

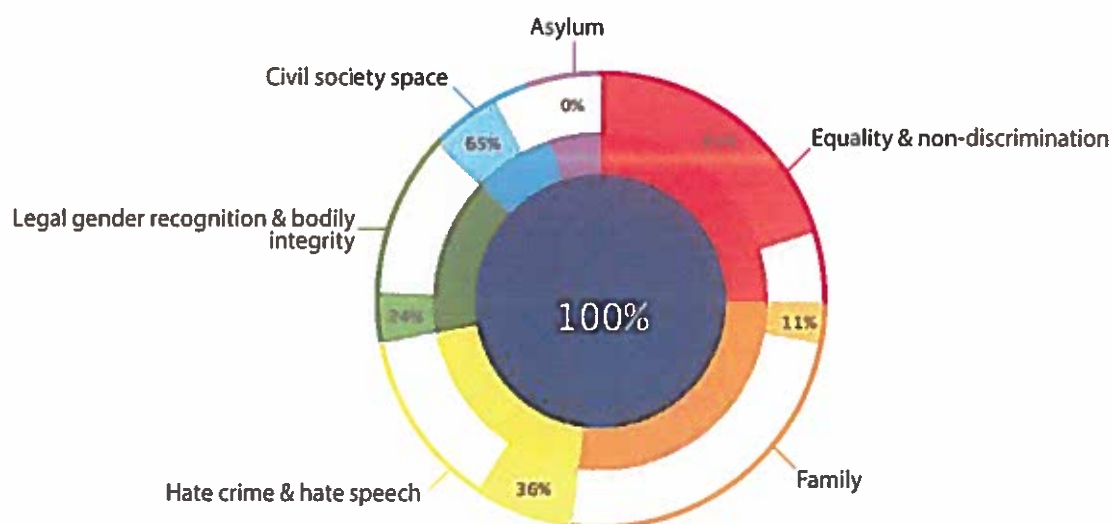
Bosnia and Herzegovina



2016 in Bosnia and Herzegovina was marked by the passage of new legislation and policy; some of which was inclusive, while some was surprisingly lacking in LGBTI-specific references. On a positive note, the anti-discrimination action plan published in April was the first national level policy of its kind to explicitly name LGBT people. The language in the existing federal anti-discrimination law was clarified, and sex characteristics were also added to the list of protected grounds in all spheres of life. However, the ongoing daily difficulties faced by intersex people were emphasised when NGO research revealed a lack of procedures or a common response in medical institutions when dealing with intersex children. Another group within the wider LGBTI community that continue to encounter barriers are LGBTI asylum seekers, who still have no legal protection in Bosnia and Herzegovina. That is despite the fact that an asylum law was passed in 2016, designed to synchronize with EU standards. LGBTI advocates and allies had put forward amendments but these were not taken into account. A senior political figure spoke out in support of LGBTI people, a first that was welcomed by activists, and a practice that was encouraged by the Ombudsman in a special human rights report.

For more information on developments in 2016, visit www.rainbow-europe.org where you can read the full country chapter.

Legal and policy situation in **Bosnia and Herzegovina** as of 31 December 2016



In order to improve the legal and policy situation of LGBTI people, ILGA-Europe recommend:

- ➔ **Adopting legal measures to recognise and protect same-sex couples, such as civil unions or registered partnership.**
- ➔ **Updating the existing legal framework for legal gender recognition, to ensure the process is based on self-determination, and is free from abusive requirements (such as GID/medical diagnosis, or surgical/medical intervention).**
- ➔ **Introducing laws designed to tackle hate speech that contain express mention of all SOGISC (sexual orientation, gender identity, sex characteristics) grounds.**

Access to goods and services

- LGBTI NGO Sarajevo Open Centre (SOC) hired a company in January to distribute leaflets for the upcoming Merlinka Queer Film Festival. SOC had worked with the company on a previous campaign and the new job was accepted. When the promotional material was in the company's possession, the manager contacted SOC to say they had reviewed the leaflets and that the company would not distribute such materials. The leaflets were returned and SOC filed a discrimination case, supported by NGO Vasa Prava. The first hearing is due to take place in April 2017.

Asylum

- The final version of the new Law on Asylum of BiH was adopted by the Parliamentary Assembly and subsequently published in the Official Gazette on 19 February. LGBTI NGOs and several parliamentarians had proposed amendments that would have included protections for LGBTI people, but the final text does not explicitly mention sexual orientation and gender identity as grounds for asylum.

Bias-motivated speech

- The current president of the Student Parliament of the University of Sarajevo, Haris Zahiragić, made anti-LGBTI remarks in March. Zahiragić claimed to have conducted research that found that "homosexuality is a systematic and contagious disease" and also stated that LGBTI people should be separated from the rest of society. He made the comments on social media and via traditional media outlets. NGO SOC reported the remarks to the Assembly of the Student Parliament of the University in Sarajevo, to the Ethics Committee, the Senate, and the Rector of the University, asking that the comments be denounced and that a new student president be appointed. The incident was also reported to the Agency for Gender Equality in BiH and the Institution of the Ombudsman for Human Rights. There was no response from any of the institutions before the end of 2016.

- After the adoption of the amendments to the Anti-Discrimination Law (See **Equality and non-discrimination**),

MP Mario Karamatić (Croatian Peasant Party, HSS; centre-right) commented that the law is giving "more rights to the LGBTI persons than to the normal people in Bosnia and Herzegovina". He made these comments under parliamentary immunity so faced no sanctions.

Bias-motivated violence

- A group of people attacked the LGBTI-friendly club Art Cinema Kriterion in Sarajevo on 4 March. The group entered the club, shouted homophobic insults and physically assaulted one of the staff. Kriterion has regularly hosted the LGBTI Merlinka festival and was the site of a similar attack during the festival in 2014. The attackers were apprehended by police but released as they were all minors. The Minister of Justice of the Sarajevo Canton, Mario Nenadic (Union for a Better Future; centre-right) condemned the attack. LGBTI NGO Sarajevo Open Centre noted that this was the first time that a senior political figure from a relevant ministry had expressed public support for LGBTI people. Investigation in this case was still ongoing.

"Violent behaviour caused by xenophobia or homophobia cannot be considered [only as] violence ... in these cases, we should use a more serious qualification to describe these acts."

Minister of Justice, Sarajevo Canton, Mario Nenadic, speaking after the attack on Art Cinema Kriterion, March 2016

- The Federation of Bosnia and Herzegovina (BiH) amended its Criminal Code to include a regulation on hate crime. Gender, sexual orientation and gender identity were included among the amendments protected grounds. It was adopted in April and published in the Official Gazette on 15 June. The Federation of BiH joined its fellow administrative units (Republika Srpska and Brčko District) in regulating hate crime, ensuring hate crime legislation in all three units across the country.

Bodily integrity

- During 2016, NGO SOC requested information from 27 different relevant medical institutions in BiH on the

procedures and rules in place regarding the treatment of intersex children and individuals. Seven institutions responded; four of which confirmed that children classified as intersex were born in their institution in the past 10 years. There appeared to be a lack of explicit procedures regarding the treatment of intersex children in the seven respondent institutions; all confirmed the children would be sent to larger medical centres for further advice.

Data collection

- The Institution of the Ombudsperson for Human Rights of BiH presented its Special Report on the status of the fundamental rights of LGBT people in December. The report assessed the current situation faced by LGBT people in the country and made several recommendations as to how this could be improved, including requiring public office holders to be more vocal in their support of LGBT people. The Ombudsperson also recommended that political parties include anti-discrimination protections, adequate healthcare for trans people, legal recognition for same-sex couples and ensuring freedom of assembly for LGBT people in their political programmes.

Employment

- The Labour Law of the Federation of BiH, adopted in April, explicitly prohibits discrimination on the ground of sexual orientation in the field of employment. The Labour Law of Republika Srpska was adopted in January but does not specifically mention sexual orientation or gender identity, while the Brčko District's Labour Law already mentioned sexual orientation as a ground of discrimination. Gender identity is not referred to as a specific ground in any labour law. Protection from discrimination on this ground remains guaranteed solely by the 2009 Anti-Discrimination Law.

Enlargement

- Bosnia and Herzegovina has been a potential candidate to join the European Union since 2003. Bosnia and Herzegovina submitted its formal

application request to join the European Union on 15 February.

- The European Parliament evaluated the situation for LGBTI people in April and recommended that gender identity and sexual orientation be more clearly translated and accurately defined in the national anti-discrimination law, and that a country-wide anti-discrimination strategy be introduced.
- In its annual enlargement package reviewing progress made towards EU accession, published in November, the European Commission observed that progress on human rights and minority protection had been made, with reference to the amendments made to anti-discrimination laws (see **Equality and non-discrimination**). However, the "continuous discrimination" faced by same-sex couples and the marginalisation of trans people were highlighted as areas of concern. The Commission also noted that an attack on LGBTI people had taken place in Sarajevo in March (see **Bias-motivated violence**).

Equality and non-discrimination

- The government of the Federation of BiH passed an operational action plan on 4 March, which included several provisions aimed at protecting the rights of LGBT people. (Republika Srpska's 2016 action plan had already been adopted in December 2015.) Both of these one-year-long operation plans feed into the Gender Action Plan of Bosnia and Herzegovina 2013-2017. The measures included by these plans were mostly implemented in cooperation with NGO SOC.
- At the level of Bosnia and Herzegovina, the Anti-Discrimination Action Plan came into effect on 26 April, after being adopted by the Council of Ministers. This plan is the first national level public policy to contain references to LGBT people. Six measures (out of a total of 32 included in the plan) refer specifically to the needs of LGBT people; including changes to health protection laws to provide access to gender assignment procedures, and training for law enforcement officials and civil servants. At the end of the year, LGBTI NGOs reported that these measures had not been implemented within the envisioned period.

- On 15 July, the House of the Peoples confirmed amendments to the federal Law on the Prohibition of Discrimination. Sexual orientation and gender identity were more accurately defined in local languages by the new amendments. In addition, sex characteristics was also explicitly added to the list of protected grounds. As a result, intersex people are protected by law from discrimination in all spheres of life.

Freedom of assembly

- In November, NGO SOC submitted an appeal to the Constitutional Court of BiH arguing that Bosnia and Herzegovina has failed to protect the freedom of assembly of LGBTI persons, citing the failure to protect the 2014 Merlinka Festival or sanction the perpetrators who attacked the festival. (Similar appeals were submitted after the 2008 attack on the Sarajevo Queer Festival; in that case that Constitutional Court ruled in 2014 that the Sarajevo Canton and the Federation of BiH government failed to protect the participants.) There is yet to be a Pride event organised in Bosnia & Herzegovina largely because members of LGBTI community are afraid of coming out for fear of stigmatisation, discrimination and violence. However, there were public events and peaceful protests organised to mark IDAHOT on 17 May and National Coming Out Day on 25 October.

Police and law enforcement

- During 2016, Sarajevo Open Centre has conducted a 'train the trainer' programme on hate crime for police officers in nine of the Cantons in the Federation of BiH. This means that police officers will be able to train their peers in their respective cantons on proper investigation of bias-motivated crimes throughout 2017 and beyond. These sessions were conducted in cooperation with the Croatian Police Academy and the Organization for Security and Cooperation in Europe OSCE mission to BiH.