



MONITORING OF THE IMPLEMENTATION OF
COMMITTEE OF MINISTERS' RECOMMENDATION CM/REC
(2010)5 ON MEASURES TO COMBAT DISCRIMINATION ON
GROUNDS OF SEXUAL ORIENTATION OR GENDER IDENTITY

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Executive summary

Year 2010 was a crucial year for LGBT community all over the world because that was the year when Committee of Ministers of Council of Europe adopted Recommendation on measures to combat discrimination based on sexual orientation and gender identity. This significant document lists measures that countries should adopt in order to combat discrimination on this bases. These measures are in accordance with the Convention for Protection of Human Rights and Fundamental Freedoms and its protocols, and Bosnia and Herzegovina (BiH) is a signee of the Convention, therefore it is ought to apply these measures even though the Recommendation itself does not represent a binding document.

In year 2012 Bosnia and Herzegovina, in the framework of an ILGA Europe re-granting project, presented a report regarding the “Monitoring of the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity”. It was a first time that our country took a serious look at general position of LGBT community regarding all areas of life. That years report showed that BiH only protected LGBT people through Anti-discrimination law of BiH and through hate crime regulation in Republika Srpska (RS) and Brčko District (BD), however there were no trainings for relevant institutions in order to provide them adequate knowledge on how to deal with problems with which this population faces. Participation in the first monitoring project provided us with the necessary information we needed to see which actions should be taken. Thanks to that, Sarajevo Open Centre intensified their cooperation with relevant institutions and thanks to their work and work of other non-governmental and civil society organisations, BiH adopted an amendment to existing Law on the Prohibition of Discrimination, which now includes (adequately listed) sexual orientation and gender identity, as well as sex characteristics, as grounds for prohibition of discrimination. Law on Equality of Sexes also guarantees equal treatment of all persons regardless of their sex or sexual orientation.

Even though the legislative framework has improved over the past three years, discrimination, hate speech and violence against LGBTI community is still present in our society, which prevents LGBTI people from leading a normal life and engage in all kinds of social activities.

Recommendations to member states for priority actions

I Recommendations regarding hate crimes and hate speech

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.
6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination

against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II Recommendations regarding freedom of association, expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

III Recommendations regarding right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

IV Recommendations regarding employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

V Recommendations regarding education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VI Recommendations regarding health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological,

endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VII Recommendations regarding housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

VIII Recommendations regarding sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

IX Recommendations regarding right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

X Recommendations regarding national human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XI Recommendations regarding discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

Introduction

The Recommendations recognize that LGBTI community has been subjected to homophobia, transphobia and other forms of discrimination and violence for centuries, and it is still ongoing in great number of states. That is why the recommendation includes number of measures to be applied in order to overcome discrimination, intolerance and social exclusion. Member states are ought to review existing legislative and collect relevant data in order to monitor implementation of these measures, and to make sure that victims of discrimination and violence have access to effective legal remedies.

Methodology

The new questionnaire has been drawn on the basis of the 2012 version, containing different sets of questions based on the structure of the Recommendation. Questionnaire has been disaggregated in different parts taking into consideration the jurisdiction of ministries and institutions the questionnaire was addressed to. It has been disseminated to seventy (70) relevant institutions. Only twenty-seven (27) of them provided us answers, which is not satisfying, but it is more in comparison with the results we got in 2012 (21 answers out same number of addressed institutions). After the amendments to the Anti-discrimination Law, no further review of existing legislative has been carried out, nor were any measures taken in order to redress such discrimination.

First method we used is collecting answers on questionnaire we sent to institutions, and the second method is gathering information and relevant data from researches conducted by Sarajevo Open Centre and other organisations of civil society, such as Pink Report from 2017 and 2018, an annual report on human rights of LGBTI persons in BiH, Numbers of Equality - research on problems and needs of LGBTI persons BiH in 2017, both published by Sarajevo Open Centre. General conclusion will be concluded based on all information we gathered using these sources.

Political system: Bosnia and Herzegovina's complex political structure represents an obstacle by itself, since we have two entities, Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and one district, Brčko Distrikt (BD). Federation is divided into 10 cantons, and Republika Srpska is centralised. Each of these structural components has its own constitution, while Brčko Distrikt has a statute. Laws and institutions are also established on all of these levels: entity/district and canton. Therefore, the implementation of the Recommendation depends on ministries and institutions at state, entity/district and canton level, making the whole decision-making process slower than it is in neighbouring countries.

However, our country, in spite of this complexity, adopted an anti-discriminatory law which included sexual orientation and gender identity as grounds for prohibition of discrimination, as well as criminal codes of RS and FBiH, Law on Sports in BiH, while some other laws incorporated only sexual orientation as ground for prohibition of discrimination, such as Labour Law. There is still a lot of work ahead of us, especially regarding implementation of these laws and amending other existing laws. It is also necessary to make legislation more intersex inclusive, since their rights have been in shadow comparing to the rights of LGB and trans people. Law on Prohibition of Discrimination is the only law which mentions sex characteristics as a ground for prohibition of discrimination, and all other laws should accordingly be harmonized with this law.

1. Hate crimes and hate related incidents

“Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.”

In the legal system of BiH, hate crimes have been differently regulated in different entities (RS and FBiH) and in BD. Instigation to violence and hatred towards any group of people, including gay, lesbian, bisexual and transgender persons, is considered a criminal offence,

according to Criminal Code of RS¹, which makes it a first administrative unit to guarantee protection of LGBT people in that manner. Criminal codes of FBiH and BD do predict penalties for incitement of hate and violence, but only on national, ethnic and religious grounds, making it impossible to prevent hate crime against LGBT people in its roots.

According to Ministry of Justice, Public Administration and Labour of Bosnian-podrinje canton Goražde, which was the only ministry of this kind to provide us answers to the questionnaire, there was no review of existing legislative regarding discrimination based on sexual orientation or gender identity. But, in 2016 amendments to Criminal Code of FBiH² were adopted and they included hate crime which was defined as every crime committed because of person's race, skin colour, religious beliefs, national and ethnic origin, language, disability, sex, sexual orientation or gender identity. No laws or other measures for collecting data on discrimination based on sexual orientation or gender identity were adopted/implemented. Laws/measures for combating discrimination based on sexual orientation or gender identity have not been adopted/implemented, nor are there any national action plans, or cross-sectoral working groups for implementation of the Recommendation. When it comes to effective legal remedies for victims of sexual orientation or gender identity discrimination, their answer was "partially", which means that there are measures and laws which were adopted, but their implementation is not effective. We got answers from 9 ministries of internal affairs, and their answers were more or less generic, such as "*We apply standard measures for protection of human rights and fundamental freedoms which are guaranteed by constitution, laws and other general documents*". In some cantons they had opportunity to be part of trainings for raising awareness and sensitization of police officers. Sarajevo Open Centre conducted a *training the trainer* programme for police officers of every cantonal ministry, which means that police officers who completed the training will train their colleagues in the area of appropriate prosecution of hate crime as part of their permanent

¹ Criminal Code of RS, Article 359., paragraph 1: "*Anyone who through press, radio, television, computer system or social network, on public gathering or public place or otherwise publicly invites, incites or encourages or makes publicly available leaflets, pictures or other material invoked against violence or hatred directed towards a particular person or groups because of their national, racial, religious or ethnic origin, colour, sex, sexual orientation, disability, gender identity, origin or other characteristics, shall be punished by a fine or imprisonment for a term not exceeding three years.*"

² Criminal Code of FBiH, Article 2, paragraph 11: "*Hate crime is any criminal offense committed because of racial affiliation, skin colour, religious beliefs, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person. Such action will be taken as an aggravating circumstance if this law does not explicitly provide more severe punishment for a qualified form of hate crime.*"

training.³ These trainings were organised by Sarajevo Open Centre with a financial support of OSCE Mission to BiH. In cantons such as Županija Posavska, ministry stated they had not recorded any cases of violence towards LGBT persons and they did not have LGBT community at all. But the reason for that is probably that LGBT people do not have enough trust into legal system so they do not report cases of violence and discrimination and since it is a small environment, they risk of coming out to whole community. According to research conducted by Sarajevo Open Centre, only 12.6% of the respondents trust the police, and 14.5 % the judiciary. The main reason for distrust is possible homophobia/transphobia of police officers (82.6% of respondents) and judiciary (75.5% of respondents).⁴ There is lack of action in the area of conducting investigation regarding crimes and others incidents based on sexual orientation and gender identity of a person. Sexual orientation and gender identity are not being taken into consideration as a motive for crime, so relevant ministries and the police do not have specific registration of hate crimes. Sarajevo Open Centre conducted a research in order to ascertain number of hate crime cases on the grounds of sexual orientation and gender identity. From information we received, most courts have not dealt with such cases yet. Out of 33 respondents only 8 cases were tried in court, out of which one is still ongoing, which confirms the inefficiency of institutions in protecting the LGBT persons from violence. But it is important to mention that outcomes of cases which ended up in court are highly satisfying: five out of seven processed cases resulted in punishment of the perpetrator of violence. So the main problem is to get to the court and once that happens the positive outcome is almost guaranteed.⁵

In 2017, Sarajevo Open Centre documented 83 cases of hate speech and incitement to hatred and violence, and 31 cases of criminal offences and incidents motivated by prejudice on the grounds of sexual orientation or gender identity. Special concern is a growing trend of domestic and peer violence against LGBT people. From 31 documented cases of offences, 11 have been a domestic violence. The perpetrators in all cases were parents or other members of family. In 2017 there were 8 cases of homophobic and transphobic peer violence. These are continuous problems in our system, and they are happening among youngest population of

³ Pink Report 2017 – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina

⁴ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

⁵ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

society, so there should be a fast and effective intervention in form of programmes, educations, trainings and curricula which should be LGBTI inclusive.⁶

1.1 Hate speech

“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.”

Measures for combating all forms of “hate speech” against lesbian, gay, bisexual or transgender persons have been partially taken, but we did not get any examples of their actual implementation in practice. Criminal Code of RS⁷ penalises incitement to hatred, hate speech and violence against LGBT people. Criminal codes of FBiH and BD do criminalise incitement to hatred, hate speech and violence, but only if it is based on national, ethnic or religious grounds. All three criminal codes recognise hate crimes and provide protection to LGBT people.

Sarajevo Open Centre tried to cover the disadvantages which were noticed in the first implementation project, so it started with trainings on discrimination and hate crime against LGBT persons for judges and prosecutors. Trainings were financed by OSCE Mission to Bosnia and Herzegovina, and they included 43 representatives of the judiciary, and for 20 police officer it was organised a two-day training. Trainings for police officers have been held since 2013 and they included *training the trainer* programme in which police officers who had completed the training educated their colleagues about hate crimes and violence against LGBTI persons. It was a first time a judicial institution organised a training for such large number of employees. The result was an appointment of contact person for LGBTI hate crime

⁶ Pink Report 2018 – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

⁷ Criminal Code of RS, Article 359., paragraph 1: *“Anyone who through press, radio, television, computer system or social network, on public gathering or public place or otherwise publicly invites, incites or encourages or makes publicly available leaflets, pictures or other material invoked against violence or hatred directed towards a particular person or groups because of their national, racial, religious or ethnic origin, colour, sex, sexual orientation, disability, gender identity, origin or other characteristics, shall be punished by a fine or imprisonment for a term not exceeding three years.”*

victims - a cantonal prosecutor in Canton Sarajevo, which means that any LGBTI person who has been a victim of hate crime can go directly to a prosecutor's office and report the incident.

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Measures to be taken:

1. Amendment to criminal codes of FBiH and BD which will include sexual orientation and gender identity as grounds for incitement to hatred and violence, and include sex characteristics as well in all three criminal codes.
2. Introduce mandatory trainings of judges, prosecutors, police officers and civil servants in order to inform them on discrimination, hate crimes and incitement to hatred and violence against LGBTI persons.
3. Develop a unique system for tracking hate crimes against LGBTI persons, which would represent a specific register to collect data on crimes which are motivated with hatred towards LGBTI persons.
4. Introduce LGBTI inclusive modules in curricula and programmes in law schools and police academies, in the permanent and specialist programmes of police officers trainings, and civil service exams.
5. Develop a programme to combat peer violence in elementary and high schools as well as programmes to promote tolerance and create an inclusive educational system. It is highly necessary to recognize the need to tackle LGBTI-phobic bullying.
6. Trainings of teachers and university professors to sensitize them in working with LGBTI persons, to teach them what is hate speech against LGBTI people and how to avoid it.
7. Amendment of existing legal framework, especially Family Law and the Law on Protection against Domestic Violence which should include sexual orientation, gender identity and sex characteristics as grounds for prohibition of violence.

2. Freedom of association, expression and peaceful assembly

“Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular,

⁸ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.”

Freedom of assembly is a constitutional right which is guaranteed by the Constitution of BiH in accordance with European Convention for Human Rights and Fundamental Freedoms⁹, entity constitutions and Statute of BD, cantonal constitutions and laws^{10 11}, as well as international documents which BiH signed and ratified and which have a legal power of constitution in our legal system. These documents guarantee freedom of assembly to every citizen of BiH and the only way it can be restricted is if it can be proven that it would make damage to society or property. But in practice, this constitutional right is being limited more often than it should be. When it comes to LGBTI organisations, main holders of activism and advocacy for human rights of LGBTI persons, freedom of association feels more like a privilege that should be earned, and not a constitutional right. They have to overcome great number of legal formalities in order to register or to maintain their function, nor were they ever being funded by state. In 2017 and the first half of 2018 there were several violations of freedom of assembly in Sarajevo Canton. **To depict the situation regarding freedom of assembly we will present next case:** On 30 of March 2017, Sarajevo Open Centre contacted Ministry of Internal Affairs of Canton Sarajevo to announce a protest march scheduled for 13 of May to mark the International Day Against Homophobia and Transphobia. On 11 April 2017, a permit was also requested from Ministry of Transport of Canton Sarajevo. According to the law, a permit was ought to be requested at least 15 days prior to the event. We have never gotten an official response from the Ministry, so Sarajevo Open Centre cancelled the march 48 hours before it was supposed to take place. The decision of the Ministry of Transport arrived five hours after Sarajevo Open Centre held a conference on which it informed the public that the march had been cancelled due to administrative silence of the

⁹Constitution of BiH, Article 2, paragraph 2: *“The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly applicable in Bosnia and Herzegovina. These acts have priority over all other laws.”*

¹⁰ Constitution of Canton Sarajevo, article 7, paragraph 1: *“The Cantonal area provides full protection of human rights and freedoms established by the Constitution of Bosnia and Herzegovina and the Constitution of the Federation, as well as in the instruments provided in the Annex to the Constitution of the Federation.”*

¹¹Constitution of Tuzlanski kanton, article 7: *“In exercising its competencies, Canton ensures and implements all measures for the protection of human rights and freedoms established by the Constitution of Bosnia and Herzegovina and its annexes, the Constitution of the Federation and its Annex and this Constitution, taking into account the equality of all peoples and citizens in the Canton, municipalities and cities.”*

Ministry of Transport. Activists of Sarajevo Open Centre filed an application before the Cantonal Court of Sarajevo because of violation of right to freedom of assembly.¹² We got a confirmation from the Ombudsperson that there was a violation of right to freedom of assembly; therefore they have issued a recommendation in which they described steps to be undertaken by the FBiH Parliament, the Ministry of Transport and the Ministry of Internal Affairs. The Institution requests from the Parliament to amend the Law on Roads and set a specific deadline within which they are supposed to provide permits for “sport events and other events taking place on public roads”. The Ministry should act with due diligence whenever they receive requests for this kind of events, especially when it comes to LGBTI organisations, and to hold themselves from preventing the applicants to exercise their right to freedom of assembly by failing to respond. Relevant ministries are ought to take every necessary step in order to ensure to LGBTI persons adequate protection from violence and to continue raising awareness on how to work with LGBTI population.

Measures to be taken:

1. Adopt a law on the level of FBiH which should uniformly regulate public assembly for all cantons in order to ensure equal enjoyment of rights on the entire territory of BiH. The law should state a clear obligation of authorities to guarantee equal treatment of every person and every organisation when it comes to organising public assemblies as long as they are peaceful. Restricting freedom of assembly should be possible only in limited number of cases explicitly stated by the Law, and the Law should stipulate that only bodies in charge of interior affairs should be notified when planning a public assembly without obliging the organizers to go through unnecessary administrative procedures before other institutions.
2. Abolish provisions in every law which require permission seekers to get approval from relevant transport authorities if the assembly takes up road surface. This means that law should state only one competent authority for decision making.

3. Right to respect for private and family life

“Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take

¹² Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.”

According to European Convention on Human Rights, every individual has the right to respect of his private and family life (Article 8), and state authorities should hold themselves from any interferences, unless that interference is in the interest of national security, public safety or economic well-being of the country. Since BiH is one of many signatories of this convention of international importance, which is also a part of our constitution, therefore it should be implemented as a document which has a legal power of constitution. But none of the family laws (state, entity, BD and canton laws) regulate the relationship of same-sex couples. Sarajevo Open Centre conducted a research where over two thirds of respondents stated that they would be a part of same-sex partnerships if it were possible, so the impossibility of registering a same-sex partnership represents an important issue.¹³ Trace of hope was a verdict of the Municipal Court in one of the cantons in FBiH, where a judge characterised a same-sex relationship as a partnership of life between two people whose purpose is mutual life. This is the first time, as far as Sarajevo Open Centre is informed, that a court in Bosnia and Herzegovina has classified a same-sex relationship as a union of life between two people.¹⁴

On 6th of May 2018, House of Peoples of the FBiH adopted a proposal of the Law on the Treatment of Infertility by Biomedical Assisted Fertilization which regulates right of married and unmarried couples who live together to treat infertility at the expense of health insurance¹⁵. This is the first law of this kind, but it refers only to couples, which means that national law does not permit assisted reproductive treatment for single women, lesbian nor heterosexual. Since our Family Law defines marriage and cohabitation as a life community between man and woman, it means that same-sex couples do not fall under this legal regulation. Law mentioned above has been recently adopted, but it still has to go through some political procedure, and Sarajevo Open Centre has been advocating for its adoption for

¹³ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

¹⁴ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

¹⁵ Law on the Treatment of Infertility by Biomedical Assisted Fertilization, Article 29, paragraph 1: “*Right to treatment by biomedical assisted fertilization at the expense of compulsory health insurance belongs to a woman by age of 42 who is in marriage, or in an extramarital community, as follows: a) three attempts of intrauterine insemination, b) five attempts of extrauterine insemination, with obligation to make two attempts by natural cycle.*”

over a year¹⁶. We can only hope that relevant institutions will take all necessary measures to implement it. Of course, this is not the end of our advocacy, but adoption of this law is a good starting point for us to advocate for widening spectrum of rights guaranteed by the law.

In the subject of adoption, there are no restrictions in the same manner, so a single person could theoretically adopt a child through the institute of incomplete adoption (our Family Law recognises institutes of complete and incomplete adoption: in first case adopted child is treated as blood relative and ends all connections with its biological family, while in case of incomplete adoption, adopted child still has the same rights and obligations towards family he was born in), but procedures are too long and formalities make it difficult for couples and single people to make that decision.

When it comes to transgender people, they can change their gender marker in official documents and unique identification number only after complete medical transition, which means that transgender person has to go through psychological evaluation, hormonal therapy and series of surgeries such as genital reconstruction surgery, chest reconstruction, breast augmentation or reduction and hysterectomy. After medical treatment, ministry of internal affairs retracts the old unique identification number and issue a new one and based on that a person can proceed changing the rest of their documents. To make things even harder for this population, transgender people have to go abroad in order to undergo endocrine therapy and surgical procedures, since they cannot be performed in Bosnia and Herzegovina, nor does the health insurance covers their costs. This kind of practice discriminates transgender people because legal gender recognition is not based on self-determination and therefore transgender people are required to fulfil invasive requirements. It forces them to reveal their personal information and have their medical documentation with them all the time to avoid administrative problems, thus making them more vulnerable to discrimination and violence.

In 2017, Sarajevo Open Centre conducted a research about needs of LGBTI people. 61 % transgender individuals, who participated in the research plan to undergo gender affirming procedures, completely or partially, while 22.2% have not made that decision yet.¹⁷ Out of those who want to change their sex, 4 individuals (22.2) are already transitioning, meaning they initiated medical process of gender reassignment, while 7 of them (38.9%) would like to

¹⁶ <http://soc.ba/en/the-draft-law-on-infertility-treatment-with-bio-medically-assisted-fertilization-in-the-federation-bih-established-improvements-needed/>

¹⁷ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

begin transition. Those who want sex reassignment are aware that they have to bear the costs of the treatment, but they still plan to do it because it is extremely important step in creating their own identity. Two thirds of respondents would change their sex marker in personal documents even before completion of the transition process if they had such option because that would eliminate the need for transgender person to explain their identity. Also, two thirds of respondents believe that the third gender category should be introduced in the law, in addition to binary female and male sexes. This kind of regulation would provide a formal gender marker for non-binary trans people, who do not experience their gender within the existing gender categories.¹⁸

Intersex people are an extremely vulnerable social group in society and information about intersex people and the ways their human rights are violated are missing. UN-Special Rapporteur on Torture criticised practices of states as cruel, inhumane and degrading. He called upon all the states to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced without the free and informed consent of person concerned.¹⁹ Regardless of these recommendations and the fact that they can cause a permanent, irreversible infertility and severe mental suffering, intersex people in BiH are still subjected to these treatments. Terms *hermaphroditism* and *pseudo hermaphroditism* are still used in literature, school books and among medical workers, even though these terms are inaccurate, scientifically unfounded and stigmatizing for intersex persons. Data that Sarajevo Open Centre collected in research in 2016 showed that 1 in 2000 new-borns is intersex person. 27 health institutions were contacted through the research and only seven of them replied. Four of them confirmed that they had had cases of intersex new-borns in their work. One of the medical institutions claimed that it is common practice for parents and children to be sent to Belgrade to Children’s Clinic Tiršova and the Mother and Child Institute.²⁰ There is no data on whether parents were provided with adequate psychological and medical consulting, as well as provided with the necessary human-rights based information which is necessary for them to make a decision in the right interest of a child. Sarajevo Open Centre organized trainings for

¹⁸ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez; February 2013.

²⁰ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

Prosecutor's Office of Sarajevo Canton, Ministry of Labour, Social Policy, Displaced People and Refugees and departmental institutions of the Ministry: Gerontology Centre, Social welfare centre, Psychiatric Hospital Jagomir, Disciplinary Centre for Juveniles, Therapeutic Community Kampus and Family Counselling Centre. Intersex people are still an invisible category and it is difficult to find a person who is ready to face these problems.²¹

Measures to be taken:

1. Pass and implement laws in all administrative units which would legally recognize same-sex partnerships and define rights and obligations of cohabitating couples in same-sex units.
2. Adopt the Law on the Treatment of Infertility by Biomedical Assisted Fertilization which would ensure that single women and lesbian couples have access to reproductive treatment.
3. Pass and implement law on state level which would clarify the term *sex change* and make the sex change procedure more accessible to the transgender people and based on their self-determination.
4. Abolish provisions which condition change of the gender marker in their documents with complete medical transition, and therefore ensure that legal gender recognition is accessible for trans people on the basis of self-determination.
5. Pass and implement laws in all administrative units which would establish obligation of health insurance institutes to cover the costs of medical procedures of sex reassignment and define duties of medical institutions to form teams of trained professionals who could perform these procedures in Bosnia and Herzegovina.
6. Engage medical institutions in cooperation and sharing relevant information with civil society, thus raising the awareness regarding intersex persons and removing outdated terms such as *hermaphrodite* and *pseudo hermaphrodite*.
7. Making information about intersex new-borns accessible and prohibiting medically unnecessary surgical procedures without a full consent of the intersex person.

²¹ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

8. Continuous involvement of public authorities and other public bodies competent for the protection of human rights (ombudsperson).

4. Employment

“Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.”

Labour laws of FBiH²² and Brčko Distrikt (Article 4, paragraph 1) forbid discrimination based on sexual orientation, but gender identity and sex characteristics are not included as grounds for discrimination, while Labour Law of RS in Article 19 lists the grounds for prohibition of discrimination in the employment area, but those ground do not include sexual orientation, sex characteristics nor gender identity. Law on the Prohibition of Discrimination²³ prohibits discrimination based on sexual orientation and gender identity and establishes obligation of the state to harmonize all other laws with this specific one²⁴. Both

²² Labour Law of FBiH, Article 8, paragraph 1: “Any discrimination of a worker or a person seeking employment is forbidden, regardless of their gender, sexual orientation, marital status, family responsibilities, age, disability, pregnancy, language, religion, political or other opinions, nationality, social origin, property status, birth, race, skin colour, membership or non-membership in political parties and unions, health status, or any other personal feature.”

²³ Law on Prohibition of Discrimination, Article 2, paragraph 1: “For the purposes of this Law, discrimination shall be considered to be any different treatment including any exclusion, restriction or advantage based on actual or assumed grounds against any person or group of persons and those who are with them in a relative or other relationship based on their race, skin colour, language, religion, ethnicity, disability, age, national or social origin, political or other beliefs, property status, union membership or other association, education, social status and sex, sexual orientation, gender identity, sex characteristic, as well as any other circumstance having the purpose or effect of preventing or threatening to recognize, enjoy or exercise on an equal basis, rights and freedoms in all areas of life to any person.”

²⁴ Law on Prohibition of Discrimination, Article 24, paragraph 1: “In the case of failure to comply with other laws with this Law in the proceedings under this Law, this Law shall apply.”, paragraph 2: “All laws and general regulations will be harmonized with the provisions of this Law within one year from the day this Law enters into force.”, paragraph 4: “All public bodies and other legal entities are obliged to regulate the principles and

direct and indirect discrimination is prohibited with this law and labour laws on entity and canton levels, and the burden of proof is on the person who allegedly committed discrimination. These laws guarantee same treatment of LGBT persons in employment in private and public sector. We got 4 answers from relevant ministries and three of them (Ministry of health, Labour and Social Welfare of Županija Zapadnohercegovačka, Federal Ministry of Health and Social Welfare and Ministry of Labour, Health, Social Welfare and Refugees of Hercegbosanska županija) confirmed these regulations, but only by mentioning prohibition of discrimination in general. Despite the prohibition of discrimination, LGBT persons are often subjected to discrimination regarding employment, which is confirmed in the research conducted by National Democracy Institute in 2015: 36% of LGBT respondents reported to have experienced some kind of discrimination in the workplace, while 30% of general population stated that they would cease every communication with a co-worker if they found them to be a different sexual orientation or gender identity.²⁵ Even though existing legislation guarantees equality in employment to every person regardless of their sexual orientation, reality differs in many ways. LGBT persons are still being stigmatized and their sexual orientation or gender identity are having negative impact on economic aspects of their life.²⁶

Measures to be taken:

1. Include gender identity as one of grounds for prohibition of discrimination in existing labour laws.
2. Organize mandatory trainings for ministries of labour, representatives of unions and associations of employers in order to raise awareness about problems LGBTI persons face with in this field.
3. Conduct additional research in order to examine this field in greater details, since there were some differences regarding different researches.
4. Take concrete steps to ensure better implementation of existing provisions.

5. Education

principles of equal treatment in their general legal acts, or through special legal acts, and to ensure effective internal anti-discrimination procedures.”

²⁵ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

²⁶ Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

“Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.”

Anti-discrimination legislation specifically prohibits discrimination based on sexual orientation and gender identity in all domains of life, including education²⁷. No person should be denied right to education on any bases. But not having a unified law on state level makes discrimination more likely to happen. Primary, secondary and higher education in BiH is divided: RS has its own system of education, as well as BD, and FBiH has 10 systems which are regulated by laws adopted and implemented differently for every canton. Law on High Education of Kanton Sarajevo expressly prohibits discrimination based on sexual orientation, but it does not include gender identity. The same regulation is present in laws on high education of Zeničko-dobojski canton, Bosansko-podrinjski canton, Usko-sanski canton and Tuzlanski canton, while laws on high education in other five cantons do not mention sexual orientation nor gender identity as grounds for prohibition of discrimination. Most cases of discrimination took place in education institutions (up to 41.2% in schools and 19.1% in a

²⁷ Law on Prohibition of Discrimination, Article 2, paragraph 2: *“The prohibition of discrimination applies to all public bodies, as well as to all natural or legal persons, in the public and private sectors, in all areas, and in particular: employment, membership in professional organizations, education, training, housing, health, social protection, goods and public services and public places, as well as carrying out economic activities and public services.”*

university setting), followed by hospitality establishment/stores with 34.6 %.²⁸ In 2017 eight cases of homophobic (6) and transphobic (2) peer violence were recorded. In one high school in Canton Sarajevo a pupil was subject to physical and verbal violence from its peers, and in this case school suspended a perpetrator binding him to attend sessions with school pedagogue, and it advised the victim to attend support sessions. Unfortunately, this case is exception, and in most other cases education staff fails to react properly and sometimes even joins in mocking the victim. School curricula and textbooks still contain harmful information about LGBTI people and use gender stereotypes which promote cisheteronormativity.

Measures to be taken:

1. Changing school curricula and textbook so they become LGBTI inclusive, and avoid using homophobic and transphobic language.
2. Develop institutional plan to combat peer violence and teacher training programmes in order to raise awareness on how to work with this specific social group and promote tolerance and inclusion of minorities, including LGBTI people.
3. Education institutions should work with social welfare centres, psychologists/pedagogues and relevant ministries on providing adequate protection of victims and rehabilitation of perpetrators.

6. Health

“Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.”

According to Federal Ministry of Health, one of ministries which responded on our questionnaire, all measures have been taken in order to ensure equal treatment of LGBT people in a domain of health care and all individuals have access to health education, care

²⁸Numbers of Equality-Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017

and treatment programmes regardless of their sexual orientation or gender identity. Law on the Rights, Obligations and Responsibilities of Patients prohibits discrimination of patients based on their sexual orientation²⁹. It is an important legal instrument which sets a list of rights of patients, some of which are significant for work with LGBTI persons. It guarantees them right to health care in accordance with their health conditions, needs and within their financial opportunities. But this right is not completely implemented since and BiH does not have specialized health services for trans persons, nor have needs of LGBTI people been adequately processed. Health care workers are obligated to respect right to privacy of patients, which means they are not supposed to reveal to others personal information about patient's sexual orientation, gender identity or sex characteristics. Reality is that LGBTI persons are invisible in our health system. They are not being recognised as vulnerable social group and health workers share same opinions, convictions and norms as a greater part of society which leads to providing inadequate health care.³⁰ Health care staff can be first contact of LGBTI persons with health system so they need to take all necessary measures in order to help their patients (i.e. they can talk to parents and explain to them that homosexuality is not a disease).

Measures to be taken:

1. Sensitization of health care workers so they can understand and acknowledge problems of LGBTI persons, and provide educations in order to acquire adequate knowledge required for work with transsexual and intersexual persons.
2. Take all measures needed to ensure respect to patient's privacy, such as providing space where patient will be able to have private consultation with a doctor in a safe environment without concern that he/she will be heard by rest of the staff.
3. Health care workers are often uninformed about sexual orientation, gender identities and sex characteristics, and ignoring these relevant information can lead to misdiagnosis or inadequate treatment. They need to refrain from their subjective

²⁹ Law on the Rights, Obligations and Responsibilities of Patients, Article 3: "*Any form of discrimination based on race, skin color, gender, sexual orientation, genetic heritage, language, religion or belief, political and other beliefs, national and social origin shall be prohibited during the conduct of activities pursuant to this Law and the regulations adopted pursuant to this Law.*"

³⁰ Responsible and Professional Treatment of Lesbian, Gay, Bisexual, Transsexual and Intersexual Persons – Handbook for institutional representatives who work on municipality, city and canton levels; Sarajevo Open Centre 2017.

opinions and stop using misleading and offensive terms (i.e. saying homosexuality is a disease, etc.).

4. Unburdening health system would enable doctors to dedicate to every patient individually and to set diagnosis and treatment that is not based on their assumptions conducted from short and superficial conversations with patients.
5. Make sure that health care worker respect patient's right to privacy, especially when it comes to minor LGBTI patients, since their coming out process requires special approach towards parents.

7. Housing

“Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.”

“Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.”

Law on Prohibition of Discrimination of Bosnia and Herzegovina prohibits discrimination based on sexual orientation, sex characteristics and gender identity in field of housing³¹. That

³¹ Law on Prohibition of Discrimination, Article 2, paragraph 1 and 2: *“For the purposes of this Law, discrimination shall be considered to be any different treatment including any exclusion, restriction or advantage based on actual or assumed grounds against any person or group of persons and those who are with them in a relative or other relationship based on their race, skin colour, language, religion, ethnicity, disability, age, national or social origin, political or other beliefs, property status, union membership or other association, education, social status and sex, sexual orientation, gender identity, sex characteristic, as well as any other circumstance having the purpose or effect of preventing or threatening to recognize, enjoy or exercise on an equal basis, rights and freedoms in all areas of life to any person.”*

“The prohibition of discrimination applies to all public bodies, as well as to all natural or legal persons, in the public and private sectors, in all areas, and in particular: employment, membership in professional organizations, education, training, housing, health, social protection, goods and public services and public places, as well as carrying out economic activities and public services.”

is the only law which prohibits discrimination on these grounds in this area of life. Laws on housing of FBiH and RS do not address discrimination on grounds of sexual orientation or gender identity. Ministries of health, labour and social care from Zapadnohercegovački, Srednjobosanski and Hercegbosanski cantons and Federal ministry of labour and social politics stated in their answers to questionnaire that every citizen is equally treated regardless of their sexual orientation or gender identity and that LGBT persons enjoy full protection from discriminating eviction, but they did not provide us any positive examples which would support these claims. Main reason for homelessness of LGBT persons is non-acceptance of their sexual orientation or gender identity from their family members, and in these cases young people have no one to refer to. Sarajevo Open Centre has gotten multiple calls for help from LGBT individuals who are being victims in their family or environment because of their sexual orientation or gender identity and have no place to go, which tells us that there are no functioning programmes for prevention of homelessness, nor are there any shelters or other adequate emergency accommodation for LGBT persons. Even though there are civil society organisations which are ready to provide shelter for lesbians and bisexual women in safe houses, there is no accommodation for gay or bisexual men and transgender persons who are victims of domestic violence. This problem is ought to be properly addressed by state because it could lead to homelessness among young LGBT persons.

Measures to be taken:

1. Homelessness of LGBT persons should be recognized as a specific problem of our society which needs to be worked on. Relevant institutions should ensure that every victim of violence has an access to safe houses, regardless of their sexual orientation or gender identity.
2. LGBT persons need safer housing options that will respect their sexual orientation or gender identity, as well as provide safe environment. This includes trainings for shelter staff on how to be an ally to LGBT individuals and written policies to keep discrimination from occurring.
3. Establish programmes which improve family relationships and reduce homelessness of LGBT youth, as well as programmes of protection against domestic violence and safe houses for LGBT victims of violence.

4. Conduct additional survey in this field and take into consideration needs of targeted population. Ensure safe environment in schools and take all measures to prevent bullying and make sure that homeless LGBT youth can continue their education. Come up with a programme which will include these measures (trainings for staff, opening special safe houses for homeless youth etc.) and suggest it to relevant ministries.

8. Sports

“Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.”

None of the relevant ministries responded to our inquiries regarding particular measures that have been taken in order to prevent the risk of exclusion from participation in sports on the grounds of sexual orientation, gender identity or sex characteristics. Inaction of ministries suggests that no action is being taken in order to prevent, counteract and punish the use of discriminatory insults during and in connection with sport events. Law on Sports in BiH³²

³² Law on Sports in Bosnia and Herzegovina, article 6: „The basic principles on which sports are organized in Bosnia and Herzegovina are: ...equal access to sport irrespective of race, skin color, national or ethnic origin,

guarantees equal availability to sports regardless of one's sexual orientation or gender identity and prohibits incitement to hatred and violence based on sexual orientation or gender identity, while some laws on canton and entity levels do not mention sexual orientation and gender identity. Sex characteristics are still absent from any of these measures.

Measures to be taken:

1. Conduct a research on needs of LGBTI persons in sports and ascertain their specific needs in physical education and sports.
2. Adopt and implement rules of conduct in sports which would prohibit discrimination based on sexual orientation, gender identity and sex characteristics.
3. Raise awareness among sports and physical education specialists by organising trainings about specific needs of LGBTI people.
4. Get support and encouragement from relevant ministries of sports.

9. Right to seek asylum

“In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.”

“Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.”

“Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should

social status, religious, political or other belief, disability, health status, age, sex, gender, sexual orientation, gender identity or any other personal property. Discrimination in sport is prohibited in accordance with the Law on Prohibition of Discrimination ("Official Gazette of BiH", No. 59/09) and the Law on Gender Equality in Bosnia and Herzegovina ("Official Gazette of BiH", no. 32/10)."

be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.”

Law on Asylum in BiH does not contain provisions which recognise well-founded fear of persecution based on sexual orientation and gender identity as a valid ground for seeking asylum. In 2016, a new Law on Asylum has been adopted, but it did not include sexual orientation nor gender identity as possible reasons for prosecution and asylum seeking³³, despite the advocacy³⁴ of Sarajevo Open Centre and other civil society organisations. In January 2018, a gay man, an asylum seeker from Syria, had to be relocated from the asylum centre due to the violence he suffered and the way he was treated by other asylum seekers in the centre. He contacted Sarajevo Open Centre to get some information or assistance, and with help of other organisation of civil society, he managed to get asylum in Germany. In 2017 Sarajevo Open Centre received nine inquiries regarding either information or assistance about a process of claiming asylum in the EU countries, and as of 2018, 4 inquiries have already been received for assistance and provision of information to LGBTI persons in BiH about the process of claiming asylum in EU and the USA. In 2017, Ministry of Foreign Affairs' of BiH registered 2 people, and since the beginning of 2018, 1 person seeking asylum on the grounds of sexual orientation or gender identity.³⁵ Sarajevo Open Centre tried to contact the Ministry for Human Rights and Refugees of BiH multiple times, but they have failed to provide us answers. Their silence suggests that there are no measures to ensure asylum seekers are not sent to countries where their life or freedom would be threatened because of their sexual orientation or gender identity, nor are there any measures which would prevent risk of violence, sexual abuse or any other form of aggression against asylum seekers deprived of their liberty.

Measures to be taken:

³³ Law on Asylum in BiH, article 19: „The refugee status will be granted to an alien who, because of founded fear of persecution for his race, religion, nationality, affiliation to a particular social group or political opinion, lies outside of the country of his nationality, and can not or because of that fear does not want to be put under protection of that country, as well as a person without citizenship outside of the country of his former habitual residence, and can not, or for such fear, not wish to return to that country.“

³⁴ <http://soc.ba/en/advocating-amendments-to-law-on-foreigners-and-law-on-asylum/>

³⁵ Pink Report – Sarajevo Open Centre Annual Report on the State of Human Rights of LGBTI persons in Bosnia and Herzegovina

1. Amend existing laws to ensure that person's sexual orientation and gender identity are being considered valid ground for fear of persecution.
2. Establish cooperation with relevant ministries and institutions in order to recognise the problem of LGBT asylum seekers. States should ensure that reception centres, as well as interview procedures were sensitive to LGBT people. Asylum seekers should not be afraid to tell officers in asylum centres about their sexuality or gender identity, while interviewers should ask the right questions and address the problem properly.

10. National Human Rights Structures

“Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.”

Institution of Ombudsman for Human Rights and its Department for Elimination of All Forms of Discrimination works on all cases of discrimination based on sexual orientation and gender identity. Law on Prohibition of Discrimination, article 7, paragraph 1, defines Institution of Ombudsman as central institution competent for protection from discrimination.³⁶ Its jurisdiction is determined with aforementioned law, and it includes:

1. receiving individual and group complaints regarding discrimination,
2. providing necessary information on rights and obligations of physical and legal persons who have filed an appeal for discrimination,
3. deciding on whether to accept an appeal or to initiate an investigation procedure in accordance with special regulations,
4. suggesting an initiation of mediation proceedings in accordance with provisions of Law on Mediation,
5. collecting and analysing statistical data on cases of discrimination,
6. submitting annual, and if necessary, extraordinary reports on the occurrences of discrimination to the Parliamentary Assembly of Bosnia and Herzegovina, the

³⁶ Law on Prohibition of Discrimination, article 7, paragraph 1: “The Central Institution responsible for the protection of discrimination shall be the Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter: the Ombudsman of Bosnia and Herzegovina).”

Parliament of Federation of Bosnia and Herzegovina, National Assembly of Republika Srpska and the Assembly of Brčko Distrikt of Bosnia and Herzegovina,

7. informing public about occurrences of discrimination,
8. conducting researches in field of discrimination, on its own initiative,
9. giving opinions and recommendations in order to prevent and repress discrimination, and suggesting adequate legal and other solutions to the relevant institutions of Bosnia and Herzegovina,
10. has the right to initiate and participate in procedures for protection against discrimination for offences prescribed by law,
11. monitoring of legislation and providing advice to legislative and executive bodies,
12. raising awareness, conducting campaigns and in other ways actively promoting fight against discrimination for the purpose of its prevention,
13. promoting policies and practices aimed at ensuring equal treatment.

Institution of Ombudsman has prepared a Special Report ³⁷ on access of LGBT persons to their rights. They are aware that these reports do not represent an actual picture on position of LGBT persons in BiH, who have to face stereotypes and prejudices in their everyday life because the public is not ready to accept them as equal members of society. They highlighted the need for stronger prevention and promotion role of Ombudsman Institution in this segment, as well as state institutions and law enforcement. In 2017, Ombudsman issued public announcement calling on the general public that the protest, which was announced on 13th of May 2017, goes dignified in the spirit of tolerance towards various political, social and cultural practices and beliefs and in the spirit of the respect for human rights.³⁸ Simultaneously, Ombudsman urged all relevant institutions, in particular Ministry of Internal Affairs of Canton Sarajevo, to take all measures needed in order to ensure that announced protest went without incidents. Ombudsman received an appeal in 2018 regarding the alleged violation of the LGBT person's right to freedom of assembly and initiated an investigation. Institution of Ombudsman still does not have mandate of Preventive mechanism for prevention of torture and other cruel, inhuman or degrading treatment or punishment, but if amendments on Law on Ombudsman for Human Rights of BiH get adopted, Institution of Ombudsman should take over this mandate. Amendments on Law on Prohibition of Discrimination strengthened role of Institution of Ombudsman in a way that

³⁷ Special report on the rights of LGBT persons in Bosnia and Herzegovina, 2016.

³⁸ <http://ombudsmen.gov.ba/Novost.aspx?newsid=724&lang=BS>

recommendations of Ombudsman need to be taken into a consideration during judicial proceedings and that department for combating discrimination will be additionally financed, but these provisions have never been fully implemented.

Gender Centre, a special unit formed as a part of Ministry of Social Affairs, Displaced Persons and Refugees of FBiH, also replied to the questionnaire we have sent them. Gender Centre monitors position of women and implementation of their guaranteed rights in domestic and international legislation, while cooperating with Gender Centre of RS. They assessed the status of implementation of the Recommendation as insufficient. In 2016. Gender Centre of FBiH, RS and Agency for Equality of Sexes BiH provided support for equality of LGBT persons by including specific measures regarding rights of LGBT persons into their operational plans. These three institutions cooperated with Sarajevo Open Centre on mapping needs for implementation of the Recommendation, which resulted with inclusion of measures into annual operational plan for implementation of Gender Action Plan. They conducted series of thematic sessions, round tables, info sessions and educational trainings in cooperation with Agency for Equality of Sexes and Gender Centre of RS. This process has just been initiated, so although there is some significant progress, the current situation still is not satisfactory.

11. Discrimination on multiple grounds

“Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.”

In 2016, House of Peoples Assembly adopted amendment on Law on Prohibition of Discrimination, which defined heavy forms of discrimination including discrimination on multiple grounds. This qualification of the unauthorized treatment directly refers to all actors, especially courts and specialized bodies for equality, to a more severe reaction in the case of these unauthorized behaviours (article 4, paragraph 6: *“As a severe form of discrimination will be considered a discrimination perpetrated against a person based on multiple grounds under Article 2, paragraph 1 of this Law (multiple discrimination), repeated discrimination and long-term discrimination (prolonged discrimination).”*). The legislator’s clear intention was that perpetrators of these forms of discrimination should have been punished more strictly, regardless of what kind of protection against discrimination is concerned. When it

comes to discrimination on multiple grounds, it needs to be more clarified, because it is a completely new concept, and there are certain doubts about recognizing, understanding, proving and adequately sanctioning multiple discrimination. It will be a challenge for judges and attorneys to fully understand and even recognize cases of discrimination on multiple grounds, but it is expected from judges to recognize it and to consider the overall status of discriminated person and to take it into account when deciding. The law requires someone you can compare your case to, so proving discrimination on multiple grounds would be much more difficult than proving there was a discrimination on just one ground (i.e. if a person did not get a promotion because she was a woman, she will compare herself with her male colleagues, but if she states that she has been discriminated on multiple grounds, it would have been difficult to find a person you can compare yourself to). That is why judges need to find a different approach when dealing with these forms of discrimination and to realise that strict application of rules about comparison cannot be adequately applied on cases of discrimination on multiple grounds.³⁹

About Sarajevo Open Centre

Sarajevo Open Centre (SOC) advocates the full respect of human rights and social inclusion of LGBTI persons and women. Sarajevo Open Centre is an independent, feminist civil society organisation which strives to empower LGBTI (lesbian, gay, bisexual, trans and intersex) persons and women by strengthening the community and building the activist movement. SOC also publicly promotes human rights of LGBTI persons and women and it advocates the improvement of public policies in Bosnia and Herzegovina at the State, European and international levels. Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to psychosocial and legal counselling we also continued running the only LGBTI media outlet in the state – a web portal www.lgbt.ba. We organized trainings for the police, the prosecutor's offices and the courts and we worked intensively on creating a local institutional network of support for LGBTI persons in Sarajevo Canton, improving the recommendation of regulating bio-medically assisted fertilisation in FBiH, the rights of working women regarding the discrimination on the grounds of sex and maternity leave, but also on raising awareness about gender-based violence in BiH. In 2017, several of our legislative and policy initiatives have been submitted to governmental or

³⁹ Commentary on Protection Against Multiple Discrimination: A New Challenge for Courts and the Ombudsman Institution in Bosnia and Herzegovina; Kosana Beker, Analitika-Centre for Social Researches, 2016.

parliamentary procedures. Our advocacy focuses on issues of policies for the equality of women and LGBTI persons in BiH, the issues of reproductive rights of women and men, parenthood in the context of conciliating the private and the business life, the freedom of assembly of LGBTI persons and improving the institutional framework for the protection against violence and discrimination. In the previous year, we had media campaigns that reached over a million of BiH citizens and we organised the LGBTI film festival Merlinka.

You can find out more about our work at: www.soc.ba.

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