčko District (BD BiH), and one round table in the premises of the Assembly of BD BiH at which they presented proposed amendments to the Criminal Code of the Brčko District of Bosnia and Herzegovina. The proposed amendments aim at expanding the definition of the criminal offense of public incitement to violence and hatred (hate speech) to provide legal protection to LGBTI people and harmonise the Criminal Code of BD BiH with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

In 2022, Sarajevo Open Centre submitted an initiative to the FBiH Ministry of the Interior (FBiH Mol) with the aim of training cadets of the FBiH Police Academy (PA FBiH) for the ranks of police officer and junior inspector, as part of the regular PA FBiH curriculum. The initiative was approved by FBiH Mol, but has not been implemented by the time of this report. More details will be provided in the next Pink Report – Annual Report on the State of Human Rights of LGBTI People in BiH.

In 2022, the European Union and the Council of Europe organised a series of trainings on human rights of LGBTI people under the project Promotion of Diversity and Equality in Bosnia and Herzegovina, which is part of the joint programme of the European Union and the Council of Europe – 2019-2022

Horizontal Facility for the Western Balkans and Turkey. The trainings were organised in cooperation with the Ministries of the Interior of Sarajevo and Tuzla Cantons, the Police of Brčko District and the Ministry of the Interior of Montenegro. In 2022, the European Union and the Council of Europe appointed three contact points at the Police Administration in two Ministries of the Interior: Sarajevo and Tuzla Cantons, and in the Police of Brčko District of BiH.

## Documented Cases at the Prosecutor's Offices

From January to December 2022, three prosecutor's offices (two from the Republika Srpska and one from FBiH) received criminal reports for criminal offences motivated by sexual orientation and/or gender identity of the victims.

The criminal report in the Cantonal Prosecutor's Office of Tuzla Canton referred to sexual harassment of the victim on the ground of sexual orientation. However, after hearing the victim's testimony, they concluded that no crime stipulated by the FBiH Criminal Code was committed and that the reported crime falls under the BiH Law on Gender Equality; the report and collected evidence, i.e., the entire case, were submitted to the jurisdiction of the Prosecutor's Office of BiH.

Of the other two criminal reports, one was filed to the District Public Prosecutor's Office in Trebinje by Sarajevo Open Centre for the criminal offense of public incitement to violence and hatred referred to in Article 359 (1) of the Republika Srpska Criminal Code, committed on the ground of sexual orientation. Namely, SOC found out in the media that unknown persons hung a homophobic banner on the Ivo Andrić bridge in Trebinje – an offence that can be qualified under Article 359. By the time of this Report, the case is being pursued against unknown perpetrators and the relevant prosecutor is undertaking all measures and actions from of their jurisdiction to make a final prosecutorial decision.

The third criminal report, filed by Sarajevo Open Centre to the District Public Prosecutor's Office in Dobož, refers to the criminal offense of public incitement to violence and hatred under Article 359 of the Republika Srpska Criminal Code. The report was filed due to hate speech against LGBTI people made by the reported person on Facebook. The offence was committed on the eve of the third BiH Pride March, that took place in Sarajevo in June 2022. The context is relevant because the event was preceded by an enormous increase in hate speech against LGBTI people, which continued even after the March. It is noteworthy that the criminal offense under Article 359 of the RS Criminal Code recognises and introduces as protected characteristics, *inter alia*, "sexual orientation" and "gender identity" of the victim. It is precisely these protected characteristics that

provide protection to LGBTI people if they are victims of offenses referred to in Article 359 of the RS Criminal Code. After the checks, a decision was made at the order of the prosecutor's office that no investigation will be launched based on the criminal report, as it is evident from the report and supporting documents that the reported offense is not a criminal offense.

In their responses, other prosecutor's offices stated that did not receive any criminal reports of acts motivated by sexual orientation and/or gender identity of the victims in the period from 1 January to 31 December 2022.

The Cantonal Prosecutor's Office of Herzegovina-Neretva Canton and the District Public Prosecutor's Office of Istočno Sarajevo have not submitted their responses by the time of finalising this Report.

In 2021, 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 Mostar City Council, who forwarded the request for graffiti removal to the competent Department for Communal Affairs of the City of Mostar. 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. By the time this report was completed, the graffiti was removed.

## Prominent Cases of Hate Speech

In 2022, Sarajevo Open Centre filed several submissions regarding hate speech it documented, for the competent institutions/agencies to take the necessary measures under their jurisdiction to adequately respond to the reported content.

In 2022, Sarajevo Open Centre filed a complaint with the Press Council in Bosnia and Herzegovina regarding the publication of the media article "Trebinje to LGBT population: you are not welcome" published on the portals Trebinje 24 and Herceg RTV. Article 4 (3) of the BiH Print and Online Media Code was grossly violated by the disputed article. Furthermore, the responsible editor, by allowing it, contributed to the spread of hate speech against LGBTI people, since they indirectly portrayed LGBTI people in a negative light using the pretext of "true values – a healthy family and a healthy environment". Until this report, SOC has not received a response from the BiH Press Council, despite two reminders.

In 2022, Sarajevo Open Centre filed a criminal report with the District Public Prosecutor's Office in Trebinje against an unknown person for the criminal offense of **publicly inciting violence and hatred** under Article 359 of the RS Criminal Code. Namely, SOC found out in the media that unknown persons hung a homophobic banner on the Ivo Andrić bridge in Trebinje – an offence that can be qualified under Article 359 of the RS Criminal Code. This case is pending.

In 2022, "Kill the faggot" graffiti, calling for violence and hatred towards LGBTI persons, appeared in the Municipality of Novo Sarajevo, on the wall of the Faculty of Veterinary Science of the University of Sarajevo. Sarajevo Open Centre reported the content of the offensive graffiti to the Service for Inspection Affairs of the Municipality of Novo Sarajevo for it to be removed; the graffiti constitutes a criminal offense under Article 293 of the FBiH Criminal Code paragraphs (1), (2), (3). Graffiti was removed following SOC's intervention.

In 2022, SOC submitted a complaint to the Central Election Commission of Bosnia and Herzegovina regarding the video posted by Haris Zahiragić, at that time a candidate of the SDA political party for the Sarajevo Canton Assembly, on his official Facebook profile. The complaint sought investigation as to whether Haris Zahiragić violated Article 7.3. (1) 7 of the BiH Election Law by spreading hatred towards persons whose gender identity does not match the sex assigned to them at birth. The Central Election Commission conducted the procedure *ex officio* and established that the content does not fall under the definition of hate speech as prescribed by the Election Law and suspended the procedure.

In 2022, the SOC submitted a complaint to the Communications Regulatory Agency (the Agency) asking it to investigate allegations in the context of violations of the Code on Audiovisual Media Services and Radio Media Services. Namely, evening news (Večernji dnevnik) of Television Sarajevo (TV SA) was reporting on the monkeypox virus in general, but also in the context of Bosnia and Herzegovina. Speaking of risk groups that can be infected with monkeypox, TV SA shared stigmatising content; specifically, viewers were told that risk groups include "high-risk behaviour people and the gay population". The Agency's response to SOC said that they carried out an *ex officio* preliminary procedure to check compliance with the relevant regulations by TV SA. The analysis of the content showed that it did not contradict the Agency's applicable regulations, specifically the Code on Audiovisual Media Services and Radio Media Services.

In 2021, Jasmin Mulahusić, a citizen of Bosnia and Herzegovina and Luxembourg, posted offensive messages on national and religious grounds on social media and the internet, using multiple profiles, insulting religious and national feelings of BiH citizens in the most inappropriate way, and produced and distributed

photographs and videos that spread national and religious hatred and intolerance between the peoples in Bosnia and Herzegovina. **The Prosecutor's Office of BiH is conducting an investigation against Mulahusić for the criminal offense of spreading national, religious hatred, discord and intolerance under Article 145a of the BiH Criminal Code.** In addition, Facebook blocked his profiles due to continuous spreading of hatred and threats. For a long time now, he has been under investigation by the Prosecutor's Office of BiH. **In his public appearances full of hate speech, he often targeted LGBTI community or used it to argue with political dissidents. Until this Report, there is no new information, and the case is still pending.**

In 2022, Sarajevo Open Centre documented **13 cases of incidents and crimes motivated by prejudice on the grounds of SOGI.**

**Of the 13 cases documented from January to December 2022, four took place in the public sphere, three referred to domestic violence, while one case referred to violence at the university.**

	2020	2021	2022	TOTAL
<b>GROUND</b>				
Sexual Orientation	12	12	13	37
Gender Identity	0	0	0	0
SOGI <sup>18</sup>	2	1	0	3
<b>TOTAL</b>	14	13	13	40
<b>TYPE OF HATE CRIME</b>				
Domestic Violence	4	2	3	9
Peer violence	0	0	2	2
Threats	4	8	4	16
Other	6	4	4	14
<b>TOTAL</b>	14	14	13	41

Table 2. SOC Data on SOGI-based hate crime

<sup>18</sup> Sexual orientation and gender identity.

## 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, continuously 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 on the grounds of gender and SOGIESC;
4. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes for police officers' training and civil service exams;
5. Develop a programme to combat peer violence in primary and secondary schools, which will include both homophobic and transphobic violence, as well as programmes 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 at LGBTI people.

# III FREEDOM OF ASSEMBLY

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## Legal Framework

With the exception of 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, non-harmonised, 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>19</sup>

## Institutional Action

In addition to tendencies to harmonise the legal framework in FBiH<sup>20</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, 2022 was also marked by restrictions on freedom of assembly and a shrinking of space for civil society organisations.

As for the Law on Public Assembly and the Law on Public Events of the Sarajevo Canton – SC Government appointed a working group to work on the draft laws and amendments were announced in 2021,<sup>21</sup> however, by the time of this Report, the drafts of the two laws are still not in the process of public consultation, and the legal framework regulating this area has not yet been improved.

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19 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.

20 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.

21 In 2021, SOC submitted a Proposal for Amendments to the Draft Law on Peaceful Public Assembly in the Sarajevo Canton, requesting removal of restrictions related to assembly locations, the expansion of prohibited grounds for incitement to hatred (including SOGISC), simplification of the reporting procedure, the designation of a single body responsible for the entire procedure, and the exclusion of provisions on penalties since they are prescribed in other regulations.

In 2022, the FBiH Government, upon proposal of the FBiH Ministry of the Interior, prepared the Draft Law on Public Assembly of FBiH. The draft Law has not been adopted by the time of this Report. The explanation submitted by the FBiH Government to the Parliament of FBiH states that the proponent could not establish compliance of this regulation with European legislation, and the cantonal ministries of the interior from Canton 10, Herzegovina-Neretva and West Herzegovina Cantons, Mostar and Ljubuški stated that public assembly is the exclusive competence of the cantons and that they do not agree with the FBiH Parliament adopting the aforementioned law. The adoption of this Law is to regulate public assembly equally in all cantons because there are no constitutional obstacles thereon, and to harmonise solutions at all levels of government to ensure equal enjoyment of constitutional rights for all in the territory of BiH.

In 2022, Sarajevo Open Centre held three working meetings with the Ministries of the Interior of the Una-Sana, Central Bosnia and Zenica-Doboj cantons to share their comments and suggestions for the improvement of the law on peaceful public assembly in these cantons during the process of legislative drafting. Although the above Ministries of the Interior were open to cooperation, the initiative to hold working meetings did not come from the Ministries of the Interior, which points to the fact that in BiH there is still a lack of awareness/will on the part of the competent/ruling structures to see civil sector representatives as partner in defining the best possible legal solutions, which would contribute to enjoyment of rights.

## Documented Cases

Although the fourth BH Pride March included a protest march and a walk on the streets of Sarajevo, the organisers, as in previous years, once again encountered an arbitrary interpretation of the provisions of the current SC Law on Public Assembly.

The organisers of BH Pride March had to face pressures again. Namely, the competent institutions imposed additional measures that they had to fulfil/provide (emergency medical vehicles, fire department presence certificate, iron and concrete barriers, in a certain number and at certain locations as assessed by SC MoI members). The above required large financial resources, which the organisers did not have. It is certain that the SC MoI found the ground for imposing such additional measures in the current SC Law on Public Assembly.

However, despite this, the Organising Committee of BH Pride March, sent the Prime Minister the same request as in 2021, that the costs of the additional

measures imposed be covered from the Sarajevo Canton budget, which the Prime Minister supported, and which the SC MoI imposed on the Organising Committee of BH Pride March. This is certainly an exceptional activist victory on the one hand, but also a sign of proactivity by the representatives of the relevant SC institutions who sent the message that LGBTI people should equally enjoy the right to freedom of peaceful assembly guaranteed to them by the Constitution, just like all other BiH citizens.

Before the BH Pride March in 2022, a status/text entitled "If anyone had asked me, I would never have given my vote to the 'Parade'" was posted on the official Facebook page of the Sarajevo Canton Ministry of Economy, and was signed by Minister Adnan Delić. It is evident that the minister misused the official communication channel of the Ministry to express his personal views regarding the human rights of LGBTI persons and the Pride March.

In addition, on the eve of BH Pride March in 2022, the president of Narod i pravda (People and Justice) political party, then a member of the Sarajevo Canton Assembly and an MP in the House of Peoples of the FBiH Parliament, Elmedin Konaković, announced on his Facebook page: "I am against the March. I consider the promotion of sexuality inappropriate. From my deep religious convictions, I am against the March". He went on to state that he had no plans to comment on the March, but that he was forced to because of the lies that the regime was spreading about his alleged support for this event: "No member of NiP, no government minister, no MP voted, supported or promoted the March. The permission for the walk is granted by the minister of transport, security assessments are done by the commissioner with other agencies, MoI, SIPA, OSA. There is no document showing any agreement to the March, our position was made public and every word I signed is public," he said.

In 2022, Sarajevo Open Centre was denied the right to temporarily use the public space of the Sarajevo Children's Square, located in front of the Aria Mall. This was not an isolated denial, considering that SOC was also discriminated against in previous years compared to all other legal or natural persons who have been granted the right to temporarily use the Square.

## 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 partnership 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

The process of analysing and proposing regulations to improve the legal position of same-sex partners in FBiH has been ongoing since 2018. The process itself, its activities and results were chronologically presented in previous Pink Reports and we refer the readers to them. It is noteworthy that in October 2022, the FBiH Government adopted a conclusion that it was duly informed of the interdepartmental working group's conclusions and tasked the FBiH Mol to organise a public debate in cooperation with the FBiH Ministry of Justice and the FBiH Ministry of Labour and Social Policy to ensure a "broader consensus" regarding family life of same-sex partners. On 9 December 2022, a public debate was held with the support of the European Commission and the Council of Europe, attended by 120 participants. At the end of December 2022, the FBiH Mol submitted to the FBiH Government a report on the conducted public debate, however, the FBiH Government has not yet taken any concrete steps to implement the conclusions thereon. It is noteworthy that the process of regulating family life of same-sex partners has been ongoing for 4 years and 5 months. During that period, new requests from same-sex partners emerged in FBiH, relating to recognition of parental care and the rights of children of same-sex partners. For this reason, we emphasise that the future Law that will regulate the family life of same-sex partners must also contain provisions that will refer to children, because it is evident that already at this moment there are justified requests to adequately resolve this issue.

SOC's 2017 research on this topic also showed that non-regulation of same-sex partnership is very problematic, and at the same time an issue that is just as necessary for LGBTI people as for all other citizens, as two-thirds of respondents said the inability to conclude a partnership 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>22</sup>

## Documented Cases

In 2022, **SOC was contacted by two couples with inquiries related to same-sex partnership/marriage**. One inquiry referred to the possibility of exercising socio-economic rights from an extramarital same-sex partnership. The second inquiry referred to the possibility of divorce of a same-sex marriage concluded abroad after the partners returned to live in Bosnia and Herzegovina. In addition to the possibility of divorce, the inquiry also referred to the possibility of recognising the birth certificate of a child conceived by medically assisted fertilisation abroad. Namely, the foreign birth certificate lists persons of the same gender as parents (parent 1 and parent 2). The national authority rejected the request to register child's birth and citizenship because, according to the FBiH Family Law, there is no option for two mothers to be the parents of the child. The effect of this decision was that the child of same-sex partners was unable to get BiH citizenship.

**Presently, and as far as SOC is informed, three cases are active in BiH courts<sup>23</sup> related to LGBTI people seeking rights that arise directly from issues of same-sex partnership and family life.** They refer to the issue of inheritance, recognition of a same-sex partnership concluded abroad, and granting of citizenship to a child of same-sex mothers. These are just three examples in which SOC is directly involved, and which concern aspects of life that are fully regulated for all citizens of BiH but LGBTI.

22 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

23 Names and details are known to SOC.

## Guidelines for Further Action

1. Accelerating the existing legislative procedures in the FBiH, while expanding the scope of rights to include matters related to children in same-sex partnerships; 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 throughout BiH (in line with Activity 2.1 of the Action Plan).

# V RIGHTS OF TRANSGENDER PEOPLE

## Legal Framework

**The procedure to register gender change in the public registers and personal documents** in the administrative-territorial units of Bosnia and Herzegovina (entities, cantons, District) is inefficient, vague, potentially degrading for trans people and does not respect the rights to self-determination, privacy and bodily integrity of trans people.

It is not clear in the existing regulations in BiH whether legal change of sex marker is conditioned by “complete” or “partial” (medical) gender reassignment. Namely, no law or by-law in the entities or the District defines what **gender change** is as performed by a health institution, what constitutes **medical documentation** proving gender reassignment, and which is the competent **health institution** to interpret it. Furthermore, it is necessary to recognise **life in a different gender identity** as a ground for administrative gender change procedures.

The current practice and the lack of regulation of gender change leads to a conclusion that gender change procedures in personal documents can only be carried out after “complete” medical gender reassignment, which implies reassignment surgeries of primary and secondary sex characteristics, often including sterilisation of trans people, i.e., deprivation of reproductive functions.

Trans people can access gender reassignment (hormone therapy, surgical procedures) only abroad, because medical institutions in Bosnia and Herzegovina do not have staff trained to support them in the transition process. The costs of medical transition, borne by trans people themselves, are not being reimbursed by the health insurance system, which further prolongs the transition process and increases financial costs.

An example of **negative legislative practice** is that in September 2022 the Republika Srpska National Assembly adopted a new Law on Mandatory Health Insurance, defining “diagnosis and treatment of sexual dysfunction or sexual inadequacy, including impotence, health services, drugs and medical devices related to gender reassignment or reversal of previous voluntary surgical sterilisation” as procedures that shall not be financed from mandatory health insurance funds. With this legal intervention, gender reassignment has become even more inaccessible to trans people, and it is clear that the legislator treats it as an aesthetic procedure, not as a necessary health service. The problem is also the ambiguity of the term “gender reassignment”, because it lacks a definition – it is unclear which medical procedures fall under gender reassignment.

## 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.

In 2022, the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina was adopted, which recognises that social inclusion of particularly marginalised trans people should be improved. Neither of the planned activities has been implemented by the time of this Report:

- Analyse and promote existing modalities of gender reassignment for BiH nationals (medical and administrative aspects);
- Training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people.

In terms of the process of adopting GAPs, in 2022 the Una-Sana Canton GAP was adopted. **USC GAP, among other things, include measures aimed at improving the position of transgender persons:** creating a guide for health workers on the treatment of transgender and intersex persons.

During the course of 2022, a trans person from Tuzla Canton requested information from the TC Mol regarding which “mandatory medical documentation” they must submit in the administrative procedure for sex marker change in personal documents. This application was a step that would help trans people in terms of strengthening the legal certainty of future sex marker change processes. TC Mol failed to provide a clear response and requested an opinion from the TC Ministry of Health, which is competent for this issue. The Ministry of Health requested an opinion/instruction from the FBiH Ministry of Health, given that the cantons do not regulate the issue, about medical documents required and the health institution competent to establish the fact of gender change. In parallel to this, TC Ministry of Health sent an initiative to the FBiH Ministry of Health to pass a by-law establishing a clear procedure in such cases and uniform treatment by administrative bodies on the territory of the Federation of FBiH.

Furthermore, in 2022, a trans person from the Republika Srpska submitted a request to the Health Insurance Fund of the Republika Srpska to obtain a referral to the Republic of Serbia for treatment and coverage of costs of a surgery – phalloplasty. Since the request was rejected in the first and second administrative instance, the case was claimed in an administrative dispute before the District Court in Banja Luka. In December 2022, the Court rendered a ruling annulling the first-instance and second-instance decisions and ordered that the Health Insurance Fund reconsider and better explain the case.

In the Federation of BiH, a trans person initiated the process of changing the sex marker. When this Report was finalised, the case was still under judicial decision-making in an administrative dispute, because the competent Ministry of the Interior and the Municipality declared themselves incompetent to resolve the matter at the request of the applicant.

An example of positive practice by institutions in the Republika Srpska is the reimbursement of costs for hormones to a trans person with residence in RS. The hormone is not on the RS Health Insurance Fund's List of Medicines; therefore, reimbursement was approved for a trans person who needs it as therapy in the process of gender reassignment.

## Social Reality

During the course of 2021 and 2022, SOC implemented a project that focused on the need to **adequately regulate legal gender change in Bosnia and Herzegovina**, as well as **cover the costs of gender reassignment procedures through the BiH health insurance system**.

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 the unique identification number to allow trans people to change their sex marker at their request and in accordance with their right to self-determination, without the need for prior medical intervention. It was SOC, **the advocacy group of trans people and their parents**, and competent institutions for health and the interior that worked together on these issues. To this end, a public policy proposal was made for the inclusion of trans people in the healthcare system of the entities and the District. In parallel, SOC, in cooperation with institutions, developed models to cover the costs of gender reassignment in the health insurance system. Furthermore, efforts were made to build the knowledge and capacity of relevant institutions for the implementation of current legal solutions in favour of human rights and equality of trans people.

At the end of 2022, an **online training** on the topic of healthcare of trans people (medical gender reassignment) was recorded and released, in cooperation with Pharma Press d.o.o. and an online platform for trainings and professional development of medical doctors in Bosnia and Herzegovina - **E-medikacija**. Until March 2023, medical doctors from Bosnia and Herzegovina will have the opportunity to watch/listen to a training resource on "Medical aspects of trans inclusive healthcare – gender reassignment".

One of the results that emerged from the project, i.e., SOC's cooperation with relevant institutions in the field of healthcare (through advocacy meetings), was an invitation from the FBiH Medical Chamber to write a paper and hold a lecture at the **Medical Law Congress** held in Tuzla, in November 2022. SOC presented the paper: *Between Law and Medicine: Legal-Medical Aspects of Transgender and Intersex Inclusive Healthcare in Bosnia and Herzegovina*.<sup>24</sup>

## Documented Cases

Through the legal counselling service, SOC receives inquiries from LGBTI people about their human rights. **In 2022, 12 trans persons contacted SOC with various inquiries that relate to their gender identity.** Three people asked for information about the possibilities of starting the transition (medical gender reassignment) and about sensitive medical experts in Bosnia and Herzegovina. Two people were interested in how to refund the costs of gender reassignment, while one person received a refund for the purchase of a drug-hormone from the health insurance in the Republika of Srpska. One trans person contacted us with a request for help in collecting funds for a gender reassignment surgery. Two trans people were interested in the possibility of legal sex change (marker) in personal documents, and two people were interested in the procedure of changing their personal name.

<sup>24</sup> International Congress of the FBiH Medical Chamber, 2022, <http://kongres.fmcbih.ba/bs/agenda/>

## Guidelines for Further Action

1. BiH, its entities and Brčko District must regulate legal gender change by enacting laws and other regulations that will systematically and comprehensively regulate the procedure for sex marker change in personal documents and the unique identification number based on the trans person's request and right to self-determination, without any need for prior medical intervention;
2. It is necessary to define in entities' and District's laws or by-laws what *gender reassignment* is when performed by a health institution, what constitutes medical documentation required to prove gender reassignment and the health institution to interpret that documentation.
3. SC, as well as other cantons, should implement GAP activities and goals related to transgender and intersex persons;
4. SC and other cantons 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 people;
5. BiH should implement the measures from the 2021-2023 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina concerning the medical and legal aspects of gender reassignment;
6. 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;
7. 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 people in the transition process.

# VI HUMAN RIGHTS OF INTERSEX PEOPLE

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## Legal Framework

BiH explicitly protects intersex persons in its anti-discrimination legislation by prohibiting discrimination on the ground 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>25</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.

The Una-Sana Canton GAP was adopted in 2022. **USC GAP includes, among other things, measures to improve the position of intersex persons:** development of a guide for health workers on the best treatment of transgender and intersex persons.

In the recent period, SOC requested **information from the registry offices** of municipalities throughout BiH to determine **the procedures for registering the sex of newly born intersex children**. Not a single municipality/city (out of a total of 22 contacted) had cases where it was not possible to enter the child's sex as 'male' or 'female'. The municipalities/cities state that the health institutions where the children are delivered did not provide information on the birth of intersex children in the past five years (2017-2021), i.e., that only male and female babies were entered in the health institutions' forms. In addition, the municipalities/cities stated that until data collection for this Report, they had no cases where they needed to extend the legal deadline to enter the

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<sup>25</sup> For more information on this topic, refer to earlier reports, in particular Chapter VI – Human Rights of Intersex People.

child's personal data, including sex. Furthermore, some municipalities/cities emphasised that they do not have any special guidelines/protocol in case of intersex newborns and that the FBiH MoI is the competent institution to adopt such regulations.

## Social Reality

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>26</sup>

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 to what extent are parents/guardians of intersex children 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 is upheld, i.e., the child's right to bodily integrity during medical treatment. 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.

26 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-interspolnedjece-u-zdravstvenom-sistemu-bosne-i-hercegovine/>

## Guidelines for Further Action

1. It is necessary to establish 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 GAPs should implement their 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 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 nongovernmental 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 global 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 ground 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>27</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 number of LGBTI people.**

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

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27 For more information on this topic, refer to the 2018 Pink Report - Chapter VII - Asylum

Russia's aggression against Ukraine in February 2022 influenced, among other things, the rise in LGBTI asylum seekers from Russia and Ukraine on the Balkan refugee movement route. These people, especially with Russian citizenship, are mostly present in the neighbouring Republic of Serbia due to the absence of entry restrictions there. A certain number of persons seeking asylum on the ground of SOGISC from Russia have recently appeared in Bosnia and Herzegovina – we will certainly address this topic in future reports.

## Documented Cases

**In 2022, SOC received 10 inquiries from LGBTI people** about asylum opportunities for themselves and/or their partners in EU countries or the US and Canada. Out of 10 inquiries, 4 persons inquired generally about the possibilities of obtaining asylum. Additional 4 inquiries referred to delivery of Letters of Support to BiH citizens who are already abroad and are planning to or have started the process of seeking asylum on the ground of SOGI. One inquiry was submitted by a foreign national who asked for SOC's support in the process of obtaining asylum in Bosnia and Herzegovina on the ground of sexual orientation. The last inquiry was about a person who needed temporary accommodation in Bosnia and Herzegovina.

We received the following information relating to 2022 from the Association Vaša prava from Sarajevo:

- two persons with Cuban citizenship, represented by the Association, entered the asylum seeker registration procedure before the Ministry of Security of BiH (they left BiH);
- one person, citizen of Sierra Leone, expressed their intention to apply for asylum, but in the meantime left Bosnia and Herzegovina and was not registered with the Ministry as an asylum seeker;
- one person from Iran was issued a positive decision of the Ministry of Security accepting the request for asylum and recognising the status of subsidiary protection (they left Bosnia and Herzegovina). Given that the person did not agree to start the proceedings before the Court of Bosnia and Herzegovina, they retained the status of subsidiary protection that was originally granted;
- one person, citizen of Morocco, was assisted by the Association in enabling re-access to the asylum procedure, since the procedure had been suspended. After the relevant actions, the person was granted access to the asylum procedure, and continued to enjoy the status of asylum seeker. The person also left BiH.
- As evident from the above cases, all of them have left Bosnia and Herzegovina in the meantime, by which they ended their contact with the Association Vaša prava.

We also received information from the Danish Refugee Council in BiH that during 2022 they cooperated with 5 LGBTI persons, however, only one person started the asylum-seeking procedure in BiH (first instance, second instance, and court proceedings, but unsuccessfully because they failed to prove potential specific and real threat on the ground of SO in the country of origin). Other persons were registered (expressed intention to seek asylum), as this is a prerequisite for using the camp’s services, but they did not pursue the official procedure as they had plans to exercise their rights in one of the EU countries.

<b>Year of advice sought and ground for seeking asylum</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>TOTAL</b>
Sexual Orientation	3	3	9	<b>15</b>
Gender Identity	2	1	1	<b>4</b>
Total Number of Cases	5	4	10	<b>19</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 failure to provide clear and understandable instructions on how to initiate an administrative asylum procedure proved to be the biggest problems for all LGBTI people who want to seek asylum in BiH.

### Guidelines for Further Action

1. Amend the BiH Asylum Law to explicitly include gender 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. Implement Activity 2.3. “Adopt guidelines for cases of LGBTI people as asylum seekers and train officials” from the 2021-2024 Action Plan to Improve the State of Human Rights of LGBTI People in BiH.
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;
5. Amend the Rulebook on the content, method of keeping and use of official records on foreign nationals (Official Gazette of BiH, 51/16) so that the Asylum Sector of the Ministry of Security of BiH keeps SOGI-based records of asylum seekers.

# VIII SOCIO-ECONOMIC POSITION OF LGBTI PEOPLE

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## 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 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in BiH**<sup>28</sup> adopted at the state level in July 2022. The action plan is the key strategic document that largely focuses on anti-discrimination in all spheres of society, primarily by providing recommendations through training of judicial office holders on discrimination, training of healthcare professionals, developing capacities of relevant institutions, but also through a series of proactive measures to raise awareness about discrimination among the general public and relevant representatives of public bodies.

The Action Plan is based on human rights standards and areas from the Appendix to Recommendation CM/Rec(2010)5 and it provides an overview of the measures that should be taken to ensure the human rights of LGBTI people. Recommendation CM/Rec(2010)5 contains a number of recommendations in the following areas: right to life, security and protection from violence, especially “hate crimes” and other hate-motivated incidents, and “hate speech”; freedom of association; freedom of expression and peaceful assembly; right to respect for private and family life; employment; education; health; housing; sports; right to seek asylum; national human rights structures; discrimination on multiple grounds.

Common to each of these areas is that it contains provisions that are based on the key obligations that arise for the member states in the field of human rights. For this reason, most of the recommendations refer to the need: to ensure structural changes in accordance with the constitutional set-up of BiH (enact appropriate laws, policies or establish competences of institutions), to improve the process of application of law (support in law enforcement, human-rights-based approach), to ensure consistent action (monitoring and data collection).

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

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<sup>28</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.

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.

The research<sup>29</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>30</sup>

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29 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>.

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

## 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. Ensure 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 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 programmes to improve family relationships and reduce LGBTI youth homelessness, as well as programmes to protect against domestic violence and establish safe houses for LGBTI victims of violence.<sup>31</sup>

<sup>31</sup> 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

Visibility of LGBTI community in Bosnia and Herzegovina is increasing and, as a result, the problems of homophobia, violence and discrimination are increasingly being put in the focus of the institutions. On the other hand, there is a need to socially destigmatise and accept LGBTI community, therefore, the activities of organisations that work to protect LGBTI rights in the Republika Srpska are important for achieving a change in awareness and attitudes towards LGBTI people, both among citizens and the institutions. Following the adoption of the *2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina*, the protection of the rights of LGBTI persons focuses on the systemic solution to their marginalisation, and should contribute to a safe environment that responds to the needs of LGBTI community.

Youth Centre 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. KVART's activities focus 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 LGBTI community.

Throughout the years of work, Youth Centre KVART has organised activities and provided services that enable LGBTI people to take part in educational, creative, psychological and other workshops, creating a safe space to build their personal capacities and providing help and support in cases of violence or discrimination.

Although the need to work with LGBTI people and to promote LGBTI rights in the Republika Srpska increases from year to year, the KVART Youth Centre is still the only organisation in the RS that strategically and programmatically works on LGBTI rights. By cultivating an activist approach in the fight for LGBTI rights, KVART implemented a series of project and non-project activities that significantly contributed to the visibility of LGBTI people in the Republika Srpska.

Over the last few years, we equipped a safe day room for LGBTI people in Prijedor. In cooperation with Sarajevo Open Centre, in 2021, we commenced the implementation of a joint project “Regionalising LGBTI inclusive psychosocial support and access to mental health services in Bosnia and Herzegovina” and we worked to strengthen the organisational capacity to expand and introduce LGBTI psychological support services. In 2022, KVART started providing psychological support and peer counselling services and ensured a space for the exchange of experiences, feelings and thoughts. During the year, we had more than 40 beneficiaries of psychotherapy and counselling services. Furthermore, there are regular, free of charge, support groups for LGBTI people in Banja Luka, led by psychotherapist Irena Đumić Jurić Marjanović.

To increase the visibility of LGBTI community, an activity was organised to mark May 17, the International Day Against Homophobia, Biphobia, Interphobia and Transphobia (IDAHOBIT). It was an opportunity to point out the problems that LGBTI community faces on a daily basis. The one-day programme was organised in cooperation with UNSA Geto, the informal group Oqueerno and the Organising Committee of BH Pride March; the activities were organised in the Social and Cultural Centre “INCEL” in Banja Luka. The programme included creative workshops, a talk with the members of the Organising Committee of BH Pride March, art exhibition, drag shows and entertainment.

In addition, one of the significant activities for LGBTI community is the Q Sports Camp, organised by KVART for the sixth year in a row. In this four-day program, we gathered 25 LGBTI people from Bosnia and Herzegovina. It included several activities in nature, such as field trips, hiking, and other recreational and interactive educational workshops, giving the participants an opportunity to get empowered and connect with each other in a safe space.

## Legal Framework and Institutional Action

Prosecution of hate crimes against LGBTI people is still not satisfactory. This is primarily because a decreasing number of LGBTI people willing to report violence due to distrust in institutions and fear of disclosure. On the other hand, the legal qualification of hate crimes is inadequate, and the perpetrators’ sanctions have been reduced to the level of misdemeanour sanctions. Despite the fact that LGBTI Action Plan was adopted in 2022, the willingness and openness of institutions in the Republika Srpska to protect LGBTI does not yet correspond to the activities envisaged under the Action Plan.

We must mention an incident that occurred in March 2023, when a group of LGBTI activists was attacked in Banja Luka by a group of hooligans and, although criminal and misdemeanour regulations in the Republika Srpska have established a mechanism to sanction actions motivated by prejudice or hatred towards a social group, there have been no convictions in the Republika Srpska so far for hate-motivated criminal offences.

In addition to working with 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. In 2022, in cooperation with the Police Academy from Banja Luka, a Handbook was published on police response to hate crime against LGBTI people. The Handbook was created for advance training of police officers to combat discrimination and violence motivated by hatred towards LGBTI people. It is also an example of good communication and cooperation between civil society organisations that promote and protect the rights of LGBT persons and institutions that should provide adequate support and protection to LGBTI people in cases of violence and/or discrimination. The Handbook outlines the relevant legal explanations of discrimination and hate crimes as concepts, presents a proposal for good practices and guidelines in the treatment victims of hate crimes by police officers, criminal processing of hate crimes, and the development of preventive action.

## Social Reality in the Local Community

In addition to the fact that social distance towards LGBTI people in Bosnia and Herzegovina is pronounced, the problems of homophobia, biphobia and transphobia in everyday life and the denial of the freedom to live authentically because of inadequate institutional support cause serious consequences for LGBTI people. The trend has continued of adult LGBTI people leaving, either to study at universities abroad or to fully move to other countries.

Hate speech in public sphere and its non-sanctioning open up space for inciting intolerance towards LGBTI people. One such example is the above incident that happened in March of this year, as the attack on LGBTI activists was preceded by hate speech, stigmatisation and calls to violence by citizens and politicians in the Republika Srpska.

## Guidelines for Further Action

1. Establishment of an LGBTI safe house in the Republika Srpska;
2. Introduce an appropriate system of control over prosecution of hate crimes and hate speech against LGBTI people by all institutions involved in the process (the police, prosecutor's office, court), and build trust of LGBTI people in local institutions of the Republika Srpska;
3. Adoption of a Law on Same-Sex Partnership in the Republika Srpska that would protect same- sex couples in the exercise of their full family rights.

## Activities of Organisations Advocating for LGBTI Rights in Tuzla Canton

Since its founding, Tuzla Open Centre (TOC) has worked to empower 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. Given that 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, Tuzla Open Centre works in two aligned directions: cooperation with public institutions and civil society organisations, creating a network of support for LGBTI people in Tuzla Canton, and empowering the local LGBTI community through informing, training and socialising, with the goal of creating a safe and free space for the local LGBTI+ community.

One of 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 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; in 2022 it worked on its sustainability through regular communication with members, meetings, info sessions and a Conference to mark International Day Against Homo/Bi/Transphobia which gathered the relevant stakeholders. In 2022, through advocacy and continuous work with public institutions, two contact points for LGBTI community were appointed by the Ministry of the

Interior of Tuzla Canton. Three info sessions were held for public institutions, namely: Cultural Centre Tuzla, Tuzla Canton Prosecutor's Office and Tuzla Centre for Social Work. The info sessions presented the results of the research: Needs and Problems of LGBTI People in Tuzla Canton, and focused on the freedom of assembly in Tuzla Canton. Through its activities, Tuzla Open Centre continues to expand the space of freedom and equality in Tuzla Canton.

Tuzla Open Centre has a specific strategic goal to annually develop and adapt a programme of activities and services to respond to real needs of LGBTI community members with the aim of empowering them. For this purpose, in 2022, Tuzla Open Centre conducted research on the real needs and problems of LGBTI community in Tuzla Canton. The research showed that LGBTI community in TC (as in other places in BiH) faces problems in all spheres of life. LGBTI community faces the problems of discrimination, violence and hate speech to an almost equal extent. The most significant data in the research refers to coming out – a much higher percentage of LGBTI persons in Tuzla Canton came out in comparison to the 2019 analysis. This tells us that the work of TOC and other local nongovernmental organisations is important for empowering LGBTI community.<sup>32</sup>

For the purpose of empowering LGBTI community, 21 workshops were held in 2022. The workshops were organised in a safe and free space, and to a large extent, they focused on mental health of LGBTI people. Tuzla Open Centre, thanks to Sarajevo Open Centre and the European Union, provided free of charge psychological and peer-to-peer support under the project “Regionalising LGBTI inclusive psychosocial support and access to mental health services in Bosnia and Herzegovina”. A total of 124 psychotherapy services and 81 peer to peer consultations were provided. Group psychoeducational activities were also organised under the project.

LGBTIQ topics are rare or not mentioned in our community's public space, making it impossible for citizens to form a realistic picture of the community. It is just as crucial to occupy media space as it is to occupy public space. Media visibility of LGBTI topics is critical to eliminating stereotypes and prejudices. In 2022, Tuzla Open Centre ran a year-long campaign marking important dates for LGBTI equality through social networks and a billboard campaign. The billboard campaign included 3 large billboards in Tuzla. The billboard campaign of Tuzla Open Centre received excellent feedback from both LGBTI community and the wider community. We also implemented *Tuzla open programme* show on the public “RTV7” Tuzla and posted articles on social media.

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<sup>32</sup> Research on the problems and needs of LGBTIQ community in TC, 2022, TOC.

In 2022, Tuzla Open Centre published the “Introduction to Queer and Gender Perspectives” outlining the basics of feminist and queer theory aimed at activist education of LGBTI community for the purpose of getting them more involved in LGBTI movement.

## Legal Framework and Institutional Action

Although the legal framework for the protection of the rights of LGBTI people and ensuring their equality has somewhat improved, hate speech, discrimination and violence against LGBTI community are still widespread in the BiH society.

Article 7 of the Constitution of Tuzla Canton 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 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 (adopted in 2021) reads 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 Tuzla Statute reads 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 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 through 12) which mentions 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 knowledge among representatives of public institutions on how to work with LGBTI people. In 2022, Tuzla Open Centre held info sessions for the purpose of raising awareness of public institutions' representatives about the problems that LGBTI community faces.

Tuzla Open Centre continued its cooperation with public institutions in 2022, 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 2026 Development Strategy of the City of Tuzla. Furthermore, financial support was provided from the City Budget for the local festival of queer art and activism Kvirhana. The National Theatre in Tuzla made its premises available to Tuzla Open Centre for Kvirhana free of charge and thus sent a clear message that public institutions are accessible to everyone. **In 2022, two contact persons for LGBTI community were appointed by the Ministry of the Interior of Tuzla Canton.**

An analysis of the Law on Public Assembly (conducted in 2021) revealed that the amendments made in 2015 only complicated the exercise of this right. In the Law on Public Assembly of Tuzla Canton, the responsibilities of organisers, leaders and stewards are far more numerous than the responsibilities of competent authorities, and they include liability for any damage committed by other persons, duty to maintain public order and peace, as well as obligation to ensure appropriate medical and fire protection measures. The notification procedure for assemblies is demanding, includes exhaustive documentation, the need for coordination with several competent authorities, and does not guarantee effective legal protection in case of restrictions by competent authorities.

In 2022, the second local queer art and activism festival Kvirhana was held in Tuzla. It was registered as a public event to the TC Ministry of the Interior and a meeting was organised with representatives of the TC MoI police to discuss the security of visitors. TC MoI police officers were not at all present during the festival, not even to take down information from the person responsible for the festival. As Tuzla Canton Law on Public Assembly foresees that the organisers may entrust the maintenance of peace and order at events to private security agencies, Tuzla Open Centre bore the costs of hiring a private security agency for the queer art and activism festival Kvirhana; twelve private security guards were engaged for 18 hours, which amounted to BAM 3,159.00. Ultimately, the biggest problem is the disproportionate division of tasks related to maintaining public order and peace between police authorities and organisers of public assemblies.

Although the Festival was held without any security threats, it once again confirmed the need to amend the Law on Public Assembly of Tuzla Canton and change the police practice regarding security of LGBTI events. Freedom of assembly and the treatment by judicial institutions of organisations dealing with LGBTI issues and the promotion of human rights should be prioritised.

## Social Reality in the Local Community

Homophobia, biphobia and transphobia are a daily reality for LGBTI community in Tuzla Canton, but also the entire Bosnia and Herzegovina. Public institutions do not do enough to combat hate speech, violence and discrimination against LGBTI people, and the distrust of public institution officials by LGBTI community is significant and prevents adequate reporting of LGBTI human rights violations. We have noticed a rise in peer violence and domestic violence among LGBTI people, while educational institutions remain closed to any discussion about LGBTI topics and equality. There still exists a great threat of psychological, verbal and physical violence against LGBTI people in the public sphere – a direct consequence of the rise of right-wing and fascist ideologies and policies. Tuzla Open Centre has recognised these difficulties and obstacles and strives to alleviate the consequences by providing information, training and a safe and free space for LGBTI community in Tuzla Canton.

### Guidelines for Further Action

1. Amend the Law on Public Assembly of Tuzla Canton and change the police practice in accordance with international legal standards of providing security at LGBTI events;
2. Promote LGBTI rights among the general public, to reduce the levels of homophobia, biphobia and transphobia in the public sphere;
3. Organise trainings for health professionals and teaching staff about violence against LGBTI people, especially in terms of family and peer violence, focusing on recognition of signs of violence, as well as its consequences;
4. Train and raise awareness of public protection authorities and the judiciary about LGBTI issues to develop awareness of the problems in access to justice for LGBTI community members;
5. Strengthen the capacities of local LGBTI organisations that provide services to LGBTI people to improve the quality and sustainability of these services;
6. Decentralise activist efforts and donor policies.

## Sarajevo Open Centre's Contribution to Activism in Local Communities

In 2021 and 2022, SOC implemented the project "Regionalising LGBTI inclusive psychosocial support and access to mental health services in Bosnia and Herzegovina"<sup>33</sup> in partnership with the Wings of Hope Foundation, financed by the European Union. The project has the goal of creating an environment in which LGBTI people will be encouraged and supported in **accessing mental health and social protection systems that provide inclusive and sensitised services**, and to strengthen and expand the institutional and civil society organisations network that provide psychosocial support for LGBTI people in BiH.

The project included work with institutions of social protection and mental health, strengthening the capacity of civil society organisations to provide inclusive psychosocial support to LGBTI people, campaigns for the media and social networks that, on the one hand, promoted the services offered by civil society organisations we cooperate with and, on the other hand, informed about the importance of caring for the mental health of LGBTI community. We formed **a network of organisations** that work with LGBTI community, as well as **a network of LGBTI persons and their families** to provide them with space for dialogue, mutual support, exchange of information and further contacts. We empowered LGBTI community in terms of mental healthcare through trainings and continuous support in six selected organisations.

For the purpose of expanding the network of civil society organisations that provide **peer-to-peer counselling and psychosocial support to LGBTI people** in BiH, we mapped the organisations we cooperated with in various ways during the project to build the capacities for introducing new and developing existing support services. These organisations are: **Tuzla Open Centre** from Tuzla, **Youth Centre KVART** from Prijedor, **Association "Novi dan"** from Banja Luka, **Psychological Support Centre Sensus** from Mostar, **Psychotherapy Centre "Be OK"** from Bijeljina and **Centre of Women's Right** from Zenica.

To ensure access to sensitive and inclusive support for LGBTI people, capacities of specialised mental health institutions and civil society organisations that provide these services must be built and their staff trained for LGBTI issues. This is exactly what we were doing in the project – numerous mental health experts employed in institutions, as well as in organisations that provide psychosocial support services, were trained by SOC and the Wings of Hope Foundation.

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<sup>33</sup> For more about the Project, visit: [www.soc.ba](http://www.soc.ba)

# GLOSSARY OF LGBTI TERMS<sup>34</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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<sup>34</sup> 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 specialised 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 specialised 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 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.

We have carried out media campaigns that have reached over one million citizens of BiH, and we also organised 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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