**Sarajevo Open Centre**

**Human rights of LGBTI persons**

**in Bosnia and Herzegovina**

*Additional information to*

*para. 9 of the List of Issues (CCPR/C/BIH/QPR/3)*

*and paras. 37–51 of the third periodic report of Bosnia and Herzegovina (CCPR/C/BIH/3)*

119th session of the Human Rights Committee (6–29 March 2017)

**Sarajevo, February of 2017**

**1. Description of the situation of LGBTI persons in the country**

***A. Positive aspects***

2016 has been a promising year for human rights of LGBTI persons in Bosnia and Herzegovina. **The Law on Prohibition of Discrimination** has been amended and in addition to sexual orientation and gender identity that were included in the Law in 2009, and were only defined more clearly in 2016, discrimination has been prohibited on the ground of sex characteristics as well.[[1]](#endnote-1) This Law has so far been the first Law in BiH to explicitly protect intersex persons from discrimination. **The Criminal Code of Federation of BiH** was also amended with hate crime regulation that covers homophobia and transphobia as motives of such crimes.[[2]](#endnote-2) Thus now, all three administrative units’ criminal codes in BiH (two entities and Brčko district) prohibit and sanction hate crimes.

In December 2015, authorities made another pioneering move: Government of Republika Srpska passed their Annual Plan for Implementation of the Gender Action Plan (GAP) for 2016,[[3]](#endnote-3) which also contains specific measures for protection of LGBTI people's rights. The government of FBiH followed soon after in March of 2016[[4]](#endnote-4). This was the first time that the governments in Bosnia and Herzegovina included LGBTI people's rights in their action plans and have implemented certain activities directly in cooperation with Sarajevo Open Centre. Similar plans are in place for the upcoming period, and ongoing cooperation is expected to continue. The Institution of Ombudsperson of BiH also issued a Special report on the state of human rights of LGBT persons in BiH[[5]](#endnote-5) with human rights violations analysis and concrete recommendations for improvement.

***B. Concerns***

Despite the positive aspects mentioned above, a particularly worrying trend was also noticed in inadequate processing of the attacks on LGBTI individuals, mostly in cases where they exercise their **right to public assembly**: the case of Merlinka in 2014 and the attack on the visitors of the Art Kriterion Cinema in March of 2016.

***Special Procedures Communication:***

***Joint allegation letter, 7 February 2014, BIH 1/2014 (A/HRC/26/21)***

*Alleged violent disruption of the Queer Festival Merlinka in Sarajevo. According to the information received, on 1 February 2014, a group of unidentified individuals reportedly stormed the Art Cinema Kriterion in Sarajevo where the aforementioned festival was taking place. They shouted hateful remarks against LGBT persons. They then physically assaulted three attendees who sustained minor physical injuries, and psychologically traumatised over 25 other attendees who were subsequently moved to safe locations in the city. A couple of hours prior to the attack, the organizers had reported to the police a series of threats against the festival made on Facebook. However, the police failed to provide protection to the organizers and participants, despite reassurances that police officers would be deployed during different events of the festival. Serious concerns are expressed about the violent disruption of the Queer Festival Merlinka and the ongoing harassment of LGBT persons in the country.*

None of these cases has had a court epilogue so far, and Sarajevo Open Centre has filed an appeal to the Constitutional Court of BiH for violation of freedom of assembly in case of the 2014 attack.[[6]](#endnote-6)

In regards to the lack of implementation and human rights violations of LGBTI persons, 2017 comes as a crude awakening. The year has started with several severe human rights violations, one involving a case of **illegal imprisonment and forced and involuntary treatment of an individual’s gender identity** by his own family which was only stopped after it was reported to the police. The police acted as a mediator instead as a protector of the victim and though they “helped” the victim leave they also mention “he could be cured if he wanted to”.

Another worrying trend is seen in **increase of homophobic bullying and increased negative pressure on LGBTI activists and organizations**. The bullying in this specific case is targeted towards individuals associated in any way with an organization known for LGBTI activism, as well as towards the members of the organization. Once again, the response of the institutions in charge were inadequate and sporadic.

In 2016 Sarajevo Open Centre documented more 21 cases of hate crimes motivated against LGBTI people, more 200 cases of hate speech towards these people, 5 cases of discrimination on the ground of sexual orientation and gender identity. Number of people inquiring about asylum seeking in EU and USA, of people inquiring about legal gender recognition and the possibility of concluding same-sex partnerships has increased .

*An opinion poll carried out by the US-based National Democratic Institute (NDI) revealed that 72% of the LGBTI people surveyed in Bosnia and Herzegovina had been verbally harassed or abused, 51% had been personally discriminated against and 15% had been the victim of physical violence because of their sexual orientation or gender identity.[[7]](#endnote-7)*

*In 2016 in Banja Luka, a bar published homophobic comments (and later threatened LGBTI activists who reacted) on their Facebook page. The case was reported to the police but no action was taken. In Sarajevo, two women were asked to leave a bar after kissing each other. When Sarajevo Open Centre tried to reserve a table at the same bar, they were warned not to hug or kiss as the owner did not want any problems at his premises.[[8]](#endnote-8)*

*“Life Beyond the Set Norms”, the first major study on trans people in BiH, was published by Sarajevo Open Centre in December 2016. The research showed that 70% of trans people surveyed saw fear of violence and exclusion as their main obstacle from living freely. 18% were discriminated against in health care institutions and 30% in education. 60% of trans people that participated experienced physical violence and 80% experienced psychological/emotional violence. 100% of trans people questioned had encountered problems while filing for personal documents and 88% of trans people in the study would change their sex marker on documents right away if they were legally able to do so.[[9]](#endnote-9)*

**It is more than clear that BiH has to work harder on implementation of the existing legislation and policies, and it has to focus directly on combating the causes of homophobia and transphobia in society through concrete measures and actions.** Such measures and actions are to be developed through a specific Action plan for equality of LGBTI persons in BiH that is to be developed in 2017 by Ministry of human rights and refugees of BiH. However so far the Ministry is still in the process of assembling the working group for this Action plan.

**2. Recommendations for the government**

Bosnia and Herzegovina should in the following period take a step forward toward the greater inclusion and equality of LGBTI persons in BH society. The focus of the protection of human rights of LGBTI persons should expand further than just prohibition of discrimination and hate crimes and it should also include ensuring inclusive public policies and making sure that mechanisms are in place for the implementation of its legislative framework to combat discrimination at all administrative units and state levels. It should also strive towards greater equality in sense of private and family life of LGBTI individuals, protection of bodily integrity and the right to self determination, as well as conduct extensive campaigns to educate and sensitize the general public and to provide institutionalized and mandatory training for members of the public sector that will promote acceptance and respect for diversity.

In particular, BiH and its administrative units should:

* Develop and adopt a periodic Action Plan for Equality of LGBTI persons be devised, in line with the Recommendation CM/Rec(2010)5 by the Council of Ministers of the Council of Europe, addressing the measures for tackling discrimination on the basis of sexual orientation or gender identity in order to create a system in which every task would be clearly assigned to departmental jurisdictions.
* Ensure the adequate sanctioning of the perpetrators of violence against the guests of festival Merlinka in 2014, and the guests of Art Cinema Kriterion in 2016 and proper mechanisms of protection of freedom of assembly.
* Change and amend the Criminal Codes of all three jurisdictional units (Republika Srpska, the Federation of BiH and Brčko District) and expand the provisions on inciting hate and violence so that they include sexual orientation and gender identity as protected grounds.
* Pass and implement laws in all three jurisdictional units (Republika Srpska, The Federation of BiH and Brčko District) which would legally recognize same-sex partnerships and define the rights and obligations arising from cohabitation of two persons in a same-sex partnership (with a particular focus on social and economic rights).
* Pass and implement laws in all three jurisdictional units (RS, the Federation of BiH and Brčko District) that would simplify the procedure of legal gender recognition and which would enable the legal change without having to complete medical transition.
* Pass and implement laws in all three jurisdictional units (RS, the Federation of BiH and Brčko District) which would define the duties of medical institutions to form teams and train professionals who could follow the process and perform medical procedures for gender reassignment in Bosnia and Herzegovina, and which would establish the obligation of the Health Bureau to cover the cost of these procedures out of the health insurance budget.
* With the aim of fighting homophobia and prejudice within institutions keep educating and informing the judges, prosecutors, police officers and state officials on hate crimes, incitement to hate and violence against LGBTI persons.
* Introduce LGBTI inclusive modules in curricula and programs in law schools and police academies and in the permanent and specialist programs of training for police officers, and civil service exams.
* Develop and adopt rules and procedures of cooperation between prosecutors and the police in order to ensure proper, timely and adequate investigation and processing of hate crimes through clearly defined obligations of both all parties involved in the process.
* Introduce LGBTI-specific modules in education of future teachers, social workers, healthcare workers, psychologists and pedagogues with specific focus on incitement to violence and homophobic bullying and its prevention.
* Change the Law on Asylum BiH, so that sexual orientation and gender identity are listed explicitly as grounds for seeking asylum and possible grounds for persecution.
* Recognize same-sex partnerships as a basis for awarding temporary residence to partners of BiH citizens on the grounds of uniting a family, through the Law on Foreigners.

**3. Information about Sarajevo Open Centre**

Sarajevo Open Centre (SOC) is an independent feminist civil society organization that strives to empower lesbian, gay, bisexual, trans\* and intersex (LGBTI) people and women through community empowerment and activist movement building. SOC advocates the full respect of human rights and social inclusion of lesbian, gay, bisexual, trans\* and intersex (LGBTI) people and women on national, European and international level, as well as for improved legislation and policies in Bosnia and Herzegovina. By working on European integration issues, SOC is improving human rights in general and encouraging further the development of civil society.

Here, we will only mention some of the achievements made in terms of equality of LGBTI people. In addition to providing psychosocial and legal counseling we also continued running the only LGBTI media outlet in the state – a web portal [www.lgbti.ba](http://www.lgbti.ba). We organized trainings for the police, the prosecutor’s offices and the courts and we worked intensely with journalists and young lawyers. Our advocacy focuses on a wide range of issues of importance to LGBTI persons and women but in 2016 we have focused and influenced a) the changes to the Law on Prohibition of Discrimination BiH, b) the changes to the Criminal Code FBiH in regards to hate crime rgulation, and c) passing LGBTI-inclusive annual operational plans for gender equality at entity and state-level. During 2015 and 2016 we had media campaigns that have reached over a million of BiH citizens and we organized the LGBTI film festival – Merlinka.

A detailed overview of all of our activities and achievements will soon be available in our webpage [www.soc.ba](http://www.soc.ba).

**Footnotes**

1. http://soc.ba/en/better-protection-of-lgbti-persons-through-the-amendments-to-the-anti-discrimination-law-of-bih/ [↑](#endnote-ref-1)
2. http://soc.ba/en/federation-of-bih-finally-adopts-hate-crime-regulation/ [↑](#endnote-ref-2)
3. http://soc.ba/en/for-the-first-time-one-of-the-governments-in-bosnia-and-herzegovina-has-included-the-rights-of-lesbian-gay-bisexual-and-transgender-people-in-their-action-plans/ [↑](#endnote-ref-3)
4. http://soc.ba/en/government-of-the-federation-of-bih-has-included-the-rights-of-lgbt-people-in-their-action-plans/ [↑](#endnote-ref-4)
5. http://soc.ba/en/special-report-on-rights-of-lgbt-persons-in-bih-presented-in-bih-parliament/ [↑](#endnote-ref-5)
6. http://soc.ba/en/pink-report-2016-annual-report-on-the-state-of-the-human-rights-of-lgbti-people-in-bosnia-and-herzegovina/ [↑](#endnote-ref-6)
7. ILGA-Europe Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2016, p. 48–49. URL: http://www.ilga-europe.org/sites/default/files/2016/full\_annual\_review.pdf. [↑](#endnote-ref-7)
8. Ibid, p. 48. [↑](#endnote-ref-8)
9. Ibid, p. 48. [↑](#endnote-ref-9)