

Contribution from Sarajevo Open Centre, ILGA Europe and ERA to Bosnia and Herzegovina's Report 2016

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Summary of key developments and trends

2015 has not been a year of progress in terms of LGBTI people's (lesbian, gay, bisexual, transgender and intersex) human rights, compared to 2014. Unfortunately, the number of cases of discrimination and violence on the grounds of sexual orientation, gender identity and sex characteristics documented by the Sarajevo Open Centre has not gone down – it has actually gone up. A particularly worrying trend is inadequate processing of the cases of attacks on LGBTI individuals, mostly in cases where they exercise their right to public assembly: the case of Merlinka in 2014 and the attack on the visitors of the Art Kriterion Cinema in March of 2016.

It is almost a year after the State Parliament held the first special session on the state of LGBTI people's human rights in Bosnia and Herzegovina (BiH) and formed three concise conclusions, but these conclusions have yet to be implemented and achieved.

In December 2015, authorities made a pioneering move: the government of Republika Srpska passed their Annual Plan for Implementation of the Gender Action Plan (GAP) for 2016, which also contains specific measures for protection of LGBTI people's rights. The government of the Federation of Bosnia and Herzegovina followed soon after in March of 2016. An LGBTI inclusive Anti-discrimination Action Plan was adopted by the BiH Council of Ministers in April 2016.

Furthermore in December 2015, the BiH Council of Ministers confirmed the draft proposal of the Law on Changes and Amendments of the Law on Prohibition of Discrimination, which includes amendments submitted by the Sarajevo Open Centre that would ensure better protection from discrimination for all LGBTI individuals. If adopted, it will be the first Anti-discrimination Law that includes sex characteristics as a ground on which discrimination is prohibited. The Law entered legislative procedure in April 2016.

Main action points for the coming year

The government should be urged to:

- Develop a multi-year Action Plan for the Equality of LGBTI persons that specifies the activities to be undertaken by the State, Entities, Brčko District and the Cantons, in line with Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe on measures for tackling discrimination on the basis of sexual orientation or gender identity.

- Amend the criminal codes of all three administrative units in Bosnia and Herzegovina (Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District) to expand the number of prohibited grounds (including sexual orientation, gender identity and sex characteristics) for the criminal act of incitement to hatred and violence.
- Adopt and implement laws in all three administrative units that would enable legal recognition of same-sex unions and regulate their mutual rights and duties.
- Adopt and implement laws that would explicitly regulate and simplify legal gender recognition procedure without the request for full medical reassignment.

Bias motivated violence, hate speech, hate crimes

In the 2015 progress report, the government was urged to:

- Address threats and attacks against LGBTI persons, and adequately investigate and prosecute cases of attacks and intimidation against human rights activists,
- Amend the Republika Srpska and Brčko District criminal codes to include gender identity and sexual orientation as grounds for hate speech, and include hate speech and hate crime in the Federation's criminal law,
- Systematically collect and track information on homophobic and transphobic hate crimes,
- Promote reporting of incidents of violence, attacks and threats against LGBTI persons,
- Prosecute the perpetrators of the 2014 attack on the Merlinka Queer Film Festival

Little progress was made concerning these action points. Threats and attacks against LGBTI persons are still not being adequately investigated and prosecuted, including the attack on the 2014 Merlinka film festival. Gender identity and sexual orientation are still not included as grounds for hate speech, reporting is not promoted and information is still not systematically collected and tracked.

In the coming year, the action points of 2015 should be reiterated, with the addition of continued training and informing of judges, prosecutors, police officers and state officials on hate crimes and incitement to hate and violence against LGBTI persons. Also, the government should be urged to introduce LGBTI inclusive modules in curricula of law schools and police academies and in the permanent and specialist programs of training for police officers, and civil service exams.

In April 2016, Criminal Code of Federation of Bosnia and Herzegovina was amended to include hate crime regulation, after a Law on Amendments to the Criminal Law drafted by the Federal Ministry of Justice was adopted in both of the Houses of the Federation of Bosnia and Herzegovina's Parliament. However, this Law has still not been published in the Federation's Official Gazette.

Research conducted by the National Democratic Institute in 2015 showed that 15% of LGBT people in Bosnia and Herzegovina have experienced physical violence because of their sexual orientation and/or gender identity, and that as many as 72% of LGBT people in Bosnia and Herzegovina have experienced verbal abuse and harassment. However, the research did not include intersex persons.

In 2015, Sarajevo Open Centre documented 103 instances of hate speech and incitement to hate and violence and 20 crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity. In the period January-March 2016 Sarajevo Open Centre documented 23 instances of hate speech and incitement of violence and hate and two crimes and incidents motivated by prejudice on the basis of sexual orientation and/or gender identity. Hate crimes varied from blackmails and threats, offensive graffiti, stalking and intimidation, domestic violence and physical violence.

In December, a 14 year-old boy in Sarajevo committed suicide, allegedly due to homophobic bullying and abuse he experienced at school. The Prosecutor's Office of Canton Sarajevo and the Bosnia and Herzegovina Ombudsperson for Human Rights both announced they would work on this case. In March 2016 they published that no evidence was found which would confirm the claims made by the parents and that nothing in this case indicates that a crime was committed. However, this case clearly demonstrated that there is a link between xenophobia, homophobia and violence, and peer-to-peer violence.

Freedom of assembly, association and expression

In the coming year, the government should be urged to continue improving the institutional and political environment to create conditions for full freedom of expression and assembly.

An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 69% of LGBTI people surveyed in Bosnia and Herzegovina felt that public LGBTI events have improved the position of the LGBTI community in society.

In 2015, the Merlinka LGBT Film Festival was held in Sarajevo and Tuzla without any problems. However, an investigation by the Prosecutor's Office into the 2014 attack on the festival is still on-going.

Equality and non-discrimination

In the 2015 progress report, the government was urged to take action on the following points:

- More even implementation of anti-discrimination legislation and the adoption of a country-wide anti-discrimination strategy,
- Introduction of an effective free legal aid system to guarantee efficient access to justice,

- Improve the legal and institutional framework for the observance of human rights, by among others revising the anti-discrimination law to include a clear definition of gender identity and sexual orientation,
- Adequately reflect and transpose anti-discrimination legislation in labour law and higher education,
- Introduce legal gender recognition,
- Removal of procedural hurdles to implementation of the anti-discrimination law.

Some progress was made concerning these action points. Amendments to the Anti-discrimination law are in parliamentary procedure, covering sexual orientation, gender identity and sex characteristics as grounds on which discrimination is prohibited. On a practical level, there has not been any relevant progress, as no actions have taken place. Upcoming work on a general Anti-discrimination and Human Rights Strategy and implementation of LGBTI inclusive mainstream action plans might prepare the grounds for sustainable institutional work on LGBTI rights. Support for trans people is still not being provided by any institution.

For the coming year, the action points of 2015 should be reiterated, and furthermore, the government should be urged to:

- Adopt a multiyear public policy (action plan) for equality of LGBTI persons which would be applied in the entire state and which would define specific and realistic measures on state, entity, cantonal and local level;
- Include the rights and needs of LGBTI persons in all public policies at all levels of government to stop the institutional ignorance of this minority and under-privileged group;
- Ask the BiH Ombudsman Institution to urgently issue a special report on the state of rights of LGBTI persons in Bosnia and Herzegovina which would serve as a basis for developing further actions and policies;
- Introduce LGBTI-specific modules in education of future teachers.

An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 51% of the LGBTI people surveyed in Bosnia and Herzegovina had been personally discriminated against because of their sexual orientation or gender identity.

Amendments to the Anti-Discrimination Law, including prohibiting discrimination on the grounds of sexual orientation, gender identity and sex characteristics, were adopted by the Council of Ministers (state government) in December. The draft law entered the Parliamentary Assembly's procedure in 2016.

The Government of Republika Srpska adopted their operational plan for the implementation of the Gender Action Plan for 2016 on 15 December; this is the first operational plan approved by a government in Bosnia and Herzegovina that explicitly mentions LGBT people. The government of the Federation of Bosnia and Herzegovina followed soon after in March of 2016.

The BiH Council of Ministers adopted an LGBTI inclusive Anti-discrimination Action Plan in April 2016. This is the first time that the governments in Bosnia and Herzegovina are including LGBTI people's rights in their action plans. The Anti-discrimination Action Plan presents 32 measures to be taken by institutions. 6 of 32 activities are related to LGBTI rights. Those measures are:

- To initiate changes of health protection laws in order to provide access to sex reassignment surgeries for transsexual people,
- To initiate changes of the Birth Register Books Law of the Brcko District,
- To amend the BiH Gender Equality Law and BiH Anti-Discrimination Law in order to clearly include sexual orientation and gender identity,
- To develop an multi-annual LGBTI Equality Action Plan,
- To introduce trainings for judges, prosecutors, police officers and civil servants on discrimination of LGBTI people, and
- To initiate changes of criminal laws in BiH in order to include hate crime regulation, covering sexual orientation and gender identity.

Activities are to be implemented during 2016, with the involvement of ministries and institutions on state, entity and cantonal level. It remains to be seen how these measures will be implemented, but our hopes are high, especially because of the evolving partnership between the Sarajevo Open Centre and the institutional mechanisms for gender equality.

The BiH Ombudsman Institution recorded eight cases of discrimination on the basis of sexual orientation and gender identity in 2015 and at the beginning of 2016.

Sarajevo Open Centre documented six cases of discrimination in 2015 and three cases in the first quarter of 2016. Four cases were discrimination in the services sector, three of which were bans to enter cafes or discriminatory behaviour in cafes, and one was discrimination in offering services by the company which distributes promotional material. From other documented cases: one related to discrimination of blood donors in Republika Srpska, the second case was discrimination and intimidation of a foreign couple while they were crossing the border and the third was loss of work place because of sexual orientation; and two cases of public incitement to discriminate against LGBT persons were recorded.

Legal recognition of same-sex couples

In the coming year, the government should be urged to pass and implement laws in all three jurisdictional units (Republika Srpska, The Federation of Bosnia and Herzegovina and Brčko District) which would legally recognise same-sex partnerships and define the rights and obligations arising from cohabitation of two persons in a same-sex partnership (with a particular focus on social and economic rights).

During 2015, a number of persons looking for information on registering their partnerships in the countries in the region and in the EU contacted the Sarajevo Open Centre. Three of these persons wanted to register their partnerships in Slovenia, where a precondition is a confirmation that they are unmarried and proof that Bosnia and

Herzegovina does not recognise these partnerships. Sarajevo Open Centre contacted the Ministry of Human Rights and Refugees in order to obtain the document to confirm that same-sex partnerships cannot be registered in Bosnia and Herzegovina. Two more persons contacted the Sarajevo Open Centre asking for information on this document in early 2016.

Although it is believed that the majority of citizens in Bosnia and Herzegovina is against legal regulation of same-sex relationships, recent research conducted by the National Democratic Institute showed that 30% of the general population of Bosnia and Herzegovina is in favour of same-sex couples having all economic, social and other rights that heterosexual couples gain through marriage and civil partnership, with the exception of adoption.

Rights and equal treatment of trans and intersex persons

In the coming year, the governments should be urged to:

- Pass and implement laws in all three jurisdictional units (Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District) that would simplify the procedure of legal sex reassignment and which would enable the legal change without having to complete medical transition;
- Pass and implement laws in all three jurisdictional units (RS, the Federation of Bosnia and Herzegovina and Brčko District) which would define the duties of medical institutions to form teams and train professionals who could follow the process and perform medical procedures for sex reassignment in Bosnia and Herzegovina, and which would establish the obligation of the Health Bureau to cover the cost of these procedures out of the health insurance budget.

NGO SOC published 'Life Beyond the Set Norms', the first major study on trans people in Bosnia and Herzegovina, in December 2015. The research showed that 70% of trans people surveyed saw fear of violence and exclusion as their main obstacle from living freely. 18% were discriminated against in health care institutions and 30% in education. 60% of trans people that participated experienced physical violence and 80% experienced psychological/emotional violence. 100% of trans people questioned had encountered problems while filing for personal documents and 88% of trans people in the study would change their sex marker on documents right away if they were legally able to do so.

In 2015, Sarajevo Open Centre was contacted by six trans persons who inquired about the possibility of changing the sex-category on their personal documents. Unfortunately, none of them could change it, because they had not undergone complete medical sex reassignment.

Public awareness and attitudes

From June to August of 2015, the National Democratic Institute, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights

Defenders carried out opinion polls in the Western Balkans on attitudes towards LGBTI people. In Bosnia and Herzegovina, 44% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 52% said they would not vote for a political party that championed the rights of LGBTI people.

A supportive and enabling environment for civil society

Coalitions and initiatives for human rights in Bosnia and Herzegovina for the most part include LGBTI rights in their advocacy actions and efforts. This is also a result of the work of organisations working on LGBTI rights, which are involved in larger civil society networks. This cooperation has resulted in an initiative by several CSOs in May of 2016 to jointly mark May as the LGBTI Equality Month in Bosnia and Herzegovina, with different activities each of them will conduct. The organisations issued a request to all institutions of Bosnia and Herzegovina, the entities, cantons, cities and municipalities, concretely Bosnia and Herzegovina Ministry for Human Rights and Refugees and entity ministries, to intensify their work on LGBTI human rights.¹

¹ <http://soc.ba/en/may-lesbian-gay-bisexual-trans-and-intersex-equality-month-in-bosnia-and-herzegovina-in-2016/>