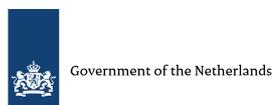


**Monitoring the implementation of the  
Council of Europe Committee of Ministers Recommendation on  
combating sexual orientation or gender identity discrimination.**

**Bosnia-Herzegovina Summary Report**

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The opinions expressed in document do not necessarily reflect official positions of ILGA-Europe or the Dutch Government.



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## I. EXECUTIVE SUMMARY

The only measure taken by Bosnian-Herzegovinian authorities in compliance with the Recommendation CM/Rec(2010)5 is the inclusion of sexual orientation and sexual expression in anti-discrimination legislation. However, in the absence of other measures, and in the face of severe social hostility, it offers little protection to lesbian, gay, and bisexual persons.

So far as the Sarajevo Open Centre has been able to ascertain, the authorities have adopted no other measures to implement the requirements of the aforementioned Recommendation. In particular, there has been no review of existing legislative and other measures that could result directly or indirectly in discrimination, no provision for protection from discrimination on grounds of gender identity, and no introduction of a comprehensive strategy aimed at tackling discriminatory attitudes within the general public and correcting prejudices and stereotypes. The Recommendation and its Appendix have not been translated, and have not been disseminated either within government or civil society.

A bias motive based on sexual orientation (but not gender identity) is included as an aggravating circumstance in the criminal codes of the Republic of Srpska and Brcko District, but not in that of the Federation of BiH. There appears to be no specific training for police officers and judiciary in relation to homophobic or transphobic hate crimes, nor for prison officers in relation to LGBT prisoners. There is no collection of data in this field.

There are no laws prohibiting "hate speech" or incitement to hatred on grounds of sexual orientation or gender identity (including on the Internet)

Although freedom of expression and assembly exist in theory for LGBT people, the violence at the time of the Queer Sarajevo Festival, and the failure of authorities to provide protection, demonstrate that the reality at that time was very different. How far things have improved will only be tested when the LGBT community gains the confidence to try to exercise freedom of expression and assembly fully again.

Same-sex sexual acts are not criminalised. No steps have been taken to remove discrimination in access to rights of couples and parenting.

Once gender reassignment is completed, the individual can apply for changes to the gender marker in all official documents including, as a first stage, the identification number. Therefore at least one abusive requirement, that of gender reassignment surgery, exists.

The Labour Law of the Brcko District and Labour Law of the institutions of BiH prohibits sexual orientation discrimination, but equivalent legislation in the Republic of Srpska and the Federation of BiH does not. It appears that none of the other measures proposed by the Recommendation have been taken, including in relation to the armed forces, and the privacy of transgender persons.

The BiH Anti-Discrimination Law, and some legal instruments at entity level, specifically prohibit sexual orientation discrimination in education, but it does not specifically include gender identity discrimination. It appears that no other measures proposed by the Recommendation have been acted on. A study of school textbooks found that some still define homosexuality as an illness and include it group of disorders such as paedophilia and drug addiction.

Homosexuality is no longer classified as a disease, HIV/AIDS prevention programme includes LGBT people, and there is nothing in principle that would prevent LGBT persons identifying their partner as "next of kin". However, it seems that other measures proposed by the Recommendation have not been carried out.

The BiH Anti-Discrimination Law prohibits discrimination in the field of housing on grounds of sexual orientation, but it does not specifically include gender identity. Apart from this, there is little suggests that any steps have been taken to address the other measures proposed by the Recommendation

None of the specific measures proposed by the Recommendation have been implemented in the field of measures to prevent discrimination in the field of sports.

BiH law does not explicitly recognise sexual orientation or gender identity in the context of asylum. No action has been taken in relation to the measures proposed by the Recommendation.

The mandate of the Ombudsman for Human Rights explicitly includes sexual orientation but not gender identity. However, the Ombudsman has included gender identity in the work of the/ Office, and has, within the limits of his

resources, conducted some activities along the lines proposed by the Recommendation. However, due to lack of resources, the Ombudsman's office does not carry out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity.

## II. RECOMMENDATIONS TO GOVERNMENT FOR PRIORITY ACTIONS

In order to fulfil the requirements of the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, as well as other binding international obligations, European human rights obligations and in order to achieve an accurate implementation of the Bosnian-Herzegovinian law on Prohibition of Discrimination and the law on Gender Equality, the state public authorities, entities and cantonal level should take the following actions/...:

- In the Law on Gender Equality and the Law on Prohibition of Discrimination, as laws, which regulate the area of discrimination prohibition in a systematic way, the terms sexual orientation and gender identity should be defined. Since this is the question of relatively new terms, adequate definition would facilitate application by state bodies, other legal and natural persons, or judicial bodies, and prevent narrow or wrong interpretation;
- Public authorities should ensure that BiH legislative and other measures are adequate to combat discrimination on grounds of sexual orientation and gender identity, and should adopt and effectively implement a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes.
- In order for the system of protection to be used, and for the deficiencies within it is application to be identified; it is necessary for persons or groups towards which the protection against discrimination system is addressed to be aware of it and to use it. Therefore an extensive awareness raising campaign needs to be issued by BiH public authorities.
- Non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are not appropriately and

systematically consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons. Therefore there is a need for systematic consultation and cooperation between non-governmental organizations and public authorities.

- In the Criminal Laws of Bosnia and Herzegovina, of Republic of Srpska, of Federation of BiH and of Brčko District in the criminal offence *violation of equality of a man and a citizen*, gender identity should be introduced as an element of the criminal offence. With the introduction of gender identity as an element of the criminal offence, the Criminal laws of Bosnia and Herzegovina would be harmonised with the Law on Prohibition of Discrimination of Bosnia and Herzegovina. Also, police statistics should not be focused only on crimes but also on the motives of those crimes.
- Although the laws guarantee free press and the freedom of expression there is neither an extra stimulation nor policies issued to ensure more visibility of LGBT persons within the media or in the public sphere. Some agencies like Communications Regulatory Agency (RAK) are persistently fighting against any kind of discrimination in the media, as well as the non governmental agency Press Council. On the other side, we conclude that public institutions are not just insufficient in encouraging a good report on LGBT issues, they are also failing to condemn cases of homophobic contents
- Public authorities need to ensure the right of peaceful assembly of every citizen. However the authorities failed to ensure public events as was clear during the events of the Queer Sarajevo Festival in 2008 where 8 persons were injured. So far, no one has been prosecuted for the aforementioned events and the case is still pending before the Constitutional Court of BiH. The occasional manifestations of violence, discrimination and homophobia in society are still a matter of concern.
- In respect of changes to the family laws in Bosnia and Herzegovina, the following steps should be taken:
  - a) Introduction of registered partnership whereby members of gay and lesbian community would regulate their property relations within the community of life;

- b) Introduction of registered partnership for members of gay and lesbian community within which partners could regulate property rights, and realise the right to pension from other partner, right to support, as well health insurance;

The minimum regulation should at least remove the legal vacuum and enable joint partner property investments, or protection of such properties enable the right to support of the other partner; enable realisation of right to pension; tax exemptions and privileges in respect of resolving housing issues: especially when the partners have spent a lifetime together. Negation of existence of such partnership by the state does not contribute to resolving the problem.

- Harmonise the Employment laws of Federation of BiH, of Republic of Srpska and of Brčko District with the relevant provision of the Law on Gender Equality and Law on Prohibition of Discrimination, introducing expressly discrimination on grounds of sexual orientation and gender identity. Public authorities should implement a strategy in order to raise awareness among employers and employees of their rights and obligations.
- Regarding transgender persons, the public authorities at entity level and Brčko District need to establish a procedure that enables change of name and gender in official documents in a quick, transparent and accessible way. Also, the right of a legally recognized transgender person to marry a person of the opposite sex to their reassigned sex needs to be legally guaranteed.
- The BiH state needs to provide the possibility to undergo surgery and other needed treatments leading to full gender-reassignment, but also to ensure that insurance plans should cover medically necessary treatment in general, with gender reassignment surgery as a part of this.
- There is a need for harmonization of the Education laws of different levels with the Law on Prohibition of Discrimination. Also the curricula and the textbooks need to be reviewed in order to include reliable information regarding sexual orientation and gender identity, eliminating all the misinformation and stereotypes.

- There is no official collection of data about bullying incidence in schools, so the public authorities need to take into consideration the systematic collection of data related to discrimination and violence in schools related to sexual orientation and gender identity, as well as implementing systematically trainings and codes of conduct for educational staff to promote a tolerant environment and the prevention of violence.
- BiH public authorities should develop a national strategy to adapt health services based on the needs of every citizen, offering effective health services while having due regard, among other things to the patient's sexual orientation and/or gender identity. This strategy should include accurate training for health workers in order to provide their services without discrimination on grounds of sexual orientation and gender identity.
- The Law on housing of both Federation of BiH and Republic of Srpska should be amended to be consistent with the law on Prohibition of Discrimination, because the former does not address discrimination on the grounds of sexual orientation or gender identity but the latter prohibits discrimination on all grounds including sexual orientation and gender identity. The amendments should introduce explicit prohibition of discrimination based on sexual orientation or gender identity in access to housing, the conditions of housing and the lease contract.
- BiH public authorities need to undertake policy and legislative measures to prevent the risk of exclusion from participation in sports on the grounds of sexual orientation and gender identity. Homophobic and transphobic chanting and violence that accompany sports events need to be included as a criminal offence in the BiH criminal laws.
- The BiH Law on migration and residence of foreigners and asylum should recognize a well-founded fear of persecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status and asylum.
- The Ombudsman office has shown its willingness to cooperate and to work with non-governmental organizations for better implementation of the anti-discrimination law, as well as providing information in order to raise

awareness of the procedures for complaint in cases of suffering discrimination on grounds of sexual orientation and gender identity. However, due to lack of resources, the Ombudsperson office is not carrying out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity, issues that should be addressed in the near future. Also, BiH should strengthen the anti-discrimination department of the Ombudsman office in order to fulfil its competences accurately.

### III. INTRODUCTION

#### **Background**

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world's first international legal instrument dealing specifically with discrimination on these grounds, which he described as "one of the most long-lasting and difficult forms of discrimination to combat".<sup>1</sup>

In broad terms the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states, including BiH. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation consists of four elements:

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<sup>1</sup>“Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons”  
<https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE>, visited July the 12<sup>th</sup> 2012

- A **preamble** which identifies that homophobia, transphobia and other forms of intolerance and discrimination against lesbian, gay, bisexual and transgender are historically and still current problems that need to be addressed. Also it recalls that human rights are universal and shall apply to all individuals without discrimination on any ground, in accordance with the European Convention on Human Rights and other international conventions such as the European Social Charter, the International Convention on the Rights of the Child, the International Covenants on civil and political rights, and on economic, social and cultural rights, and the European Union Charter of Fundamental Rights. Also the Recommendation recognizes the role that state actors should play both as to negative obligations, ensuring non-discriminatory treatment, and as to positive obligations that require implementing measures to protect against discriminatory treatment, including measures implemented by non-state actors. These are both fundamental components of the international system to protect human rights and fundamental freedoms- without discrimination on any ground.
- An **operative text** which highlights three key areas of activity by governments, namely: review and eliminate existing discriminatory laws and policies; introduction of laws and other measures to combat discrimination and ensure that effective legal remedies are in place.
- An **appendix**, which sets out in more detail the measures required of governments in the operative text. The appendix is divided in the following sections: I. Right to life, security and protection from violence (hate crimes and hate speech); II.. Freedom of association; III. Freedom of expression and peaceful assembly; IV. Right to respect for private and family life; V. Employment; VI. Education; VII. Health; VIII. Housing; IX. Sports; X. Rights to seek asylum; XI. National Human Rights Structures. The proposed actions are based on the legally binding international covenants exposed before.
- The **explanatory memorandum** which supports the Recommendation by adding background information in the different sections and topics, clarifying what was intended by individual recommendations, explaining

the principles derived from existing European and other international instruments on which the individual recommendations are based and giving examples of the detailed measures required to implement individual recommendations.

### **The purpose of this report**

The purpose of this report is to assess what progress has been made by the Bosnian Herzegovinian all relevant authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

### **Methodology**

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Sarajevo Open Centre has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix iii to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and other agencies to letters from Sarajevo Open Centre listing the relevant checklist questions, and

asking for comments on actions taken to implement the related measures.

- Information from published sources, such as the reports on Bosnia and Herzegovina commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, "Discrimination on grounds of sexual orientation and gender identity in Europe". Also other sources such as the European Union Progress Report for BiH<sup>2</sup>, the Country Reports on Human Rights Practices by the United States Department of State<sup>3</sup>,
- Research and documentation assembled by Sarajevo Open Centre and other non-governmental organisations.

BiH has been created after the war in early 90's with a very complex political system and legal framework in order to reflect all identities of a multi-ethnic, multi-cultural and multi-religion state which consist of two entities and one district: the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and Brcko District (BD). FBiH is a federation of 10 Cantons, while RS is centralised.

In addition to the State Constitution, each entity has its own constitution while BD has its own statute. Furthermore, in addition to laws and ministries at the State level, there are laws and ministries both at the entity/district level, as well as at the level of cantons.

This structure means that responsibility for implementing the Recommendation of the Committee of Ministers on combating sexual orientation or gender identity discrimination lies with ministries or institutions at State, entity/district and canton level, making accountability for action very diffuse. In preparing this report, the letters referred to above have been directed to no fewer than 71 ministries or other institutions at all the levels of government described above.

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<sup>2</sup>EU Commission Progress Report 2011 (Brussels, 12.10.2011 SEC(2011) 1206 final)

<sup>3</sup> US Department of State, Country reports on Human Rights Practices for 2011, Bosnia-Herzegovina <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>, visited July the 10<sup>th</sup> 2012

#### IV. FINDINGS

##### The Recommendation

*The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.*

*The only measure in compliance with the above is the inclusion of sexual orientation and sexual expression in anti-discrimination legislation. However, in the absence of other measures, and in the face of severe social hostility, it offers little protection to lesbian, gay, and bisexual persons. There is no specific legal protection for transgender persons<sup>4</sup>.*

LGBT people in BiH face a very considerable degree of hostility. According to a Gallup survey conducted in 2010, 64.1% of BiH citizens think that homosexual relations are wrong, and just 18% think that homosexuals should enjoy the same rights as heterosexuals.

This hostility has impacted very negatively on the development of the LGBT community. LGBT persons remain largely invisible socially and politically. In 2008 there was a first attempt to break through this invisibility, with the holding of the Sarajevo Queer Festival, a cultural event with an art exhibition, movies etc. Announcement of the Festival was met with an outpouring of homophobic

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<sup>4</sup> The anti-discrimination law includes prohibition of discrimination on the grounds of "sex, sexual expression (expression of sex) or orientation" ("...ispola, spolnogizražavanjailiorijentacije"). Although this law was expected at minimum to include the grounds of gender identity and sexual orientation, it fails to do so. This law is not satisfactory as it does not specifically include the term gender identity. Banovic, D., *Prava I slobode LGBT osoba, Seksualna orijentacija I rodni identitet u pozitivnom pravu u Bosni I Hercegovini*, Edition Questioning Sarajevo Open Centre, Sarajevo 2011

and transphobic speech in the media. Extremist groups called for violence against homosexual and transgender people. Some mainstream politicians joined the outcry. Only two opposition parties gave open public support to the Festival.

When it opened, there was a brutal attack on participants by hooligans and religious extremists, with eight persons being injured. With the police failing to provide adequate protection, the organisers were unable to ensure the safety of participants, and the rest of the programme was cancelled.<sup>5</sup>

Since then, the LGBT community has remained largely invisible, it being considered too dangerous to organise any form of public event. However, in 2010 the Sarajevo Open Centre began work within the LGBT community, and due to this fear created after QSF 2008 events had deliberately low public profile. However after verifying that the events were carried out without difficulties, since mid- 2011 till nowadays all the events around the country are totally public and even advertised in different mainstream media. So far, none of the public events have been attacked.

### **Measures taken**

Of the measures required under the Recommendation proper, only one has been implemented, namely prohibition of discrimination on grounds of sexual orientation, which is provided for both by the BiH Law on Gender Equality and the BiH Law on Prohibition of Discrimination. They were adopted in 2003 and

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<sup>5</sup> For further information on the Sarajevo Queer Festival, see the Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, – Sociological Report: Bosnia-Herzegovina, prepared for the Office of the Commissioner for Human Rights

2009 respectively under pressure from the EU and Council of Europe, rather than from any impetus by BiH politicians.

So far as the Sarajevo Open Centre has been able to ascertain, the authorities have adopted no other measures to implement the above-mentioned requirements of the Recommendation. In particular, there has been no review of existing legislative and other measures that could result directly or indirectly in discrimination, no provision for protection from discrimination on grounds of gender identity, and no introduction of a comprehensive strategy aimed at tackling discriminatory attitudes within the general public and correcting prejudices and stereotypes. The Recommendation and its Appendix have not been translated, and have not been disseminated either within government or civil society.

On paper, legal remedies exist for victims of discrimination. However, Sarajevo Open Centre knows of no examples of successful use of anti-discrimination law in relation to discrimination on the grounds of sexual orientation or gender identity. Indeed, given the continuing hostility towards LGBT people, it is an open question whether the courts, police and other administrative bodies would apply the anti-discrimination legislation effectively.

The 2011 annual report of the Ombudsman indicates the necessity of intensifying a campaign of awareness-raising among certain categories of victim, including those suffering discrimination based on sexual orientation.

Against this background, it comes as no surprise to find that the Council of Europe Commissioner for Human Rights has stated the necessity of encouraging the authorities "to step up their efforts to ensure the effective implementation of anti-discrimination legislation and to raise public awareness of this law".<sup>6</sup>

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<sup>6</sup> Council of Europe Commissioner for Human Rights, 4TH QUARTERLY ACTIVITY REPORT 2010 by Thomas Hammarberg, CommDH(2011)1

During the preparation of this report we met representatives of the Ministry for Human Rights and Refugees of BiH. Regrettably, we were left with the impression that they have no plans to work on combating sexual orientation or gender identity discrimination or collaborate with NGOs working on the issue, and these issues are not a priority for the Ministry.

## Appendix to Recommendation CM/Rec(2010)5

### i. Hate crimes and hate speech

*The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.*

*A bias motive based on sexual orientation (but not gender identity) is included as an aggravating circumstance in the criminal codes of the Republic of Srpska and Brčko District, but not in that of the Federation of BiH. There appears to be no specific training for police officers and judiciary in relation to homophobic or transphobic hate crimes, nor for prison officers in relation to LGBT prisoners. There is no collection of data in this field.*

*Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.*

*There are no laws prohibiting "hate speech" or incitement to hatred on grounds of sexual orientation or gender identity (including on the Internet). The Communications Regulatory Agency (broadcast media) include sexual orientation in its regulation and code of practice, and the Press Council (print media) include sexual orientation and gender identity in its regulation<sup>7</sup>. At the time of the Queer Sarajevo Festival, leading public officials did not distance*

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<sup>7</sup> See article 4a of the Press Code:  
[http://english.vzs.ba/index.php?option=com\\_content&view=article&id=218&Itemid=9&lang=en](http://english.vzs.ba/index.php?option=com_content&view=article&id=218&Itemid=9&lang=en)

*themselves from "hate speech", and indeed, some leading public officials were guilty of using homophobic language.*

### **Hate crimes and hate related incidents**

In the legal system of BiH hate crimes have not been defined and the criminal laws differ depending on the region: The Criminal codes of Republic of Srpska and Brcko District have recently introduced hate as an aggravating circumstance in all the criminal felonies, and recognize sexual orientation as a possible motive in such crimes. However gender identity however is not explicitly mentioned. In the Federation of BiH such legislation has not yet been introduced. Federation of BiH does not recognise hate crime as such.

As for the prompt and impartial investigation of hate crimes and other hate motivated incidents, due to the political division of the country this varies depending on the region. While the Ministry of internal affairs of the Federation of BiH, agrees that training for police officers and for the staff of the legal system should be ensured in order to deliver accurate justice, the Ministry did not conduct any such training so far. In Republic of Srpska the Department of police education of Ministry of internal affairs has included in its programme the realisation of training "Professional specialisation of the police officers in the area of prevention and suppressing the violence motivated by sexual orientation and gender identity" and training on "Raising the awareness on gender equality", but these planned activities have never been conducted. Even though the ministries in charge affirm that training programmes for police officers as well as codes of conduct ensure that everyone, including LGBT individuals, is treated equally and in a respectful manner so that they would feel safe to report hate crimes or other hate motivated incidents in 2011, there have been no cases reported to the police. This is a evidence of the lack of trust from LGBT persons in the system and their fear to report cases of hate crime and hate motivated incidents. In BiH there are no special police liaison officers tasked with investigating crimes and incidents linked with sexual orientation and gender identity or to maintain contact with local LGBT communities in order to foster the relationship of trust.

The majority of institutions in charge at every level do not emphasize the need for a special approach in the investigation of homophobic and transphobic hate crime cases, because they think that during the investigation of any criminal case police officers should be guided by the principle of objectivity, efficiency and in general have a professional approach to the investigation. However there is no efficient nor professional system for admission and investigation of complaints of hate crimes or hate motivated incidents, particularly ones based on sexual orientation or gender identity, allegedly committed by the law enforcement officers in any of the ministries in charge of the police. One example of the lack of efficient and professional system of police investigation and prosecution is that none of the alleged perpetrators of the attacks during Queer Sarajevo Festival in 2008 have been prosecuted so far, and this fact is a matter of concern as the former Commissioner Hammarberg states in his report of June 2011.

As for the situation in the judiciary, the Ministry failed to provide us with information about their programmes and codes of conduct, and thus it shows the lack of action on this area of hate crimes and hate motivated incidents with sexual orientation and/or gender identity as bias.

Regulations of the Law on the Execution of Criminal Sanctions, Confinement and Other Measures, especially Article 52 (the demand for humane treatment), prohibit any kind of discrimination based on ethnic belonging, race, skin colour, gender, sexual orientation, language, religion or a belief or any other grounds, in the treatment of prisoners. However the ministry in charge did not inform us of any effective measures used to minimise the danger of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible.

As for the effective system for recording and publishing statistics on hate crimes and hate motivated incidents related to sexual orientation and gender identity, the ministries in charge of police keep these data and statistics within their regular crime statistics and there is no specific registration of hate crimes. The police statistics are focused on the crime not the motive.

## "Hate speech"

Legislation penalising "hate speech" exists. It is penalised in Federation of BiH and Brčko District in their criminal laws, but these laws do not specify homophobic and transphobic hate speech. Criminal Law of the Republic of Srpska does not expressly prohibit hate speech, although the law prohibits incitement of ethnic, racial and religious hatred (Article 390), but it does not penalise homophobic or transphobic hate speech.

But we have to be aware, as it is said in the Report of the Council of Europe Commissioner, T. Hammarberg<sup>8</sup>; he was particularly concerned about statements of parliamentarians and some religious leaders supporting persons who had physically assaulted participants of the Queer Sarajevo Festival in 2008, resulting in eight casualties. For example, a senior member of the dominant Bosniak peoples party, Stranka Demokratske Akcije (SDA), and nowadays one of the members of the Presidency, Bakir Izetbegović, said around the QSF of 2008 "I am not glad that we are holding a Queer Festival. This is a reminder of Sodom and Gomorrah, during one important night that noble Muslims were waiting for, so I am not pleased about that"<sup>9</sup>. Also as Head of the Presidency of BiH he stated in Gracija magazine on October 2010 "we have to fight with all moral means against those who want to pervert high moral society. Everyone has the right to live his life as he pleases, but no right to represent youth perverted things as normal, they call it."<sup>10</sup>

It is also a matter of particular concern that "no public institutions or officials clearly demarcated themselves from the hateful discourse."<sup>11</sup>

The Codex on audiovisual media services and radio media services of the Communications Regulatory Agency of BiH (RAK) states that in audiovisual media services and radio media services human dignity and elementary rights

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<sup>8</sup> Vid supra note 5

<sup>9</sup> Diskriminacija (web portal to report and advertise cases of discrimination) <<http://diskriminacija.ba/node/72>>, visited the 6<sup>th</sup> July 2012

<sup>10</sup> Gracija, <<http://www.gracija.ba/novost/11079/gracija-144>>, visited July 6<sup>th</sup> 2012

<sup>11</sup> "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Sociological Report: Bosnia – Herzegovina" - the Danish Institute for Human Rights (commissioned by the Council of Europe Commissioner for Human Rights)

of others will be respected, and the freedom of forming an opinion will be encouraged. The providers of media services will not provide content that involves any kind of discrimination or prejudice on the grounds of sex, race, ethnicity, nationality, religion or a belief, physical disability, special needs, age, sexual orientation, social origin, as well as any other content whose purpose or consequence is to disable or endanger the recognition or the realization, on an equal basis, of any individual rights and freedoms. However, gender identity is not included in the list.

The Press Council, an independent non-governmental self-regulated media body whose mission is to improve ethical and professional standards in the print media, in article 4, in consultation with Organization Q, decided to include sexual orientation as follows “Journalists must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state. References to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state shall be made only when directly relevant to the occurrence being reported.” Also a new article was added, 4a, which states as follows: “Journalists shall avoid direct or indirect comments which might place individuals in an unequal position or discriminate them based on sex, gender, sexual identity, gender identity, gender expression and/or sexual orientation.”

In cooperation with the Gender centres of FBiH and Republic of Srpska and the Gender Equality Agency of BiH the Press Council adopted a new tool “Recommendation for media- treatment of gender issues in media” where they recommend editors and editorial staff of print and electronic media in BiH, via editorial policy, “to make efforts to assure respect of equality based on gender, sex, sex identity, gender identity, gender expression and sexual orientation, through different measures such as showing positive examples of non-discrimination and respect of human rights in both private and public aspects of life, showing all persons in an equal and non-stereotyped manner, fully respecting their personality and human dignity, restricting sexism, gender-phobia, homophobia, bi-phobia, trans-phobia and other prejudice and stereotypes in media language”.

On the negative side, we conclude that public institutions are not just insufficient in encouraging objective coverage of LGBT issues, they fail to condemn cases of homophobic content.

For example, the Coordination Body of the Colourful network of BiH (LGBTTIQ)<sup>12</sup> lodged a complaint regarding an article in SAFF magazine entitled “AIDS is actually GIRD- Gay related immune deficiency” published on May the 4<sup>th</sup> of 2012, and signed by MD Adem Zalihić. The Press Council found that the layout elements, heading, headline and subheading were tendentious, manipulative, discriminatory and stigmatizing regarding LGBT population.<sup>13</sup> The magazine has not been fined nor have the public authorities stated in public the breach of the Press Code and the necessity to present information in a reliable way, without stereotypes that discriminate citizens of BiH.

Even so, there are cases that show better practice of implementation, like OBN television that was fined on account of messages shown at the MIMOHOD show on August 2008 that were discriminatory against LGBT population, when talking about the Queer Sarajevo Festival.

Printed media in B&H produce and preserve the values of Bosnian and Herzegovinian society through reporting on LGBT topics and creating the reality utilizing several models that represent LGBT persons: (1) Topics not related to LGBT, but – for the purposes of spreading hate or sensationalism – are connected to LGBT context (2) Topics related to Pride Parades in Serbia, Split, Zagreb and the rest of the world. (3) Issues related to LBGT through popular culture and celebrities (4) A group of articles that show positive shift related to the rights of LGBT persons (5) Interviews with LGBT persons from Bosnia and Herzegovina. (6) Authorial articles that are a mix of information, prejudice and arbitrariness and deal with different topics

Two conclusions are evident – a small number of articles is related to B&H and to LGBT issues in B&H and a great number of articles, reporting on LGBT topics, creates the image of frivolous persons and subculture, who are there to

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<sup>12</sup> The Colourful network of BiH is a non-formal network where LGBT human rights organizations and individuals are engaged on the fighting against discrimination towards LGBTTIQ persons in BiH.

<sup>13</sup> Press Council, <[http://english.vzs.ba/index.php?option=com\\_content&view=article&id=1277%3Athe-color-lgbtqi-network-of-bih-magazine-qsaffq-08062012&catid=68%3Asaff&Itemid=25&lang=en](http://english.vzs.ba/index.php?option=com_content&view=article&id=1277%3Athe-color-lgbtqi-network-of-bih-magazine-qsaffq-08062012&catid=68%3Asaff&Itemid=25&lang=en)>, visited July the 15<sup>th</sup> 2012

entertain, humour, shock and reaffirm the prejudices. In that way, the responsibility of failing to write about real, everyday, economical, legal and other problems related to violence and discrimination LGBT persons are subjected to<sup>14</sup>.

## **ii. Freedom of association, expression and assembly**

*Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.*

*LGBT organisations are able to gain official registration. Their involvement in implementing relevant public policies is not systematic, being in the context of wider civil society consultations, or on an occasional ad hoc basis. No public funding has ever been made available to them. Since the violence at the Queer Sarajevo Festival, state protection has improved, although the low public profile maintained by the LGBT community has meant that this issue has not been put to the test to any extent.*

*Section III of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.*

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<sup>14</sup> Causevic, J. and Ljevak, K., *Čekajući ravnopravnost analiza sadržaja izvještavanja pisanih medija o LGBT temama. Period: oktobar 2011. – oktobar 2012, Human Rights Edition Sarajevo Open Centre, Sarajevo 2012*

*Although freedom of expression and assembly exist in theory for LGBT people, the violence at the time of the Queer Sarajevo Festival, and the failure of authorities to provide protection, demonstrate that the reality at that time was very different. How far things have improved will only be tested when the LGBT community gains the confidence to try to exercise freedom of expression and assembly fully again.*

### **Freedom of association**

The BiH anti discrimination law forbids public institutions in charge of NGO and other organizations to impede or prevent official registration in accordance with Article 11 of the European Convention on Human Rights. Nevertheless few organizations that directly mention LGBT and/or queer in their statute are registered so far.

Non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are not appropriately and systematically consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

Nevertheless we can affirm that LGBT human rights organizations are able to work with national human rights institutions such as the Ombudsman's office, even though they need to strengthen their consultation and collaboration with LGBT human rights non-governmental organizations. However, they have shown their willingness to cooperate and to work together with Sarajevo Open Centre for a better implementation of the anti-discrimination law, as well as providing information to raise awareness of the procedures to complain in case of suffering discrimination on grounds of sexual orientation and gender identity.

### **Freedom of expression and assembly**

Freedom of speech in BiH is ensured by the Constitution, in accordance with applicable international treaties and specific legal norms. Constitutional provisions at the state level and in both entities include the protection of freedom of expression in article II/3 at BiH Constitution; article II/2 of the

Federation BiH Constitution and in articles 32 and 34 of the Republic of Srpska Constitution.

Although the laws guarantee free press and freedom of expression there is neither an extra stimulation nor policies to ensure more visibility of LGBT persons within the media or in the public sphere. Some agencies like RAK and the non-governmental Press Council are permanently fighting against any kind of discrimination.

As for the need to ensure the right of peaceful assembly, the events during the Queer Sarajevo Festival provide a disturbing example of failure by the authorities to protect the participants of public events. Although the Ministry ensured the presence of police, the protection they provided was no more than nominal. It was clearly insufficient taking into account the gravity of the violence that happened during the inauguration day of Queer Sarajevo Festival, with the result that 8 people were injured. Moreover, there was extensive public hate speech with posters stating "Death to Faggots" and "We Shall Not Allow Gay Festival" all over Sarajevo. While there were numerous statements by international organisations and other states condemning such acts, few BiH public authorities publicly condemned these interferences with the right to freedom of expression and peaceful assembly; the majority of the state institutions remained silent. So far, no one has been prosecuted for the violence, but the case against the two perpetrators that were caught by the police is currently before the Constitutional Court of BiH. The Council of Europe Human Rights Commissioner summed up a widespread worry when he commented that he remained "concerned about the manifestations occasionally violent, of discrimination and homophobia in the society of BiH. It is of particular concern that investigations into attacks against LGBT activists and their supporters have not resulted in any prosecution so far".<sup>15</sup>

There is no evidence provided by BiH authorities that they will provide protection for future public demonstrations or gatherings of the LGBT community. Moreover, the advisor of the Ministry of Human Rights and

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<sup>15</sup> Council of Europe, supra note 10

Refugees, in a meeting with representatives of Sarajevo Open Centre showed no willingness to ensure LGBT persons freedom of assembly.

**(iii) Respect for private and family life (excluding specific transgender issues) (Section IV, paras 18, 19, and 23 – 27 of the Appendix)**

*These paragraphs of Section IV of the Appendix address inter alia criminalisation of same-sex sexual acts and discrimination in access to the rights of couples and parenting.*

*Same-sex sexual acts are not criminalised. No steps have been taken to remove discrimination in access to rights of couples and parenting.*

The Criminal Law does not recognize same sex acts thus it does not criminalize same-sex sexual acts. The family laws of Federation BiH, of Republic of Srpska and Brčko District confer rights and obligations on unmarried couples, but no steps have been taken to ensure that these rights and obligations apply to same sex couples. The legislation does not recognize registered same-sex partnerships and the state Ministry of Justice mentioned no possibility of implementing legal or other means to address the practical problems arising from the lack of recognition of rights and obligations of same-sex couples. When it comes to adoption of a child, the family laws of the Federation of BiH, of Republic of Srpska and of Brcko District do not allow single individuals to adopt children<sup>16</sup>, regardless of their sexual orientation and gender identity, so all single individuals are discriminated.

Furthermore, in case of lesbian, gays or bisexual persons in the process of getting divorced it is recommended not to mention their sexual orientation in court, because judges are more likely to give custody of the children to the other partner.

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<sup>16</sup> Family Laws gather two different regimes of adoption: the fully adoption and the limited/incomplete (nepotpuno) adoption. Just married individuals are allow to fully adopt children

In addition, the state Ministry of Justice mentioned no steps taken to ensure access to single women to assisted reproductive treatment without discrimination based on sexual orientation. However according to BiH clinics the assisted reproductive treatment is just for married women, so it discriminates against all single women.

There is a plan for adopting a new law in Federation of BiH called Law on treatment of infertility with biomedical assisted reproductive technology which is specifically aimed at married couples or couples that live in extramarital cohabitation.

**iv. Respect for private and family life and access to health care – specific transgender issues (Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36))**

*These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person's gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.*

Once gender reassignment is completed, the individual can apply for changes to the gender marker in all official documents including, as a first stage, the identification number. This stage requires that the relevant medical documentation has been submitted by a doctor or medical team, confirming that full gender reassignment and full transition have been completed. These procedures are of an administrative nature and do not involve court proceedings. It is not clear how far these procedures are quick, transparent and accessible. The right of a legally recognized transgender person to marry the person of the opposite sex to their reassigned sex is not legally guaranteed. In

principle, a person that has legally recognised as the reassigned sex have no obstacles to marry a person of the opposite sex to their reassigned sex, but since there are no legal provisions in the family law recognizing the right of legally recognised transgender persons to marry we are not certain if discrimination would occur in this situation by the administrative bodies.

No review of prior requirements to legal gender recognition has been conducted. At least one abusive requirement, that of gender reassignment surgery, exists.

Transgender persons do not have access to appropriate gender reassignment services. Moreover, neither the Federation of BiH nor the Republic of Srpska cover the costs of gender reassignment treatment. Transgender persons wishing to undergo gender reassignment treatment are thus forced to seek such treatment abroad at their own expense.

#### **v. Employment**

*Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.*

*The BiH Anti-Discrimination Law prohibits discrimination on the ground of sexual orientation, but it does not specifically include gender identity. The Labour Law of the Brčko District and the Labour Law of the institutions of BiH also prohibits sexual orientation discrimination, but equivalent legislation in the Republic of Srpska and the Federation of BiH does not. It appears that none of the other measures proposed by the Recommendation have been taken, including in relation to the armed forces, and the privacy of transgender persons.*

The existing legislation, the Anti-discrimination Law in particular, prohibits discrimination in employment in the public and private sectors on the grounds of sexual orientation and sexual expression at the state level and is applied to entities, Brčko District, cantons and municipalities, and all laws should be harmonized with this specific one. The Law on prohibition of discrimination covers direct and indirect discrimination and the burden of proof remains on the employer or the alleged person who committed discrimination.

Nevertheless the US Department of State affirmed in their country report of 2011 that “while the law prohibits discrimination on the basis of sexual orientation, it was not fully enforced in practice, and there was frequent societal discrimination against LGBT. Gays and Lesbians faced frequent harassment and discrimination, including termination from employment. In some cases dismissal letters explicitly stating that sexual orientation was the cause of termination made finding another job extremely difficult.”<sup>17</sup>

The Labour law and the Law on mediation in employment and on social support to unemployed of Federation of BiH as well as the Labour law of RS have no special prohibition of discrimination on the grounds of sexual orientation and gender identity. Labour law of Brčko District prohibits discrimination on the grounds sexual orientation, but it does not specifically list gender identity as one of the prohibited grounds of discrimination.

Related to the enrolment in the armed forces, the failure of the Ministry of Defense to reply to the questionnaire and the lack of available information strongly suggests that there is a need for further action, especially in order to provide the effective protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill treatment and promote tolerance and respect.

## **vi. Education**

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<sup>17</sup> US Department of State, Country reports on Human Rights Practices for 2011, Bosnia-Herzegovina <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>, visited 10<sup>th</sup> July 2012

*Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.*

*The BiH Anti-Discrimination Law, and some legal instruments at entity level, specifically prohibit sexual orientation discrimination in education, but it does not specifically include gender identity discrimination. It appears that no other measures proposed by the Recommendation have been acted on. A study of school textbooks found that some still define homosexuality as an illness and include it group of disorders such as paedophilia and drug addiction.*

Within the anti-discrimination legislation it is specifically prohibited to unlawfully deny the right to education to persons on the basis of their sexual orientation, but not their gender identity.

The system of primary, secondary and higher education in Bosnia and Herzegovina is extremely fragmented: Republic of Srpska has its own system, Brčko District has its own, and in Federation of Bosnia and Herzegovina 10 systems exist. All this fragmentation makes discrimination towards marginalised groups more probable and more difficult to control.

Systematic legislation on prohibition of discrimination has influenced the process of changes in the laws in the area of education, and resulted in explicit introduction of prohibition of discrimination on grounds of sexual orientation in some areas. The Framework Law on Higher Education of Bosnia and Herzegovina, which regulates prohibited discrimination, expressly mentions gender and sexual orientation as prohibited discrimination grounds. Furthermore, for example, in the Law on Higher Education in the Canton

Sarajevo, which regulates the area of higher education of the largest university centre in the country, it is stated that the high education institution cannot limit access to higher education, be it directly or indirectly, on grounds of gender or sexual orientation. This prohibition is also in the Ethical Code of the University.

Regarding the curricula and the information available to students about sexual orientation and gender identity, in 2010 Organization Q published an analysis titled “1+1=0” researching high school’s handbooks about how they showed LGBTIQ issues. They analyzed 62 handbooks from the three different educational plans (Bosnian/Serbian/Croatian) of different subjects such as biology, psychology, sociology, democracy and human rights, philosophy and ethics. They concluded that the information about these topics was underrepresented, with a very low quality, using gender stereotypes and promoting heteronormativity. In some cases the terminology is wrongly defined (homosexuality, bisexuality, transsexual/transgender) even confusing gender and sex.<sup>18</sup> Homosexuality is even sometimes defined as an illness and included in the same group of disorders as pedophilia and drug addiction.

There is no official collection of data about bullying incidence in schools, so we believe the public authorities need to take into consideration the systematic collection of data related to discrimination and violence in schools related to sexual orientation and gender identity, as well as implementing systematically trainings and codes of conduct for educational staff to promote a tolerant environment and the prevention of violence.

**vii. Health - other than transgender specific health issues<sup>19</sup> (Section VII of the Appendix paragraphs 33, 34,)**

*These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without*

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<sup>18</sup>Organization Q, *1+1=0: analiza srednjo skolski hudzbenika o LGBTIQ pojmovima u Bosni i Hercegovini*, Sarajevo 2010.

<sup>19</sup> See Section iv above

*discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their "next of kin" without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity*

*Homosexuality is no longer classified as a disease, HIV/AIDS prevention programme includes LGBT people, and there is nothing in principle that would prevent LGBT persons identifying their partner as "next of kin". However, it seems that other measures proposed by the Recommendation have not been carried out.*

The Ministry of health and social care of Republic of Srpska informed us that it uses the International Classifications of Diseases which does not classify homosexuality as a disease. And the Federal ministry of health-care states that in the Federation of BiH homosexuality is no longer considered a disease and that it has been removed from all textbooks and educational material for medicine studies.

The Republic of Srpska Minister of Health affirmed that health and social workers are encouraged to create an open and encouraging environment for young LGBT individuals. .Although we have no evidence to support this claim.

The Health Ministry of Federation of BiH claims that health care is available to all the individuals equally without any discrimination based on sexual orientation or gender identity, but no information campaigns towards the LGBT population have been conducted.

A countrywide HIV/AIDS prevention programme is implemented and gives support to LGBT persons. All costs are covered by United Nations Development Programme. Sarajevo Open Centre is unaware that any informational campaigns or user assessment have ever been conducted by the public institutions within the LGBT population.

Despite the existence of the above mentioned official policies and practices which do not discriminate, the situation in the field shows some examples of LGBT persons treated negatively by health professionals. One is the case of the 2012 annual voluntary blood donation programme conducted by the Federal institution for transfusion medicine at the Faculty of Philosophy of Sarajevo. When some LGBT students saw that the questionnaire for blood donors states that “any person that has ever had contact with homosexuals is banned to donate blood” they wanted to have a meeting with the person in charge of the donation programme. A health technician together with one person from the library agreed to the meeting and insulted the students. The students contacted the director of the Centre for Human Rights of the University of Sarajevo who advised them to go to the Ombudsman and to the police<sup>20</sup>. Sarajevo Open Centre had sent before those events several letters to the Blood Donation Institute, both in Federation of BiH and RS, and after this incident organized together with other human rights activists an action to change the aforementioned questionnaire. By September 2012 Sarajevo Open Centre met with the representatives of the Blood Donation Institute of the Federation and they explained the changes made at the questionnaire, erasing any previous discriminatory statement.

#### viii. **Housing**

*Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant's partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.*

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<sup>20</sup>Case documented by Sarajevo Open Centre in June 2012

*The BiH Anti-Discrimination Law prohibits discrimination in the field of housing on grounds of sexual orientation, but it does not specifically include gender identity. Apart from this, there is little suggests that any steps have been taken to address the other measures proposed by the Recommendation.*

The Law on housing of both Federation of BiH and Republic of Srpska does not address discrimination on the grounds of sexual orientation or gender identity either. However the Anti-Discrimination Law prohibits discrimination on grounds including sexual orientation and sexual expression (but not gender identity) concerning housing, including the access to housing, the conditions of housing and the lease contract.

The Ministries in charge of housing failed to reply to our letter requesting information, suggesting that there is no action in this field by the authorities. We believe that there is a clear need for action in order to prevent that LGBT persons face discrimination when they want to exercise their housing rights, such as the sale or rent of housing, the provision of loans for purchase of housing, the recognition of the rights of a tenant's partner or eviction. To give one example, an LGBT non-governmental organization wanted to rent an office in June 2012 for a "daily living room" which would provide to LGBT persons a safe space to meet and obtain information, but the landlord refused to rent the flat for these purposes.

Also Sarajevo Open Centre has no evidence that there are provisions in place to ensure non-discriminatory access to shelters and other emergency accommodation by LGBT people. In their replies to our enquiries, the Federal ministry of labour and social support mentioned no social programmes or support programmes that address the factors which increase vulnerability to homelessness of LGBT people. However, on the positive side, the Ministry of labour, social affairs and refugees of Zeničko-dobojski Canton claims that even though the existing laws do not include the category of homelessness, social programmes and support programmes conducted in coordination with centres for social work, and municipality services in charge of social care, are available for all the users under equal conditions, regardless of sexual orientation and

gender identity in their Canton. Other cantonal ministries that replied did not address the issue of homelessness of LGBT persons.

## **ix. Sports**

*Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.*

*None of the specific measures proposed by the Recommendation have been implemented.*

In their responses to our enquiries, the Ministry of Civil Affairs of BiH, the Ministry of Family, Youth and Sports of Republic of Srpska and the Department for Economic Development Sports and Culture of Brčko District mentioned no particular measures that have been taken to prevent the risk of exclusion from participation in sports on the ground of sexual orientation and gender identity. Besides the legislation that prohibits spectator violence and insulting acts, the ministries offered no information on concrete measures that are being taken in order to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events. The Ministry of Culture, Sports and Youth of the Federation of BiH did not reply to our enquiry, suggesting that no action is being taken by this ministry.

Homophobic and transphobic chanting at or around sports events has not been made a criminal offence in particular, but the Law on Sports of Republic of Srpska forbids spectator violence and insulting acts, especially those that provoke racial, national, political and other intolerance. This is confirmed by the Law on Prevention of Violence at Sport Events which states that violence and inappropriate behavior are considered to include putting up banners, flags or other texts, pictures, songs or other marks which show or encourage hate or

violence on the grounds of racial, national or religious belonging, or some other special characteristic. Nevertheless sexual orientation and gender identity are not mentioned in this law.

**x. Right to seek asylum**

*Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure 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. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.*

*BiH law does not explicitly recognise sexual orientation or gender identity in the context of asylum. In the absence of any response from the relevant ministry, it can only be assumed that no action has been taken in relation to the measures proposed by the Recommendation.*

The Law on the Migration and Residence of Foreigners and Asylum of Bosnia and Herzegovina does not explicitly recognize a well-founded fear of persecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status and asylum.

Since the Ministry for Human Rights and Refugees of BiH failed to respond to our enquiries, there is no information available on any measures taken to ensure 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, degrading treatment or punishment on the grounds of sexual orientation or gender identity. Sarajevo Open Centre is unaware of any measures to prevent risk of

physical violence, including sexual abuse, verbal aggression or other form of harassment against asylum seekers deprived of their liberty and to ensure their access to information relevant to their particular situation.

#### **xi. National Human Rights Structures**

*Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.*

The mandate of the Ombudsman for Human Rights explicitly includes sexual orientation but not gender identity. However, the Ombudsman has included gender identity in the work of Office, and has, within the limits of his resources, conducted some activities along the lines proposed by the Recommendation.

The Institution of Ombudsman for Human Rights has a clear mandate to deal with discrimination on the grounds of sexual orientation but not specifically on gender identity, in accordance with Article 2 of the Law on Prohibition of discrimination of Bosnia and Herzegovina.

In practice the Institution of Ombudsperson for Human Rights carries out the following activities related to discrimination on any ground, including sexual orientation and gender identity:

- Issues recommendations in order to eliminate violations of the law; these recommendations can cover the alteration of the regulation and the general acts, as well as individual measures
- Carries out an intensive campaign in order to promote Anti-discrimination law and its mandate
- Receives individual complaints and based on them conducts the investigation, both in public and private sector, and takes appropriate decisions

- Monitors the court trials but has no jurisdiction over them and cannot influence the process of judicial decisions
- Publicly supports respect of the rights of all the endangered categories, including the right to express their opinions and attitudes.

However, due to lack of resources, the Ombudsman's office does not carry out extensive public campaigns in order to promote anti-discrimination on grounds of sexual orientation and gender identity. Only two persons are working in the anti-discrimination department which makes it one of the smallest units dealing with anti-discrimination in South East Europe. Nevertheless the Ombudsman's office has implemented some actions in order to accomplish their mandate when it comes to sexual orientation and gender identity as prohibited grounds of discrimination, such as: participating in a workshop that the Sarajevo Open Centre organized in OSCE premises in December 2011 dealing with relevant legal issues for LGBT activists and also in the LGBT Law School in October 2012, participating in conferences dealing with anti-discrimination policies abroad, giving lectures at faculties of law and political sciences in BiH and taking part in a local radio talk show in Banja Luka as part of the campaign to promote anti-discrimination.

**Monitoring Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity**

COMPLIANCE DOCUMENTATION REPORT

**Recommendation**

- 1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

In its reply the Ministry of Justice of BiH did not mention whether they have conducted any review of the existing legislative and other measures that could result directly or indirectly in sexual orientation or gender identity discrimination. It is therefore assumed that no such review has been conducted.

- ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

Not applicable

- 2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;**

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security*

*and health care, education, access to and supply of goods and services, including housing, been introduced?*

Gender equality law and Law on Prohibition of discrimination cover the prohibition of discrimination in different areas of life, including employment, social support, health care, education and the access to and supply of goods and services.

The Law on prohibition of discrimination includes prohibition of discrimination on the grounds of “sex, sexual expression (expression of sex) or orientation” (“...i spola, spolnog izražavanja ili orijentacije”). Although this law was expected at minimum to include the grounds of gender identity and sexual orientation, it fails to do so. This law is not satisfactory as it does not specifically include the term gender identity

Even though the legal framework to fight against discrimination is in place the Council of Europe Commissioner stated the necessity to encourage “the authorities to step up their efforts to ensure the effective implementation of anti-discrimination legislation and to raise public awareness of this law”<sup>21</sup>, given that the government has not implemented periodic action plans at national, entity or local level, as well as include indicators to measure the results of the implementation.

*ii. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

The letters we received from those ministries and institutions in charge contained no information of any strategy or long-term education and awareness raising programmes aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes. The Ministry for Human Rights and Refugees of BiH which is in charge of equality and non-discrimination did not reply, so we contacted them and they received us in a bilateral meeting. The conclusions of this meeting were that sexual orientation and gender identity as grounds of prohibition of discrimination are not in their priorities, even

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<sup>21</sup> Council of Europe Commissioner for Human Rights, 4TH QUARTERLY ACTIVITY REPORT 2010 by Thomas Hammarberg, CommDH(2011)1 <sup>22</sup> Ombudsman Institution, ANNUAL REPORT ON OCCURRENCES OF DISCRIMINATION IN BOSNIA AND HERZEGOVINA FOR 2011 Banja Luka, February 2012

though they stated that “if some plan or strategy will be done these two grounds will be included”.

**3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

- i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*

The Ministry of Justice mentioned no specific legal remedies for victims of sexual orientation and gender identity discrimination on the national level. Nevertheless, the system of protection against discrimination offers protection from discrimination on grounds of sexual orientation (but not, specifically, gender identity). While it contains remedies for victims of discrimination, there are no examples of successful use of the law on prohibition of discrimination in relation to sexual orientation or gender identity so far.

- ii. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*

The Ombudsman for human rights of BiH has the duty to conduct a campaign in order to promote the Law on Prohibition of Discrimination which should make victims aware of such remedies and how to access them, even when the violation is committed by person acting in an official capacity.

However, the fact that there are no examples of successful use of this law can be attributed to two main factors: first, social attitudes are so hostile that LGBT victims of discrimination do not have confidence in making use of these remedies; and secondly, a general lack of awareness of the remedies.

In this context, it should be noted that the annual report on occurrences of discrimination in BiH for 2011 elaborated by the Ombudsman's Office indicates the necessity of intensifying the campaign of awareness raising about the work of the

Institution among non-privileged categories, including victims of discrimination based on sexual orientation<sup>22</sup>.

*iii. Are the remedies effective, proportionate and dissuasive?*

These remedies are considered to be proportionate. But we cannot state whether remedies are effective since there is no case law that could prove their level of effectiveness.

*iv. Do the remedies include, where appropriate, adequate reparation for victims?*

These remedies, include, adequate reparation for the victims

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

*i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

The Ministry of Human Rights and Refugees which is in charge of equality and non discrimination did not reply to our letter so we have no information of any strategy aiming to ensure a wide dissemination of the Recommendation and its appendix.

*ii. Have the Recommendation and its appendix been translated?*

The Ministry of Human Rights and Refugees did not reply to our letter so we have no information whether the Recommendation has been translated.

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<sup>22</sup> Ombudsman Institution, ANNUAL REPORT ON OCCURRENCES OF DISCRIMINATION IN BOSNIA AND HERZEGOVINA FOR 2011 Banja Luka, February 2012

*iii. Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*
- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

No translation of the Recommendation and its appendix were disseminated within the LGBT community, neither to CSOs and nor throughout the media. Sarajevo Open Centre is unaware of any measures taken by the BiH authorities to disseminate the Recommendation throughout public administration stakeholders, other civil servants of any level of the public institutions, other national human rights bodies, such as the Ombudsperson office, or through the educational or health care system.

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### A. “Hate crimes” and other hate-motivated incidents<sup>23</sup>

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.**

- i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

The Federal Ministry of Internal Affairs think that training for police officers, and for the staff of the law system are needed in order to achieve these goals, but they did not conduct any such training so far. In Republic of Srpska the Department of Police Education of Ministry of Internal Affairs state that they have included in their programme the carrying out of training on “Professional specialisation of the police officers in the area of prevention and suppressing the violence motivated by sexual orientation and gender identity” and training on “Raising the awareness on gender equality”. The Ministry of Internal Affairs of Canton Sarajevo answered that all the trainings of the police officers includes awareness-raising about the specific term or

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<sup>23</sup> See Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents

a problem they encounter throughout their regular work. In Canton Tuzla the training of police officers gets provided by this Ministry of Internal Affairs, which claims that it ensures efficient, quick and professional investigation of all the felonies, including hate crimes.

The Ministry of Internal Affairs of Canton 10 stated that the officials of this Ministry participate in all the seminars and trainings related to “hate crimes” and are daily introduced to the parameters for this area, but an additional professional education on the approach to the victim or the perpetrator would also be useful so that the perpetrators would be brought to justice more efficiently and in less time. Ministry of Internal Affairs of Unsko – sanski Canton claims to ensure, through training and procedures, the respect of the dignity of every person and claims to offer help and protection and to treat everyone equally and respectfully. They stated that police officers have to approach the “hate crimes” related to sexual orientation and gender identity in a professional and proper way. Ministry of Internal Affairs of Zeničko – dobojski Canton did not have special training about the “hate crimes” with (a) homophobic or (b) transphobic elements so far. Ministry of Internal Affairs of Posavski Canton states that their training of police officers includes awareness raising on the need to make special efforts when dealing with any form of violence and abuse, and hate crimes towards any group of citizens, including crimes motivated by sexual orientation and gender identity, although Sarajevo Open Centre has no evidence to prove right this claim. Ministry of Internal Affairs of Hercegovinačko – neretvanski Canton stated that during the training of their officers they do not emphasize the need of a special approach in the investigation of homophobic and transphobic hate crime cases, because they think that during the investigation of any criminal case police officers should be guided by the principle of objectivity, efficiency, and in general have the professional approach to the investigation. In the Ministry Internal Affairs of Zapadnohercegovački Canton they say that the police officers of this Ministry's Department of the police are permanently trained to aid and protect all the victims and witnesses involved in criminal felonies, and sexual incidents or any other form of violence. They stated that police officers know that, in order to achieve high standards of behaviour, they have to behave lawfully, kindly and carefully, with respect to all the citizens regardless to their religion, nationality, sexual or other orientation.

From the above responses, it seems that only the Republika Srpska mentions plans to provide the police with training specifically in relation to homophobic and transphobic hate crime., but we have no evidence that such training has never been conducted.

We welcome the acknowledgement of the Federal Ministry of Internal Affairs that police and persons working in the legal system need training in this field, but are concerned that there appears to be no plan to conduct such training.

In a meeting with the advisor of the Ministry of Internal Affairs of Sarajevo Canton she affirmed that, when investigating, police officers look at cases on the basis of the offense committed and not at the cause or motive for committing this offense<sup>24</sup>. However and according to the articles 2, 3 and 14 of the European Convention of Human Rights states should be prompt to take reasonable measures to establish the role played by the alleged prejudices and, consequently, to ensure that a distinction is drawn both in the legal system and in practice between cases where excessive force has been used and those involving hate crimes.

Evidence of the lack of efficient and professional police investigation and prosecution in the case of homophobic and transphobic hate crimes is that none of the alleged perpetrators of the attacks during the Queer Sarajevo Festival in 2008 have been condemned so far. This fact is a matter of particular concern, as Commissioner Hammarberg stated in his report of 2011.<sup>25</sup>

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

We have no evidence in this regard.

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<sup>24</sup> Meeting with H. Korac, advisor of the Ministry of Internal Affairs of Sarajevo Canton, July the 11<sup>th</sup> 2012.

<sup>25</sup> Council of Europe., Report following the visit to B&H on November 2010 by T. Hammarberg,, Comm DH (2011)11, Strasbourg 29 March 2011

**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.**

- i. Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*

Legislative measures that combat “hate crimes” and other hate motivated incidents have recently been introduced in the criminal laws of Republic of Srpska and Brčko District. Both specifically recognise sexual orientation as a possible motive in such crimes, but neither specifically recognises gender identity. It is possible that "gender identity" may be covered by "gender" in the case of Republic of Srpska, and by the term "other characteristics" in Brčko District, although successful cases will be needed to prove that this is in fact the case.

In the Federation of BiH such legislation has not yet been introduced.

- ii. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

So far as RS and BD are concerned, their respective laws ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance when determining sanctions. So far as gender identity is concerned, the position is unclear: On one hand, these laws make no specific reference to this ground; on the other, there is no legal practice in the form of case law that would confirm the coverage of gender identity by "gender" in the case of Republic of Srpska, or "other characteristics" in the case of BD.

The absence of such legislation in the Federation of BiH means that a bias motive related either to sexual orientation or gender identity is not taken into account as an aggravating circumstance when determining sanctions.

**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.**

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?<sup>26</sup>*

A simple and comprehensible definition of “hate crimes” which includes the motives of sexual orientation and gender identity has not been disseminated to the general public. Nor does one as such exist in the legal system of BiH, on any level.

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

Ministries in charge of the police on all state levels claim that their training programmes and procedures ensure that the police officers possess the knowledge and the skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support.

However, the facts that

- a. There is no such hate crime legislation in the Federation BiH,

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<sup>26</sup> e.g. through police websites or leaflets distributed in the community.

b. Such legislation in Republika Srpska and BD has only been recently introduced, and makes no specific reference to gender identity, must raise significant doubts about these assertions.

The Ministry of Justice offered no information concerning judiciary trainings and procedures.

*iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*

According to the ministries in charge training programmes and codes of conduct for the police ensure that everyone, including LGBT individuals, is treated equally and in a respectful manner so that they would feel safe to report hate crimes or other hate motivated incidents whether as victims or witnesses. However, none of the letters from these various ministries provided evidence that these training programmes and codes of conduct specifically address LGBT people, and are not just training programmes which address the needs of the public in general.

As for the judiciary programmes and codes of conduct the Ministry of Justice gave us no information.

As an example of a lack of professionalism by the police, when Sarajevo Open Centre received a phone call violence threat and we went to report the case to the police station, the police officer outside the station took the statement there while standing next to his bicycle. So, even though there was no overt discrimination on grounds of sexual orientation and gender identity, we believe that unprofessional behaviour such as this does not encourage persons to report cases of hate crimes or hate motivated incidents.

*iv. Are units within the police tasked specifically with investigating crimes and incidents linked to sexual orientation and (b) gender identity?*

There are no units within the police tasked specifically with the investigating crimes and incidents linked with sexual orientation and gender identity in any of the state levels.

- v. *Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

There are also no special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster the relationship of trust in any of the state levels.

- vi. *Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?*

In all of the state levels there is a system of anonymous complaints or on-line complaints, that works through a telephone line and an e-mail address where third parties can report incidents.

**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.**

- i. *Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

In its reply to the Sarajevo Open Centre, the Ministry of Justice did not specify whether there are any trainings and codes of conduct for prison staff that ensure that prisoners are treated with respect and without discrimination in relation to their sexual orientation and gender identity. We presume therefore that training programmes and codes of conduct for prison staff do not address sexual orientation and gender identity.

- ii. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

Regulations of the Law on the execution of criminal sanctions, confinement and other measures, especially the Article 45 (the demand for the humane treatment), prohibit any kind of discrimination based on ethnic belonging, race, skin colour, gender, sexual orientation, language, religion or a belief or any other grounds, in the treatment of prisoners. The law provides number of rights of the confined and imprisoned persons, such as the right to be respected as a person, preservation of physical and mental health, human dignity, elementary and professional education and qualification, enabling inner and outer abilities, and other rights aiming to re-educate an re-socialise these people, with the prohibition of discrimination on any ground, and with the disciplinary monitoring and disciplinary responsibility, both of the people stationed in the institution and the members of personnel. However the entities Ministries of Internal Affairs did not inform us, either generally, or specifically in relation to LGBT prisoners, of any effective measures used to minimise the danger of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible.

- iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?*

The ministry in charge did not mention in its reply any independent and effective machinery for receiving and investigating reports of such crimes by prison staff.

Sarajevo Open Centre has no information on the extent of physical assault on prison inmates on grounds of sexual orientation or gender identity, and considers it important that data on such cases is collected by the responsible authorities.

- iv. *In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

The ministry also provided no information concerning transgender prisoners and their treatment in prisons, their interaction with prison staff and the placement of a prisoner in a male or female prison.

**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.**

- i. *Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

The ministry in charge of human rights and refugees of BiH did not reply to our letter so we have no information on any existing research into the nature and causes of hostile and negative attitudes to LGBT people or plans with a view to developing effective policies to combat these phenomena.

- ii. *Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

We also received no information from the ministry on surveys into levels of social acceptance of/hostility towards LGBT people.

However, according to a Gallup survey<sup>27</sup> 64,1% of BiH citizens think that homosexual relations are wrong, and just 18 % think that homosexuals should enjoy the same rights as heterosexuals. In the light of this, social acceptance of LGBT people can be considered very low in BiH.

*iii. Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

There is no effective system for recording and publishing statistics on hate crimes and hate motivated incidents related to sexual orientation and gender identity. The ministries in charge of police keep data and statistics on crime within their regular crime statistics records, but there is no specific registration of hate crimes. The police statistics are focused on the crime not the motive. Moreover, the Federation of Bosnia and Herzegovina does not recognise hate crime as such.

## **B. “Hate speech”**

**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.**

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<sup>27</sup> Balkan Monitor, Gallop, < <http://www.balkan-monitor.eu/index.php/dashboard>>, visited July the 12<sup>th</sup> 2012

- i. Do legislative measures penalising “hate speech” on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic “hate speech”?*

Legislation penalising “hate speech” exists in Federation of BiH (article 363, paragraph 2) and Brčko District (article 357, paragraph 2) in their criminal laws, but these laws do not specify homophobic and transphobic hate speech. The Criminal Law of the Republic of Srpska does not expressly prohibit hate speech, although it prohibits incitement of ethnic, racial and religious hatred (Article 390). However, it does not penalise homophobic or transphobic hate speech.

- ii. Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*
- a culture of respect, tolerance and diversity, and*
  - to avoid negative and stereotyped representations of LGBT people?*

The Regulatory Agency of BiH (RAK) informed us that their Codex on audiovisual media services and radio media services in Bosnia and Herzegovina, which is in accordance to the Constitution of Bosnia and Herzegovina, the Law on Communications, and the Directive on the Audiovisual Media Services of the European Union, as well as the other legal international or domestic documents, states that in audiovisual media services and radio media services human dignity and elementary rights of others will be respected, and the freedom of forming and opinion will be encouraged. The providers of media services will not provide the contents that involve any kind of discrimination or prejudice on the grounds of sex, race, ethnicity, nationality, religion or a belief, physical disability, special needs, age, sexual orientation, social origin, as well as any other content whose purpose or consequence is to disable or endanger the recognition or the realization, on the equal basis, of any individuals right and freedoms. Providers of the media services will pay special attention to the treatment of vulnerable individuals that appear in their content.

At a meeting with the director of the Press Council, an independent media body whose mission is to improve ethical and professional standards in the print media, we were informed that at the time of updating the Press Code they have consulted Organization Q and in the article 4 they decide to include sexual orientation as follows: “Journalists must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state. References to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state shall be made only when directly relevant to the occurrence being reported.” They explained to us that a new article was added, the 4a, which state as follows: “Journalists shall avoid direct or indirect comments which might place individuals in an unequal position or discriminate them based on sex, gender, sexual identity, gender identity, gender expression and/or sexual orientation.” The Director stated that the reason to do so was that “back in 2006 the B&H newspapers began to write about LGBT issues in a very negative and stereotypical way, so that was when the first complaints arrived, inspired and encouraged by the work of the Press Council”. They explained to us that after the Queer Sarajevo Festival in 2008 the complaints almost ended due to the fear the LGBT population was suffering. The Press Council has as a fundamental task to react to any breach of the Press Code and spread the information among citizens.

In cooperation with the Gender centres of FB&H and Republic of Srpska and the Gender Equality centre of B&H they adopted a new tool “Recommendation for media- treatment of gender issues in media” where they recommend editors and editorial staff of print and electronic media in BiH shall, via editorial policy, make effort to assure respect of equality based on gender, sex, sex identity, gender identity, gender expression and sexual orientation, through different measures such as showing positive examples of non-discrimination and respect of human rights in both private and public aspects of life, showing all persons in equal and non-stereotyped manner, fully respecting their personality and human dignity, restricting sexism, gender-phobia, homophobia, bi-phobia, trans-phobia and other prejudice and stereotypes in media language, raising public awareness on presence of different sorts of violence based on gender, sex, and sexual orientation, and disastrous effect of such violence on victims, education of journalists on equality based on sex, gender, sexual identity, gender identity, sexual orientation and usage

of gender sensitive language in everyday journalistic practice, promotion of equal participation and representation of persons with different sex and gender identity on decision making positions at media, especially at leading, programming and regulatory bodies<sup>28</sup>.

- iii. *Has legislation for criminalising “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?*

There is no implemented legislation that criminalizes “hate speech” on the internet.

- iv. *Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?*

Internet providers are obliged to follow the Press code and the articles above mentioned.

- v. *If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

Incidents of "hate speech" are not generally disavowed by leading public officials. The Sociological Report commissioned by the Council of Europe Commissioner for Human Rights noted that, at the time of the Queer Sarajevo Festival, "no public institutions or officials clearly demarcated themselves from the hateful discourse, but only in some instances from the physical violence."<sup>29</sup> However, hate speech did not go entirely without response. For example, Dani magazine published an interview with Danis Tanovic, the Oscar-winning director of No Man's Land, who founded

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<sup>28</sup> Press Council <[http://english.vzs.ba/index.php?option=com\\_content&view=article&id=216%3Apreporuke-za-medijske-tretiranje-rodnih-sadraja-u-medijsima&catid=8%3Arecommendations-for-media&Itemid=11&lang=en](http://english.vzs.ba/index.php?option=com_content&view=article&id=216%3Apreporuke-za-medijske-tretiranje-rodnih-sadraja-u-medijsima&catid=8%3Arecommendations-for-media&Itemid=11&lang=en)>, visited on 3<sup>rd</sup> July 2012

<sup>29</sup> "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Sociological Report: Bosnia-Herzegovina". COWI - the Danish Institute for Human Rights

Naša stranka (Our party) He was also one of the few politicians to criticize the attacks and the (lack of) public reactions around the Queer Sarajevo Festival .<sup>30</sup>

**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.**

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

The ministry in charge of human rights and refugees of BiH did not reply to our request for information therefore we have no information of any guidelines issued or any other measures taken to raise awareness of public authorities/institutions of their responsibilities to refrain from such statements.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

As it is said in the Report of the Council of Europe Commissioner, T. Hammarberg, he was particularly concerned about statements of parliamentarians and some religious leaders supporting persons who had physically assaulted participants of the Festival, resulting in eight casualties.

For example, the president of SDA, one of the major political parties, and nowadays one of the members of the Presidency, B. Izetbegovic, said at the time of the Queer Sarajevo Festival, in 2008 "I am not glad that we are holding a Queer Festival. This is a reminder of Sodom and Gomorrah, during one important night that noble

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<sup>30</sup> Organization Q, < <http://www.queer.ba/?q=en/content/%E2%80%9Cbattle-sarajevo%E2%80%9D-%E2%80%9Cmetropolis%E2%80%9D-closure-first-queer-sarajevo-festival-according-liberal-press>>, visited July the 6<sup>th</sup> 2012

Muslims expect, so I am not pleased about that”<sup>31</sup>. Also as a Member of Presidency of BiH he stated in Gracija magazine on October 2010 that “we have to fight with all moral means against those who want to pervert high moral society. Everyone has the right to live his life as he pleases, but no right to represent to youth perverted things as normal, as they call it.”<sup>32</sup>

Also around the time of the Queer Sarajevo Festival in 2008 Amila Alikadic-Husovic, a member of the Federation Parliament, expressed her surprise that “Spain, historically known for having introduced the Inquisition in the Middle Ages has now approved the gay marriage?” and added about the Festival that “it is not appropriate that such a thing takes place in the month of Ramadan. Homosexuality is condemned by every religion so who are we to approve something that God does not permit?”<sup>33</sup>

**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.**

*i. Has guidance been issued to public officials and state representatives in this respect?*

Since the Ministry of Human Rights and Refugees of BiH did not reply we have no information whether any guidance has been issued to public officials and state representatives in this respect. Sarajevo Open Centre knows of no such guidance.

*ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue*

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<sup>31</sup> Diskriminacija (web portal to report and advertise cases of discrimination) <<http://diskriminacija.ba/node/72>>, visited the 6<sup>th</sup> July 2012

<sup>32</sup> Gracija, <<http://www.gracija.ba/novost/11079/gracija-144>>, visited July 6<sup>th</sup> 2012

<sup>33</sup> Diskriminacija, supra note 9

*with civil society, and encouraging the use of responsible and non-violent speech?*

As a positive example of promoting tolerance for LGBT people the President of the political party Naša Stranka, Denis Gratz stated in 2011 that this party “in the meantime clearly and inviolably positioned itself as a political organisation that protects the rights of discriminated groups and individuals, from the LGBT population to the so-called others.” But no public officials or State representatives have done so.

## **II. Freedom of association**

**9. 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, discriminatory administrative procedures, this 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.**

*i. Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*

The anti discrimination law forbids public institutions in charge of NGO and other organizations to impede or prevent official registration. However, in practice, civil servants within the registry institutions occasionally request that organizations do not include the word LGBT in their statute, as a consequence of which registration takes longer than it should do under the regulations. One example is that of the registered organization Okvir, which asked to have the term LGBT in their statute. The civil servant refused to accept it, arguing that the term does not exist in local language,

offering them the possibility to put the term “queer”, which is not Bosnian either. So, in practice the registration of Okvir organization took longer than it is supposed to have done by Bosnian-Herzegovinian law.

- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

Not applicable

- iii. *Are there examples of measures taken to:*
- *ensure that LGBT organisations can operate freely,*
  - *defend their interests when necessary, facilitate and encourage their work?*

There are no examples of measures taken by state stakeholders in that sense at all.

- iv. *Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

Nowadays there is no LGBT organization consulted on a regular basis by the BiH public authorities when it comes to framing or to design of strategies for public policies. However, in previous years Organization Q was consulted and involved in the anti-discrimination law framing process, to the extent that this NGO was part of a larger network of civil society organizations. Currently Sarajevo Open Centre, as part of several networks in B&H, as for example the Forum of Equality formed by 25 NGOs and with the mission of fight against discrimination in all forms, is lobbying for different improvements in harmonization of legislation on prohibition of discrimination at the state level and that's a way to be in permanent contact with public authorities..

**10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.**

- i. Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

We have no information whether public funding earmarked for NGO's is accessible to LGBT organisations without discrimination because the ministry in charge did not reply to our request for information.

In public calls for applications there are no cases where terms of reference for grants have included actions dedicated to combating discrimination on the grounds of sexual orientation or gender identity.

- ii. Has such funding been made available to LGBT organisations?*

Organization Q and Sarajevo Open Centre have in the past applied for a grant to the Federal Ministry of Culture and Sport as well as Canton Sarajevo Ministry of Culture and Sport for support. We never received any kind of response regarding our application. As far as we know public funding has never been given to LGBT projects by the Bosnian-Herzegovinian public institutions. Moreover, in the public calls for applications actions dedicated to combating sexual orientation or gender identity discrimination are never included in the terms of reference.

**11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.**

- i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

The state provides nominal protection from hostility and aggression for LGBT Human Rights organizations, but sometimes in practice this protection proved to be insufficient. In our opinion, part of the problem is that it is a completely new area for the state institutions, which results sometimes in a lack of professionalism, even though they are supposed to secure equal treatment to every citizen of Bosnia-Herzegovina. As an example of this insufficient protection provided by the state we had the result of 8 injured people during the first day of the Queer Sarajevo Festival in September 2008, even though they took responsibility for the protection of the organizers, participants and guests outside the locations where the Festival took place.

- ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

Some civil servants provide support on an individual basis, but public institutions have never taken any measure or action plan enabling LGBT organisations freely to conduct their activities, and promoting respect for their work. In this respect, it should be noted that Sarajevo Open Centre considers it unwise, in the current climate, to adopt the sort of public profile actions, such as public demonstrations, that should be open to all human rights organisations. This is a clear indicator of the need for public institutions to take positive measures to improve the environment of those working on LGBT rights, and promote respect for their work.

- iii. Are LGBT human rights organisations able to work with*
- national human rights institutions and ombudsmen,*
  - the media,*
  - other human rights organisations?*

LGBT Human Rights organizations are able to work with all three stakeholders, although to varying extents. For example, before, during and after the Queer Sarajevo Festival some media published articles with clear homophobic content, calling for hostility against the participants and the organizers of the event, while other media like Dani magazine published very positive articles defending the freedom of expression and peaceful assembly. Also, during this period Organization Q sent an official letter to a number of institutions, asking for a meeting and cooperation in order to prevent any kind of physical violence during the Festival. Unfortunately, most of the institutions, including the Ministry for Human Rights and Refugees did not reply to this letter, nor did they support the Festival publicly nor condemn the homophobic behaviour.

As far as Sarajevo Open Centre is concerned, the established relationship with the Office of the Ombudsman is satisfactory. They have shown their willingness to cooperate and to work together for a better implementation of the anti-discrimination law, as well as providing information to raise awareness of the procedures to complain in case of suffering discrimination on grounds of sexual orientation and gender identity.

- iv. *Are they able to take part in training sessions, international conferences and other human rights activities?*

From our experience we have participated in different training sessions, regional conferences or other activities but always invited by other NGOs or by International Organizations or foreign states. Sarajevo Open Centre was invited by the Ministry of Human Rights and Refugees in cooperation with the OSCE to give our inputs for the Progress Report on human rights situation in BiH.

**12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.**

- i. *Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

As mentioned before Organization Q was consulted by the state authorities over the adoption and implementation of various measures affecting the rights of LGBT persons from 2004 to 2009. Organization Q, as part of a wider civil society network, took part in the framing of anti-discrimination law of 2009.

Sarajevo Open Centre was invited by the Police of Sarajevo Canton to consult on different measures during 2012, as part of a wider civil society network. Nevertheless, we cannot say that this is a usual practice. These are "one-off" events – there is no systematic consultation with LGBT NGOs.

*ii. Have there been such consultations regarding the implementation of this Recommendation?*

No, there has not been any consultation with LGBT human rights organizations regarding the implementation of this Recommendation.

### **III. Freedom of 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.**

*i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*

- *activities that support the human rights of LGBT persons*
- *publication of material*
- *media coverage*
- *organisation of/participation in conferences*

- *dissemination/access to information on safe sexual practices?*

Freedom of speech in BiH is enshrined in the constitution, consistent with applicable international treaties and specific legal norms. Constitutional provisions at the level of the state and both entities include the protection of freedom of expression in article II/3 at BiH Constitution; article II/2 of the Federation BiH Constitution and in articles 32 and 34 of the Republic of Srpska Constitution.

Although the laws guarantee a free press and freedom of expression there is neither any additional encouragement nor any policies to ensure more visibility of LGBT persons within the media or in the public sphere.

- ii. *Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

Sarajevo Open Centre is unaware of cases where restrictions on freedom of expression have been placed.

- iii. *Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

Some agencies like RAK (regulation of communications agency) are always fighting against any kind of discrimination, as is the non governmental agency Press Council. On the other hand, we conclude that other public institutions not only fail to encourage balanced reporting on LGBT issues, they even fail to condemn cases of homophobic content. For example, Walter magazine, in including homophobic and transphobic comments by journalists, was in breach of the Press Code. Organization Q put a complaint related to these articles stating that the language of journalists was offensive and that they were breaching articles 4 and 7 of the Press Code. The magazine never issued an apology to persons that were mentioned in the aforementioned article nor published the letter of complaint. However there are cases that show a practice of better implementation, like OBN television that was fined on the account of messages shown at the programme MiMOHOD show on August 2008

that were discriminatory against LGBT population, when talking about Queer Sarajevo Festival.

**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.**

- i. Have the authorities ensured freedom of peaceful assembly for LGBT people?*

The public authorities failed to ensure freedom of assembly during the Queer Sarajevo Festival in 2008. They did not implement the right measures in advance to ensure the protection of the participants, nor did they respond effectively to the violence on the day.

As a result of the violence at the Queer Sarajevo Festival, there has been no attempt by the LGBT community to hold major public events in the intervening period. The relatively low profile events organised by Sarajevo Open Centre since the autumn of 2010, such as concerts, public discussions and film screenings, have passed off without incident, except that, at a concert in November 2010, the car of a member of the Croatian group LEZBOR was attacked by unknown person/s. However, from mid 2011 those public events are publicly advertised even in mainstream media and so far no incidents have occurred.

There is no evidence provided by BiH authorities that they will provide protection for future public demonstrations or gatherings of the LGBT community. Moreover, the advisor of the Ministry of Human Rights and Refugees, in a meeting with representatives of Sarajevo Open Centre showed no willingness to ensure LGBT persons freedom of assembly

**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.**

- i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*

In the case of the Queer Sarajevo Festival, the law enforcement authorities failed to take reasonable and appropriate measures to protect participants. Police were present, but the protection was insufficient, taking into account the gravity of the violence on the first day of the Festival, with the result of 8 injured people and the public hate speech. So far, no one has been prosecuted for the aforementioned events.

The Council of Europe Human Rights Commissioner expressed his concern at "the manifestations, occasionally violent, of discrimination and homophobia in the society of BiH. It is of particular concern that investigations into attacks against LGBT activists and their supporters have not resulted in any prosecution so far".<sup>34</sup>

- ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*

As we mentioned above in the case of the Queer Sarajevo Festival in 2008 they did not protect the participants effectively. Nevertheless, the police forces in charge of protecting events in the city of Sarajevo offered protection to Sarajevo Open Centre during the public presentation of the Textbook of lesbian and gay rights.<sup>35</sup>

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<sup>34</sup> Council of Europe, supra note 4.

<sup>35</sup> Sarajevo Open Centre and Heirich Boll Stiftung, Čitanka lezbejskih i gej ljudskih prava, Sarajevo 2011

- iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

In the case of events organised by Sarajevo Open Centre we can confirm that police forces acted respectfully when our small events took place since 2010.

**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.**

- i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*

The only example that Sarajevo Open Centre is aware of in which the authorities attempted to place restrictions on a freedom of assembly event involved warnings by the police from Sarajevo Canton to Organization Q to reduce or even stop the Queer Sarajevo Festival, arguing security reasons. The festival was suspended after the opening event ended up with extreme violence against the participants.

However, the state authorities should ensure that order or security reasons are not abused to interfere with the exercise of freedom of opinion and expression in support of lesbian, gay, bisexual and transgender persons. Peaceful demonstrations cannot be banned simply because of the existence of attitudes hostile to the demonstrators or to the causes they advocate for. On the contrary the state has a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully.

- ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*

In view of the public hostility, to our knowledge there have been no attempts so far to hold a public demonstration in BiH. Accordingly, the question of the authorities imposing restrictive conditions has not arisen.

- iii. *If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

Not applicable.

**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.**

- i. *If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
  - a. *Has there been encouragement to public authorities to condemn such interferences?*

The ministry in charge did not inform us of any encouragement to public authorities to condemn such interferences.

There have been unlawful interferences with the right to freedom of expression and assembly within the Queer Sarajevo Festival where dozens of individuals publicly engaged in hate crime (8 injured participants) and hate speech, with statements calling for violence. Posters “Death to Faggots” and “We Shall Not Allow Gay Festival” were found all over Sarajevo during the days before the Festival.

After these events Organization Q sent official letters to governmental institutions, including the city Mayor, Ministry for Human Rights and Refugees, Council of Europe, European Commission, Federal Ministry of Culture and Sport, Cantonal Ministry of Culture and Sport, Agency for Gender Equality, Gender Centre RS, Gender Centre FBiH, Amnesty International, OSCE, Cabinet of Presidency (all three

members). However, although there were statements by International Organizations and foreign governments condemning such acts, few BiH public authorities publicly condemned these interferences with the right to freedom of expression and peaceful assembly. The majority of the state institutions remained silent.

*b. Have public authorities actually condemned such interferences?*

The majority of the public authorities, even those in charge of ensuring these rights to all Bosnian-Herzegovinian citizens, like the Office of the Ombudsperson or the Ministry of Human Rights and Minorities, did not react to the violence and hate speech. On the positive side, we have some examples of public authorities that condemned these unlawful interferences, such as the Mayor of Sarajevo, S. Borovac, who said that “hate speech and hate crime is not going to be allowed in our country” and also some opposition parties such as the Liberal Party and Naša Stranka, which published a Press Release opposing violence and supporting the Queer Sarajevo Festival.

*ii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*

See the answer above.

*iii. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

We can affirm that some authorities did not condemn hostility and they even incited homophobia with statements like that by B. Izetbegović<sup>36</sup> or certain religious authorities who called the Queer Sarajevo Festival a “provocation” to believers.

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<sup>36</sup> Gracija, supra note 13.

#### IV. 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.**

- i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*

The legislation does not criminalise same-sex sexual acts. There are no differences in the age of consent.

- ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding  
(a) sexual orientation or  
(b) gender identity?*

According to the Ministry of justice there are no criminal law provisions which are liable to be applied in a discriminatory manner regarding sexual orientation or gender identity.

- iii. If so, what steps are the authorities taking to remedy this situation?*

Not applicable.

**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.**

*i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*

The Ministry of Justice mentioned no steps that have been taken to ensure that public authorities do not collect, store or otherwise use personal data referring to person's sexual orientation or gender identity.

*ii. What steps have the authorities taken to ensure that existing records are destroyed?*

Authorities mentioned no steps taken to ensure the destruction of the existing records either.

However, Sarajevo Open Centre is unaware of the existence of such records or whether or not authorities are continuing collection of such data, but in accordance with the article 8 of the European Convention on Human Rights the authorities should ensure the right to respect for private life.

*iii. Have these steps been effective?*

*Is there any evidence of:*

- *the continued existence of such records*
- *the continuing collection of such data?*

Not applicable

**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.**

*i. Has a review of such prior requirements been conducted?*

The Ministry of Justice did not reply so we have no information whether any review of prior requirements for legal recognition of gender reassignment has been conducted.

*ii. Are there still requirements which might be considered disproportionate or even abusive,<sup>37</sup>*

*such as:*

- *irreversible sterilisation,*
- *hormonal treatment,*
- *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

According to the Human Rights Commission's Sociological Report, gender reassignment surgery is a precondition for change of documents, although a name can be changed without the requirement of surgery.<sup>38</sup>

**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**

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<sup>37</sup> The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

<sup>38</sup> "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity" – Sociological Report: Bosnia- Herzegovina – COWI - the Danish Institute for Human Rights - paragraph 84

**recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.**

- i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

According to the Human Rights Commissioner's Sociological Report in 2009 the Ministry for Human Rights and Refugees confirmed to local authorities that documents (identity card, birth certificate, etc) should be changed once gender reassignment treatment is completed.<sup>39</sup> According to the Human Rights Commissioner's Legal Report, once gender reassignment is completed, the individual can apply for changes to gender marker in all official documents including, as a first stage, the identification number. This stage requires that the relevant medical documentation has been submitted by a doctor or medical team, confirming that full gender reassignment and full transition have been completed. These procedures are of an administrative nature and do not involve court proceedings.<sup>40</sup>

- ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

It is not clear how far the above-mentioned procedure permits all the necessary changes in a quick, transparent and accessible way.

- iii. Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*

- *diplomas,*
- *certificates of employment, and*
- *insurance or banking documents?*

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<sup>39</sup> Ibid, paragraph 84

<sup>40</sup> Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Legal Report: Bosnia and Herzegovina –COWI - Danish Institute for Human Rights

There are no procedures ensuring corresponding changes in key documents originated by non-state actors.

- iv. If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

There are no procedures that include the protection of the person's private life.

**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.**

- i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

The right of a legally recognized transgender person to marry the person of the opposite sex to their reassigned sex is not legally guaranteed. In principle, a person that has legally recognised as the reassigned sex have no obstacles to marry a person of the opposite sex to their reassigned sex, but since there are no legal provisions in the family law recognising the right of legally recognised transgender persons to marry we are not certain if discrimination would occur in this situation by the administrative bodies.

**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.**

- i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

The family laws of Federation BiH, of Republic of Srpska and Brčko District confer rights and obligations on unmarried couples, but no steps have been taken to ensure that these rights and obligations apply to same sex couples.

**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.**

- i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

The legislation does not recognise registered same-sex partnerships

**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.**

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The Ministry of Justice mentioned no possibility of implementing legal or other means to address the practical problems arising from the lack of recognition of rights and obligations of same-sex couples.

**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.**

- i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*

The issue of ensuring that the decisions regarding the parental responsibility for, or guardianship of a child are taken without discrimination based on sexual orientation and gender identity was not addressed in the response of the Ministry of Justice. Sarajevo Open Centre presumes therefore that no actions have been taken by the authorities in this respect.

- ii. In practice, are such decisions taken on a non-discriminatory basis?*

In some cases the parents conceal their actual sexual orientation, due to the fear of losing the parental responsibility of the child.

**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.**

- i. *What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*

The Ministry of Justice of BiH did not address adoption of a child by a single person in its response; however the Family laws of Federation of BiH, of Republic of Srpska and of Brčko District do not allow single individuals to adopt children<sup>41</sup>,, regardless of their sexual orientation and gender identity.

- ii. *In practice, are such decisions taken on a non-discriminatory basis?*

Since no single individual is allowed to adopt a child, the decision regarding adoption discriminates all single individuals.

**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.**

- i. *What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*

The Ministry of Justice mentioned no steps taken to ensure that access by single women to assisted reproductive treatment is without discrimination based on sexual orientation. However according to BiH clinics the assisted reproductive treatment is just for married women.

- ii. *In practice, is such access granted on a non-discriminatory basis?*

Not applicable.

## **V. Employment**

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<sup>41</sup> Family Laws gather two different regimes of adoption: the fully adoption and the limited/incomplete (nepotpuno) adoption. Just married individuals are allow to fully adopt children

**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.**

*i. Does legislation<sup>42</sup> exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*

The existing legislation, the Law on Prohibition of discrimination in particular, prohibits discrimination in employment in the public and private sectors on the grounds of sexual orientation (but not specifically gender identity) on the state level and is applied to entities, Brčko District, cantons and municipalities, and all laws should be harmonized with this specific one. The on Prohibition of Discrimination covers direct and indirect discrimination and the burden of the proof remains on the employer or the alleged person who commit discrimination.

Nevertheless the US Department of State affirmed in their country report of 2011 that “while the law prohibits discrimination on the basis of sexual orientation, it was not fully enforced in practice, and there was frequent societal discrimination against LGBT. Gays and Lesbians faced frequent harassment and discrimination, including termination from employment. In some cases dismissal letters explicitly stating that sexual orientation was the cause of termination made finding another job extremely difficult.”<sup>43</sup>

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<sup>42</sup> Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- [http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf)). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a ..... particular sexual orientation at a particular disadvantage compared with other persons .....".

<sup>43</sup> US Department of State, Country reports on Human Rights Practices for 2011, Bosnia-Herzegovina <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>, visited 10<sup>th</sup> July 2012

*ii. Does it cover:*

- *access to employment (including recruitment); promotion,*
- *dismissals,*
- *pay,*
- *harassment and other forms of victimisation?*

The Law on Prohibition of Discrimination of Bosnia and Herzegovina covers access to employment, promotion and all the conditions of employment as well as harassment and other forms of victimisation.

The Employment Law and the Law on Mediation in Employment and on Social Support to Unemployed of Federation of BiH and the Employment Law of RS prohibit the discrimination on the grounds on race, skin colour, sex, language, religion, political or other opinion, national or social origin, assets, birth or any other circumstances, membership or not being a member of a political party, syndicate, physical and psychical disabilities, education, promotion, conditions and terms of labour, cancelling labour contracts or other questions that are related to labour relations and employment conditions, to any employed or employment seeking individual. These laws also regulate the financial fines for the employers who violate these laws. No special prohibition of discrimination on the grounds of sexual orientation or gender identity is regulated. The Law on labour within the public institutions of BiH and the Law on labour of BD include sexual orientation as prohibited ground for discrimination

*iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*

- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

The Ministry of Labour of Federation of BiH has had no plans so far to introduce the legislation regulating this kind of discrimination, but they say they will take this matter into consideration during the alteration of laws in this area

Also, in the area of labour and employment the Federation of BiH did not promote any other measures against discrimination, disturbance and victimisation.

*iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

According to the Ministry of Labour of Federation of BiH general regulations in the area of labour and employment do not contain special anti-discrimination rule dealing with sexual orientation and gender identity, and they have no information regarding measures taken to abolish the laws, norms and practice discriminating on these grounds.

*v. Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

Since the Ministry of Defence of BiH did not respond to our enquiries we have no information whether the armed forces provide protection for LGBT persons against

investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment and whether the codes of conducts and training address the need to combat discrimination against LGBT persons and promote tolerance and respect.

*vi. Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

The Ministry of Labour of FBiH states that considering the fact that the Law on Labour and the Law on Mediation in Employment and Social Support for the Unemployed, as well as the general regulations on labour and employment, prohibit discrimination for all the individuals in this area, in their opinion the transgender individuals are also protected by them.

*vii. Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

Employment programmes of the Federal Department for Employment in cooperation with cantonal employment services did not develop any special opportunities for the employment of transgender individuals.

**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.**

*i. Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

The Federal Ministry of Labour responded that the Labour Law provides certain protection to the people seeking employment regarding the information that employers are not allowed to ask of them, these information usually concern any information not related to the work the employee does. However no special

protection of previous gender and names of transgender individuals seeking employment is provided.

## VI. 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.**

*i. Have*

- *equality and safety policies,*
- *codes of conduct and*
- *handbooks*

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

The answers we received from the Ministry of Civil Affairs of BiH and the ministries of education of Unsko-sanski Canton and Hercegovacko-neretvanski Canton contained no information whether the equality and safety policies, codes of conduct and handbooks for educational staff have been introduced to ensure that LGBT pupils and students receive their education in a safe and tolerant environment.

However the Ministry of Education, Science, Culture and Sports of Srednjobosanski Canton said that they educate their teachers, students and parents through different educational programmes related to inclusive teaching and environment, violence prevention, communication, behaviour codex, peaceful conflict resolving, gender

projects, justice, freedom of expression, project for accepting the differences and overcoming the prejudice and barriers. The department for education of Brčko District informed us that the prohibition of discrimination on any ground is established in rules of conduct in schools.

We note that in none of the above responses is there any confirmation of specific reference to sexual orientation or gender identity in the fields addressed by the question. We therefore assume that sexual orientation and gender identity are not specifically addressed.

There is no official collection of data about bullying incidents in schools, so we believe the public authorities need to take into consideration the systematic collection of data related to discrimination and violence in schools related to sexual orientation and gender identity.

- ii. Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
  - a. treat their LGBT pupils and students with respect*
  - b. be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

These ministries did respond with any information relating to the initial and in-service training programmes for teachers and other educational staff so we have to presume that these programmes do not specifically address the respectful treatment of their LGBT pupils and students, nor make provision for combating discrimination against them.

- iii. Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

As for the school campaigns and cultural events against homophobia and transphobia including the participation of representatives of LGBT organisations the Ministry of Education, Sciences, Culture and Sports of Srednjobosanski Canton said that they accept the cooperation with all international and domestic non-governmental organisations and the Ministry of Education, Science, Culture and Sports of Unsko-sanski Canton stated they would support the establishment of school campaigns and cultural events, as well as the individuals and organisations that ask for the approval for their activities and that they support the activities of non-governmental sector – associations and organisations which promote combat against discrimination on any grounds.

We welcome these statements, but note that other ministries to which we wrote did not respond.

**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.**

*i. Is information on*

*a. sexual orientation*

*b. gender identity*

*provided in school curricula and sex and health education classes?*

In Brčko District the sex and health education topics are elaborated in biology classes and class meetings, however no information was provided on whether information on sexual orientation and gender identity are provided in these classes.

In school curriculum of Unsko-sanski Canton there is no regular sexual and health education, but these issues are elaborated through the series of school and other activities, clubs, workshops, in class meetings, student associations.

Other ministries offered no information on this topic.

In 2010 Organization Q publish an analysis titled “1+1=0” researching high school’s handbooks about how they showed LGBT (IQ) issues. They analyzed 62 handbooks from the three different educational plans (Bosniak/Serbian/Croatian) of different subjects such as biology, psychology, sociology, democracy and human rights, philosophy and ethics. They concluded that the information about those topics was underrepresented, with a very low quality, using gender stereotypes and promoting heteronormativity. In some cases the terminology is wrongly defined (homosexuality, bisexuality, transsexual/transgender) even confusing gender and sex.<sup>44</sup>

*ii. Is it provided in a respectful and objective manner?*

As it is presented in the analysis “1+1=0” the information regarding sexual orientation and gender identity in textbooks of high schools is wrongly represented, with a very low quality of information, mixing terminology such as gender and sex, using gender stereotypes and promoting heteronormativity and hetero families.

*iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*

None of the ministries that responded to our questions mentioned any information or support that LGBT pupils and students are provided with in order to live in accordance with their sexual orientation and gender identity. As for the protection in Brčko District the Law on education in elementary and high schools of Brčko District (Article 6, paragraph 6) “prohibits discrimination or favouring based on national,

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<sup>44</sup>Organization Q, *1+1=0: analiza srednjoskolskih udzbenika o LGBTIQ pojmovima u Bosni i Hercegovini*, Sarajevo 2010.

sexual, social or any other ground” and this prohibition of discrimination on any ground is also established in rules of conduct in schools. In Unsko-sanski Canton the prohibition is prohibited by the Law on elementary and high school education and Law on high schools. And the Ministry of Civil Affairs has initiated five general laws in the education sector which prohibit discrimination on any ground; four of these have been adopted. The ministries offered no information on how these laws enable LGBT pupils and students to live in accordance with their sexual orientation and gender identity.

- iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

The ministries which responded gave us no information on the situation regarding transgender students in school life.

In general the treatment that transgender students experience in their school life depends on the teachers and other educational personnel, given that there are no measures in place.

## **VII. 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.**

- i. Do*  
*a. the design of national health plans,*

- b. health surveys,*
- c. suicide prevention programmes,*
- d. medical training programmes,*
- e. training courses and materials*
- f. the monitoring and quality assessment of health-care services*  
*take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

The Ministry of Civil Affairs of Bosnia and Herzegovina informed us both of health-care in Federation of Bosnia and Herzegovina and health-care in Republic of Srpska by forwarding us the letters from the Federal Ministry of Health-Care and the Ministry of Health and Social Support of Republic of Srpska. However they provided no information on any national health plans, surveys, suicide prevention programmes, medical training programmes or monitoring of health-care services that take into account the specific needs in relation to sexual orientation or gender identity.

- ii. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

None of these ministries mentioned training programmes for health professionals that would enable them to deliver the highest attainable standard of health-care to all persons with respect to sexual orientation and gender identity.

- iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*

The ministries informed us that in Federation of BiH all programmes of education, prevention, care and treatment are available in all health issues under highest possible standard to all citizens regardless of their sexual orientation and gender identity, and in Republic of Srpska as well.

A countrywide HIV/AIDS prevention programme is implemented and gives support to LGBT persons. All costs are covered by United Nations Development Programme. Sarajevo Open Centre is unaware that any informational campaigns or user assessment have ever been conducted by the public institutions within the LGBT population.

- iv. *Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

The Republic of Srpska ministry affirmed that health and social workers are encouraged to create an open and encouraging environment for young LGBT individuals. Although we have no evidence to support this claim. In Federation of BiH health care is available to all the individuals equally without any discrimination based on sexual orientation or gender identity, but no informational campaigns towards LGBT population was conducted, and they provided no information whether health professionals and social workers are encouraged to create an environment that is reassuring and open to young LGBT persons.

However the situation in the field shows some examples of LGBT persons treated negatively by health professionals, as for example the case of the 2012 annual voluntary blood donation lead by the Federal institution for transfusion medicine at the Faculty of Philosophy of Sarajevo. When some LGBT students got the questionnaire where it states that "any person that has ever had contact with homosexuals is banned to donate blood" they wanted to have a meeting with the person in charge of the donation. One technician together with one person from the library yielded and insulted the students who contacted the director of the Centre for Human Rights of the University of Sarajevo who advised them to go to the Ombudsman and to the police.

- v. *Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

In Federation of BiH patients are allowed to name whoever they want as their “next of kin” and this can be treated like confidential information if they want. In Republic of Srpska Law on health care clearly states that the patient has the right to decide, in writing, which person will be his in case of emergency contact, and this right to name the contact person is realised without discrimination.

**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.**

- i. Has homosexuality been removed from the national classification of diseases?*

The Ministry of Health and Social Care of RS informed us that in Republic of Srpska the diseases are classified by MKB 10 – 10 International classifications of diseases. This classification doesn't contain homosexuality listed as a disease. And the Federal Ministry of Health Care states that in Federation of BiH homosexuality is no longer considered a disease and this has been removed from all the textbooks and educational material.

- ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

The Ministry of Health and Social Care of RS claims that homosexuality has never been categorised as a disease in Republic of Srpska, nor treated that way, therefore there was no need for correction or withdrawal of regulations, medical textbooks or materials for education of health workers. Federal ministry informed us that they have removed the classification of homosexuality as a disease from all the textbooks and educational material.

- iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

In Federation of BiH Law on Protection of the patients' rights prohibits forced medical treatments. No individual can be forced to undergo an unwanted medical treatment, and in Republic of Srpska the Law on health care states that the patient has the right to be informed about his health, and to be informed by his own doctor about anything he needs to know in order to decide on his medical treatment. The same law regulates that the patient has the right to freely decide on any matter concerning his health, except in cases where his decision directly endangers other individuals. The right to refuse includes medical treatment proposed even if it saves or sustains his life, however the approval for medical treatment on underage individuals is given by their parents, spouse, legal representative or a guardian, in written form. The same Law regulates that the patient has the right to freely choose his medical treatment based on appropriate information on possible risks and consequences for the patients health, and gives his consent to the treatment in writing.

**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.**

- i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

The Federal Ministry of Health Care claims that people who want to undergo gender reassignment treatment easily access adequate institutions. However, there is no

hospital with medical premises in B&H territory where you can get surgical reassignment services, so the transgender persons that want to proceed with a gender reassignment surgery have to go abroad, as for example to Belgrade (Serbia) where they can get this service in private clinics such as Narodni Front, at their own expense.

- ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

The ministries provided no information whether it was the practice to make transgender persons undergo therapy to accept their birth gender and whether this practice is now abandoned.

- iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

The Federal Ministry of Health Care stated that no individual can be forced to undergo an unwanted medical treatment but they did not specifically state whether this applies to children as well. In Republic of Srpska the approval for medical treatment on underage individuals is given by their parents, spouse, legal representative or a guardian, in written form.

**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.**

- i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

Neither the Federation of BiH nor the Republic of Srpska cover the costs of gender reassignment treatment.

*ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

Non applicable

## **VIII. 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.**

*i. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

The ministries in charge of housing did not reply so we have no information from them whether the legislation or other measures prohibits discrimination on the grounds of sexual orientation and gender identity in areas such as the sale or rent of housing, the provision of loans for purchase of housing, the recognition of the rights of a tenant's partner or eviction. The Law on housing does not address discrimination on the grounds of sexual orientation or gender identity either. However the Anti-discrimination law prohibits the discrimination on all grounds including

sexual orientation and gender identity concerning housing, including the access to the housing, the conditions of housing and the lease contract.

- ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

The ministries in charge of housing did not reply so Sarajevo Open Centre is unaware whether there are provisions in place to ensure non-discriminatory access to shelters and whether other emergency accommodation is provided in regard to sexual orientation and gender identity

- iii. Is information available to landlords and tenants aimed at preventing such discrimination?*

Since the ministries in charge of housing did not reply we do not know whether any information available to landlords and tenants is aimed at preventing such discrimination

- iv. Are adequate and effective legal or other remedies available to victims of such discrimination?*

The victims of this kind of discrimination can use legal and other remedies which are provided by the Anti-discrimination law. However, as noted elsewhere, given the degree of social hostility towards LGBT people, access to these legal and other remedies is more theoretical than practical.

- v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

The ministries in charge of housing did not reply so Sarajevo Open Centre is unaware about the existence of any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions.

**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.**

- i. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*

Federal Ministry of Labour and Social Sport mentioned no social programmes or support programmes that address the factors which increase vulnerability to homelessness of LGBT people, however the Ministry of Labour, Social Affairs and Refugees of Zeničko-dobojski Canton claims that even though the existing laws do not include this category of homeless persons, social programmes and support programmes conducted in coordination with centres for social work, and municipality services in charge of social care are available for all the users under equal conditions, regardless of sexual orientation and gender identity in their Canton. While we welcome this statement, given the degree of social hostility towards LGBT people, and in the absence of special measures, we question whether this equality of access is more theoretical than practical.

- ii. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and*

*sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

The ministries did not mention any trainings or awareness raising programmes that were conducted in order to ensure that relevant agencies are aware and sensitive to the needs of LGBT people facing homelessness.

## **IX. 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.**

- i. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*

The responses we got from Ministry of Civil Affairs of BiH, Ministry of Family, Youth and Sports of Republic of Srpska and the Department for Economical Development, Sports and Culture of Brčko District mentioned no particular measures that have been taken to prevent the risk of exclusion from participation in sports on the ground of sexual orientation and gender identity. Although not specifically mentioned in the Law on Prohibition of Discrimination, sport is included under the wording “services designated for public and public places”. However, there are no reported cases of discrimination on grounds of sexual orientation or gender identity under this heading

of the legislation, raising concerns that LGBT people do not feel able to make use of the legislation, or are unaware of the remedies available.

*ii. By encouraging, for example:*

- *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
- *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
- *anti-discrimination campaigns in the sports world,*
- *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

Sarajevo Open Centre is unaware of any particular measures taken by the ministries in order to prevent the risk of exclusion from participation in sports on ground of sexual orientation and gender identity.

*iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

Besides the legislation that prohibits spectator violence and insulting acts, the ministries offered no information on concrete measures that are being taken in order to prevent, counteract and punish the use of homophobic or transphobic insults during and in connection to sports events.

*iv. In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*

- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,<sup>45</sup> the European Sports Charter<sup>46</sup>*
- *and ECRI's General Policy Recommendation No.12<sup>47</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

Homophobic and transphobic chanting at or around sports events has not been made a criminal offence. But the Law on Sports of Republic of Srpska forbids spectator violence and insulting acts, especially those that provoke racial, national, political and other intolerance. This is confirmed by the Law on Prevention of Violence on Sport Events which states that violence and inappropriate behaviour are considered to be putting up banners, flags or other texts, pictures, songs or other marks which show or encourage hate or violence on the grounds of racial, national or religious belonging, or some other special characteristic. Both of these laws foresee prosecution of offences in case of their violation.

Ministry of Civil Affairs of Bosnia and Herzegovina said that the Sport law of BiH is based on standards and principles confirmed in the European Sports Charter and other regional and international conventions and documents, however they did not specifically state that this means that the provisions of these documents are implemented in respect of sexual orientation and gender identity.

v. *Have specific appropriate measures been taken to:*

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45 <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 ("Domestic coordination"), 3 ("Measures"), 5 ("Identification and treatment of offenders").

46

[https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.1 (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

47 [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/e-RPG%2012%20-%20A4.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf): Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognize their preferred gender?*

None of these ministries addressed the matter of transgender persons in any way.

**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.**

- i.* *Have*  
*steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities*
  - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

Ministries responsible for sports mentioned no steps taken to encourage dialogue with, and support for sports associations and fan clubs in developing awareness-raising activities and condemning homophobic and transphobic behaviour during and in connection with sports events.

In BiH there are no LGBT sport associations, neither formal nor informal. Such associations exist in many other European countries, and the fact that they do not exist in BiH emphasises yet again that LGBT people do not feel safe to engage in communal social activities.

**X. 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.**

- i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

The Law on the Migration and Residence of Foreigners and Asylum of Bosnia and Herzegovina does not explicitly recognise a well founded fear of persecution based on sexual orientation and gender identity as a valid ground for the granting of refugee status and asylum, However, the Human Rights Commissioner's Legal Report comments that sexual orientation and gender identity should, by default, be legally binding grounds.<sup>48</sup> The author of that report was aware of only one application for asylum on these grounds, and the Sarajevo Open Centre is unaware of any others. Given the difficulties faced by the LGBT community in BiH, the absence of LGBT asylum seekers is not a surprise.

- ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

The Ministry for Human Rights and Refugees of BiH did not respond therefore we have no information on any kind of training intended for the staff responsible for processing asylum requests.

- iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

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<sup>48</sup> "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual orientation and Gender Identity – Legal Report: Bosnia and Herzegovina", paragraph 36

Sarajevo Open Centre is unaware whether the asylum requests are turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation and gender identity secret

**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.**

- i. What procedures are in place to ensure compliance with this obligation?*

The Ministry for Human Rights and Refugees did not respond to our letter and we have no information whether there are procedures in place to ensure 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, degrading treatment or punishment on the grounds of sexual orientation or gender identity. So far according to BiH legislation it is strictly prohibited to send an asylum seeker to a country where his/hers life or freedom are in danger regardless on any ground. The principle of "non-refoulement" is incorporated in the Law on the Migration and Residence of Foreigners and Asylum. Article 8 of this law prohibits discrimination. Sexual orientation is not stipulated directly, although gender is. The article includes a general ground, "on any other ground".

- ii. Are there documented cases where asylum seekers have been returned to such a country?*

Sarajevo Open Centre is not aware of cases of asylum seekers returned to a country where their life or freedom would be threatened or they face risk of torture, inhuman, degrading treatment of punishment on the 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.**

*i. What measures have been taken to comply with this requirement?*

The Ministry for Human Rights and Refugees of BiH did not respond, therefore we have no information on any measures taken to prevent risk of physical violence, including sexual abuse, verbal aggression or other form of harassment against asylum seekers deprived of their liberty and to ensure their access to information relevant to their particular situation.

*ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

We also have no information whether the trainings for staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases contains relevant information on issues regarding sexual orientation and gender identity.

## **XI. 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.**

*i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

The Institution of Ombudsperson for Human Rights has a clear mandate to deal with discrimination on the grounds of sexual orientation but not specifically gender identity, in accordance to Article 2 of the Anti-discrimination law of Bosnia and Herzegovina.

*ii. In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public*
- *examine individual complaints*
- *participate in court proceedings*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*

*in relation to (a) sexual orientation or (b) gender identity?*

the Institution of Ombudsperson for Human Rights stated that they carry out following activities related to discrimination on any ground, including sexual orientation and gender identity:

- issues out the recommendations in order to eliminate violations of the law, these recommendations can cover the alteration of the regulation and the general acts, as well as the individual measures
- carries out an intensive campaign in order to promote Anti-discrimination law and its mandate
- receives individual complaints and based on them conducts the investigation, both in public and private sector, and enacts appropriate decisions
- monitors the court trials but has no jurisdiction over them and cannot influence the process of judicial decisions

- publicly supports the respect of the rights all the endangered categories, including the right to express their opinions and attitudes .

However, due to lack of resources, the Ombudsperson office do not carry extensive public campaign in order to promote anti-discrimination on grounds of sexual orientation and gender identity. Furthermore, the Office of the Ombudsperson did not make a public statement supporting the rights of LGBT people when freedom of assembly events were in danger, and as example the negative consequences of the Queer Sarajevo Festival 2008, the human rights state institutions failed to react and condemn it openly.

However we welcome the fact that more recently the Ombudsman's Officers have done some steps such as: they have participate in a workshop that Sarajevo Open Centre has organized in OSCE premises in December 2011 dealing with relevant legal issues for LGBT activists, they have participated in conferences dealing with anti-discrimination policies abroad, they have had lectures at faculties of law and political sciences in BiH and they have had a local radio talk show in Banja Luka as part of the campaign to promote anti-discrimination, as well as helping Sarajevo Open Centre to distribute informational flyers about different LGBT issues throughout the country. These are very positive developments.

## GLOSSARY

**Biphobia:** the fear, unreasonable anger, intolerance or/and hatred toward bisexuality and bisexual people (see “Bisexual”). The phobia may exist among heterosexuals, gay men, lesbians, or by bisexuals themselves, and is often related to multiple negative stereotypes of bisexuals centre on the belief that bisexuality does not exist and on the generalization that bisexuals are promiscuous.

**Bisexual:** when a person is emotionally and/or sexually attracted to persons of more than one sex.

**Coming-out:** the process of revealing the identification of a lesbian, gay, bisexual, trans or intersex person.

**Discrimination:** unequal or unfair treatment which can be based on a range of grounds, such as age, ethnic background, disability, sexual orientation or gender identity. Can be divided into different types of discrimination, which all can lead to victimisation and harassment:

- Direct discrimination: a situation where a person is treated less favourably than others on grounds of his or her sexual orientation or gender identity.
- Indirect discrimination: where an apparently neutral provision or practice would put persons having a particular sexual orientation or gender identity at a disadvantage compared to others.

**Gay:** a person who feels sexual and/or emotional desire exclusively or predominantly for persons of her or his own sex. The term has however been misused to cover all gay men and lesbians (and sometimes even bisexuals). This has been widely discussed, and gay should therefore only be used when it is referring to men who are emotionally and/or sexually attracted to other men. If the intention is to cover all without intentionally excluding any sexual orientation or gender identity/expression, then it is recommendable not to use only the term gay, and instead use LGBTI (lesbian, gay, bisexual, trans and intersex people).

**Gender:** refers to people’s internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles which vary across history, societies, cultures and classes. Gender is hence strongly linked to society’s expectations and is not exclusively a biological matter.

**Gender expression:** refers to people’s manifestation of their gender identity, and the one that is perceived by others. Typically, people seek to make their gender

expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

**Gender identity:** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism (Yogyakarta Principles).

**Gender marker:** is a gendered designator on official documents. The most obvious gender markers are designations such as male/female or Mr/Mrs/Ms/Miss. They are often embedded in ID cards, driver's licences, birth certificates, diplomas, civil status documents and tax forms. Less obvious gender markers can be coded numbers such as social security numbers and tax numbers.

**Gender reassignment:** refers to the process through which people re-define the gender in which they live in order to better express their gender identity. It is often referred to as a process that may involve medical assistance including hormone therapies and surgical procedures that transpeople undergo to align their body with their gender.

**Hate crime:** offences that are motivated by hate or by bias against a particular group of people. This could be based, inter alia, on gender, gender identity, sexual orientation, ethnicity, religion, age or disability. Also called bias crime.

**Hate speech:** refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards minorities — for example statements by political or religious leaders appearing in the press or the Internet.

**Heteronormativity:** Reference to cultural and social practices where men and women is being led into believing and behaving as if heterosexuality were the only conceivable sexuality. It also implies the positioning of heterosexuality as the only way of being "normal" and as the key source of social reward.

**Heterosexual:** People are classified as heterosexual on the basis of their gender and the gender of their sexual partner(s). When the partner's gender is other than the individual's, then the person is categorised as heterosexual.

**Homophobia:** the fear, unreasonable anger, intolerance or/and hatred toward homosexuality. Homophobia can appear in various ways:

- Internalised Homophobia: when lesbian, gay men and bisexual people are considering and accepting heterosexuality as the correct way of being and living.

- Institutionalised Homophobia: when governments and authorities are acting against equality for LGB people. This can be hate speech from public elected persons, ban on pride events and other forms of discrimination of LGB people.

**Homosexual:** People are classified as homosexual on the basis of their gender and the gender of their sexual partner(s). When the partner's gender is the same as the individual's, then the person is categorised as homosexual. It is recommended to use the terms lesbian and gay men instead of homosexual people. The terms lesbian and gay man are being considered neutral and positive, and the focus is on the identity instead of being sexualised. Lastly, the term homosexual has for many a historical connotation of pathology.

**Intersex people:** refers to those people who have genetic, hormonal and physical features that are neither exclusively male nor exclusively female, but are typical of both at once or not clearly defined as either. These features can manifest themselves within secondary sexual characteristics such as muscle mass, hair distribution, breasts and stature; primary sexual characteristics such as reproductive organs and genitalia; and/or in chromosomal structures and hormones. This term has replaced the term 'hermaphrodite' which was used extensively by medical practitioners during the 18th and 19th centuries.

**Lesbian:** a woman who is sexually and emotionally attracted to women.

**LGBT:** Acronym for lesbian, gay, bisexual and trans people.

**Pride events:** Pride events and marches date back to June 1969 to the so-called Stonewall riot, when LGBTI persons in New York protested in the streets for several days against persistent police harassment of LGBTI individuals and venues. The following year, the uprising was commemorated by demonstrations in several American cities, and since then annual demonstrations against homophobia/transphobia and for LGBTI rights have spread around the world.

**Queer:** has become an academic term that is inclusive of people who are not heterosexual - includes lesbians, gay men, bisexuals and trans. Queer theory is challenging heteronormative social norms concerning gender and sexuality, and claims that gender roles are social constructions. For many LGBTI persons, the term "queer" has negative connotations as it was traditionally an abusive term, however many LGBTI persons are now comfortable with the term and have "reclaimed" it as a symbol of pride.

**Sexual orientation:** refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

**Transgender:** refers to those trans people who live permanently in their preferred gender, without necessarily needing to undergo any medical intervention/s. Until

recently, this term was also the primary umbrella term referring to all trans people, but this use is now losing favour to the term 'trans' which is perceived to be more inclusive of all trans communities.

**Transsexual:** refers to people who identifies entirely with the gender role opposite to the sex assigned to at birth and seeks to live permanently in the preferred gender role. This often goes along with strong rejection of their physical primary and secondary sex characteristics and wish to align their body with their preferred gender. Transsexual people might intend to undergo, are undergoing or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery).

**Trans Person/People/Man/Woman:** is an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

**Transvestite/Cross dresser:** refers to people who enjoy wearing the clothing of another gender for certain periods of time. Their sense of identification with another gender can range from being very strong and indeed their primary gender, to being a less critical part of their identity. Some transvestite or cross-dressing people may seek medical assistance to transition and live permanently in their preferred gender at some point in their life. Others are happy to continue cross dressing part-time for the rest of their lives.

**Transphobia:** refers to negative cultural and personal beliefs, opinions, attitudes and behaviors based on prejudice, disgust, fear and/or hatred of transpeople or against variations of gender identity and gender expression. Institutional transphobia manifests itself through legal sanctions, pathologisation and inexistent/inadequate mechanisms to counter violence and discrimination. Social transphobia manifests itself in the forms of physical and other forms of violence, hate speech, discrimination, threats, marginalisation, social exclusion exoticisation, ridicule and insults.

## **ABOUT SOC**

### **Mission**

Sarajevo Open Centre is an independent, non-political and non-profit organization that promotes full respect of human rights and decrease the level of discrimination on grounds of gender, sexual orientation and gender identity by empowering marginalized groups through community activities, promoting human rights within the society and advocating for policy change towards the public authorities.

### **Vision**

Bosnia and Herzegovina is a society of equal rights and opportunities for everybody, built on a culture of respect for human rights, equality, peace and democracy.

SOC was established in 2007 and ever since has been constantly working and increasing its scope of action from interreligious education and cultural programmes to a human rights programme, especially Lesbian Gay Bisexual Transgender rights. We have been working intensively since 2011, when we opened our first office and had our staff constantly working in the Sarajevo Open Centre. Nowadays, our team is composed of 12 employees and 2 voluntaries. We are part of the following networks:

Omladinska mreža BiH – Youth Network in B&H

Šarena mreža BiH – Colorful Network in B&H

Mreža izgradnje mira u BiH – Peace Network in B&H

Mreža pravde – Justice Network in B&H

Forum jednakosti – Equality Forum

Ženska mreža u BiH – Women's Network in B&H

Regional Network Against Homophobia

Koalicija 143 – Coalition 143

### **Specific objectives**

- To increase awareness among state institutions/officials about the necessity to fully implement International, European and national human rights standards towards women and LGBT persons
- To raise citizens awareness about the LGBT rights and political, social and economic rights of women

- To empower and strengthen the LGBT community by implementing supportive community based activities, related to their rights and needs.

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