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&

Sexual Rights Initiative



KEY WORDS: Discrimination, Sexual orientation and gender identities, LGBT rights.

INTRODUCTION

1. This report was drafted by the Bosnian-Herzegovinian, Sarajevo-based Human Rights Organisation Sarajevo Open Centre¹ (Sarajevski otvoreni centar), jointly with the Sexual Rights Initiative.²
2. The report builds directly or indirectly on the recommendations of the UPR Working Group from the 14th session (2010) in a following manner:
 - DIRECTLY: 34, 48, 49, 50 (accepted) and 51 (rejected);
 - INDIRECTLY: 9, 10, 11, 12, 13, 15, 18, 30, 31, 32, 45, 83, 98, 99, 100, 101, 102 (accepted) 19, 33, 111 (rejected) and 80 (pending).
3. The submission tackles the following topics: a) **social and political framework**; b) **discrimination based on sexual orientation and gender identity**; c) **hate crime and hate speech acts based on sexual orientation and gender identity**, d) **freedom of assembly and LGBT rights**, and e) **rights of organizations and activists working on LGBT issues**, and includes f) **recommendations**.

SOCIAL AND POLITICAL FRAMEWORK

4. Homosexual acts among men are decriminalized with the amendments of the Criminal Code of the Socialist Republic Bosnia and Herzegovina in 1991. Decriminalization of homosexual acts is confirmed with the adoption of the new Criminal Codes in the three federal units Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and Brcko District (BD).
5. Heterosexuality and patriarchal values are being constantly reproduced in private life/family surrounding, educational institutions and media. School textbooks and curricula do not cover sexuality and health issues. Homosexuality, bisexuality, transgender, transsexual and intersex are rarely mentioned in schools and if, then as social deviations and/or risk groups for the society³.
6. Lesbian, gay, bisex and transgender (LGBT) issues are being addressed in electronic, print and online media. Media reporting has increased and improved drastically in the last four years. Nevertheless, hate speech (i.a. death and violence threats) is still present, especially in online media. There is no criminal proceeding of such cases, even though cases are being reported to the police. One of the reasons for that is the low level of coordination between police agencies (one agency is in charge for the reporting of cases, another one for the investigation of online hate speech).

¹ See more details at: www.soc.ba (all information on the web is available in English and local language).

² The Sexual Rights Initiative (SRI) is a coalition of organizations that advocates for the advancement of human rights in relation to gender and sexuality within international law and policy. The SRI focuses its efforts particularly on the work of the United Nations Human Rights Council, including its resolutions and debates as well as the work of the Universal Periodic Review mechanism and the system of Special Procedures. The SRI combines feminist and queer analyses with a social justice perspective and a focus on the human rights of all marginalized communities and of young people. It seeks to bring a global perspective to the Human Rights Council, and collaborates in its work with local and national organizations and networks of sexual and reproductive rights advocates, particularly from the Global South and Eastern Europe. The SRI partners are: Action Canada for Population and Development, Akahatá - Equipo de Trabajo en Sexualidades y Generos, Coalition of African Lesbians, Creating Resources for Empowerment in Action (India), Egyptian Initiative for Personal Rights, and Federation for Women and Family Planning (Poland).

³ Sarajevo Open Centre Report on Homo-/Bi-/Transphobia in BiH Schools, 2013: <http://soc.ba/en/izvjestaj-o-homofobiji-bifobiji-i-transfobiji-u-skolama-u-bih-2/>

7. When it comes to the general public, a public opinion pool form 2013⁴ showed that still 56.5% of the respondents think “homosexuality must be cured,” which is evidenced by a lack of knowledge and entrenched stereotypes about homosexuality, which was removed from the list of illnesses and social disorders. For three fourths of the respondents, same-sex kissing in public is unacceptable, whereas having a sex change is considered repulsive by 59.5%. A 2013 countrywide LGBT community research⁵ showed that only every seventh person is out to his parents and family, confirming the low level of social and family support of LGBT persons.
8. Homophobia and transphobia are tolerated and very present in governmental institutions, political parties, police and other public institutions. All legal measures, which promote human rights of LGBT persons, are made in order to satisfy minimum requirements and international obligations regarding UN, and Council of Europe and are especially a result of the ongoing European Union Integration Process.
9. Different political leaders used discriminatory language, like the member of BiH Presidency, Bakir Izetbegovic, who in an interview⁶ answered the question if he is going to advocate the rights of homosexual persons the following way: “I will fight with all democratic means so that the society that we will leave to our children does not remember us to Sodom and Gomorra.” Similar language is used by ministers, members of parliament and political party representatives on all levels of governance.

DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Legal framework

10. The BiH Gender Equality Law, adopted in 2003 and amended in 2009, is the first law that includes a prohibition of discrimination on the grounds of sex/gender (*spola*) and sexual orientation (*spolne orijentacije*).
11. The BiH Anti-discrimination Law from 2009 covers the prohibition of discrimination on the grounds of “sex expression and/or orientation”⁷. It was adopted only after severe pressure was placed by the international community. The terms are not defined and are left to the interpretation of lawyers. Gender identity (important for trans persons) is not covered by the law (but can be covered under “sex expression”). Different laws on State, Entity and Cantonal level do cover sexual orientation or gender identity.

Implementation

12. Information about discrimination on the grounds of gender, sexual orientation and gender identity is not collected or tracked, because the BiH Ministry of Human Rights and Refugees did not create the database (it was supposed to be created 90 days after the adoption of the Anti-discrimination law 2009). No single legal case exists regarding discrimination on the grounds of sexual orientation or sexual/gender identity and expression, although cases have been reported⁸. Existing discrimination cases that are in courts show that legal proceedings are not

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

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

⁶ <http://gracija.ba/novost/14850/vaspitali-su-me-i-otac-alija-i-sarajevska-jalija>

⁷ In local language, terminology that is used is: “(s)polnog izražavanja i/ili orijentacije”, which literally means «sex expression and/or orientation». Sex in this case refers to “(s)pol”, i.e. biological sex. Local translation for gender is «rod», gender identity is «rodni/spolni identitet», and sexual orientation is «seksualna/(s)polna orijentacija».

⁸ See i.a. Pink Report. Annual Report on the Human Rights Situation of LGBT persons in BiH: <http://soc.ba/en/pink-report-annual-report-on-the-human-rights-situation-of-lgbt-persons-in-bih-in-2012/>

efficient, because some cases take up to three years to be solved. LGBT persons do not trust into the judiciary system and there were any trust-building efforts of the institutions towards the LGBT community.

13. Laws are not harmonized with the Anti-Discrimination Law even this was supposed to happen 90 days after the adoption of the Law. As a result, different laws (like the Labor or Higher Education Laws) do have different anti-discrimination clauses (sometimes covering and sometimes not sexual orientation and gender identity). For example, the draft of the new FBiH Labor Law did not foresee sexual orientation in the anti-discrimination clausal, reducing the level of workplace protection only on the level of the Anti-Discrimination Law.
14. The BiH Ombudsman Institution has very limited resources to work on Anti-discrimination cases. Even it was by the Anti-discrimination law supposed to get a special budget line, the Anti-discrimination Department in the Ombudsman Institution never got it.
15. Judges and prosecutors countrywide don't have any or have limited training related to the new Anti-discrimination law. The result of this is that the law is not implemented how it is defined by the provision of the law text⁹.
16. BiH never adopted a countrywide Anti-Discrimination Strategy that would define concrete and realistic measure how to fight discrimination (including the grounds of sexual orientation and gender identity), prejudices and promote tolerance and equality on State, Entity, Cantonal and Local level. BiH did adopt the Council of Europe's recommendations on measures on fight against sexual orientation and gender identity discrimination, but did not take any measures, what has been shown in an independent monitoring report¹⁰. If the CoE recommendations have been implemented, the institutions would be more informed and aware about discrimination of LGBT persons.
17. Family laws of FBiH, RS and BD define marriage and domestic partnership as the union between a woman and a man. Even though jurisprudence (for example the case Schalk and Kopf vs. Austria, 30141/04) of the European Court for Human Rights indirectly bounds BiH as Council of Europe member state to extent its legislation to recognize some of the rights and obligations (i.a. social rights) that come out of the union between same sex couples. Since it is the opinion of the Court that same sex couples in stable de-facto relationships are also protected by the Art. 8 of the European Convention for Human Rights and Fundamental Freedoms. There was no attempt to adopt a, registered partnership for same-sex couples law in any of the BiH federal units. Among other things same sex couples cannot access reproductive technologies or adopt a child as such rights are limited by law only to married couples and heterosexual couples in domestic partnerships.
18. There is no medical support to transexual persons. Surgeries have to be done abroad, while the official social security system is not covering any costs. However, once the sex reassignment is done, transexual persons can legally change their name, personal number (JMB) and documents. Only the BD Law on Birth Register Books does not cover "sex reassignment" as a ground for legal change of personal data. Civil society organizations did call the BD Government in 2013 to amend the law that the government refused to do. The case is at the moment at the

⁹ See a big number of policy papers and analysis <http://analitika.ba/en/projects/overview-ad-framework-and-practice-bih>

¹⁰ Monitoring of the implementation of the Council of Europe's recommendations on measures on fight against SOGI discrimination, <http://soc.ba/en/monitoring-the-implementation-of-the-council-of-europe-committee-of-ministers-recommendation-on-combating-sogi-discrimination-2/>

Ombudsmen Institution.

19. There is also no legal provision regarding intersex children and decisions being made about their sex and sexual/gender identity, although such surgeries are practiced in BiH. Data about intersex children is not collected or tracked.

HATE CRIME AND HATE SPEECH ACTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Legal framework

20. The BiH state-level Security Ministry and the Organisation for Security and Co-operation in Europe (OSCE) called BiH federal units (FBiH, RS and BD) to adopt amendments on their criminal laws and to include hate crime regulation. The RS and BD did so in 2010, i.a. including the grounds of sexual orientation and gender identity in the hate crime definition. FBiH did not adopt amendments on the criminal law.
21. Since December 2012 a non-formal coalition¹¹ is advocating for the adoption of hate crime regulation in the Criminal Law of FBiH. Even amendments have been adopted in July 2013 in the FBiH House of Representatives the amendments have not been adopted in the second chamber - the FBiH House of Peoples. Civil society advocacy actions did continue also after this failure.
22. Hate speech provision, covering i.a. sexual orientation and gender identity, are not included in the Criminal Laws of FBiH, RS and BD. There was no attempt to amend the Criminal Laws with hate speech provisions.

Implementation

23. Information about hate crime acts on the grounds of gender, sexual orientation and gender identity is not systematically collected or tracked. Nevertheless, the police are working on concrete cases (hate crime acts against homosexual persons) and some of them are in the prosecution phase. A countrywide LGBT community research¹² showed that every third LGBT person has been violated, but only every seventh case of violence has been reported to the police. This is a clear sign of miss-trust towards the law enforcement institutions.
24. The Police of the Canton Sarajevo are cooperating since 2012 with civil society organizations that are working on LGBT rights. Educational and informative actions did take place and the police did commit to continue working on LGBT rights issues in 2014, buy including LGBT and hate crime topics in the police permanent education. Other police units did not show special interest working on these issues.
25. Judges and prosecutors countrywide have got no or limited training related to hate crime provisions.
26. Violence acts and attacks against LGBT persons are happening on regular basis and are also regularly presented in media. Public institutions never commended this acts.
27. The attacks on the LGBT arts festival "Queer Sarajevo Festival" in September 2008 have never been prosecuted, even 8 persons have been hurt and everything has been reported to the police. The case is since years on the BiH Constitutional Court.

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

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

FREEDOM OF ASSEMBLY AND LGBT RIGHTS

28. Freedom of Assembly is guaranteed by the constitution and laws, but in practice different minority groups are prevented to use it, including LGBT persons. After the attack on the Queer Sarajevo Festival in September 2008, when 8 persons have been hurt, nobody was prosecuted. The case has been submitted to the BiH Constitutional Court 2011. The BiH Constitutional Court answered that this case has no priority, indirectly saying that the freedom of assembly for LGBT persons, one of the most fundamental human rights, is not a priority for the highest judiciary authority in BiH.
29. On February 1st 2014 the LGBT film festival Merlinka in Sarajevo has been attacked by a hooligan group. Even though the event was registered to the police 16 days in advance the police was 50 min. late at the festival location. During this attack two festival speakers have been physically hurt, 25 other participants experienced fear. Even main human rights institutions and ministries have been invited to condemn the attack, only the BiH Human Rights Ombudsman Institution did so. The BiH Ministry for Human Rights and Refugees ignored the letter.

RIGHTS OF ORGANIZATIONS AND ACTIVISTS WORKING ON LGBT RIGHTS

30. Three organizations actively working on LGBT rights are formally registered in BiH: Sarajevo Open Centre, Foundation CURE and Okvir Organization. Activists of the Sarajevo Open Centre who are publicly out have faced death and other threats and have been subjected to hate speech. We are not aware of any prosecution of those cases.

RECOMMENDATIONS

31. Amend the BiH Anti-discrimination Law to include gender identity and sexual orientation (as opposed to existing grounds: sexual expression and/or orientation).
32. Amend the FBiH Criminal Law to include hate crime and hate speech provisions, i.a. on the grounds of gender identity and sexual orientation.
33. Amend the RS and BD Criminal Law to include hate speech provisions, i.a. on the grounds of gender identity and sexual orientation.
34. Draft, with active civil society involvement, and adopt an Anti-Discrimination Strategy that defines concrete and realistic measures how to fight discrimination (including the grounds of sexual orientation and gender identity), prejudices and promote tolerance and equality on State, Entity, Cantonal and Local level.
35. Draft, with active civil society involvement, and adopt legal provisions (for example a registered partnership law) that regulates rights and obligations out of same sex unions.
36. Provide medical support to transexual persons during the sex reassignment procedure and to cover sex reassignment costs trough the official social security system.
37. Eliminate derogatory and demeaning language and inaccurate contents from school and higher education textbooks and curricula.
38. Take a proactive role in securing, protecting, promoting and implementing human rights of LGBT persons in BiH.