

EU Values and BiH:
**Addressing the “taboos” and changing prevailing attitudes in respect to sex
(gender) identity, sexual orientation and people living with HIV**

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1. INTRODUCTION

This paper examines legal and institutional framework, as well as present Media and educational politics in BiH in terms of the gaps between where the country is and what the accession criteria are concerning human rights in the EU. Most discussion on discrimination in BiH is concerned with ethnicity and religion, but the issues of gender and sexual discrimination are very important as well. As sooner as this is understood by the governmental officials and other relevant factors, closer the accession to EU will be.

On 21 October 2005, the European Commission recommended to the Council of the European Union the opening of negotiations with Bosnia and Herzegovina on a Stabilization and Association Agreement (SAA). The negotiations were opened on 25 November 2005. Prior to the opening of the negotiations, in its Communication - 2005 enlargement strategy paper no COM (2005) 561 the Commission of the European Communities¹ stated that

“it is vitally important for the EU to ensure a carefully managed enlargement process that extends peace, stability, prosperity, democracy, human rights and the rule of law across Europe... The Western Balkans is a particular challenge for the EU. Enlargement policy needs to demonstrate its power of transformation in a region where states are weak and societies divided. A convincing political perspective for eventual integration into the EU is crucial to keep their reforms on track. But it is equally clear that these countries can join only once they have met the criteria in full. ”

It took two years for Bosnia and Herzegovina from the date the EU approved the Feasibility study (twice as much time than was previously expected²) to get to this point and receive recognition from the Commission in respect to the progress it has made in the implementation of the Feasibility Study reforms. In order to avoid delays in the subsequent steps in the

¹ Communication from the Commission- 2005 enlargement strategy paper no COM (2005) 561, the Commission of the European Communities Brussels, 9 November 2005 available at <http://dei.gov.ba/en/pdf/doc561.doc>, p2

² see Chris Patten’s statement from 18 November 2003 available at http://europa-eu-un.org/articles/en/article_3018_en.htm

process of the EU accession, Bosnia and Herzegovina must now become fully serious and responsible for its actions. In the aforementioned Communication³ the Commission stated that

“enlargement policy is defined by Article 49 of the Treaty on European Union, which states that any European State which respects the EU’s fundamental democratic principles may apply to become a member of the Union. The EU has set political and economic criteria for membership, as well as criteria related to the obligations of membership and the administrative capacity to implement and enforce the EU’s laws and policies. The three basic principles of the Commission’s approach to enlargement are consolidation, conditionality and communication.”

The Stabilization and Association Agreement is the first major step in the European integration process for Bosnia and Herzegovina. In order to develop a closer relationship with the EU, Bosnia and Herzegovina will have to gear its political, economic and institutional development to the values and models underpinning the European Union: democracy, respect for human rights and a market economy. Although the European Union will certainly (as it was the case earlier) support and assist Bosnia in Herzegovina in introducing the reforms necessary to progress in these areas, it is for the country itself to ensure the fulfillment of the requirements.

Adopting the proposal for the Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership with Bosnia and Herzegovina, the Commission of the European Communities⁴ noted the following:

“The main priorities identified for Bosnia and Herzegovina relate to its capacity to meet the criteria defined by the Copenhagen European Council of 1993 and the conditions set for the Stabilisation and Association Process, notably the conditions defined by the Council in its Conclusions of 29 April 1997 and 21 and 22 June 1999, the content of the final declaration of the Zagreb Summit of 24 November 2000 and the Thessaloniki Agenda... A distinction is made between short-term priorities, which are expected to be accomplished within one to two years, and medium-term priorities, which are expected to be accomplished within three to four years. The priorities concern both legislation and the implementation thereof.”

³ Communication from the Commission- 2005 enlargement strategy paper no COM (2005) 561, *ibid*,

⁴ the Council Decision on the Principles, Priorities and Conditions Contained in the European Partnership with Bosnia and Herzegovina, the Commission of the European Communities {SEC (2005) 1422} Brussels, 9 November 2005, COM (2005) 555 available at <http://dei.gov.ba/en/pdf/doc555.doc>

And it is the implementation that is at the heart of this policy. In the Decision⁵, among other priorities, the Commission put the implementation of the international conventions ratified by Bosnia and Herzegovina, including reporting requirements as the short-term key priority and the ensuring of continued progress in taking full national responsibility for policy formulation and decision-making and full compatibility of national legislation with the European Convention on Human Rights as the medium-term priorities.

It is true that the current situation in the country is not bright. The reports⁶ are warning on the worsening of the situation among ethnic groups. According to the International Religious Freedom Report 2005 for Bosnia and Herzegovina Released by the Bureau of Democracy, Human Rights, and Labor of the U.S Department of State⁷

“Overall, respect for religious freedom declined during the reporting period: the number of attacks on religious officials and religious buildings increased markedly. A number of illegally constructed religious objects continued to cause ethnic/religious tension and conflict in a number of communities. Religious communities continued to support and advocate refugee returns for their respective constituencies; however, the number of returns significantly declined during the reporting period. The return process suffered from a lack of funding for reconstruction of housing and infrastructure, local governments' inability or unwillingness to provide necessary services to allow for sustainable returns, and a lack of employment opportunities...Religious intolerance in the country directly reflects ethnic intolerance because of the virtually indistinguishable identification of ethnicity with one's religious background. Bosniaks generally are associated with Islam, Bosnian Croats with the Roman Catholic Church, and Bosnian Serbs with the Serb Orthodox Church. The Jewish community maintains a very small but important presence in Bosnian society. Despite the constitutional and legal provisions protecting religious freedom, discrimination against religious minorities occurs in virtually all parts of the country. In some communities, local religious leaders and politicians contributed to intolerance and an increase in nationalist feeling through public statements and on occasion in sermons. Religious symbols were often misused for political purposes...”

⁵ ibid

⁶ see Bosnia, rebuilt but still divided: Ten years after the Dayton accords, the testing ambition is to bring Bosnia and the rest of ex-Yugoslavia into the European Union, *The Economist Global Agenda*; 23 November 2005
⁷ (the International Religious Freedom Report 2005 for Bosnia and Herzegovina Released by the Bureau of Democracy, Human Rights, and Labor of the U.S Department of State, on 8 November 2005; available at <http://www.state.gov/g/drl/rls/irf/2005/51544.htm>)

Although registering some advances in economic performance that Bosnia and Herzegovina has made during 2004 and the strong economic growth performance of 6.2% real growth the IMF⁸ and World Bank⁹, Bosnia and Herzegovina continues to face major challenges: persistent fiscal problems, a weak corporate sector, a large current account deficit, in the context of a currency board, unemployment remains high, and structural economic reforms across the board have slowed down in both entities and at the State level. In regards to the respect of human rights, according to the Helsinki Committee for Human Rights in Bosnia and Herzegovina¹⁰ noted that in 2004 the respect for democracy and human rights was more on the declarative level and that the continued trend of neglecting of human rights on the part of both the international community and the local authorities was present. Not more optimistic is their Report on the Status of Human Rights in Bosnia and Herzegovina for 2005:¹¹

Inter-national relations are still loaded by attempts of ruling nationalist parties to preserve ethnic homogenization including preservation of territorial division on ethnic principles. There is still fear from the others and nothing is being done to boost tolerance and the respect to differences and the rights of members of other ethnic groups and national minorities... Bosnia and Herzegovina is still behind in the implementation of reforms which should establish rule of law and equality of all citizens before law. Tardiness in the establishment of rule of law breeds numerous infringements of human rights, feeling of uncertainty among citizens and mistrust towards authorities.

In the recent press release of 13 September 2005¹² the Helsinki Committee appealed against the devastating separation of school-age children based on ethnicity which escalated at the beginning of this school year “to the extent that we now have a practice of open segregation

⁸ see 27 May 2005, the Executive Board of the International Monetary Fund (IMF) assessment after the conclusion of the Article IV consultation with Bosnia and Herzegovina available at <http://www.imf.org/external/np/sec/pn/2005/pn0576.htm>

⁹ see 29 September 2005, State and Entity Finance Ministers, Central Bank and World Bank Agree on Need to Accelerate Economic Reforms, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/BOSNIAHERZEXTN/0..contentMDK:20668727~menuPK:362032~pagePK:141137~piPK:141127~theSitePK:362026,00.html>

¹⁰ Report on the Status of Human Rights in Bosnia and Herzegovina (Analysis for the period January – December 2004) available at: <http://www.bh-hchr.org/Reports/reportHR2004.htm>

¹¹ Report on the Status of Human Rights in Bosnia and Herzegovina (Analysis for the period January – December 2005) available at: <http://www.bh-hchr.org/Reports/reportHR2005.htm>

¹² titled the Segregation and apartheid at work available at <http://www.bh-hchr.org/index2.htm> the Helsinki Committee, 13 September 2005

and apartheid in Bosnia and Herzegovina". This problem was also recognized by the Council of Europe when in its tenth Report (February – April 2005)¹³ stated that with respect to a further category of CoE accession commitments, insufficient progress has continuously been reported in respect to the commitment to eliminate all aspects of discrimination based upon ethnic origins in the field of education. In the same report in respect to the Human rights¹⁴ the Council of Europe stated that particularly worrying was the lack of progress with respect to the successful completion of the 'compatibility exercise' of BiH legislation with the ECHR and the implementation in practice of adopted legislation which remains weak:

„30. The examination of the compatibility of national law and practice with the ECHR, one of the post-accession commitments undertaken by BiH, can serve as a basis for a programme of further legislative and other reforms. A good quality compatibility report is thus of importance mostly for BiH itself. However, continuing difficulties have been encountered by the CoE in carrying out this exercise with BiH: the Working Group of National Experts was set up last year after considerable delays and since then only two out of its eight members have attended all four meetings organised with CoE experts. The national Working Group has taken no subsequent action and shown no commitment...

31. ...It is also essential that the Council of Ministers give its proper institutional support to the exercise....,,

Since its inception the European Community has been concerned with discrimination issues. However, only after the Treaty of Amsterdam amending the Treaty of the European Union (TEU), the Treaties establishing the European Communities (TEC) and certain related acts, commonly known as the Amsterdam Treaty, was signed on 2 October 1997, and entered into force on 1 May 1999, anti-discrimination in all fields was included as a basic founding principle of the Union (Article 13 of TEC). More generally, the Amsterdam Treaty has strengthened the protection of fundamental rights in the Union by enhancing Articles 6 and 49 of the Treaty of the European Union (TEU). The respect of fundamental rights, among which

¹³ the tenth Report (February – April 2005) of the Council of Europe ; the Document presented by the Secretary General - Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme Information Documents SG/Inf (2005)8 25 April 2005 available at <http://www.coe.ba/pdf/10-rep-final-en.pdf> pp. 21; item 110

¹⁴ *ibid*, pp. 7-8; items 29-31

is the right to non discrimination¹⁵, is expressly required of the Union and the Member States, the latter being liable to sanctions in case of breach thereof, and is an indispensable and fundamental condition for accession to the Union.

In the context of present Bosnia and Herzegovina the discussions on the rights of ethnic groups have almost entirely occupied our social interests. Even the EU values have often been interpreted in this context. For example the police reforms which were the prerequisite for the start of the negotiations for SAA were negotiated in this context as well as the forming of the negotiation team in SAA talks with the EU. The rights of ethnic groups have been used as an excuse for non-adoption of the Law on Public Broadcast System and Law on Higher Education. This is being only more intensified with the start of the pre-election campaigns (for the General state elections which are to be held in October 2006) started by the ruling parties which may be seen on the example of current talks about Amendments to the Constitution of Bosnia and Herzegovina. The respect for human dignity, equality and human rights is most often directly connected to ethnic groups in Bosnia and Herzegovina. It seems we do not notice other forms of discrimination occurring on an every day basis. There is a widespread misconception that BiH must deal first with issues relating to the immediate post-war transition, ignoring other needs, including the basic right of women and sexual and gender minorities to live free of violence or discrimination. Even among the young urban educated population, which is the internet literate and has access to www, there is the belief that the main endangered categories of people are mainly considered to be the poverty

¹⁵ Discrimination is where one person is treated less favorably than another person would be in the same situation without objective justification. The notion of discrimination has been interpreted consistently by the European Court of Human Rights in its case-law concerning Article 14 of the Convention. In particular, this case-law has made clear that not every distinction or difference of treatment amounts to discrimination. As the Court has stated, for example, in the judgment in the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*: “a difference of treatment is discriminatory if it ‘has no objective and reasonable justification’, that is, if it does not pursue a ‘legitimate aim’ or if there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realized’” (judgment of 28 May 1985, Series A, No. 94, paragraph 72).

stricken categories such as the pensioners, unemployed and refugees-returnees and the national minorities¹⁶ while the rights of LGBTTIQ people, for example, do not deserve priority. Recently, I witnessed a forum/e-mail list discussion¹⁷ that arose after a post by feminist activist organization calling for peaceful march marking the 8th of March, the International Women's Day, in order to promote the struggle against the discrimination against the women in Bosnia and Herzegovina's society. Over 70% of posts replying to the invitation for participation in the march stated that there is no (or that there is very little) discrimination based on gender in Bosnia and Herzegovina. However, the situation in which so many things need to improve and reach the certain level in order to get even to the position of the candidate country, everything becomes priority. And we cannot rely entirely on the current politicians in power to resolve the issues by themselves. The responsibility lies on the entire civil sector. It is exactly the obligation of the civil society to introduce the changes and induce politicians to implement them.

2. METHODOLOGY

This research methodology combines the content-analysis method applied to various pieces of legislation, communiqués and different NGO reports. I conducted the interviews with different actors in this complicated matter, some of those being activists working on the promotion of the rights of the targeted groups, prosecutors working on the cases of the domestic violence, NGO representatives. In total I conducted 15 interviews. Those were informative interviews based on which I obtained certain data and opinions of the interviewees in relation to the addressing taboos and prevention of the domestic violence

¹⁶ see forum sarajevo-x.com under title prava homoseksualaca (the right of homosexuals) – z. forum pink 12.05 available at <http://www.sarajevo-x.com/forum/viewtopic.php?t=14197>,

¹⁷ It is considered that members of this mailing list (Bhfront) are mainly young, urban, well educated, people mainly from Bosnia and Herzegovina

against women, hate crimes and violence against LGBTTIQ people and people living with HIV. I also recorded short video interviews with 8 people randomly stopping them in the streets of Sarajevo in an attempt to get just small idea about how general public perceives the issue of the violence against women. Furthermore, I conducted monthly monitoring of the daily papers in Bosnia and Herzegovina of different editorial politics and geographical coverage and profiles of the readers in order to see how the media treat the problem I deal with in this policy paper. In addition, I sent out the questionnaire to 150 women's NGOs and 150 women NGO's activists in order to see how many of them deal with the issue and in which way. Unfortunately I received only 10 replies, which supports the position of the current "NGO-ization" of the civil society in Bosnia and Herzegovina.

3. PROBLEM DEFINITION

Article 13 of the EC Treaty (TEC) reads as follows

'Without prejudice to the other provisions of this Treaty, and within the limits of the powers conferred by it upon the Community, the Council acting unanimously on a proposal from the Commission, and after consulting the European's Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

This article implies that discrimination based on sex or sexual orientation may be grounds for EU action. Therefore, the pro-active vision of guaranteeing the human right to non-discrimination that looks further than the securing of equality on formal and legal levels only is required for any country wanting to become the member state. Therefore, it is not enough for the state to just adopt the laws which would satisfy the formal criteria, but their successful implementation is necessary as well.

In Bosnia and Herzegovina discrimination is prohibited on the formal level. However, the implementation of those laws, as well as the presence of a non discrimination clause is lacking. The discriminations based and connected to the patriarchal norms of the society represent a deeply rooted and widely spread societal problem. As stated in the Shadow Report¹⁸ “behind a facade of civility and modern living, BiH remains a deeply traditional and patriarchal society”. Although since the second half of the last century women in Bosnia and Herzegovina have been enjoying formal and legal equality to men, the actual status of women has been under strong patriarchal influence. According to the World Learning Pilot STAR Survey¹⁹ all the recent studies on the status of women in Bosnia and Herzegovina point to the omnipresent values of patriarchal culture as a common factor:

“Roughly classified indicators significant for understanding of the socio-economic status of women in Bosnia and Herzegovina are as follows:

1. Patriarchal inheritance, which defined the role and status of men and women in society until the second half of the twentieth century. The patriarchal cultural matrix in Bosnia and Herzegovina was not too different from the general patriarchal matrix...
2. Pre-transition, socialist and communist heritage, within which women acquired formal and legal equality. “Emancipation of women” and declarative equality were one of the social ideals of this time... Even though it was hidden behind the “social equality” policy, male domination remained uncontested.
3. The War in Bosnia and Herzegovina 1992 – 1995 strongly shook the existing system of values, producing specific forms of violence against women, and influencing the psychological stability and general health of the female population...
4. Signing of the General Framework Agreement for Peace in Bosnia and Herzegovina ... experience also shows a negative influence of economic reform on women – loss of work places and an increase of the portion of women in the overall unemployment statistics...”

In her text Dr. Jasna Bakšić-Muftić²⁰ titled the Social Context for the Enjoyment of Women’s Human Rights in BiH; noted:

¹⁸ Bosnia and Herzegovina's NGO Shadow Report to the UN CEDAW Committee from January 2004, http://www.globalrights.org/site/DocServer/CEDAW_Final_revised__12.04.pdf?docID=150

¹⁹ “Because We Are Women - Socio-economic status of Women in BiH” authors: Ms. Jasna Bakšić-Muftić, PhD, Ms. Nada Ler-Sofronic, PhD, Ms. Jasminka Gradašević- Sijercic, PhD, Ms. Maida Fethagic, M.A. World Learning Pilot STAR Survey, 2003

²⁰ Dr. Jasna Bakšić-Muftić Social Context for the Enjoyment of Women’s Human Rights in BiH; Cooperation with Global Rights Bosnia and Herzegovina NGO Shadow Report to the UN CEDAW Committee January 2004 available at http://www.globalrights.org/site/DocServer/SOCIAL_CONTEXT_FOR_WOMEN_s_RIGHTS.pdf?docID=1506

“As a result of patriarchal and communist influences, as well as many of the trends prevalent in the post-war transition period, the following obstacles and misconceptions have undermined the advancement of women’s rights:

- Men dominate the political sphere, and this is often justified by stereotypes relating to the inherent capabilities of men, or by social inertia that supports the established distribution of political power;
- Some argue that the interests of women diverge from the superior social objectives of men. Before the war, these divisions related to class-based distinctions, and after the war they often relate to ethnic, religious, entity, regional or other political interests. Following this course of logic, men alone are capable of representing the common interests of all BiH citizens, and they do so with superior knowledge and experience, so that female political participation is not necessary;
- For many women, ethnic divisions, and their corresponding identification with specific ethnic and religious groups, have become more important than gender equality. At the same time, support for feminism or the promotion of women’s human rights often elicits severe resistance within these conservative and male-dominated social groups. In addition, efforts to maintain and nurture harmful myths that cast women as mothers, housewives, pillars of the family, or sex objects also have taken a toll. These stereotyped presentations of women are omnipresent in school textbooks, the media, employment contexts, and in many other public spheres. Women themselves often perpetuate these views, failing perhaps to recognize the harmful consequences of such discrimination.”

Due to the deeply rooted patriarchal norms the discrimination based on gender or sexual orientation most of the time remains taboo. In respect to the domestic violence against women the Shadow report²¹ has noted the following:

“Traditional biases perpetuate a view of domestic violence as a private, family matter that should remain outside the realm or influence of the state. The problem is minimized at all levels, with many officials clinging to the social misconception that women victims of violence are troublemakers, and deserving of the violence that they themselves must have instigated. Under these views a woman is expected to remain silent about domestic violence, since it is perceived to reflect her own shame and failure. She is also expected to remain in an abusive relationship, since under these views family obligations must be prioritized over a woman’s individual rights. Such extreme beliefs usually manifest themselves in the belief in the need to remain in abusive relationships for the sake of the children.”

Even in the Initial Report on the application of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for the period from 1994 to 2004, the Council of Ministers of Bosnia and Herzegovina in June 2005 under the item 40 (page 16) notices that,

²¹ Bosnia and Herzegovina's NGO Shadow Report to the UN CEDAW Committee from January 2004, *ibid*

although a very present problem in Bosnia and Herzegovina, domestic violence is covered in the veil of secrecy and few talk about issue.

The situation is even worse in respect to the taboo of violence directed against LGBTTIQ people or people living with HIV. Many people in BiH, and in particularly current power-holders, appear to feel threatened by those two social groups. The disapproval of the LGBTTIQ community and the stigmatization of people living with HIV are widely spread in Bosnia and Herzegovina. According to the Helsinki Committee for Human Rights in Bosnia and Herzegovina,²²

“The treatment of the rights of sexual minorities significantly differs from other rights because of the social setting, which is still too conservative and traditional and thus unable to overcome predominant stereotypes. What differentiates sexual discrimination from other forms of minority discrimination is the fact that people in their mindset perceive this issue as a disease and, if there is no direct aggressiveness and violence, according to homosexual accounts - that is the best that one can expect at this point in time.”

In its Initial Report the Council of Ministers does not even feel obliged to mention whether the hate crimes and violence against LGBTTIQ or people living with HIV exist in BiH. (True there is no specific provision in the Covenant on the prohibition of the discrimination based on the sexual orientation, but this does not prevent the writer of the report from mentioning the existence of these kinds of violations).

However, the violations continue to occur and will not go away if we ignore them. According to the recently conducted research by the Association Q (presented 8 November 2005) almost 50 percent of the LGBTTIQ population wants to leave Bosnia and Herzegovina stating fear and discrimination as the main causes for such need. More than 17 per cent of the interviewed

²² (Report on the Status of Human Rights in Bosnia and Herzegovina: Analysis for the period January – December 2004):

LGBTTIQ persons experienced the discrimination in the educational institutions, while more than 24 per cent experienced the discrimination in the social institutions.

Recently, two LGBTTIQ persons were attacked at the tram station in Sarajevo, their only “mistake” being different from the set norms (their appearance “provoked” some “moralists” to physically attack them and “kill the fagots”). Not addressing the issue or creating the “taboo” out of certain issue only encourages the perpetrators to continue doing what they have already been doing. Due to ignorance of the responsible factors the hate crimes and violence against the sexual and gender minorities and people living with HIV people are present in Bosnia and Herzegovina. Even the police officers when invited to prevent the violence against the LGBTTIQ persons react in a discriminatory fashion. True they act *ex officio* but they cannot resist stating their “opinions”. One police officer thought it was appropriate to make the comment before the medical personnel in the Emergency after he brought one gay man to the hospital after he was attacked stating: “It’s his fault his faggot!”

3.1 Domestic violence against women and hate crimes and violence against LGBTTIQ and people living with HIV

The UN Declaration on the Elimination of Violence against Women defines the term ‘violence against women’ as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” For the purpose of this policy the domestic violence against women shall be understood to encompass, but not be limited to, the following: “Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and

other traditional practices harmful to women, non-spousal violence and violence related to exploitation;”

A hate crime is understood as a criminal offense against persons (or property) motivated by hate or bias against the victim(s) due to race, ethnicity, national origin, religion, gender, disability, or sexual orientation.

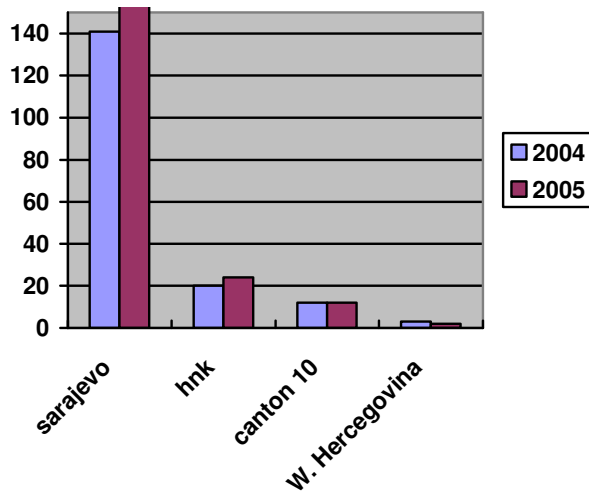
Violence is manifested in several basic ways, as physical, sexual, psychological, economic, structural (which includes invisible, but ever-present obstacles in the realization of basic rights i.e. uneven distribution of power, which produces inequality and makes it legitimate) and spiritual violence. The most intense and overwhelming type of violence is a combination of physical, sexual and psychological violence with the background of structural violence.

Despite the fact that society continues to ignore domestic violence against women and hate crimes and violence against LGBTTIQ or people living with HIV, reports produced by non-governmental organizations (NGO) indicate a disturbing increase in the number of victims. Alarmingly, the state itself has not collected adequate data on either of those issues. There are some official statistics on the scope of the problem but they are not reliable. In respect to the domestic violence against women there is some more concrete data available from the Ministries for Internal Affairs, while there has not been any official reports on the hate crimes and violence against LGBTTIQ and people living with HIV due to the fears of the members of the groups.

3.1.1. Violence against women:

According to the data of the Federal Ministry of Internal Affairs²³ in the first six months of 2005 314 criminal acts of violence in the family were registered, which was 44% higher than in the same period of the previous year. According to Magbul Skoro, the spokesperson of the Ministry of Internal Affairs of the Sarajevo Canton in the period of eight months of 2005 204 criminal acts of the domestic violence were registered, while in the same period of the 2004 there were registered 141 criminal acts of the domestic violence. According to the data of the Ministry of Internal Affairs of the Zapadna Hercegovina Canton in the first half of 2005 there were registered 2 criminal acts of domestic violence, while in the same period of the previous year there were 3 cases registered. In the Canton 10 there were registered 21 such cases for the eight months in 2005 while 2004 in the same period 12 cases were registered. In the Hercegovina-Neretva Canton 20 cases of domestic violence were registered in 2004, while in eight months of 2005 24 cases were registered.

registered criminal acts of domestic violence for first 8 months in years 2004 and 2005 in 4 cantons in the F BiH



According to the data from the women's NVO LARA there were 156 reported cases of domestic violence in RS until 10 June 2005, while in the 2004 there were 862 reported cases

²³ see dnevni list 22.9.05 pp 3

of domestic violence²⁴. Unfortunately, there are just a few women who were able to leave the perpetrator and find accommodation in shelters. According to the data of the Centre for Public Security Banja Luka that covers the city of Banja Luka and 16 municipalities, the number of reported cases of domestic violence is increasing on a daily basis. In the first half-term of 2005 statistics showed an increase of 32% of cases of violence in comparison to the same period of 2004. According to Rade Mutic²⁵, spokesman of Centre for Public Security, out of 99 reported cases of domestic violence in the first six months of 2005, 31 occurred in Banja Luka, 24 in Prijedor, ten in Mrkonjic Grad, nine in Novi Grad, four each in Gradiska, Knezevo and Prnjavor, three each in Celinac, Kozarska Dubica, two each in Kotor Varos, Krupa na Uni and one each in Srbac, Sipovo, Ribnik, while in Kostajnica and Ostra Luka there were no reported cases. On that basis, 99 reports were submitted to District Attorney's Office in Banja Luka against 102 perpetrators suspected for criminal act of domestic violence. Mostly women from urban places report violence.

Due to the current patriarchal attitudes in the society it is considered that there are far more unreported cases of the domestic violence. According to the Shadow report²⁶

“State bodies that usually act as the first point of contact with victims of violence, including the police, social welfare centers and courts, do not collect data or report on their work in this area. And quite often there are no statistics because these bodies fail to respond to such cases altogether. To the extent that any official data on domestic violence is collected, it generally remains unprocessed and inaccessible.

Informal data on the numbers of women victims of violence are often collected in NGO records, including statistics on clients who seek NGO assistance or in data gathered through NGO research on domestic violence or violence against women in various regions of BiH. But NGOs are missing data on the number of victims of violence at the level of the entities or the state, as they have not been able to conduct research over such a broad area.”

²⁴ see nezavinse novine 22.9.2005 page 11

²⁵ ibid

²⁶ Bosnia and Herzegovina's NGO Shadow Report to the UN CEDAW Committee from January 2004, ibid

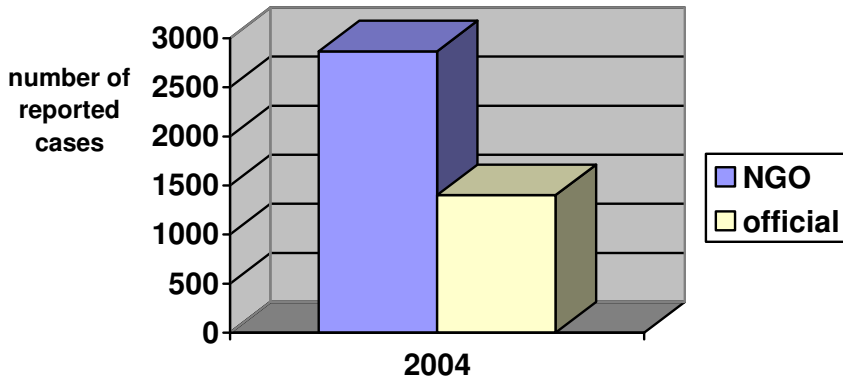
For example in the research published by the Association for assistance to children and women war victims²⁷ showed that the domestic violence stays within the realms of home. Through interviewing the citizens of Trebinje the association discovered that among the interviewed women who were victims of the domestic violence 80% of them never turned for help nor disclosed to anyone what was happening in their families.

This may be illustrated by the discrepancies between the findings from the NGO sector and official reports presented by the entities Ministries for the Internal Affairs. The development study – Domestic violence²⁸ conducted by Institutie for Crime and security studies of the Faculty of the Criminalistic Science of the University of Sarajevo in 15 cities in Bosnia and Herzegovina in the period from 01. 01. 2004 through to 01. 01. 2005 according to which there were 2865 criminal reports for the domestic violence registered in that period in those 15 cities, out of which 1233 ended with the judgment (str. 194). On the other hand, from the aforementioned reports presented in the public by the Entities' Ministries for Internal Affairs it follows that the number of registered reports of domestic violence in both entities was not higher than 1400 cases in 2004.

²⁷ UDRUŽENJE ZA POMOĆ DJECI I ŽENAMA ŽRTVAMA PORODIČNOG NASILJA ŽENSKI CENTAR – TREBINJE “NASILJE U PORODICI U OPŠTINI TREBINJE - ANALIZA REZULTATA ISTRAŽIVANJA SA OSNOVAMA ZA PLAN AKCIJE “Trebinje, jun 2003. pp 5-17

²⁸ *Nasilje u porodici- Razvojna studija u Bosni i Hercegovini.* (2005). Sarajevo: Institut za kriminologiju i sigurnosne studije Fakulteta kriminalističkih nauka; Ambasada SAD, Odjel za odnose sa javnošću by Azra Adžajlić-Dedović, Halima Sofradžija, Irma Deljković,

discrepancies in the reports of domestic violence for 2004



3.1.2. Hate crimes and violence against LGBTTIQ people

According to the Helsinki Committee's Report, "during 2004, most frequent were verbal threats and intimidation of individuals and some members of the community. Unfortunately, cases of beatings were also registered. Due to their sexual orientation, some people lost their job, and some were eliminated at job vacancies, after the first interview. In a significantly more difficult position are homosexual men, while the female part of the population is less exposed. Older members of the community, taught by bad experience and frustrated by the treatment of the environment toward them, rarely approach communities and associations and thus resolve common problems with a greater difficulty." According to the official police and public prosecutorial/judicial data there was no registered cases of the either hate crimes and violence against LGBTTIQ people or the cases of the domestic violence caused by the sexual orientation or gender identity of the victim. However, according to the Association Q, the real situation is totally different: the victims do not report such cases because the police generally negatively respond. According to the research conducted by the Association Q, out of 215

respondent, members of the Bosnian LGBTTIQ community, only 1.2% are out in respect to their sexual orientation or gender identity. Out of this 1.2% less than 50% live in Bosnia and Herzegovina (and again this coming out of those 0.5% occurred only in very small circle of people). Most of the LGBTTIQ people hide their sexual orientation or gender identity because of the fears of the physical and psychological violence they could be exposed by the society. The most striking data is the most of LGBTTIQ people fear domestic violence or the rejection by the family.

3.1.3. Hate crimes and violence against people living with HIV

According to the data which poses the Association Apoha²⁹ there has been no physical violence connected or caused by the HIV positive status of the person (here it needs to be pointed that according to the data presented by the APOHA since the beginning of the registration in 1986 until the end of 2004 there were 101 HIV positive people registered in Bosnia and Herzegovina. During 2004 there have been registered 9 new cases (8 in the Federation of BiH and 1 in the RS).³⁰ According to some estimates the number of infected people in Bosnia and Herzegovina is around 300 to 400.) According to the Federal bureau for the public health the HIV infection in FBiH is rising.

However, the recent attitudes expressed in public such as the attitude of the Islamic Community in Bosnia and Herzegovina expressed through the Jumbo billboard posted on the occasion of the 1 December, World AIDS Day - the international day of action on HIV and AIDS, stating: "Stay away from impurity - keep away from AIDS" are only encouraging stigmatization of people living with HIV.

²⁹ (the first Association for the support of the persons living with HIV/AIDS), www.xy.com.ba

³⁰ <http://www.xy.com.ba/a/bih0.htm>

3.2. Present Legal and Institutional Framework

3.2.1 Present Legal Framework

The BiH Gender Equality Law (2003) does provide a good basis for the adoption of a national law on the prohibition of domestic violence and arguably hate crime and violence against the LGBTTIQ people. (Gender based violence is defined in Article 4 of the Law. All of Section XI is devoted to prohibition of violence. Violence is prohibited irrespective of its form, and irrespective of whether it was committed in private or public life. Also, the state is obliged to take measures aimed at eliminating and preventing all forms of gender based violence. All state and entity level laws, as well as other relevant regulations are to be harmonized with this law in no longer than six months.). Unfortunately this deadline of six months has long passed and the harmonization of the laws and regulations still has not occurred.

3.2.1.1 Domestic violence against women

On 29 March 2005 the Parliament of the Federation of Bosnia and Herzegovina passed the Law on the protection from Domestic Violence which was published in the Official Gazette of the Federation BiH No 22/05 of 6 April 2005. This Law presents a symbolic move of one of the Entities in respect to securing some kind of protective measures and defining and recognizing the existence of the domestic violence problem. Unfortunately, under this Law domestic violence is treated as a minor offence and not as a crime. However, the good thing is that this law provides for perpetrators to be removed from their victims and for protective orders to be ordered and enforced. It does provide for emergency protection measures and it

finally provides for interim measures such as restraining orders and removal orders. Article 13 of the Law provides for placing the victim in the shelter when necessary (unfortunately it does not require that the state finance the shelter).

The BiH Criminal Law³¹ does not contain provisions related to the protection of women and girls from domestic violence. However, the entity laws define domestic violence as a criminal offence, sanctioning it as such.

The Criminal Code of Republika Srpska defines domestic violence as a criminal offence³². If the incident causes no serious consequence, or if the act is not particularly cruel, the offence is sanctioned by a fine, or by no more than two years in prison. The legal situation in the Federation of BiH (FBiH) is similar. Until recently, the law sanctioned only those acts of violent behavior inflicting light or serious physical injury on a spouse or partner, or on the parent of a child with whom the perpetrator did not share a home.³³ In addition to these categories the amended Criminal Law of FBiH also introduced a specific offence of domestic violence, which includes a sentence of no more than one year for violence committed against a family member, or a fine or sentence of no more than three years if the offence was committed against a family member “with whom the perpetrator lives in a shared household.” And if the offence involved the use of firearms, dangerous weapons or other devices suitable for inflicting serious physical injury or other injury to health, the law establishes a sentence ranging from three months to five years.³⁴

³¹ Criminal Law of BiH, Official Gazette of BiH Nos. 3/03; 32/03; 37/03; 54/04 and 61/04

³² Criminal Code of Republika Srpska, Official Gazette of RS, No. 22, Banja Luka 2002, Article 198

³³ Criminal Law of the Federation of BiH, Official Gazette of FBiH No 36, Art. 172, para 2, and Art. 173, para. 2

³⁴ *Ibid.*, Art. 222, paras 3, 4, 5, and 6

Although there is a collision between the laws in the Federation of Bosnia and Herzegovina (according to the Law on the protection from Domestic Violence the domestic violence is treated as minor offence, while the Criminal Law of the F BiH treats the domestic violence as the criminal offence), according to the Prosecutorial office of the Cantonal Court of Sarajevo, the act of the domestic violence has been treated as the criminal offence by rule.

3.2.1.2 LGBTTIQ

It is an upsetting fact that, until 1998, a total ban on homosexual relations existed in Bosnia and Herzegovina. It was actually taken over from 1959 Criminal Code of the SFRY³⁵ by which homosexual acts were proclaimed illegal and only in November 1998 was the Criminal Code of the Federation of Bosnia and Herzegovina³⁶, in which homosexuality was decriminalized, adopted. The Criminal Code has no reference to homosexuality and homosexuality accordingly is no longer a criminal offence, while the age of consent is now 16 years. The Republika Srpska³⁷ followed in October 2000 in the same way. Finally, in 2003 the Criminal Code of Bosnia and Herzegovina was passed,³⁸ which included “Infringement of the Equality of Individuals and Citizens” clause proclaiming in Article 145, paragraph (1) that

“An official or responsible person in the institutions of Bosnia and Herzegovina, who on the ground of differences in race, skin color, national or ethnic background, religion, political or other belief, sex, sexual orientation, language, education or social status or social origins, denies or restricts the civil rights as provided by the Constitution of Bosnia and Herzegovina, ratified international agreement, law of Bosnia and Herzegovina, some other regulation of Bosnia and Herzegovina or general act of Bosnia and Herzegovina or, whoever on the ground of these differences or background or other status grants unjustified privileges or does unjustified favors to individuals, shall be punished by imprisonment for a term between six months and five years.”

³⁵ Law on taking over the Criminal Code of SRBiH Official Gazette of the Republic of Bosnia and Herzegovina No. 13/92

³⁶ Criminal Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina No. 43/98

³⁷ Criminal Code of Republika Srpska, Official Gazette of Republika Srpska No.49/03

³⁸ Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina No.5/03

At least in this respect the prohibition of any kind of discrimination including the discrimination on the ground of sexual orientation was adopted.

In respect to the Labor Laws, both entities' Laws prohibit discrimination on the ground of sex, however not on the sexual orientation. On the other hand, the Labor Law of Brcko District and the Law on Employment in the State Institutions of Bosnia and Herzegovina, adopted in 2004, prohibits discrimination on the ground of both gender (sex) and sexual orientation.

Furthermore, the Law on gender equality in Bosnia and Herzegovina exists, if nothing else, then at least on the paper. In Article 2 it explicitly states:

Article 2

The sexes have equal rights.

Full equality of treatment for both sexes is guaranteed in all sectors of society, particularly in the fields of education, the economy, employment and labour, social welfare, health care, sport, culture, public life and the media, regardless of marital or family status.

Discrimination on the grounds of gender and sexual orientation is prohibited.

It was adopted in 2003 and besides formal establishment of the Entity Gender Centers any implementation of this law is hardly visible.

However, the both entity Laws on Public Law and Order contain provisions that can threaten the rights of sexual and gender minorities. In accordance with the aforementioned law in the Federation of Bosnia and Herzegovina, the violation of public law and order is considered to be the "threatening of public morality" as well as "insulting the patriotic, national, religious and moral feelings of citizens" in public places. In the Republika Srpska, the law bans these

relations between people in public places that could “call into question the rights of citizens to a personal security, peace, privacy and human dignity”. Such legal inconsistencies leave judges to ascertain based on their free assessment and on the basis of discretionary right what threatens public law and order and what is inadmissible from the standpoint of “public morality”.

In addition, the Family Law of Bosnia and Herzegovina (valid on the territory of the Federation of BiH) and Family Law of the Republika Srpska, do not regulate the question of the same sex unions at all (which immediately represents discrimination in respect to inheritance for example³⁹). According to the same Laws marriage defines the legally arranged union of man and woman. Adoption of children is only allowed to the married couple (exceptionally one person can adopt the child of his or her spouse), while incomplete adoption may be allowed to one person or by one of the partners living out of the wedlock.

³⁹ In respect to the different treatment in law of homosexual and heterosexual domestic partnerships the ECHR in the case of *Karner v. Austria* of 24 July 2003 (*Karner v Austria* case, ECHR Judgment of 24 July 2003, series A, No. 40016/98 , paragraph 37) reiterated its findings stated in various previous judgments that “differences based on sexual orientation require particularly serious reasons by way of justification”. The Austrian government could not convince the ECHR that excluding same-sex partners from the right to succeed in a tenancy would help achieve the objective of the “protection of the traditional family unit”. The ECHR explained:

“In cases in which the margin of appreciation afforded to Member States is narrow, as the position where there is a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realizing the aim sought. It must also be shown that it was necessary to exclude persons living in a homosexual relationship from the scope of application of Section 14 of the Rent Act in order to achieve that aim. The Court cannot see that the Government has advanced any arguments that would allow of such a conclusion.” (paragraph 41)

And it continued:

“Accordingly, the Court finds that the Government have not offered convincing and weighty reasons justifying the narrow interpretation of Section 14 (3) of the Rent Act that prevented a surviving partner of a couple of the same sex from relying on that provision.” (paragraph 42)

And, “thus, there has been a violation of Article 14 of the Convention, taken together with Article 8.”(paragraph, 43)

There are no provisions at the present time which would ban discrimination based on gender identity and expression and (inter)sexual characteristics or which address hate speech and hate crimes on the basis of sexual orientation and/or gender identity and expression.

3.2.1.3. People living with HIV

As there “only” 101 HIV infected person have been registered in Bosnia and Herzegovina since 1986 the BiH authorities do not bother too much to adopt any laws to help people living with HIV deal with the problems they face. The only official documents are the Strategy for the prevention and fight against HIV/AIDS in Bosnia and Herzegovina in the period 2004-2009 adopted by the Council of Ministers of BiH on 5 February 2004 and the directive on the establishing of the network of the coordinators in the Federation of Bosnia and Herzegovina for undertaking the measures for the protection of the citizens from the AIDS issued on 12 September 2003 by the Federal Minister of health (Official Gazette of the Federation of BiH No. 46/03).

3.2.2. Institutional framework

Although the legislation in Bosnia and Herzegovina may sound quite alright (although still needing improvement) the implementation of the Laws is lacking. This has been both noticed by the Council of Europe and European Commission in their respective reports. In order to be able to implement and promote the Laws, Bosnia and Herzegovina needs strong and reliable institutions, which unfortunately are still far from the ideal. The educational institutions, Media, executive and judicial institutions contribute to the overall situation in the society. The data from the research conducted by the Association Q, for example shows, that more that

23% of the LGBTTIQ people interviewed for the research, experienced indirect discrimination in Media and other institutions, while almost 14% of the interviewed witnessed discrimination either in employment process or at work. When it comes to the implementation and promotion of the Laws relating to the prevention of domestic violence against women, hate crimes and violence against LGBTTIQ people and people living with HIV the situation is far from the ideal.

3.2.2.1. Education

Due to the still unresolved legal framework for the higher education Universities in Bosnia and Herzegovina the students are still learning according to old-fashioned programs which, among other things, reinforce the patriarchal order. According to the Institutional Evaluations of seven Universities in Bosnia and Herzegovina – Summary report⁴⁰

“Higher education in BiH is highly constrained by the legal situation, which does not provide a suitable framework for addressing current or future challenges facing the universities... the various laws in force are variations of the old Yugoslav model, which as a model is incompatible with the goals of the Bologna process and has now been largely abandoned across the successor republics.”

As Bosnia and Herzegovina did not follow the neighboring countries with the adoption of quality Higher Education Law neither did the Universities follow the good practices and examples of the Universities in neighboring and other countries in introducing Gender studies at the undergraduate level. None of the Universities has Gender studies offered as the undergraduate or graduate course. Due to this fact Bosnia and Herzegovina has few experts who could recognize the way in which gender divisions intersect with other social divisions and tackle the problems of domestic violence against women and hate crimes and violence against LGBTTIQ and people living with HIV from various aspects.

⁴⁰ the Institutional Evaluations of seven Universities in Bosnia and Herzegovina – Summary report prepared by the European University Association, joint project of the European Commission and the Council of Europe, December 2004), pp15, item 14

The second thing, but of no less importance, is the non-existence of the sexual education subjects at any level of the educational system. For this reason it is not surprising that many taboos in relation to the people living with HIV or violence against women or gender minorities exist. Currently it is only through the projects of peer education that teenagers learn about issues relating the youth health, such as HIV/AIDS, sexually transmitted diseases, pregnancy prevention, alcohol and drug abuse, sexuality etc.

Furthermore, across curriculum and textbooks from the first years of primary education on are not gender sensitized at all. They rather continue to re-establish patriarchal norms by presenting “proper” societal norms in all the segments of life.

When asked by some LGBTTIQ activists to allow them access to interview youth in the secondary schools about their sexuality, the ministers of education on all the levels either negated such possibility or suddenly became „unavailable or too busy“. At the recent presentation of the study about the Domestic violence against women at the Faculty of the Criminological Sciences in Sarajevo some renown professors of law and psychology accused the „West“ for destruction of the family unit because it started to encourage public talks about domestic violence against women, so they proposed that „as the west is already promoting homosexual marriages which represent an attack on the ideal of the family unit we should export our *stable Bosnian family* as our contribution to the diversity of the European community“ (of course in this ideal Bosnian family woman is expected to be silent about the violence against her). When such statements come from the „intellectual“ surrounding who is expected to teach young people about the respect for human rights, the situation becomes really serious.

3.2.2.2. Gender centres

Although established in both entities, the Gender centres have a more formal than active role. Their activities, if any, mainly revolve around the organization of conferences or round tables which most of the time have no far reaching effect. The state Agency for gender equality is even worse, as it does not function even on the pretence at the “formal” level. The most recent response that was needed from the both Gender centres and agency was in respect to the possible adoptions of the amendments to the election laws which may quash the quota system and reintroduce the close system vote (opposite of the preferential) which could be devastating for the representation of women in politics as during 1996 elections when parties offered no women candidates at all. As in numerous other cases, none of those three institutions issued any statements. Also, even on the small scale of activities those centres act, they only define gender within a strict binary opposition of masculine and feminine and do not pay any attention at all to gender minorities.

3.2.2.3 Police

In respect to the police and their response to domestic violence against women and hate crimes and violence against LGBTTIQ people the following was concluded from the interviews conducted by the activist from CNA⁴¹ who worked on a project in 2003 in a few Municipalities (Prijeedor, Zavidovići, Žepče) on sensitizing the police forces and facilitating them for quality response in situations of the domestic violence. During those workshops the trainers concluded that police was not sufficiently sensitized in respect to such situations,

⁴¹ Centre for non-violent action, <http://www.nenasilje.org/>

since police reasoning seemed to be: “It’s her fault, she deserved it – Husband arrived home after 10 hours of exhausting work and she couldn’t be bothered to heat him up the dinner” or “Do you still love him? If you do, why don’t you forgive him?”

The activists from the Association Q noted that the police responses are most of the time negative. In situation when the some of the members from Q asked the police to intervene in one case of the domestic violence (as the parents locked up the 21 years old daughter after she told them about her sexual orientation and tried to “cure” her by forcing her to take hormonal therapy), they got the following reply from the police: “I have to respond *ex officio*, but if it was my daughter I would have killed her.”

3.2.2.3 Prosecutorial and judicial institutions

In respect to the domestic violence against women, I conducted an interview with the prosecutorial office in the Cantonal court of Sarajevo where I was told that around 90% of women refuse to witness against their husbands in criminal proceedings in the matters of the domestic violence. Most of them even plead with the Prosecutorial office not to charge their husbands. This information is confirmed by the results of the research conducted by the Institutie for Crime and security studies of the Faculty of the Criminalistic Science of the University of Sarajevo⁴². The researchers here noted that this attitude creates frustration with the police who then think that they only wasted their time.

3.4. Present media attitude

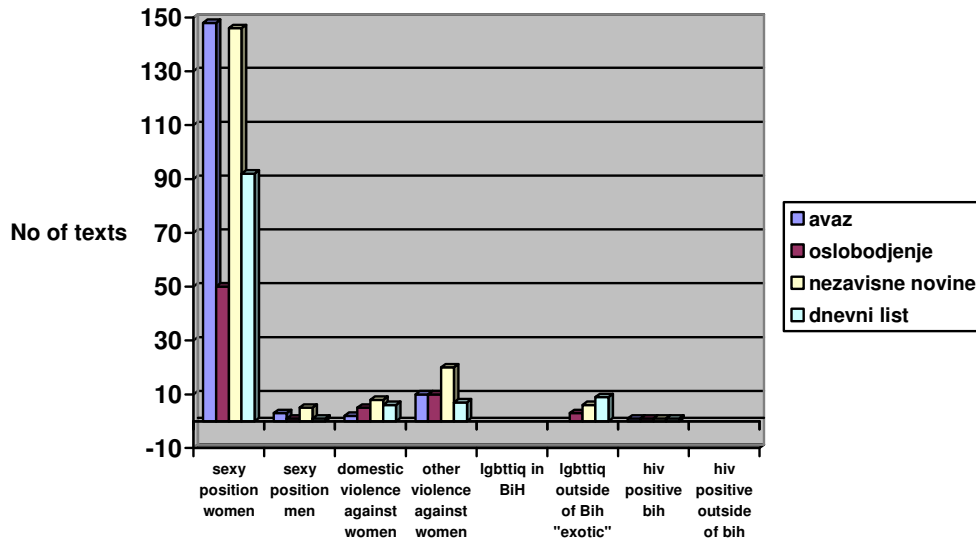
⁴² *Nasilje u porodici- Razvojna studija u Bosni i Hercegovini.* (2005). Sarajevo: Institut za kriminologiju i sigurnosne studije Fakulteta kriminalističkih nauka; Ambasada SAD, Odjel za odnose sa javnošću by Azra Adžajlić-Dedović, Halima Sofradžija, Irma Deljkić,

After conducting the research of the printed media in respect to the domestic violence and hate crimes and violence against LGBTTIQ and people living with HIV the following was noted:

The analysis includes four daily papers: *Dnevni Avaz*; *Oslobodjenje*; *Nezavisne Novine* and *Dnevni List*⁴³. All the articles written in September 2005 relating the issues at question were processed. Few conclusions may be drawn after the examination. In respect to violence against the women, most of the articles were placed in the Crime pages and most of them are very short. They only mention what happened, rarely mentioning the punishment that the perpetrator may receive. There is rarely follow up on the case. Most of the articles are neutral. There is rarely criticism of the actions of violence. In respect to the LGBTTIQ issues there are very few mentions of the topic. Most of the texts related to some “exotic” event from abroad. In respect to people living with HIV, there was only one short piece mentioning the occasion of the report on the health situation in Federation BiH when health Minister mentioned presence of HIV/AIDS in BiH and all the papers published it. The language used by the papers is most of the time patriarchal.

⁴³ According to the omnibus research of the Mareco Index Bosnia - BiH member of the Gallup International for September of 2005 in respect to newspaper consumption those four daily papers were taking the following positions: *Avaz* No. 1 with 40,2%; *Oslobodjenje* No. 3 with 9,8%; *Nezavisne novine* No. 7 with 7,7% and *Dnevni list* No. 9 with 4,1% out of 14 daily papers examined. Available at <http://mib.ba/version01/01/RADIOIPRINT%202004.pdf>

review of print media september 2005



According to the monitoring of print media conducted by the Association of BH Journalist⁴⁴ conducted during 15 days of July 2005 the deduced data undoubtedly points to the fact that women are marginalized in the media... In respect to the frequency of the appearance of women in media, the statistic is more than devastating – in the total number of the published texts women are presented only in 4.4 % of the text. More than one quarter of those texts relates to the passive mentioning of women in the crime pages (26.2 %).

In the research carried out by the LGBTTIQ Association Q45 which included the analysis of the printed media from BiH includes a period of over sixteen months of clipping/monitoring (June 29th, 2003 – November 19th, 2004) and a total of 36 articles, it was concluded that journalists in printed media in Bosnia and Herzegovina are not sensitized and sufficiently informed/educated to write about LGBTTIQ themes.

⁴⁴ Udruženje BH Novinari; MONITORING PRINTANIH MEDIJA U BOSNI I HERCEGOVINI - ZASTUPLJENOST I NAČIN PREDSTAVLJANJA ŽENA U MEDIJIMA

⁴⁵ "Analysis of Terminology pertaining to LGBTTIQ Persons and Human Rights in Printed Media in Bosnia and Herzegovina", Organization Q, Sarajevo, Bosnia and Herzegovina, 2005

As confirmed by APOHA, most of BiH media are not interested in the issues concerning the issued of HIV/AIDS in our society, their attitude is showing the lack of awarnese and interest in BiH for this issue.

3.5. Current NGO situation

Due to the situation in the country in last 15 years and the fact that due to the influx of money in the civil society sector from around the world, NGOs became the means of survival.

With the constant reduction in funds the NGOs became competition against each other. The solidarity and cooperation among the NGOs (if previously existed) has been mainly lost.

In its tenth Report on Bosnia and Herzegovina⁴⁶ the Council of Europe noted that the

“27. Civil society development seems to be somewhat linked to the complex set-up of the country and to the still very strong international presence. Many NGOs – owing also to the war situation- have been created and developed in donor-driver fashion, with very weak links to the real societal demands. Furthermore, the prevailing nationalist agenda of many parties have atomised civil society and provoked an “ethnisation” of NGOs.

28. Whilst there is a legal basis at state level allowing for NGOs to operate “state-wide”, few NGOs have a country-wide area of action. NGOs remain free to register at State, Entity or canton level (in the FBiH) and by-laws for the functioning of NGOs are still rather complicated. Furthermore, the difficulty of financing NGOs domestically creates a rather limited space for their action.“

3.5.1. NGOs dealing with the prevention of domestic violence against women

There are numerous organizations registered as dealing with the women’s human rights for example. Out of the 150 I contacted only 10 replied to me and filled in the questionnaires, so it is very hard to say how many of them are working actively and how many of them have been working on the prevention of the domestic violence against women. I can only confirm that there are 8 organizations who are actively involved in the work on prevention of the

⁴⁶ the tenth Report (February – April 2005) of the Council of Europe, *ibid*, pp. 7, items 27 - 28

violence against women. There are few women shelters run by different women's NGOs (not more than 10 in entire BiH – this number changes depending on the funds available) who are struggling to survive (as currently there is quite sufficient flow of funds for prevention of trafficking of women some of the NGOs try to find the solution to combine and to run two types of shelters). Some of the shelters are able to keep the women for certain time and to provide them with psychological help and to assist with adjustment in new life. Unfortunately those are very few; most of them may only provide shelters for women for few days.

There is no reliable network which could organize the secure “hiding” of women. There were few attempts of forming of women NGOs networks, but that only lasted as long as the project (for which the international sponsor donated the funds) lasted. There was not really honest attempt in forming such network as many organizations see competitors in each other instead cooperators.

3.5.2. LGBTTIQ NGO

There is only one registered organization dealing with the LGBTTIQ rights. In respect to visibility of the issues concerning the rights of LGBTTIQ people few steps forward (no matter how small they were) were made as the LGBTTIQ Association Q which was established in 2002 was finally formally registered in February 2004 (although the address of the Association is not publicly announced due to the death threats the members have been receiving). The Association Q is dedicated to protection of human rights of sexual and gender minorities, i.e. lesbian, gay, bisexual, transgender, intersexual and queer persons and also to

the strengthening, development and public visibility of queer identity and cultural and all other discrimination based on sexual orientation, gender identity and/or expression and (inter)sexual characteristics. see web site: www.queer.ba.

3.5.3. NGOS for support of people living with HIV

Thanks to the group of enthusiasts from the Association for sexual and reproductive health, XY, the project of the establishing of the first Association for the support of the persons living with HIV/AIDS (APOHA⁴⁷) was initiated in July 2004. Unfortunately, although its aim is to act on the entire territory of Bosnia and Herzegovina its effectiveness and visibility is still minor. As long as there is no adequate state support and policy the chances for the progress are rather slim.

4 RECOMMENDATIONS AND CONCLUSIONS

4.1. What needs to be done?

The following are recommendations for the improvement in the current situation (it does not necessarily need to be done in the proposed order):

- As all the issues are not properly addressed their visibility needs to be improved; work on the active and well planed media campaigns;

⁴⁷ see www.xy.com.ba

- Although formed, the Gender Centers are not doing much in order to follow up the implementation of the BiH Gender Equality Law it would be useful to establish the institution of Equity Ombudsman on the national level whose task would be to monitor the coordination of the laws and other regulations in Bosnia and Herzegovina in relation to the protection of the gender equality rights (including the protection of rights and interests of gender and sexual minorities), to make the efforts towards protection and promotion of the gender equality rights (including the protection and promotion of rights and interests of gender and sexual minorities); propose undertaking of measures intended for the creation of the coherent system of protection and promotion of the gender equality rights (including the protection and promotion of rights and interests of gender and sexual minorities) and for the prevention of harmful activities jeopardizing the gender equality rights, inform the public on the state of the gender equality rights; inform and advise the victims of the domestic violence or hate crime on the manner of the realization and protection of their rights and interests; initiate and participate in public activities oriented towards improvement of the position of gender equality, take part in the procedure of the preparation of the draft proposals of the regulations concerned with the gender equality rights or those regulating important issues for gender equality, and may give impetus for the adoption or change of the laws and other regulations concerned with the rights and protection of gender equality.
- education of media in respect to the sensitized and adequate use of language
- the solidarity and help among the current NGOs is necessary (although it seems that the three groups are different they have a lot of in common)

- lobby for the state and local governments to assume the responsibility for financing the shelters and SOS telephones for women victims of domestic violence
- lobby for forming of local support centers for victims of domestic violence and hate crimes based on gender or sexual orientation
- education:
 - a) lobbying and establishing at least one degree in gender studies at the University level (this would educate the professionals dealing with these issues; would educate and inform the journalists and other media producers writing/covering the issues and therefore secure the presence of those taboos in media;
 - b) lobbying for the introduction of the sexual education in schools
 - c) across curricular and textbooks gender balanced approach
 - d) organizing educative trainings relating the issues for the police, judges, and prosecutors
- amendments to the laws and adoption of the new laws:

- a) Along the line of the Federal Law on the protection from the Domestic Violence adopt the similar Law at least on the RS level, also in both entities law define the domestic violence as a criminal act
- b) extend the non discrimination clause to the grounds of sexual orientation and other possible bases for discrimination
- c) define hate crime either within the current Criminal Codes or as the separate Law
- d) cancel all discriminatory provisions in the current legislation

4.2. How is this achievable?

For those goals to be achievable, dedicated and reliable activists are needed. The first step is to create a reliable network of NGOs which would act simultaneously (as all women, LGBTTIQ community and people living with HIV are the victims of the patriarchal order, their cooperation is more than welcomed as most of the times they are tackling same or similar issues and problems). Of course all the time it is necessary to work on the increase in the membership of the NGOs. It is necessary to create such network that can effectively act both on the local and the national level.

During the work on the establishment of the reliable NGO network continuous addressing of the stereotypes and prejudices need to be taking place (all the NGO members must take onto

themselves to do it everywhere they go). As it is hard for the victims of the domestic violence or hate crimes to go to the media and present their stories (as most of the time they will be ridiculed and even threatened especially if it is the case with LGBTTIQ or people living with HIV), it is very important to find the people who will offer their support and accept the media exposure instead of the victims (organizations such as PFLAG and other activists who without fear of repercussions may talk publicly about the issue – here is the need for the role of Ombudsman for Gender equality to be visible).

In order to secure the constant, clever and not too aggressive presence in the media, it is not a bad idea to appoint a press officer who would secure sending of the regular press releases, comments and analysis to the media. It is important to mark the significant dates in public by providing the statement that is going to be heard. Animating cultural institutions to support the cause is also very effective.

The lobbying must be done jointly, mobilizing as much of the civil sector as possible. For the adoption of the laws it is good idea to lobby all the national and local government and international community. For amendments to the Law or introduction of the new Laws it is good to use the help of the international NGOs so they would pressure the government from the outside⁴⁸.

4.3. Possible problems

- Money issue mainly for shelters, and support centers:

⁴⁸ See the situation on the occasion of the 17 September 1998 European Parliament Adoption of the Urgency Resolution on Equal Rights for Gays and Lesbians in the EU available at <http://www.france.qrd.org/assocs/ilga/euroletter/63.html#EP1>

As the shelters and support centers may not function without certain reliable funds and the state at this moment is neither willing or capable of providing financing, a lot of effort and capabilities of the NGOs and activists needs to be spent on fundraising (and of course it would be better if those efforts and capacities are spent on helping and assisting the victims of violence).

- Uneducated and incompetent media presenters⁴⁹

As Media in Bosnia and Herzegovina have great influence on the attitudes of people of BiH the uneducated and incompetent journalists may worsen current situation instead of improving it.

- the assumption is that many things are going to be done on voluntary basis

As the economic situation in Bosnia and Herzegovina is very bad NGO sector has become the only source of income for the people employed in such organizations. Many of the people employed are not there for the cause but only for the money. As the international donors who sponsored BiH NGOs for the last 10 – 15 years are pulling out of Bosnia and Herzegovina, a lot of these organizations will be closed or forced to tighten their budgeting and lean on the voluntary forces (unfortunately volunteerism and solidarity are two characteristics that BiH society somehow lost along in the transitional process).

4.4. Conclusion

⁴⁹ In September 2004, TV Hayat aired a talk show “Arduana”, which raised a question of accepting homosexual people in BiH. This show was a major benchmark given that this whole topic was presented through the prism of yet unfinished movie of the BH Director Ahmed Imamović, 'Go West' (the film, among other things, addresses a love story between two men of different ethnic backgrounds during the war in BiH and their struggle to “go west”). After the show certain newspapers and magazines published the articles which criticized the host and the editor of the show (reference). On the other hand, there were the magazines and writers (among which the columnist of the Magazine *Walter*, Fatmir Alispahić was ahead) who published a series of articles campaigning directly against homosexual people.

Although the situation in the legislation in respect to the prohibition of discrimination on grounds of sex and sexual orientation in BiH is slowly improving, it is still far from meeting the EU criteria. Considering the pace of changes and general interest of the ruling parties in the issue it could take another 15-20 years until the Laws in Bosnia and Herzegovina meet the EU standards in respect to non-discrimination. Furthermore, the improvement in implementation of laws is even worse, still only minor steps have been made in respect to really addressing the issues of non-discrimination. It is not enough to adopt the Law and expect it to be implemented by itself, but certain steps in promoting, and implementing of the Law need to be taken.

It is not enough to repeal the “century’s” long discriminatory laws. This can only be considered a first step in combating discrimination. As Claudia Roth⁵⁰, German Commissioner for Human Rights Policy and Humanitarian Aid in the Foreign Office stated “in order for human rights to be effectively protected, they need to be respected in all political and social spheres”. The government needs to put in place broad ranging programs aimed at progressively reducing the level of chauvinism and homophobia in society and promoting the acceptance of successful women, LGBTTIQ people, and people living with HIV.

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