



A ROCKY PATH TO JUSTICE:
POLICE RESPONSE AND PROSECUTION
OF HATE CRIMES AGAINST LGBTI
PEOPLE IN BOSNIA AND HERZEGOVINA

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Introduction

Life in Bosnia and Herzegovina as a member of the LGBTI community or any other marginalized group is not easy. A large part of society in this country seeks to justify its intolerance towards the LGBTI community by seeking a foothold in tradition and religion. LGBTI persons in Bosnia and Herzegovina (BiH) are frequent victims of discrimination in areas such as employment, political engagement, police and social protection. Furthermore, 72 percent of LGBTI persons in BiH have been subjected to psychological abuse and verbal harassment, with the majority of perpetrators being strangers on the streets.¹

Physical violence remains one of the biggest issues for the LGBTI community as it perpetuates social isolation and fear in addition to damaging the psychological wellbeing of the victims. Even though there is no official data on the prevalence of hate crimes against the LGBTI community, research has found that 15 percent of the LGBTI population in BiH have been a victim of physical violence due to their sexual orientation or gender identity (SOGI).²

There is no consolidated official data for bias-motivated crimes in BiH, including those motivated by prejudice based on sexual orientation and/or gender identity (SOGI).³ Apart from systematic deficiencies in data collection, LGBTI persons who are victims of violence mostly do not report it due to the lack of trust in state institutions.⁴

The problem is further complicated by the inadequate response of state institutions in preventing and prosecuting hate speech and hate crimes against the LGBTI community.⁵ This makes the LGBTI community vulnerable in the exercise of basic human rights. The insufficient response of relevant institutions to violence only solidifies the widespread belief among LGBTI persons that reporting hate crimes is futile and will not result in justice. At the same time, underreporting paints a picture that LGBTI individuals are not victims of violence, thus sending a message to the general population that this is not an issue.

This paper aims to explore the existing legislative framework regulating the protection of the LGBTI community from violence in BiH, with a focus on legislative gaps, institutional issues related to the handling of hate crimes on the part of the police and the prosecution, and challenges concerning the collection and analysis of hate crime data. Based on its findings, this policy paper offers recommendations for improving the prosecution of hate crimes based on SOGI, as well as data collection in this area.

1 USAID, National Democratic Institute, Civil Rights Defenders, & Victory. (2015, June). LGBTI Public Opinion Poll, Western Balkans. <https://www.lgbti-era.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf> p. 9-14.

2 Ibid.

3 OSCE Mission to Bosnia and Herzegovina. (2012). Tackling Hate Crimes: An analysis of bias-motivated incidents in Bosnia and Herzegovina with recommendations. <https://www.osce.org/files/f/documents/3/8/107255.pdf>

4 Numanović. (2017). Numbers of Equality 2. Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017 - Analysis of Findings (Human Rights Series of Sarajevo Open Centre Book 61). Sarajevo Open Centre. https://soc.ba/site/wp-content/uploads/2017/10/ENG-Brojevi-ravnopravnost_04.10.2017.-WEB-II.pdf

5 Ibid.

Legislative framework

The legislative framework for the protection of LGBTI persons in BiH consists of multiple local laws and international standards.

As a signatory party to the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms⁶, BiH enshrined international standards and norms as a legal basis for the criminalization of hate crimes in its Constitution. It is also a signatory party to the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) which requires party states to “declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons.”⁷

The laws of BiH provide a legislative framework for the protection of LGBTI individuals from hate crimes. The Criminal Codes of BiH, Brčko District of BiH (BD) and the two entities (Federation of Bosnia and Herzegovina - FBiH and Republika Srpska - RS) regulate criminal offenses in this area in three ways:

- as a separate, independent criminal offense of inciting hatred, discord and intolerance;
- hate (prejudice as a motive) is prescribed as a qualifying circumstance for a whole range of qualified forms of various crimes;
- hatred (prejudice as a motive) is prescribed as an aggravating circumstance in sentencing for all other criminal offenses for which the law does not prescribe more severe punishment for a qualified form of criminal offense.⁸

Among other characteristics, the Criminal Code of FBiH recognizes SOGI as a basis for hate crimes. It adds that “such conduct shall be taken as an aggravating circumstance unless this law expressly prescribes a more severe punishment for a qualified form of a hate crime.”⁹ The Criminal Code of RS also recognizes gender, sexual orientation and gender identity as grounds for hate crimes.¹⁰ The Criminal Code of BD defines hatred as a “motive for a criminal offense provided in this Code that is entirely or partly perpetrated due to actual or assumed” characteristics including sex and sexual orientation.¹¹ It is important that an offense shall be considered as being motivated by bias even in cases of wrong assumptions about the victim’s characteristics or affiliations.¹²

The adoption of hate crime-related legislation in the Western Balkans region was most often initiated by external actors. It was civil society and international organizations who pushed legislators to put these issues on the agenda and the most important monitoring mechanisms in this field are within the mandate of OSCE. This means that adoption does not necessarily reflect the opinions

6 UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 17 December 1966, United Nations, Treaty Series, vol. 999, p.171

7 Article 2(1) of the UN Convention on the Elimination of All Forms of Racial Discrimination, supra note 14; and Article 4(2) of the UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55.

8 Bajraktarević Pajević. (2016, September). Istraživanje krivičnih djela počinjenih iz mržnje: Priručnik za policiju (Edicija Ljudska prava Sarajevskog otvorenog centra). Sarajevski otvoreni centar.

9 Član 2(11), Krivični zakon Federacije Bosne i Hercegovine, (“Sl. novine FBiH”, br. 36/2003, 21/2004 - ispr., 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 i 75/2017)

10 Član 123(21), Krivični zakonik Republike Srpske, (“Sl. glasnik RS”, br. 64/2017 i 104/2018 - odluka US)

11 Član 2(42), Krivični zakon Brčko Distrikta Bosne i Hercegovine, (“Sl. glasnik Brčko distrikta BiH”, br. 19/2020 - prečišćen tekst)

12 OSCE Mission to Bosnia and Herzegovina. (2012). Tackling Hate Crimes: An analysis of bias-motivated incidents in Bosnia and Herzegovina with recommendations, 19. <https://www.osce.org/files/f/documents/3/8/107255.pdf>

and values of the legislators and the broader public but is rather seen as a strategic step in the European integration process. It is important to address this issue in order to understand all the implementation-related difficulties.

In practice, these laws are insufficiently implemented. In 2019, the Sarajevo Open Centre (SOC) registered 16 attacks against LGBTI persons and only one was prosecuted – but as a misdemeanor, not as a hate crime.¹³ For the same period of time, the Organization for Security and Co-operation (OSCE) in BiH reported only one incident of threatening behavior motivated by SOGI that was recorded by the police. Among the incidents reported by sources other than the police, there were 9 violent attacks, 7 threats, and 2 attacks on property motivated by the same bias.¹⁴

A positive example of criminal prosecution motivated by hatred against LGBTI persons can be found in Serbia, where in a 2020 ruling, a court found a perpetrator (who had physically and verbally attacked two individuals) guilty of hate crime and sentenced them to 6 months of home confinement.¹⁵ Although the court proceedings lasted almost 5 years, such cases are an example of positive improvements in the prosecution of hate crimes against LGBTI persons in the Balkans. Moreover, they send a clear message to both the LGBTI community and society at large that violence will not be tolerated and that all perpetrators will be prosecuted.

In general, when speaking about neighboring countries, Croatia has gone the furthest in the adoption of legislation regulating LGBTI rights. Namely, the Criminal Code of the Republic of Croatia has recognized hate crime since 2006, citing sex and sexual orientation as a protected category. The new law from 2011 expanded the list of characteristics, including gender identity.¹⁶ According to the Protocol for Procedure in Cases Of Hate Crimes, the concept of a hate crime (in a broader sense) covers not only criminal offenses but also misdemeanors.¹⁷ Similar to the 2017 Criminal Code of RS, in 2011 Croatia regulated public incitement to violence and hatred, recognizing sexual orientation and gender identity as protected characteristics.¹⁸ Nevertheless, this country also faces many problems in implementing the above mentioned legislation.

The importance of regulating incitement to hatred, hate speech and violence

Although hate-crime legislation in BiH recognizes the rights of LGBTI persons formally, hate-speech legislation, on the other hand, remains unsatisfactory even though it plays a key role in the prevention of hate crimes as the two are intrinsically linked.

More specifically, hate-speech legislation is not harmonized at subnational level in BiH. The Criminal Code of RS, for instance, provides a framework for the penalization of incitement to hatred, violence, and hate speech against LGBTI individuals. However, the relevant criminal codes of BD and FBiH only recognize incitement to hatred, violence, and hate speech on the basis of nationality, ethnic group, and religion.¹⁹ According to the current legal framework, it is impossible to sanction incitement to hatred and violence against LGBTI persons who live in these two administrative units, if these offences are not prescribed in legislation. This situation leads to the proliferation of discrimination and hate speech which are present on social media and in the comment sections of news websites.²⁰

In fact, RS was the first administrative unit in the country to sanction incitement to hatred, hate speech and violence against LGBTI people back in June 2017 when it adopted the Criminal Code. According to this Code, public incitement and incitement to violence and hatred shall be prohibited on the basis of “national, racial, religious or ethnic origin, skin color, gender, sexual orientation, disability, gender identity, origin or any other characteristics.”²¹

Considering the discrepancy between these laws on subnational level, legislators should ensure their amendment as soon as possible in order to offer equal protection to LGBTI individuals in all parts of BiH. This would allow members of the community in FBiH and BD, for instance, to report online hate speech, which would hopefully result in the perpetrators being held accountable for their actions as was the case in Croatia in 2013, when a man was fined for hate speech on an internet forum.²²

In order to create equal preconditions for the successful sanctioning of hate crimes and hate speech, it is necessary to ensure a comprehensive harmonization of criminal codes in BiH. It is in particular important to ensure that the protected characteristics are identical in all laws in BiH and in accordance with the best European practices.²³ That includes amending the Criminal Codes in FBiH and BD by expanding the provisions regarding the incitement to hatred and violence so that they include sexual orientation, gender identity and sex characteristics as protected grounds.²⁴ Also, criminal codes at the state and entity levels should provide an appropriate definition of the term “hatred”, as defined in the Criminal Code of BD.

13 Sarajevo Open Centre. (2020, May). Pink Report 2020: Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. <https://soc.ba/site/wp-content/uploads/2020/07/Pink-report-2020-FINAL-web.pdf> p. 12-13.

14 OSCE Office for Democratic Institutions and Human Rights. (2019). Bosnia and Herzegovina Hate Crime Reporting. <https://hatecrime.osce.org/bosnia-and-herzegovina>

15 K., A. (2020, February 29). Zakon i praksa: Zločin iz mržnje nad LGBTI osobama. LGBTI.Ba. <https://lgbti.ba/zakon-i-praksa-zlocin-iz-mrznje-nad-lgbti-osobama/>

16 Član 87(21), Kazneni zakon Republike Hrvatske (pročišćeni tekst zakona NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 na snazi od 01.01.2020
17 Protocol for Procedure in Cases of Hate Crimes. (2011, March). The Human Rights Office of the Government of the Republic of Croatia, Working Group for Monitoring Hate Crimes. <https://pravamanjina.gov.hr/UserDocsImages/arhiva/protokolii/Protocol%20on%20procedure%20in%20cases%20of%20hate%20crime.pdf> p. 3.

18 Kondor-Langer, M. (2015). Zaštita prava LGBT osoba: zakonodavstvo i policija. Kriminologija i Socijalna Integracija, 23(2), 290. <https://hrcak.srce.hr/162568>

19 Sarajevo Open Centre. (2020, May). Pink Report 2020: Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. <https://soc.ba/site/wp-content/uploads/2020/07/Pink-report-2020-FINAL-web.pdf> p. 29.

20 Ibid.

21 Blažević (Ed.). (2019). Izvješće o pojavama govora mržnje i kaznenih djela učinjenih iz mržnje u Bosni i Hercegovini u razdoblju od lipnja 2018. godine do lipnja 2019. godine (Edicija Ljudska prava Sarajevskog otvorenog centra 70). Sarajevski otvoreni centar, 10.

22 Libela. (2013, January 15). Kažnjen s 5.000 kuna zbog govora mržnje na internetu. <https://libela.org/vijesti/3281-kaznjen-s-5-000-kuna-zbog-govora-mrznje-na-internetu/>

23 Lučić-Čatić, & Bajrić. (2013). Procesuiranje kaznenih djela počinjenih iz mržnje u Bosni i Hercegovini: perspektiva tužitelja. Analitika - Centar za društvena istraživanja, 65.

24 Pandurević, D., Hasanbegović, D., Blažević, J., & Agić, N. (2020, May). Pink Report 2020 Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. Sarajevo Open Centre, 34.

Institutional protection

The work of the police in the SOGI-based hate crimes

Police officers are usually the first public servants to communicate with victims of violence. In order to conduct an investigation of these crimes in the first place and do it thoroughly, police officers must be able to identify hate crimes and report them as such.²⁵ The practice in BiH shows that this usually is not the case.

LGBTI persons hesitate to report hate crimes to the police, often out of fear that this could out them to their family, community, or employer, or due to a lack of trust in police protection.²⁶ Moreover, many LGBTI persons believe that the police do not want to properly respond to such cases or that they will not be taken seriously.

In this regard, we can find an example of good practice in Montenegro where the Police Directorate has appointed a special police chief in charge of more direct communication with the LGBTI community²⁷. The government applies the same model in all regional units of the Police Directorate in order to improve the dialogue and strengthen the confidence of the LGBTI community in the police, as well as to provide adequate assistance in gathering evidence and ensuring prosecution, if necessary.

However, police agencies in BiH still do not systematically collect information on these crimes.²⁸ Therefore, a large number of these cases go unnoticed, legally unrecognized and unprocessed, or wrongly prosecuted. Considering that there have been cases of the police dismissing reports of hate crimes and downplaying the seriousness of threats made against the LGBTI community²⁹ in BiH, such negative experiences only further contribute to the alienation of the community. What is more, they affirm the belief that the police will fail to provide them with adequate protection, which subsequently results in a low number of reporting.

A study about the prosecution of hate crimes in BiH shows that some of the challenges regarding police conduct are the lack/ignorance of indicators for recognizing prejudice as a motive, perceived uncertainty regarding evidence, inadequate format of investigations and insufficient sensitization.³⁰ General public attitudes, marked with biases and prejudices towards LGBTI people in BiH, affect the police as a part of society. Insufficient sensitization of police officers when it comes to the rights and freedoms of the LGBTI community in BiH causes a lack of trust of this community in institutions. This leads to the non-reporting and non-prosecution of violence, which undermines the overall security of society.

25 Maljević, A., & Vujović, S. (2013). Vodič za procesuiranje krivičnih djela počinjenih iz mržnje u Bosni i Hercegovini. Analitika - Centar za društvena istraživanja, 47.

26 United Nations Development Programme. (2017). Being LGBTI in Eastern Europe: Reducing inequalities and exclusion, and combating homophobia and transphobia experienced by LGBTI people in Bosnia and Herzegovina. https://www.ecoi.net/en/file/local/1421144/1226_1515406178_undp-rbec-blee-bosnia-and-herzegovina.pdf, 18.

27 Zeković, A. S. (Ed.). (2013). Policija, tolerancija i prihvatanje identiteta. LGBT Forum Progres & Ministarstvo unutrašnjih poslova Crne Gore, 67.

28 Blažević (Ed.). (2019). Izvješće o pojavama govora mržnje i kaznenih djela učinjenih iz mržnje u Bosni i Hercegovini u razdoblju od lipnja 2018. godine do lipnja 2019. godine (Edicija Ljudska prava Sarajevskog otvorenog centra 70). Sarajevski otvoreni centar, 7.

29 Civil Rights Defenders. (2019). Human Rights Defenders in the Western Balkans. <https://crd.org/wp-content/uploads/2019/12/Human-Rights-Defenders-Report.pdf> p. 33.

30 Lučić-Čatić, & Bajrić. (2013). Procesuiranje kaznenih djela počinjenih iz mržnje u Bosni i Hercegovini: perspektiva tužitelja. Analitika - Centar za društvena istraživanja, 38-52.

Trainings that are crucial for the sensitization of police officers are mostly organized by the civil society, which indicates the lack of institutional engagement in this regard. Nevertheless, the civil society in BiH continues to conduct workshops and trainings with the police in order to improve their response and raise their awareness regarding the issues faced by the LGBTI community. Such projects are not a “one-and-done” process but need to be continuously implemented in order to ensure the police are adequately prepared. In 2019 for example, SOC held trainings for police officers on freedom of assembly and hate crimes for the cadets of the FBiH Police Academy³¹. These trainings must become part of the official training curricula for future police officers at all levels of governance. Although the police academy curricula of both the FBiH Ministry of Interior and the RS Ministry of Interior do contain modules that focus on LGBTI rights and protection, these should certainly be expanded.³²

The work of the prosecution in SOGI-based hate crimes

The Prosecutor’s office is a crucial institution in prosecuting violence and other hate crimes. According to the criminal procedure codes of the FBiH³³, RS³⁴ and BD³⁵, the prosecutor shall order an investigation if there is a reasonable suspicion that a criminal offense has been committed. Unfortunately, the problems that are present in the work of the police are also present in the case of indictments. Regardless of the crime in question, the prosecutors should classify the crime as a criminal offence, if the motive for the crime was hatred or prejudice³⁶. This should result in the collection and presentation of evidence regarding the motive of the criminal offence in court, even when the relevant criminal code does not prescribe a more serious form of crime. In BiH, this is often not the case.

According to a study on the prosecution of hate crimes in BiH with a special focus on the prosecutors’ perspective, most prosecutors point out deficiencies in police reports. Once they receive a police report, unless it explicitly specifies elements that could indicate prejudice as a motive, they treat the offence as an “ordinary” criminal offence³⁷. The prosecutors who participated in this study underlined the issues of insufficient sensitization and the potential problem of personal views of police officers; shortcomings in the investigation (apart from investigating what happened, it should also be asked why the crime occurred); lack of indicators for recognizing prejudice as a motive; perception of the ubiquity of these crimes and difficulty in distinguishing essential and irrelevant elements of criminal offences; insufficient training of prosecutors and lack of knowledge regarding the existing case law in this area.

31 Pandurević, D., Hasanbegović, D., Blažević, J., & Agić, N. (2020, May). Pink Report 2020 Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. Sarajevo Open Centre, 30.

32 Mr.sci Džumhur, J., Jukić, N., & dr. Mitrović, L. (2016, September). Specijalni izvještaj o pravima LGBT osoba u Bosni i Hercegovini. Institucija ombudsmena/ombudsmana za ljudska prava Bosne i Hercegovine. https://ombudsmen.gov.ba/documents/ombudsmen_doc2016110413333704eng.pdf p. 29.

33 Član 231(1), Zakon o krivičnom postupku Federacije Bosne i Hercegovine (“Sl. novine FBiH”, br. 35/2003, 56/2003 - ispr., 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 9/2009, 12/2010, 8/2013, 59/2014 i 74/2020)

34 Član 224(1), Zakon o krivičnom postupku Republike Srpske (“Službeni glasnik Republike Srpske”, 53/2012, 91/2017 i 66/2018)

35 Član 216(1), Zakon o krivičnom postupku Brčko distrikta Bosne i Hercegovine (“Sl. glasnik Brčko distrikta BiH”, br. 34/2013 - prečišćen tekst, 27/2014, 3/2019 i 16/2020)

36 Blažević, J., & Vasić, V. (Eds.). (2016). Razumijevanje krivičnih djela počinjenih iz mržnje: priručnik za Bosnu i Hercegovinu. Sarajevski otvoreni centar, 21.

37 Lučić-Čatić, & Bajrić. (2013). Procesuiranje kaznenih djela počinjenih iz mržnje u Bosni i Hercegovini: perspektiva tužitelja. Analitika - Centar za društvena istraživanja, 38.

However, civil society representatives point out the importance of prosecutors in this process³⁸. The prosecutor must be present on the scene of the crime and has to be in charge of the whole process of investigation. They should also ensure to properly classify hate crimes so that they are not processed as misdemeanors. In cases where there is a lack of evidence, prosecutors should order additional investigative actions from the police. Less serious criminal offences are presently prosecuted only at the request of the victim. In the case of hate crimes, the prosecutors should prosecute *ex officio*.

Nevertheless, when it comes to prosecution, there have been positive improvements in the Sarajevo Canton in recent years. In 2018, the Prosecutor's Office of Sarajevo Canton named a point of contact for SOGI-based hate crimes.³⁹ Prior to this, there was no one at the Prosecutor's Office who was specialized in dealing with hate crimes against the LGBTI community and this step has certainly strengthened the trust of the community in the institutional protection in Sarajevo. Victims of SOGI-based hate crimes based can now go directly to the Prosecutor's Office and report violence to the appointed prosecutor.⁴⁰ But since the Sarajevo Canton is only out of ten cantons in FBiH to implement such measures, it is necessary for the other administrative units in both entities to do the same.

Bridging the two: joint cooperation and trust-building

One of the key challenges in prosecuting SOGI-based hate crimes in BiH is the lack of cooperation between the relevant institutions, namely the police and the prosecution. Therefore, it is necessary to implement mechanisms to strengthen cooperation which would result in a greater amount of trust in institutions and an increase in reporting and prosecuting SOGI-based hate crimes.

This can be achieved through the development of manuals, protocols and strategies aimed at preventing and prosecuting cases of violence against LGBTI people. An example of good practice in this regard is the Croatian "Protocol for Procedure in Cases of Hate Crimes".⁴¹ The purpose of adopting such a protocol is to ensure conditions for effective and comprehensive work of competent bodies involved in detecting, prosecuting, but also monitoring the results of hate crime-related proceedings, the manner and content of cooperation between relevant bodies and their other activities regarding the suppression of these offenses.⁴² Given the complexity of the political system in BiH, such protocols should be adopted at cantonal and entity levels.

There are improvements in this regard in the Sarajevo Canton, where one of the points of the Gender Action Plan that was adopted in December 2019⁴³ is to create an official protocol for SOGI-based hate crimes, which would involve the Ministry of Justice, Ministry of Internal Affairs, Sarajevo Cantonal Prosecutor's Office, and the Sarajevo cantonal police.⁴⁴ The Ministries of Justice and Interior shall be in charge of drafting the protocol, while the implementation shall be done by the Prosecutor's Office and the cantonal police administration. However, in order to offer LGBTI individuals across the country access to equal improvements, this would also need to be implemented in the nine other cantons, BD, and RS.

Nonfunctional data collection system

One of the main problems for understanding the extent of hate crimes is the absence of an effective system for recording these crimes. The current case management system (CMS) in courts does not provide data on hate crimes categorized by the grounds the crimes were motivated by.⁴⁵ As such, neither the police nor the courts in BiH conduct systematic collection of data regarding hate crimes committed on the basis of gender, sexual orientation, gender identity, or sexual characteristics.⁴⁶ Consequently, there is no official data that would paint the complete picture regarding the number of cases involving LGBTI persons. Due to the lack of data on violence against the LGBTI community, it is very difficult to take preventive action. As part of the project "Improving the Efficiency of Courts and the Accountability of Judges and Prosecutors in BiH", the High Judicial and Prosecutorial Council (HJPC) of BiH is planning on updating CMS and organizing trainings in order to train judges and court clerks on proper CMS data entry.⁴⁷ The High Judicial and Prosecutorial Council has also held consultations and discussions with SOC regarding possible CMS improvements and the ways in which it can be amended to include a new category that would account for hate crimes against LGBTI individuals.⁴⁸ If this were to be implemented, it would finally be possible to monitor these cases, as well as collect and analyze data. However, mere changes in the CMS and the addition of categorized hate crimes are not enough without educating the judiciary about the use of these changes,⁴⁹ which is why the aforementioned HJPC project that will provide the necessary education is just as essential as the CMS update.

In addition to CMS changes, it is necessary to work on promoting and strengthening the role of the Ministry of Security of BiH in the prevention and prosecution of hate crimes. A contact person for the reporting of hate crime data at national level was appointed at this state-level ministry, but unfortunately, this mechanism has not yet taken root in practice. This means that the appointed contact person at the Ministry of Security of BiH does not collect or dispose of any statistical data related to hate crimes.⁵⁰ Therefore, it is recommended that HJPC of BiH delivers relevant data from the updated CMS to the Ministry of Security of BiH, thereby creating a simple and straightforward hate crime monitoring system.

38 Interview with Vladana Vasić, Advocacy Manager at the Sarajevo Open Centre (SOC), January 14, 2020.

39 Sarajevski otvoreni centar. (2018, January 13). Kantonalno tužilaštvo KS imenovalo kontakt osobu za slučajeve zločina iz mržnje prema LGBTI osobama. LGBTI.ba. <https://lgbti.ba/kantonalno-tuzilastvo-ks-imenovalo-kontakt-osobu-za-slucajeve-zlocina-iz-mrznje-prema-lgbti-osobama/>

40 Vasić, V., Bošnjak, E., Pandurević, D., Isić, L., Blažević, J., & Huremović, L. (2018). 2018 Pink Report Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina (Human Rights Series 64). Sarajevo Open Centre, 11.

41 Protocol for Procedure in Cases of Hate Crimes. (2011, March). The Human Rights Office of the Government of the Republic of Croatia, Working Group for Monitoring Hate Crimes. <https://pravamanjina.gov.hr/UserDocImages/arhiva/protokoli/Protocol%20on%20procedure%20in%20cases%20of%20hate%20crime.pdf>

42 Lučić-Čatić, & Bajrić. (2013). Procesuiranje kaznenih djela počinjenih iz mržnje u Bosni i Hercegovini: perspektiva tužitelja. Analitika - Centar za društvena istraživanja, 53.

43 Sarajevo Open Centre. (2020, May). Pink Report 2020: Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. <https://soc.ba/site/wp-content/uploads/2020/07/Pink-report-2020-FINAL-web.pdf> p. 14.

44 Interview with Vladana Vasić, Advocacy Manager at the Sarajevo Open Centre (SOC), January 14, 2020.

45 Pandurević, D., Hasanbegović, D., Blažević, J., & Agić, N. (2020, May). Pink Report 2020 Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. Sarajevo Open Centre, 30-31.

46 Sarajevski otvoreni centar. (2019). Rozi izvještaj 2019. Godišnji izvještaj o stanju ljudskih prava LGBTI osoba u Bosni i Hercegovini. <https://soc.ba/site/wp-content/uploads/2019/05/Rozi-izvjestaj-2019-za-web.pdf> p. 24.

47 Avaz.ba/FENA. (2020, May 17). VSTV: Korak dalje ka ukidanju diskriminacije nad LGBTI osobama. Dnevni Avaz. <https://avaz.ba/vijesti/bih/570595/vstv-korak-dalje-ka-ukidanju-diskriminacije-nad-lgbti-osobama>

48 Sarajevo Open Centre. (2020, May). Pink Report 2020: Annual Report on the State of Human Rights of LGBTI Persons in Bosnia and Herzegovina. <https://soc.ba/site/wp-content/uploads/2020/07/Pink-report-2020-FINAL-web.pdf> p. 30.

49 Interview with Vladana Vasić, Advocacy Manager at the Sarajevo Open Centre (SOC), January 14, 2020.

50 Blažević, J. (2019b). Izvješće o pojavama govora mržnje i kaznenih djela učinjenih iz mržnje u Bosni i Hercegovini u razdoblju od lipnja 2017. godine do lipnja 2018. godine. Sarajevski otvoreni centar, 18.

In neighboring Croatia, for example, the above-mentioned hate crime protocol explicitly states that such cases will be specifically designated and registered in the hate crime database. Furthermore, the judiciary is tasked with maintaining records of such cases and delivering them to the Ministry of Justice. The Ministry then summarizes the data and sends the statistics to the relevant offices.⁵¹ However, as of right now, the relevant institutions only have access to handbooks distributed by the civil society.⁵²

The absence of data also has an adverse impact on the policymaking at governmental level. Considering that governments use data to develop policies aimed at combating different types of violence, the absence of information regarding hate crimes against LGBTI persons means that this issue will be left unaddressed. Therefore, the institutions will not address existing prejudices in society, which further impedes the long process of making improvements in the safeguarding of the rights of LGBTI persons in BiH.⁵³

The lack of data is not only detrimental to the creation of reliable statistics but also to police trainings' outreach. When there are no records of hate crimes against LGBTI people, it is difficult to persuade the police to participate in trainings that would educate them about this issue. As a result, police officers lose out on the opportunity to improve their response in such cases. SOC has been organizing such trainings since 2012 and it is worth noting that the process of getting the police onboard was much easier in those cantons that had already had experiences with the LGBTI community and hate crimes.⁵⁴

Conclusion

Hate crimes based on sexual orientation or gender identity remain an unaddressed issue for the LGBTI community in BiH. They are most often the target of attacks that are currently not receiving adequate institutional and social response.

Despite the legislative framework that aims to protect the rights of LGBTI individuals from hate crimes, BiH has a long way to go in terms of its implementation, as evidenced by hate crimes against LGBTI individuals where the perpetrators had been charged only with misdemeanors. Furthermore, hate speech legislation is not harmonized across the different levels of government in BiH, and as of right now, an individual cannot be charged with SOGI-based hate speech in FBiH and BD.

Likewise, the LGBTI community in BiH does not put a lot of stock in the police and prosecution due to the prevailing belief that these institutions have little interest in protecting their rights. Institutions in BiH do not have an official protocol for hate crimes, which is another hurdle toward the quick and effective processing of such cases. Coupled with the fact that reporting a hate crime carries the risk of the victim being outed to their community, it is no surprise that many victims of hate crimes hesitate to file reports, let alone go through the entire court proceedings.

Gaining an insight into the actual number of hate crime reports is further complicated by the CMS, a digital system that does not offer the option of registering SOGI-based hate crimes. Recent reports indicate that the HJPC of BiH, the institution in charge of the CMS, is planning on updating the system to make this possible. However, the lack of information is not only a challenge in terms of statistics as it also prevents hate crimes against LGBTI persons from being addressed by government policies and in police trainings, which in the grand scheme of things, leaves the LGBTI community in BiH in a limbo where they can only rely on a handful of civil society organizations for limited protection.

To tackle the problem of violence against the LGBTI community in BiH, the following set of recommendations is suggested.

⁵¹ Protocol for Procedure in Cases of Hate Crimes. (2011, March). The Human Rights Office of the Government of the Republic of Croatia, Working Group for Monitoring Hate Crimes. <https://pravamanjina.gov.hr/UserDocsImages/arhiva/protokoli/Protocol%20on%20procedure%20in%20cases%20of%20hate%20crime.pdf> p. 4.

⁵² Interview with Vladana Vasić, Advocacy Manager at the Sarajevo Open Centre (SOC), January 14, 2020.

⁵³ Interview with Vladana Vasić, Advocacy Manager at the Sarajevo Open Centre (SOC), January 14, 2020.

⁵⁴ Ibid.

Recommendations

- It is necessary to ensure a comprehensive harmonization of criminal codes in BiH, which would create equal preconditions for the successful sanctioning of hate crimes and ensure equality of citizens before the law in all jurisdictions in BiH. It would include amending the criminal codes in FBiH and BD and expanding the provisions on incitement to hatred and violence so that they include sexual orientation, gender identity and sex characteristics as protected grounds.
- In order to strengthen the trust between the LGBTI community and civil servants, it is necessary to appoint contact persons in the police and prosecutors' offices who would be responsible for LGBTI victims of hate crime. A potential example to follow is the appointment of a contact person in the Sarajevo Cantonal Prosecutor's Office and in the police directorates in Montenegro.
- In order to more efficiently process hate crimes, it is necessary to adequately train all participants in the criminal prosecution process: police officers, prosecutors and professional associates. The following topics should be mandatory in such training curricula: recognizing prejudice as a motive, conducting a hate crime investigation, proving these criminal offenses and legal regulations. The relevant institutions should make hate crime-related topics a permanent part of police academy curricula, so that the training of future police officers does not depend solely on civil society projects.
- Prosecutor's offices should promote opportunities for greater cooperation with citizens since they can also receive victims of hate crimes as a first instance in those cases where there has been no prior reporting to the police. This provides an opportunity for this institution to work more openly and transparently.
- The HJPC of BiH should make changes to the CMS as soon as possible, thus enabling hate crimes and their motives, i.e., protected characteristics, to be recorded.
- The Ministry of Security of BiH, as the highest authority in the field of security, should establish and coordinate a consultative mechanism between law enforcement agencies, civil society and representatives of hate crime victims.
- The Ministry of Security of BiH should provide adequate working conditions and support to the contact person working on hate crimes. This person, with the technical support of the HJCP, should collect all data on hate crimes, classifying them according to their motives.
- Cantonal and entity governments should initiate the development of LGBTI inclusive gender action plans, which would include the adoption of protocols on dealing with hate crimes that explicitly define the roles and operation of the relevant institutions.
- The establishment of an Official Protocol for the Processing of Hate Crimes is recommended to the Ministry of Internal Affairs in RS, the Ministry of Internal Affairs in BD and at the level of the ten cantonal ministries in FBiH. It would also need to involve local prosecutor's offices, the Ministry of Justice, and local police departments.

