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**Study on Homophobia, Transphobia and Discrimination on  
Grounds of Sexual Orientation and Gender Identity**

**Legal Report: Bosnia and Herzegovina**

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## **A. Executive summary**

1. Neither Constitution nor any other legislation embodies the principles of equality and non-discrimination on the grounds of sexual orientation and gender identity directly. However, sexual orientation has been introduced in a number of other laws, including the Law on Equality of Sexes and the Law against Discrimination.
2. Homosexuality was decriminalised in 1998 during reforms of the legislation in order to meet the formal requirements of a Council of Europe membership.
3. School curriculum does not include sexual education and there are no other specific programmes or education directly related to sexual orientation.
4. Hate crime is punishable according to the Criminal Code, but the prohibition of incitement does not relate to sexual orientation. This is different for the press, which should do its utmost not to incite or inflame hatred or inequality on the ground of sexual orientation among others.
5. Marriage is only recognised between men and women and no partnerships between same-sex partners are legally recognised. Moreover, same-sex partners are not recognised as next of kin and do not have the right to adopt or to have assisted reproduction.
6. Discrimination against transgender individuals is not regulated by law and legislation relevant to this group is to be found in laws governing change of name, sex, gender marker, right of access to affirmative treatments and medication. Furthermore, there is no regulation pertaining to intersex persons.
7. There are reports of discrimination within almost all fields examined in the report, but none of them have resulted in court cases.
8. There are no particularities regarding LGBT people within the areas of housing.

## B. Findings

### B.1. Overall legal framework

9. Bosnia and Herzegovina (BiH) gained independence from the Socialist Federative Republic of Yugoslavia (SFRY) in April 1992. With the signing of the Dayton Peace Agreement in 1995,<sup>1</sup> BiH gained a Constitution and became a State made out of two entities and one District: Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS), and Brcko District (BD). Furthermore, FBiH is created out of the Cantons, while RS is centralised. Specific laws and ministries do exist on the Entity/District level, as well as on the level of Cantons.
10. In addition to the BiH Constitution, each Entity has its own Constitution while BD has its own Statute. All four documents list international Conventions featuring an exhaustive list of human rights. Although the BiH Constitution lists 16 international conventions,<sup>2</sup> it specifies that the European Convention for the Protection of Human Rights and Fundamental Freedoms (EC) is above all BiH laws. In addition, on 1 April 2005, Protocol 12 to the EC entered into force in respect of BiH reaffirming the general prohibition of discrimination in BiH.
11. Prohibition of discrimination on the grounds of sexual orientation and sexual expression or orientation is noted in the Law on Gender Equality in BiH and Law Against Discrimination in BiH, respectively. However, neither Constitution nor laws give special mention to sanctioning of hate speech/crime on the grounds of sexual orientation and gender identity. It can be said that such protections are inclusive through other grounds given that BiH legislatively adheres to human rights protection and fulfilment. However, one main flaw exists, offering a glimpse of discriminatory edge or focus in BiH. BiH is set and created as the State of Bosniaks, Croats and Serbs,<sup>3</sup> thus giving them special rights over other nations in relation to elections and governmental positions, and inherently discriminating on the grounds of national/ethnic identity. This merely means, that sometimes human rights are interpreted to mean rights of national community and not rights of people/citizens who are all inherently equal regardless of their national/ethnic background.
12. Prior to war, each federative republic had its own Penal Code. The Penal Code of BiH from 1977 contained an article that *de facto* criminalised male homosexual conduct with up to a maximum of one year of imprisonment.<sup>4</sup> This law was amended in both Entities and Brcko District ending a ban on homosexual conduct in 1998. In addition, new Criminal Codes do not make a differentiation between age of consent for heterosexual and homosexual conduct. However, sexual relations with a person below age of 14 is considered rape and is prohibited and punishable by law.<sup>5</sup> Decriminalisation of homosexuality is attributed to reforms in legislation as well as a requirement to formal membership to Council of Europe in 2002.
13. In May 2003, Law on Equality of Sexes was adopted on the level of the State. This law is the first law that prohibits discrimination on the grounds of sexual orientation. Not a single

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1 Also known as the General Framework Agreement for Peace in Bosnia and Herzegovina, this Agreement was signed on 14 December 1995, bringing the 1992-1995 war to an end.

2 *Constitution of BiH*, annex 1, [www.ccbh.ba/eng/p\\_stream.php?kat=518](http://www.ccbh.ba/eng/p_stream.php?kat=518), accessed 24 September 2010, and Article II, 2.

3 *Constitution of BiH*, [http://www.ccbh.ba/eng/p\\_stream.php?kat=518](http://www.ccbh.ba/eng/p_stream.php?kat=518)

4 Article 93, 2, *Criminal Code of BiH*, 1977.

5 *Criminal Code of FBiH*, article 224, and *Criminal Code of RS*, article 91.

case has been prosecuted on the grounds of sexual orientation using this law, however. In addition, harmonisation with other laws occurred with some laws, resulting in the term sexual orientation being included in the anti-discrimination clause.<sup>6</sup> One main flaw of this law was that although it referred to “sex” as a primary ground of anti-discrimination, it actually, by definition, referred to gender (all along using term “sex”), although for all purposes it implied “sex.”<sup>7</sup>

14. On 23 July 2009, Law Against Discrimination was adopted on the State level.<sup>8</sup> This law 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 at minimum supposed to include the grounds of gender identity and sexual orientation, this was not the case. Also, although the draft of this law has existed for years, it has entered the Parliamentary procedure in 2009 and was adopted as a result of EU Road Map. This law is not satisfactory as it does not specifically include the term gender identity. Furthermore, this law specifically exempts marriage from discrimination as it remains a union of man and woman.
15. Mid-2009, Law on Equality of Sexes started undergoing its first amendment phase and it was adopted on 15 December 2009. Initially, amendments to the Law on Equality of Sexes, according to the state Agency for Gender Equality, were to eliminate the ground of sexual orientation. Explanation offered during the public discussion in Sarajevo was that the ground of sexual orientation made its way in this law by mistake, it does not belong in this law and that if Law Against Discrimination is adopted with this ground in it, there is no reason why there should be two laws with the same grounds. However, it was decided that sexual orientation remains in the Amendments’ draft regardless of the outcome of the Law Against Discrimination. Again, this law only provides prohibition of discrimination on the grounds of sexual orientation. However, it now includes grounds of both sex and gender.
16. There is no law that directly sanctions hate speech or hate crimes on the grounds of sexual orientation, sex/gender and or sexual/gender identity and/or expression.
17. Neither one of the Constitutions in BiH embodies the principles of equality and non-discrimination on the grounds of sexual orientation and gender identity, explicitly. Although sexual orientation is included in some laws, gender identity is not mentioned anywhere as of yet. In addition, huge pressure is exhibited so that anything pertaining to LGBTI population in relation to human rights and legislation is not included. Specifically, pertaining to public sphere, explicitly hate speech and hate crimes.
18. In the past, the government or governmental institutions have organised training sessions regarding gender equality or human rights, but have avoided education on human rights inclusive of sexual orientation even when such education was about Law on Equality of Sexes which explicitly mentions sexual orientation as prohibited grounds of discrimination. Although, there is slight improvement on this front, the only achievement really presents a training organised by the Ministry of Security and OSCE in BiH regarding hate crimes. This training was organised for police officers and mimicked the same programme that was finalised in Croatia and other OSCE member states in the region. As such, it serves as an

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6 For example, under article 145 of the *Criminal Code of Bosnia and Herzegovina*, article 162 of the *Criminal Code of the Republika Srpska*, article 177 of the *Criminal Code of the Federation of Bosnia and Herzegovina* and article 174 of the *Criminal Code of the Brcko District*, discrimination on the grounds of sexual orientation is a crime; see also article 4 of the *Labour Law of the Brcko District* which prohibits discrimination on the grounds of sexual orientation.

7 “Sex: socially determined roles of women and men in public and private life which is different from the same term which implies biological attributes. Term sex, in the spirit of this law, shows meaning which is within society given to biological attributes of sex. *Law on Equality of Sexes in BiH*, article 4.

8 *Law on Prohibition of Discrimination*, [www.queer.ba/en/content/law-prohibition-discrimination](http://www.queer.ba/en/content/law-prohibition-discrimination), accessed 24 September 2010.

exception. No other trainings are known to have been organised, especially regarding governmental officers or civil servants.

19. Laws adopted in BiH regarding human rights are being adopted because of EU requirements or due to adherence to the UN and CoE. There appears to be no true and genuine interest or actions on the larger governmental front in improving human rights and equality for everyone, in the way of progressive achievement of realisation of human rights and equality long term.

## B.2. Freedom of assembly and association

20. In 2001, BiH Gay-Lesbian Association attempted to register itself as a non-governmental organisation. Due to a legal requirement about the minimum number of founders (set at 30), this organisation was not able to attempt registration as it obtained signatures of only 20 individuals.<sup>9</sup> After the law changed, only three persons were required to serve as founders. In early 2004, Organization Q for Promotion and Protection of Culture, Identity and Human Rights of Queer Persons was registered, becoming the first LGBTIQ registered NGO in BiH. In 2005, an organisation under the name of International Initiative for Visibility of Queer Muslims was registered and reregistered in 2006 becoming known as Logos. These two organisations were registered on the State level. Logos is no longer active. In 2009, an organisation Equilibrium initiated and finalised its registration in Banja Luka on the level of RS. This organisation has not publicly announced its existence and work nor agenda and activities.
21. All public demonstrations have to be registered and approved. Permission has to be sought three days in advance of the event. Homophobic demonstrations have been allowed, not officially by granting a permit, but by allowing demonstrations that were not reported and issued a permission, to take place.
22. The Government has provided funds to some human rights organisations in Bosnia Herzegovina, however not to the LGBTIQ organisation.

	2004	2005	2006	2007	2008
Number of demonstrations in favour of LGBT people / LGBT rights, gay pride parades, etc.					1
Number of demonstrations against LGBT people / LGBT rights					2
Number of planned demonstrations / public events organised by LGBT people denied					

## B.3. Freedom of expression

23. Hate speech is not explicitly addressed in any BiH laws. What is mentioned in the Law Against Discrimination is "incitement to discrimination is any advocacy of national, racial or religious hate and is forbidden."<sup>10</sup>

<sup>9</sup> Durkovic, S., *The Invisible Q?: Human Rights Issues and Concerns of LGBTIQ Persons in Bosnia and Herzegovina*, Udruzenje Q, Sarajevo, 2008, page 22.

<sup>10</sup> *Law Against Discrimination*, article 4 (6).

24. Hate crime, however, is addressed in all four Criminal Codes, but again, it is only on the grounds of nationality/ethnicity, race or religion.
25. There has been state and private interference with LGBT activities, including organising an arts and cultural festival - Queer Sarajevo Festival (QSF). This interference includes denial of different venues to rent their space to QSF organisers for the purpose of QSF (also, a venue owned by the FBiH government).

	2005	2006	2007	2008	2009
Number of court cases regarding violations of the right to freedom of expression of LGBT people				Unknown	Unknown
Number of convictions regarding violations of the right to freedom of expression of LGBT people (please indicate range of sanctions ordered)				Unknown	Unknown
Range of sanctions issued for the violation of the right to freedom of expression of LGBT people.				Unknown	Unknown

#### B.4. Hate crime - Criminal law

26. Hate crime is prohibited by national legislation and is included in all four Criminal Codes. Incitement of national, racial or religious hatred is also included on the level of the State through the Law Against Discrimination. No other grounds are included. In addition, no other laws mention hate crimes.
27. Furthermore, public events which have been characterised with severe usage of hate speech and hate crimes actions on the grounds of sexual orientation and gender identity have not yielded post fact inclusion of such provisions in the Law Against Discrimination that was adopted in July 2009.
28. Hate speech communicated via TV and radio can be sanctioned by a Regulatory Agency on Communications (RAC) in accordance with the Law on Communications. Indeed, RAC has sanctioned OBN TV with a fine for allowing broadcasting of all SMS messages during a live show programme. Most of these SMS message contained hate speech. For more information, please see section on media.

	2005	2006	2007	2008	2009
Number of court cases regarding homophobic/transphobic hate speech initiated					
Number of convictions regarding homophobic/transphobic hate speech (please indicate range of sanctions ordered)					
Range of sanctions issued for homophobic/transphobic hate speech				1	

	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic/transphobic motivation was used as an aggravating factor in sentencing	NA	NA	NA	NA	NA

## B.5. Family issues

29. Marriage in BiH is recognised as a union between man and woman. Since the adoption of Law on Equality of Sexes, Family Laws on Entity levels were revised, however, they did not include revision of the marriage definition/rights nor did they secure same rights for same sex couples.
30. Bosnia and Herzegovina does not recognise same-sex marriage or any other union for same-sex couples. There are no alternative registration schemes similar to marriage. There is no lesser alternative that offers lesser rights, similar to registered partnerships, cohabitation of same-sex partners, out of marriage unions, or alike.
31. Transgender and transsexual individuals can change their names as anyone else, however only transsexual individuals who have completed the gender reassignment procedure can change their identification number (with a gender marker included) and subsequently all legal papers and documents which carry a gender marker. Change of identification number and name is regulated by law, and includes the police and municipal authorities. Requirement for change of documents is that the person requesting the change must present medical/doctor papers/confirmation that change of gender has been final and that the person is now of F/M sex. Once that paper is obtained, the process begins with authorities. Transgender persons cannot marry in their desired gender unless it is made legal by the state and unless they marry a person of opposite sex. No specific law exists regulating the marriage status of transgender/transsexual individuals in regards of their marriage status and gender reassignment procedure.
32. Transgender persons who have not undergone gender reassignment treatment and subsequently changed their documents cannot marry, as that union would be viewed as a same-sex union. However, transsexual individuals who have undergone gender reassignment and have modified their documents, can legally marry if they indeed would be marrying a person of the opposite sex.
33. Adoption of children can be classified as full adoption or partial adoption. Full adoption is reserved only for married couples, while partial adoption (fostering) can be done by a single person. Due to the fact that same-sex couples cannot marry, they cannot adopt children, either. In addition, Law Against Discrimination indicates Family Law as an exclusion from discrimination, thus specifying marriage and marital relations, protection of public moral and requirements for marriage as specified in Family Law as allowed exceptions from discrimination. It can be argued that this law prohibits the same rights for LGBT persons. Specifically, exceptions from the principle of equal treatment, include, among others: "placing in worse position, when administering rights and responsibilities from the family relations when specified by law, and especially with the goal of protecting the rights and interests of children, which has to have legitimate aim, protection of public moral, as well as marriage requirements in accordance with family law."<sup>11</sup>

<sup>11</sup> *Law Against Discrimination*, article 5 (g).



34. Assisted reproduction is allowed and available in BiH for married heterosexual couples (artificial insemination). Although there is no explicit prohibition for access to these services by LGBT people, there is no specific permission of these rights to non-heterosexual persons/couples. Single individuals cannot be provided with assisted reproduction. It is also not possible for any person to store own sperm/fertile eggs for future use as there is no fertility bank and no laws stipulating reproduction issues.
35. Bosnia and Herzegovina does not recognise same-sex marriages contracted in a foreign jurisdiction nor does it legally recognise family reunification for same-sex partners (married or not).

#### **B.6. Asylum and refugee issues**

36. According to the Law on Movement and Residence of Foreigners and Asylum, asylum is awarded to refugees “according to Article 1. A (2) Convention on Status of Refugees from 1951 and Article 1 of Protocol from 1967) due to legitimate fear from persecution on the grounds of race, faith, nationality, membership to a social group or due to political belief”.<sup>12</sup> Although sexual orientation and gender identity are not explicitly included, they should, by default be legally binding grounds. No cases of asylum on the grounds of sexual orientation or gender identity are publicly known. However, Organization Q, together with Amnesty International in London, have knowledge about one instance where such considerations were involved. This case was filed in 2009 by an applicant himself, from the Immigration Centre in Lukavica. The applicant is a citizen of Cameroon who has prohibition of return to his home country due to his homosexuality (original communiqué written by his government, dated 14 January 2007).
37. The anti-discrimination clause in regard to treatment of foreigners, includes the following grounds: “gender/sex, race, skin colour, language, faith, political and other beliefs, national and social background, association to a national minority, inheritance status, status achieved at birth or some other status.”<sup>13</sup>
38. Asylum seekers can apply for a humanitarian visa before coming to Bosnia and Herzegovina or can claim asylum once they have reached BiH borders. If applying for a visa prior to arriving, they will be awarded a humanitarian visa “if interested persons can prove legit fear from persecution due to their race, faith, nationality, social group membership or due to political belief if they remain in the State of their origin.”<sup>14</sup> Obtaining this visa does not imply that the visa holder will apply for asylum once in Bosnia and Herzegovina.
39. A foreigner who is awarded asylum in Bosnia and Herzegovina gains status of a refugee and hence rights as listed from Article 3 to 34 of the Convention on Status of Refugees from 1951.<sup>15</sup> In addition, “refugee status, in general, is also awarded to a spouse and underage children, as well as other members of nuclear family as long as they live in the same household, on the territory of BiH. Family members of the foreigner to whom asylum was awarded are issued entrance visas.”<sup>16</sup> In other words, Bosnia and Herzegovina does not include specific law or policy provisions regarding asylum on the grounds of sexual orientation or gender identity. Although those grounds would be deemed included via “social group membership,” there are no official data on how many applications have been

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12 Ibid, article 72.

13 *Law on Movement and Residence of Foreigners and Asylum*, article 8, published in the Official Gazette of Bosnia and Herzegovina no. 36/08 of 6 May 2008.

14 Guidelines about Conditions and Procedures on Issuing Visas to Foreigners, Extension of Visas, Termination of Visas, Types of Visas and Keeping Data about issued Visas, article 22, 2004.

15 *Law on Movement and Residence of Foreigners and Asylum*, article 120.

16 Ibid.

submitted and granted on those grounds. Furthermore, a same-sex spouse/partner of the asylum applicants will not be granted an entrance/visa/status given that BiH does not recognise same-sex partnerships and marriage. In addition, although refugees have the same rights to work, education, health and social care as BiH citizens, health and social insurance does not include the necessary health treatments for transsexuals.

40. LGBT persons are not affected by the right for family unification in Bosnia and Herzegovina, given that the law specifies family to mean, besides children and parents, a legally married spouse or registered partner of the opposite sex.<sup>17</sup> Same-sex partnership and marriage do not constitute a family.
41. In relation to movement and visas, if a BiH citizen and a Swedish citizen are married in a same-sex civil ceremony, Swedish citizen would not have any legal benefits of being the spouse of a BiH citizen given that BiH does not recognise same-sex marriages arranged somewhere else. This would pertain to a visa, social security, work permits, etc.

	2005	2006	2007	2008	2009
Number of persons benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation or gender identity					Unknown

#### **B.7. Social security, social care and insurance**

42. Social security, social care and insurance as rights have been implemented in BiH legal system. Such measures do seem to be homophobic/transphobic in regard to parental leave, insurance, family and marriage related benefits in regard of partner or child benefits (given that such rights are not being respected and fulfilled).
43. Access to poverty reduction strategies and programmes, appropriate public or private social care and other services legislatively function without discrimination on the basis of sexual orientation or any other grounds. However, it is not known to what extent they function in practice, as some rights are, in advance, directed towards specific groups in need which are not defined as LGBT.

#### **B.8. Education**

44. In BiH, 13 ministries administer and shape education on the level of primary, secondary and university education. Given that Ministry of Education does not exist on the level of State, education is a matter of local politics. However, a General Law on Elementary and High-school Education in Bosnia and Herzegovina<sup>18</sup> was adopted in 2003 while a Law on Agency for Preschool, Primary and Secondary school Education<sup>19</sup> was adopted in 2007.
45. Although sexual orientation and gender identity are not explicitly mentioned in the Article 35 of the General Law, the anti-discrimination clause does include the following: "race,

<sup>17</sup> Ibid, article 57.

<sup>18</sup> Oscebih, [www.oscebih.org/documents/14-bos.pdf](http://www.oscebih.org/documents/14-bos.pdf), accessed 24 September 2010.

<sup>19</sup> Oscebih, [www.oscebih.org/documents/12896-bos.pdf](http://www.oscebih.org/documents/12896-bos.pdf), accessed 24 September 2010.

colour of skin, sex, language, religion, political or other opinion, national or social background, special needs, or any other status.”

46. No laws or policies seem to specifically address social exclusion, violence or bullying and harassment in the school environment and especially concerning sexual orientation or gender identity.
47. School curriculum does not include sexual education. Thus sexual education is taught to some extent through the subjects of Biology, Sociology, Psychology, Ethics. Although some subjects seem to be neutral when discussing different forms of sexual orientation, most textbooks discuss homosexuality and bisexuality as wrong or a deviant state, deviant behaviour, sexual deviations, rightfully deserved connector to HIV/AIDS, etc. Issues of transsexualism are barely mentioned and intersex issues are discussed as an anomaly and abnormality.<sup>20</sup>
48. Social or legal gender reassignment can impact the possibilities of a student or teacher to participate in school activities given that such an environment is very gender-phobic. Change of name and gender on a diploma and other documents would be initiated with the change of other legal documents. However, there are no known cases, as of yet, where legal gender change took place for student or teachers while still in school.

	2005	2006	2007	2008	2009
Number of cases of homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools					
Number of convictions regarding homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools (please indicate range of sanctions ordered)					
Range of sanctions issued for homophobic/transphobic bullying and harassment of LGBT your in schools					

### B.9. Employment

49. There are three Labour laws in Bosnia and Herzegovina. Labours laws on Entity levels do not include grounds of sexual orientation and gender identity, whereas the Labour law of

<sup>20</sup> For specific examples please see Durkovic, S., *1 + 1 = 0: Analiza srednjoškolskih udžbenika o LGBTIQ pojmovima u Bosni i Hercegovini*, Udruženje Q, Sarajevo, 2010.

BD does include sexual orientation in its anti-discrimination clause (seksualno opredjeljenje - sexual orientation).<sup>21</sup>

50. Another law, the Law on Equality of Sexes, prohibits discrimination on the grounds of gender, sex and sexual orientation in relation to labour. Gender identity as a term has not been included.
51. There are no measures that exist in terms of workforce/labour rights regarding LGBT persons or sick leave and health care insurance employer based benefits for transsexual individuals nor employment policies regarding non-discrimination on the grounds of sexual orientation and gender identities.
52. Although, in 2009, the Ombudsmen created a Department for Elimination of all Forms of Discrimination, there are nor have there been governmental offices or bodies, including those of the Ombudsman working solely on the issues of discrimination on the grounds of sexual orientation or gender identity.
53. Civil society organisations have in the past addressed the issue of discrimination on the grounds of sexual orientation. Both the Helsinki Committee for Human Rights in BiH and the Helsinki Committee for Human Rights in RS have addressed discrimination on the grounds of sexual orientation. The prior has assisted with a case of loss of job due to sexual orientation. Also, Organization Q has addressed discrimination on the grounds of sexual orientation as well as other grounds via public petitions, complaints, reports, and publications.

	2005	2006	2007	2008	2009
Total complaints of discrimination on the grounds of sexual orientation (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
Total complaints of discrimination on the grounds of sex/gender identity (equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					

<sup>21</sup> Zakon o radu Brcko Distrikta Bosne i Hercegovine, *Labour Law of Brcko District*, clean text, article 4, [www.skupstinabd.ba/zakoni/158/b/Zakon%20o%20radu%20Brcko%20distrikta%20-preciscen-B.pdf](http://www.skupstinabd.ba/zakoni/158/b/Zakon%20o%20radu%20Brcko%20distrikta%20-preciscen-B.pdf), accessed 24 September 2010.

Total finding of Discrimination confirmed on the grounds of sexual orientation (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
Total finding of Discrimination confirmed on the grounds of sex/gender identity (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
National number of sanctions/compensation payments issued (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					
National range of sanctions/compensation payments (by equality body, tribunals, courts, etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods, and services, etc).					

**B.10. Housing**

54. No information is known and/or available regarding discrimination on the grounds of sexual orientation and/or gender identity in relation to housing.

	2005	2006	2007	2008	2009
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Number of court cases raised where the right to housing of LGBT people (e.g. denial of selling or renting to a person, or not lending financial support to purchase housing) has been violated due to homophobic/transphobic motivations					
Number of convictions regarding the violation of the right to housing due to homophobic/transphobic motivations					

**B.11. Health care**

- 55. Adequate legislative, administrative and other measures have not been implemented to ensure enjoyment of the right to the highest attainable standard of physical and mental health without discrimination on the basis of sexual orientation or gender identity.
- 56. LGB individuals are not allowed to donate blood due to a communicated policy that individuals who engage in homosexual behaviour or are close to homosexuals should step aside from donating blood without any further comment.<sup>22</sup>
- 57. In regards to HIV/AIDS prevention, the gay population is seen as one of the primary target groups and they are referred to as MSM, men having sex with men.
- 58. Health sector is not affirmative in relation to homosexuality and bisexuality, but there are no known cases of LGB persons being diagnosed and treated with hormones or affirmative therapy treatment.
- 59. Transgender and transsexual persons, while possibly diagnosed, do not get a therapy prescribed in Bosnia and Herzegovina, as BiH does not have a team of doctors and health care professionals assisting with gender reassignment treatment, especially genital surgery.<sup>23</sup> Health insurance does not cover any of these treatments. Transgender and transsexual individuals seeking therapy and treatment often opt to leave BiH in order to get proper care.
- 60. Health policies have been drafted, including the anti-discrimination clause, which features sexual orientation as a prohibited ground of discrimination. However, gender identity, sexual identity, sexual orientation and intersex conditions are not a priority in any way, including the one of health care and insurance.

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<sup>22</sup> This internal policy has been confirmed by the Institute of Transfusion in Sarajevo. Each new client is handed a piece of paper by which they are informed that if they have had homosexual relations or are very close to someone who is homosexual, they should step away from the desk with no further comment.

<sup>23</sup> According to the General Hospital Kosevo, Sarajevo, a formal team has not been created due to a small number of cases. Currently, national legislation does not prohibit sex modification surgeries the same way that it does not deem them a necessity to be regulated by law.

61. Same-sex partners are not recognised as next of kin and cannot receive information about their partner's health.

	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived of the right to access to health care facilities due to homophobic motivations?					
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?					
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?					
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?					
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?					
Number of persons receiving gender reassignment treatment					

#### **B.12. Access to goods and services**

62. Discrimination exists in the field of access to goods and services, be it in the private or public sector. People have reported exclusion and discrimination on the grounds of sexual orientation, sexual/gender identity and gender expression in almost all public institutions (hospitals, social care centres, schools, police stations, etc.) as well as non-governmental organisations and the private sector.<sup>24</sup>
63. Most of such incidents are not deemed as worth reporting, and even when it is, most LGBT persons choose not to report it due to the lack of confidence/trust in the authorities as well

<sup>24</sup> Durkovic, S., *The Invisible Q?*, Udruzenje Q, Sarajevo, 2008, page 70.

as further public outing or the cost of time/energy which would be wasted as such cases would not yield positive results.<sup>25</sup>

	2005	2006	2007	2008	2009
Number of cases where LGBT people have been deprived of the right to access goods and services due to homophobic/transphobic motivations?					
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?					
Range of sanctions issued for the violation of the right to access to goods and services due to homophobic/transphobic motivations?					

### B.13. Media

64. Given that media are the most related to the issue of freedom of expression and hate speech/crimes, this section is of huge importance.
65. BH Press Council does exist in Bosnia and Herzegovina, regulating the conduct of newspapers and magazines, albeit short of actual standing decisions.<sup>26</sup> The Council's Press Code was adopted in 1999 and amended in 2005 and twice in 2006.<sup>27</sup> According to it, the press should do its utmost not to incite or inflame hatred or inequality on grounds of ethnicity, nationality, race, religion, sex, sexual orientation or any physical or mental illness or disability.<sup>28</sup> In addition, it states that newspapers and periodicals "must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, sex, sexual orientation or to any physical or mental illness or disability."<sup>29</sup> Such references can be made only when directly relevant to the event being reported. Furthermore, newspapers and magazines "shall avoid direct or indirect comments that might cause the inferior treatment of individuals or discrimination based on sex, gender, sexual identity, gender identity, gender expression and/or sexual orientation."<sup>30</sup> Despite having a Press Code regulating print media, newspapers and magazines are not fined for their unprofessional and discriminatory writing.

<sup>25</sup> Ibid, page 71.

<sup>26</sup> Press Council, [www.vzs.ba/en/](http://www.vzs.ba/en/), accessed 24 September 2010.

<sup>27</sup> Press Council, [www.vzs.ba/en/?ID=2](http://www.vzs.ba/en/?ID=2), accessed 24 September 2010.

<sup>28</sup> *Press Code*, article 3.

<sup>29</sup> Ibid, article 4.

<sup>30</sup> Ibid, article 4a.



66. The Law on Communications is very specific about TV and radio media. Unlike the Press Council, Regulatory Agency on Communications (RAC) has the authority to implement this law and issue fines.<sup>31</sup> Under Article 4 of the Law on Communications “regulatory principles of broadcasting include: a) protection of freedom of expression and diversity of opinion respecting generally accepted standards of behaviour, non-discrimination, justice, correctness and non-bias.”<sup>32</sup> Surrounding the Queer Sarajevo Festival media coverage in August 2008, the RAC issued a fine to OBN TV for broadcasting hostile and violent mobile text messages during the live show interview with one of the QSF organisers. On another note, the RAC issued a public statement on 23 September 2008, condemning violence and open threats to certain media houses for offering their public support to the Queer Sarajevo Festival.<sup>33</sup>
67. The authorities have not been recognised as of yet to encourage debate within the media profession on the image that they convey of LGBT people in connection with the fight against homophobia/transphobia and on the particular responsibility of the media professions, in this connection, to avoid perpetuating prejudices and spreading biased information.

	2005	2006	2007	2008	2009
Number of court cases regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.					
Number of convictions of media by ‘soft-law’ institutions, such as a media council					
Number of convictions regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.					

#### B.14. Transgender issues

68. Discrimination of transgender people is not mentioned in any law nor have there been any cases pertaining to them or their partners. Discrimination on the grounds of sex seems to be only about equality between men and women. In 2003, sexual orientation was introduced as another ground of discrimination along with gender via the Law on Equality of Sexes. It was not until 2009, via the Law Against Discrimination that true possibility was given to include the grounds of sexual/gender identity, although what was included in the law is “expression of sex” and not gender identity.

31 Communications Regulatory Agency BH, [www.rak.ba/bs/legal/?cid=2428](http://www.rak.ba/bs/legal/?cid=2428), accessed 24 September 2010.

32 *Law on Communications*, article 4, 2004, [www.rak.ba/bs/legal/?cid=2428](http://www.rak.ba/bs/legal/?cid=2428), accessed 24 September 2010.

33 Communications Regulatory Agency BH, [www.rak.ba/bs/public-affairs/pressr/default.aspx?cid=5025](http://www.rak.ba/bs/public-affairs/pressr/default.aspx?cid=5025), accessed 24 September 2010.

69. There have been no cases to challenge existing definitions and grounds, as well as implementation of these laws.
70. Transgender individuals are not able to get an adequate health treatment in Bosnia and Herzegovina due to the non-existence of interest on behalf of the medical team. In addition, health insurance does not cover medical treatment for transsexual persons. To most, recommendations are made about teams and surgeries outside of BiH. Subsequently, however, it is possible to legally change one's name and gender on all legal documents.
71. Legal change of name is possible without undergoing gender reassignment procedure.<sup>34</sup> Name change is administered through the Ministry of Interior as well as municipal offices based on the current address of residence. Name change is practiced also in relation to surnames due to marriage and divorce. Practice in regards to transgender individuals and a change of name is not known as it has never been reported. It may be possible that such changes are not allowed, due to social insensitivity.
72. As for gender reassignment, only after the whole process has been completed, is it possible to apply for change of gender marker in all official documents including, primarily, the identification number (JMB). The identification number consists of 13 digits.<sup>35</sup> The first seven specify the date of birth, the following two specify a region (10-19 is for Bosnia and Herzegovina, 17 being for Sarajevo, for example), the following three stand for person's sex and registered number in the Birth Registry (000-499 for males and 500-999 for females), and the last number is the control number.<sup>36</sup> Upon change of sex, the JMB is changed. In order for a personal JMB to change, the relevant medical documentation needs to be submitted by a doctor or medical team. Medical documentation can also mean a document specifying that gender reassignment and full transition have been completed and achieved. The same procedure is used when a gender marker has been written wrongfully by mistake. These procedures are of an administrative nature and do not involve court proceedings.
73. Transgender persons who do not want to undergo gender reassignment procedure should still be able to change their name, but not their documents nor their identification number.

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/the gender identity of the applicant					
Number of persons who changed their gender/sex in your country under the applicable legislation (if relevant split between transgender/intersex					

<sup>34</sup> Article 29, *Law on Unique Identification Number*, Sluzbeni glasnik BiH, 32/01.

<sup>35</sup> Unique identification number of a citizen has been introduced in ex-Yugoslavia in 1976, being allocated to every living person at that time. 13 digits stand for date of birth, region, sex and registered number in the Birth Registry, and control: DDMMYYRRSSSC.

<sup>36</sup> Article 4, *Law on Unique Identification Number*, Sluzbeni glasnik BiH, 32/01.

applicants)					
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**B.15. Intersex issues**

- 74. Legislation in Bosnia and Herzegovina does not address the issue of human rights of intersex individuals. That said, human rights of intersex individuals fall in the hands of medical staff and parents, sometimes at the time of birth and sometimes when other complications arise during puberty.
- 75. In the case of intersex children, one of the two sexes is given and written in legally. Once surgical body modification has been made, that change is legally corrected as well. However, in the last case of an intersex child, it was the medical team that made all decisions and all surgeries were complete by the end of 2009.
- 76. Given that most decisions regarding intersex individuals are made during their early life, it is usually the intersex individual who is excluded from making choices about their own body, sex/gender and name.
- 77. There seems to be a lack of a serious policy or legislation regarding human rights of intersex individuals, those also pertaining to surgeries and age, medical risks, and parental educated informative consent, etc. Kosevo Hospital in Sarajevo has initiated creating a team due to some cases they have had to handle in the past.
- 78. In school textbooks, intersex issues are treated as an abnormality and anomaly.<sup>37</sup> Hence, intersex as a condition continues to be viewed as something that can be fixed, to fall into male or female binary.

**B.16. Good practice**

- 79. **Law enforcement officer Programme on combating hate crime** was a programme delivered by the Ministry of Security BiH and OSCE/ODIHR for police officers in 2009.<sup>38</sup> Neighbouring countries have undergone the same training, impacting the work of the police regarding hate crimes and minorities, especially. Although this initiative is not innovative it has shown good will on behalf of authorities in BiH. Effectiveness and impact are still unknown, however, as well as results of monitoring and assessment.

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<sup>37</sup> Durkovic, S., *1+1=0: Analiza srednjoskolskih udzbenika o LGBTIQ pojmovima u Bosni i Hercegovini*, Udruzenje Q, Sarajevo, 2010.

<sup>38</sup> OSCE, [www.osce.org/publications/odihr/2006/09/20673\\_676\\_en.pdf](http://www.osce.org/publications/odihr/2006/09/20673_676_en.pdf), accessed 24 September 2010.