

ILGA-Europe's Review of the Human Rights Situation of LGBTI people in BiH Contribution to the 2015 EC Progress Report

In cooperation with Sarajevo Open Centre and based on ILGA-Europe's 2015 Annual review

Period covered: October 2014-May 2015

A summary of key developments and trends

LGBTI rights continue to remain politically irrelevant in BiH, especially in the current context of political stagnation and instability following the elections in October of 2014. The FBiH Criminal Code was not changed to include bias as a motive of crimes while violence against LGBTI people has increased. Following the attack on Sarajevo LGBTI film festival earlier in 2014, no perpetrators had been found and brought to justice, confirming a general trend of weak judicial responses to hate crime. The Ombudsperson of BiH has failed to draft a special report on the human rights situation of LGBTI people despite the repeated request from more than 20 CSOs to issue such report. Positively, LGBTI activism has flourished and the number of active LGBTI groups and the visibility of their work have increased. Importantly also, the Constitutional Court of BiH ruled in September of 2014 that authorities had failed to uphold LGBTI activists' right to freedom of assembly during the Queer Sarajevo Festival in 2008. This ruling was made public in October of 2014. Finally, by the end of 2014 around 1000 police officers were trained on homophobic and transphobic hate crime with the help of Sarajevo Open Centre.

Bias motivated speech

- In the period between October 2014 and April 2015 Sarajevo Open Centre documented 27 incidents of hate speech against LGBTI people. Most incidents took place online, including comments, Facebook pages, or articles on xenophobic online portal *Saff*. *Saff* and its journalists, with their continuous unprofessional, false and unconfirmed reporting on LGBTI people and activism directly and unequivocally incited to violence towards, among other groups, LGBTI people, calling them 'sick' and 'unnatural'. On several occasions they also published the names of LGBT activists putting them directly at risk of attacks. Although almost all of these cases were reported to relevant institutions, no one so far had been sanctioned for incitement to hatred.
- Latest examples of incitement to violence and direct threats to a member of Sarajevo Open Centre are the comments on the web portal www.klix.ba to the article *Political Act*

or Provocation: Is BiH Ready for the Pride Parade in March 2015. Threats and incitement to violence were reported to the police and their response is awaited.

Bias motivated violence

- Violent attacks and threats towards LGBTI activists and community members have increased since October 2014. During the reporting period only Sarajevo Open Centre documented 7 incidents of hate crime on the grounds of sexual orientation and gender identity, most of which had targeted activists and members of LGBTI groups.
- Although BiH Constitutional Court ruled in September 2014 that the freedom of assembly has been violated in the case of Queer Sarajevo Festival in 2008, no perpetrators were brought to justice. The perpetrators of violence during Merlinka Queer Film Festival in February 2014 have not been prosecuted either, confirming a general trend of weak judicial responses to hate crime.
- Despite the repeated request by OSCE mission in BiH and by the Coalition for Combat against Hate Speech and Hate Crime to amend the FBiH Criminal Law as to include provision on hate crimes, including on the basis of sexual orientation and gender identity, FBiH parliament has failed to do so.

Equality and non-discrimination

- Systematic discrimination based on sexual orientation and gender identity is still omnipresent. BiH Ministry of Human Rights did not propose amendments to the BiH anti-discrimination law related to the explicit definition of sexual orientation and gender identity as prohibited ground of discrimination, despite the recommendations of the European Commission. The current version of the law, adopted in 2009, prohibits discrimination on the ground of 'sex expression and/or orientation'.
- There is still not a single policy document (i.e. a strategy or an action plan on state, entity or cantonal level) that defines any kind of specific measures to fight discrimination and promote social inclusion of LGBTI people. Improvement of the state of LGBTI human rights depends only on the initiative and lobbying work of human rights advocates and the good will of individuals in the institutions.
- The BiH Ombudsperson Institution ignored the request of civil society organisations to produce a Special Report on the state of LGBT human rights despite the repeated request from a number of civil society organisations to produce such report.
- During the reporting period, Sarajevo Open Centre documented two cases of discrimination on the grounds of sexual orientation.
- The family laws of FBiH, RS, and Brčko District (BD) define marriage and domestic partnership as a union between a woman and a man. There was no attempt to adopt a law on registered partnership for same-sex couples in any of the BiH administrative units. Among other things, same-sex couples cannot access reproductive technologies or adopt children, as the law reserves these rights only for married couples and heterosexual couples in domestic partnerships.

- In February 2015, the Facebook page of coffee shop *Senat* in Banja Luka posted a status, inviting everyone to the newly opened business, except “faggots”. The comments on the post incited to violence against LGBTI people and an activist whose photo was published on the facebook page of the shop has received serious threats. The owner of the shop has refused to remove his post after requests from several Facebook users and LGBTI activists to do so. The case was reported to the police by a member of Banja Luka Association of Queer Activists.

Freedom of assembly

- After the Queer Sarajevo Festival was attacked in 2008, the Constitutional Court confirmed that organisers’ right to freedom of assembly had been violated. The court ordered the federal government and the government of Sarajevo Canton to each pay Association Q 3.000 BAM (1.500 EUR) for omitting to protect the right of assembly of LGBT people.

Police and law enforcement

- With the assistance of the Sarajevo Open Centre, the cantonal ministry has trained more than 1000 police officers about homophobic and transphobic hate crimes during 2014. In addition, in March 2015 Sarajevo Open Centre in partnership with OSCE has trained 31 police officers of Zeničko-dobojski Canton about hate crimes, including homophobic and transphobic crimes.
- While on holiday, a gay couple from the Netherlands was intimidated by border officers as they drove from Croatia into Bosnia and Herzegovina. The officers intimidatingly asked if they were boyfriends, which led the men to pretend they were friends; rummaged through their shared suitcase; and showed personal items including a bottle of lubricant to colleagues while laughing. The couple several weeks later complained to the Bosnian embassy in the Netherlands. The ambassador offered his sincere apologies, and wrote that he had passed on their complaint. NGO Sarajevo Open Centre also filed a complaint to the Ombudsperson for Human Rights in relation to this case.

Trans*

- Trans people are completely marginalised within the BiH society and subjected to ongoing structural discrimination. The official social healthcare system does not cover any costs related to gender reassignment surgeries that are taking place abroad. There is a lack of medical and financial support for trans* people. Operations have to be done abroad, while the official healthcare system does not cover any of the related costs. However, once sex reassignment is complete, transexual people can legally change their name, personal identification number and documents. Only the Brcko District Law on Registers does not stipulate “sex reassignment” explicitly as a ground for legal change of personal data.

* *Trans* is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth.