



**ILGA-EUROPE Review of the Human Rights Situation of Lesbian, Gay, Bisexual,
Trans and Intersex people in BOSNIA AND HERZEGOVINA**
Contribution to the 2014 EC Progress report
Based on the submission of the SARAJEVO OPEN CENTRE¹
16 May 2014

Introduction

In its review 2013, ILGA-Europe and its affiliated organizations confirmed that experiences of homophobia and transphobia remain very common in Bosnia and Herzegovina with limited or no action taken by authorities to address such discrimination, harassment or violence. In fact, the case of the derogatory comments made by the Deputy Minister of Human Rights and Refugees in one of the main newspapers was an example of how government officials also contributed to perpetuating homophobia.

Summary of developments since the last ILGA-Europe report

In everyday life, the situation of LGBT people in Bosnia and Herzegovina continues to be affected by the presence of homophobia and the aversion to homosexuality stemming from prejudice. Heterosexuality and patriarchal values are still very much engrained in the private life/family sphere, in educational institutions and in the media. School textbooks and curricula do not cover sexuality and health issues. Homosexuality, bisexuality, transgender, transsexual and intersex are rarely addressed books and still perceived as social deviations that create risk groups for society².

¹ILGA-Europe is grateful to Marina Barreiro from the Sarajevo support Centre for her support in preparing this submission

² Sarajevo Open Centre Report on Homo-/Bi-/Transphobia in Baha Schools, 2013: <http://soc.ba/en/izvjestaj-o-homofobiji-bifobiji-i-transfobiji-u-skolama-u-bih-2/>



While media reporting has increased and improved drastically in quality and content,³ manifestations of homophobia through hate speech (i.e. death and violence threats) and sensationalist reporting are still present, especially in online media.

A public opinion survey in 2013⁴ showed that 56.5% of the respondents still think “homosexuality must be cured,” which shows a lack of knowledge and entrenched stereotypes about homosexuality. For three out of four of the respondents, same-sex kissing in public is unacceptable, whereas having a sex change is considered repulsive by 59.5%.

A 2013 countrywide LGBT community research project⁵ showed that only every seventh person is out to his parents and family, confirming the low level of social and familial support of LGBT persons.

Political leaders are continuing to use discriminatory or derogative language. Samir Kaplan, the Minister of Culture and Sports of the Federation of BiH, stated in August 2013 in a magazine that pride parades in BiH were “*a demonstration of someone’s internal needs on the streets that has no sense; they are unnecessary and only cause more troubles because they provoke reactions such as criminal offences. They are the oppression of the majority by the minority.*” Similar language is used by ministers, members of parliament and political party representatives on all levels of governance.

After taking part in the EC delegation consultation seminar on March 7, 2014 and sending the open letter to the BH Council of Ministers, the BH Directorate for European Integration, the EU Delegation in BiH and the European Commission, civil society organizations have been officially invited to be part of the EU-BiH Structured Dialogue on Justice. The plenary session of the Structured Dialogue was held on May 13-14 2014 in Sarajevo. The Sarajevo Open Centre took part in the Structured Dialogue and advocated issues related to the prohibition of discrimination, anti-discrimination policies, gender equality, hate speech and hate crime.

³ Number of article in print media grew 60% from 2012 to 2013, while the number of texts about LGBT rights in Bosnia and Herzegovina is five times bigger then. Especially, the number of texts related to Bosnia and Herzegovina is five times bigger. See Sarajevo Open Centre Media analysis: <http://soc.ba/en/programmes/lgbt/lgbt-and-media/>

⁴ Sarajevo Open Centre Report on the 2013 Public Opinion Pool on Homosexuality: <http://soc.ba/en/56-5-of-bih-citizens-still-think-homosexuality-must-be-cured/>

⁵ 2013 LGBT community research report: <http://soc.ba/en/numbers-of-life-2/>



Non- discrimination

The BiH Gender Equality Law, adopted in 2003 and amended in 2009, is the first law that prohibits discrimination on the grounds of sexual orientation (*spolne orijentacije*).

The BiH Anti-Discrimination Law from 2009 covers the prohibition of discrimination on the grounds of “sex expression and/or orientation.”⁶ The terms (grounds on which discrimination is prohibited) lacks definition and its interpretation is left to the attorneys, prosecutors and judges.

The provisions of the national Anti-Discrimination Law have not been adequately reflected and transposed in labour law or higher education. There is a lack of consistency between the provisions covering different laws (cf labor or higher education laws provisions) when it comes to sexual orientation and gender identity.

Information about discrimination on the grounds of sex/gender, sexual orientation and gender identity, as well as on any other ground, is not collected or tracked because the BiH Ministry of Human Rights and Refugees have not put into place the necessary data collection mechanisms.⁷

The BiH Ombudsman Institution on Human Rights works on complaints. The decisions of the Ombudsman Institution are not binding. The very low number of registered cases based on sexual orientation,-4 cases in 2013⁸⁻⁹

There are no recently known court cases regarding discrimination on the grounds of sexual orientation or gender identity, although discrimination cases on those grounds have been documented. Existing discrimination court cases (on other grounds of discrimination) show that legal proceedings are lacking efficiency. Citizens do not trust the judiciary system and there have not been any trust-building mechanisms coming from institutions notably for the LGBT community.

⁶ terminology used is: “(s)polnog izražavanja i/ili orijentacije”, which literally means “sex expression and/or orientation”. Sex in this case refers to “(s)pol”, i.e. biological sex. Local translation for gender is “rod”, gender identity is “rodni/spolni identitet”, and sexual orientation is “seksualna/(s)polna orijentacija”.

⁷ According to the Law on Prohibition of Discrimination a database was to be created in the 90 days following the adoption of the Anti-Discrimination Law in 2009.

⁸ Data provided by the Ombudsman Institution BiH following a Sarajevo Open Centre request. The report about 2013 is not published yet.

⁹ Since September 2013, Sarajevo Open Centre has recorded 5 cases of discrimination on grounds of sexual orientation and/or gender identity by LGBT people seeking legal advice or that were reported in press.



Judges and prosecutors countrywide have received limited training related to the new Anti-Discrimination Law. The combined lack of trust from society in the institutions together with the lack of knowledge and training of law enforcement officials are not conducive to creating an enabling environment for an effective implementation of the law.

During the period under review, BiH has put into place or discussed a countrywide anti-discrimination strategy¹⁰ (including on the grounds of sexual orientation and gender identity). In terms of equality mainstreaming, public institutions at the federal or municipality levels have also failed to take initiatives to implement awareness raising activities related to LGBT rights.

Gender Identity

Gender identity (crucial for trans persons) is not covered by the law (but can be covered under “sex expression,” if there is a will for a broad interpretation by attorneys, prosecutors and judges). Different laws on the state, entity and cantonal levels do cover sex/gender, sexual orientation and gender identity

Family law and same sex partnerships

The family laws of FBiH, Republika Srpska (hereinafter RS) and Brčko District (hereinafter BD) define marriage and domestic partnership as a union between a woman and a man even though jurisprudence (for example, the case *Schalk and Kopf vs. Austria*, 30141/04) of the European Court for Human Rights indirectly binds BiH, as a Council of Europe member state, to extend its legislation to recognize some of the rights and obligations (i.e. social rights) that come out of the union between same sex couples. There has in so far not been any developments aiming to adopt registered partnership for same-sex couples law in any of the BiH federal units.

¹⁰ The Law on Prohibition of Discrimination contains a provision related to the development of an anti-discrimination strategy and calls for consultation of civil society.



Bias motivated speech and violence

The BiH state-level Security Ministry and the Organization for Security and Co-operation in Europe (OSCE) called BiH federal units (FBiH, RS and BD) to adopt amendments to their criminal laws and to include hate crime regulation. The RS and BD did so in 2010, i.e. including the grounds of sex/gender, sexual orientation and gender identity in the hate crime definition. FBiH did not adopt amendments to its criminal law.

Since December 2012, the CSOs Coalition to Combat Against Hate Crime and Hate Speech¹¹ has been advocating the need for the adoption of an hate crime regulation in the Criminal Law of FBiH. Amendments were adopted in July 2013 in the FBiH House of Representatives but not confirmed through adoption in the second chamber - the FBiH House of Peoples.

Hate speech provision covering sexual orientation and gender identity are not included in the Criminal Laws of FBiH, RS or BD. There has been no attempt to amend the criminal laws to include hate speech provisions.

A countrywide LGBT community research project¹² showed that every third LGBT person has experienced violence, but only every seventh case of violence has been reported to the police. Law enforcement institutions need to need to address the question of trust building, especially towards minority groups (i.e. returnees, LGBT people, Roma).

Since September 2013, Sarajevo Open Centre has documented 8 cases of hate crime on grounds of sexual orientation and/or gender identity, which means a remarkable increase in comparison with the same period last year. Sarajevo Open Centre has also recorded 8 cases of hate speech since September 2013. No case has been instructed so far since the criminal laws don't cover hate speech.

¹¹ <http://soc.ba/en/hate-crime-to-be-introduced-into-the-criminal-code-of-federation-of-bih/>

¹² 2013 LGBT community research report: <http://soc.ba/en/numbers-of-life-2/>



The Police of the Canton Sarajevo have been cooperating since 2012 with civil society organizations that are working on LGBT rights. Educational and informative sessions took place and the police committed to continue working on LGBT rights issues in 2014 by including LGBT and hate crime topics as part of the required professional training. A recent positive development has been the decision taken in May 2014 by the Ministry of the Interior of Canton Sarajevo regarding the establishment of a position of contact persons, police officers, to work with LGBT victims of crime in four Sarajevo police precincts (Stari Grad, Centar, Novo Sarajevo and Novi Grad).

Freedom of Assembly

Freedom of assembly is guaranteed by the constitution and laws, but in practice, different minority groups are not being provided the rights to exercise it and this concerns the situation, of LGBT people as well.

On February 1st 2014, the LGBT film festival Merlinka in Sarajevo was attacked by a hooligan group. While the event was registered with the police 16 days in advance, the police authorities were 50 minutes late to the festival location. During this attack, two festival speakers were physically hurt and 25 other participants experienced fear traumas. While the main human rights institutions and ministries were invited to condemn the attack, the BiH Human Rights Ombudsman was the only official body to do so. It took 14 days to the Baha Ministry for Human Rights and Refugees to issue a position

Taking into account the violent attacks against another LGBT festival in 2008, Queer Sarajevo Festival, where 8 participants were injured, and the perpetrators never prosecuted, and observing that the same modus operandi leading to similar results happened in this last Melina Festival concerns are being expressed about the ability of the Baha to guarantee and protect the freedom of assembly of LGBT people.

In its adopted resolution in February 2014, the European Parliament expressed its shock following the brutal attack on participants at the Melina Film Festival in Sarajevo and called on the authorities, in this connection, “to investigate the attack fully and to ensure that in the future similar events are afforded appropriate protection by the police; calls on the EU Delegation, the Baha authorities and political parties openly to support the victims of this attack and to condemn such action¹³,”

¹³ European Parliament resolution of 6 February 2014 on the 2013 progress report on Bosnia and Herzegovina (2013/2884(RSP))



Recommendations

Bosnia and Herzegovina need to ensure that its laws and policies protect all human rights of LGBTI persons in accordance with the existing international legal standards applicable at the level of the United Nations and the Council of Europe and notably the recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

Bosnia and Herzegovina need to fully integrate EU fundamental rights acquires and notably laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender Recast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

At the domestic level, Bosnia and Herzegovina need to:

1. Amend the Baha Anti-Discrimination Law to include gender identity and sexual orientation (as opposed to the existing grounds: sexual expression and/or orientation), with clear definitions of the terms;
2. Harmonize all other laws in education, employment, sports, etc. of Federation of Baha, of the Republic of Ruska and the Beckon District with the relevant provisions of the law on gender equality and the law on prohibition of discrimination;
3. Amend the Fib Criminal Law to include hate crime and hate speech provisions, including, for example, on the grounds of gender identity and sexual orientation;
4. Amend the RS and BD Criminal Law to include hate speech provisions, for example, on the grounds of gender identity and sexual orientation;



5. Adopt ,in line with the EP resolution¹⁴ and civil society requests, an anti-discrimination strategy that defines concrete and realistic measures on how to fight discrimination (including the grounds of sexual orientation and gender identity) and prejudices and promote tolerance and equality at the federal, regional and local levels;
6. Develop legal provisions (for example, a registered partnership law on the entity and Beckon District level) that regulates the rights and obligations of same sex unions;
7. Guarantee and protect freedom of expression and peaceful assembly of LGBT people in accordance with article 12 of the Charter of Fundamental rights of the EU, article 11 of the ECHR and the recommendation CM/Rec(2010) of the Committee of Ministers of the CoE;
8. Guarantee that medical support to transsexual persons during sex reassignment procedure is provided and the corresponding costs covered by the official social security system;
9. Train Law enforcement institutions' representatives (police, prosecutors, judges) on anti-discrimination, hate crime and hate speech regulation, focusing on marginalized groups' (i.e. women, Roma, returnees, LGBT persons) needs and problems;
10. Implement trust-building mechanisms for marginalized groups (i.e. women, Roma, returnees, LGBT persons);
11. Ensure that non-governmental organizations defending the human rights of lesbian, gay, bisexual and transgender persons are fully consulted and involved on the adoption and implementation of measures that concern LGBT rights;

¹⁴ European Parliament resolution of 6 February 2014 on the 2013 progress report on Bosnia and Herzegovina (2013/2884(RSP))