

Thematic analysis of the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

## **LGBTI PERSONS' ACCESS TO HEALTHCARE IN BOSNIA AND HERZEGOVINA**

### **NATIONAL THEMATIC REPORT**

**FEBRUARY 2024**

The opinions expressed in this report are those of the authors and do not necessarily reflect the official policy of the Council of Europe.

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## Table of Contents

<b>1. Executive Summary</b>	<b>4</b>
List of abbreviations and acronyms	5
<b>2. INTRODUCTION</b>	<b>6</b>
A. Background to the thematic review	6
B. Scope of this report	7
C. Methodology and Structure of the report	8
D. Applicable international standards	8
E. Understanding LGBTI Experiences and Discrimination in accessing healthcare in BiH	14
<b>3. Overview of the healthcare system in Bosnia and Herzegovina</b>	<b>16</b>
3.1. Legislation, policies and measures on healthcare	17
3.2. Healthcare institutions, medical facilities and their competencies	18
<b>4. Bosnian-Herzegovinian progress regarding specific LGBTI persons’ healthcare topics</b>	<b>20</b>
4.1. Analysis of the regulatory and institutional reforms undertaken in BiH on LGBTI persons’ access to healthcare	20
4.2. Specific topics of relevance for LGBTI persons’ access to healthcare	21
Discrimination in accessing healthcare on grounds of SOGIESC	21
Trans-specific and trans-affirming healthcare services: regulation, availability, costs	25
Human rights of intersex persons in healthcare	28
Mental health and psychosocial support to LGBTI persons	30
LGBTI persons’ trust in institutions regulating and providing healthcare	33
<b>5. Recommendations</b>	<b>35</b>
Glossary of the most commonly used terms, phrases and acronyms	39

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## 1. Executive Summary

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The thematic report presents Bosnia and Herzegovina's (BiH) developments in implementing the provisions outlined in the Council of Europe Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination based on sexual orientation or gender identity in the field of health and the accessibility of healthcare services by LGBTI persons. Through a comprehensive examination, it assesses the progress made, identifies existing gaps, and offers targeted recommendations for improvement.

The first part of the report introduces the background for carrying out thematic reviews on the implementation of the Recommendation, explains the scope of the report, its methodology, and structure. It also provides an overview of the applicable international standards regarding access to healthcare and LGBTI persons' human rights.

The second part consists of an overview of the Bosnian-Herzegovinian (BH) healthcare system in terms of national legislation, policies, measures on healthcare, healthcare insurance, the respect of patients' human rights, and healthcare institutions'/ medical facilities' competencies and scope of work.

The third part analyses the impact of the Bosnian-Herzegovinian legal-institutional framework on LGBTI persons' access to healthcare. Furthermore, it analyses the regulatory and institutional reforms undertaken in BiH (to date), as well as the national civil society organisations' efforts on improving LGBTI persons' access to healthcare. It also highlights specific initiatives and accomplishments in the field.

Note: Whereas the Recommendation does not cover "sex characteristics", this report also incorporates data on intersex persons. This inclusion is justified by significant developments that have occurred at International, European and National levels since the Recommendation was adopted, aimed at combating discrimination on the basis of sex characteristics, including BiH Law on Prohibition of Discrimination that prohibits discrimination in all spheres of life, among others, on grounds of sex characteristics.

## List of abbreviations and acronyms

ARV	Antiretrovirals
BD	Brčko District of Bosnia and Herzegovina
BH	Bosnian-Herzegovinian
BiH	Bosnia and Herzegovina
CDADI	Steering Committee on Anti-Discrimination, Diversity and Inclusion
CDDH	Steering Committee for Human Rights
CoE	Council of Europe
CSO	Civil Society Organisation
ECHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
FBiH	Federation of Bosnia and Herzegovina
FRA	European Union Agency for Fundamental Rights
GAP	Gender Action Plan
GEA BiH	Gender Equality Agency of the BiH Ministry of Human Rights and Refugees
ICD	International Classification of Diseases
USCC	University of Sarajevo Clinical Centre
LGR	Legal Gender Recognition
MD	Doctor of Medicine
MSM	men who have sex with men
PACE	Parliamentary Assembly of the Council of Europe
PEP	post-exposure prophylaxis
PrEP	pre-exposure prophylaxis
RS	Republika Srpska
SOC	Sarajevo Open Centre
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
STD	sexually transmitted disease
the Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms
the Recommendation	Recommendation to member states on measures to combat discrimination based on sexual orientation or gender identity (CM/Rec(2010)5)
UCC	University Clinical Centre

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## 2. Introduction

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### A. Background to the thematic review

This report and the analysis that preceded it are parts of the Council of Europe annual thematic reviews of the Council of Europe's Committee of Ministers Recommendation CM/Rec(2010)5<sup>1</sup> to member States on measures to combat discrimination on grounds of sexual orientation or gender identity. These reviews address specific topics outlined in the Recommendation to analyse gaps between the recommendation and the progress made in member States. They result in annual European thematic reports, highlighting trends and promising practices identified through national and European roundtables, alongside complementary research. Member states voluntarily participate in National thematic reviews conducted by the Council of Europe. The European Report is presented to the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) for adoption. The overarching goal is to increase the participation, engagement and accountability of a broad range of national stakeholders and civil society in the review process, while making progress. The first thematic review was held in 2021 on the theme of Legal Gender Recognition<sup>2</sup>. The second focused on Right to life, security and protection from violence: combating SOGIESC based hate crime across Europe<sup>3</sup>. The third report to be finalised in 2024 focuses on LGBTI persons' access to healthcare.

The following report maps out the current situation on LGBTI persons' access to healthcare in Bosnia and Herzegovina and **identifies gaps between international standards, practices, national legislation and policies**, including their **implementation and impact**. The report is a result of extensive preliminary analysis conducted between July and November 2023, and contains conclusions emanating from the Bosnian-Herzegovinian (BH) National Roundtable that took place on 12 December 2023. Furthermore, the report and the entire thematic review process aims at assisting member states in making advancements in policy and legislation, i.e. in the implementation of the Recommendation and informing the Comprehensive Review process.

In terms of legislation, LGBTI persons in BiH are explicitly protected by the Law on Prohibition of Discrimination of BiH, BiH Law on Gender Identity and the prescribed hate crimes in criminal codes<sup>4</sup>.

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<sup>1</sup> Recommendation available at:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a)

<sup>2</sup> Report available at : <https://rm.coe.int/thematic-report-on-legal-gender-recognition-in-europe-2022/1680a729b3>

<sup>3</sup> Report available at: <https://rm.coe.int/gt-adi-sogi-2023-3-en-european-report-sogiesc-based-hate-crime-final-t/1680ac3c18>

<sup>4</sup> The Criminal Code of the Brčko District recognizes only sexual orientation as a possible motive for hate crime, while omitting gender identity, while the criminal codes of the Federation of Bosnia and Herzegovina and Republika Srpska include sexual orientation and gender identity.

BiH adopted amendments to the existing Law on Prohibition of Discrimination<sup>5</sup>, to incorporate (adequately specified) sexual orientation and gender identity, as well as sex characteristics into the Law. The BiH Law on Gender Equality<sup>6</sup> also guarantees equal treatment of all persons, regardless of their gender identity or sexual orientation. The Law on Prohibition of Discrimination states that the prohibition of discrimination applies to all public bodies and to all natural or legal persons in both the public and private sectors, in all areas, such as in particular: employment, membership in professional associations, education, training, housing, **health**, social care/protection, goods and services intended for the public and public places, performing economic activities and public services. One of the mentioned areas of application of the law, i.e. protection of rights, is **healthcare**, including the **availability of protection and treatment**, and in relation to **the way patients are cared for and treated**.

Even though the legislative framework has improved over the past years, discrimination, hate speech, and violence against LGBTI persons are still present in Bosnian-Herzegovinian society.<sup>7</sup>

## B. Scope of this report

The CoE Recommendation (CM/Rec(2010)5) to member States on measures to combat discrimination on grounds of sexual orientation or gender identity is a standard setting tool that comprehensively guides the member States in the guarantee, enjoyment, exercise of human rights and protection from discrimination on the grounds of sexual orientation and gender identity. Its recommendations for member States are set towards the following:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to the recommendation;
5. ensure by appropriate means and action that the recommendation, including its appendix, is translated and disseminated as widely as possible.

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<sup>5</sup> "Official Gazette BiH", no. 59/09; Law on Amendments of the Law on Prohibition of Discrimination ("Official Gazette BiH", no. 66/16)

<sup>6</sup> "Official Gazette BiH", no. 32/10

<sup>7</sup> Amina Dizdar (2018), Monitoring of the Implementation of Committee of Ministers' Recommendation CM/Rec (2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/site/wp-content/uploads/2018/09/Report-Monitoring-Recommendation-CM-Rec-2010-5.pdf>, page 3

Among the areas of life and human rights it covers<sup>8</sup>, a special emphasis is put on the importance of non-discriminatory access to healthcare for LGBTI individuals and it stresses the essential intersection of health with all other spheres of life. In that sense, this report analyses the progress made for the implementation of the Recommendation in the Bosnian-Herzegovinian context, focusing on LGBTI persons' access to healthcare.

The **topics the report covers** include:

- discrimination in accessing healthcare on grounds of SOGIESC, including intersectional identities;
- trans-specific and trans-affirming healthcare services: regulation, availability, costs;
- human rights of intersex persons in healthcare;
- mental health and psychosocial support to LGBTI persons;
- LGBTI persons' trust in institutions regulating and providing healthcare.

### **C. Methodology and Structure of the report**

The methods used include desk research of the relevant international and national standards in the fields of human rights and healthcare, starting from legislation and policies, through to institutions and their competencies, to concrete practices implemented. The report also analyses the relevant data available, collected, and published previously by the BH institutions and CSOs working in the field.

The framework used to analyse the healthcare systems and practices includes the relevant law, policy documents, measures that regulate healthcare, as well as the specific healthcare practices relevant for the well-being of LGBTI persons, through the important topics covered in the report. The analysis is not restricted to legislative and state measures, institutional structures and resources, rather it also reviews educational and advocacy efforts made by the government and civil society sector, as well as important research and data existing on LGBTI persons' access to healthcare in BiH.

The recommendations are presented based on all the information collected from the above-mentioned sources.

### **D. Applicable international standards**

#### **Overview of the standards and measures set by the Council of Europe regarding access to healthcare**

At the beginning of this chapter, it is important to present the relevant provisions of the Recommendation CM/Rec(2010)5 regarding health, since the topics that this report covers are mostly in line with what the Recommendation instructs the member States to

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<sup>8</sup> Right to life, security and protection from violence, Freedom of association, Freedom of expression and peaceful assembly, Right to respect for private and family life, Employment, Education, Housing, Sports, Right to seek asylum



do. The Recommendation is the most concrete international standard defining the assessment and revision of current legislative and other measures, their efficient implementation in efforts to combat discrimination, the collection and analysis of relevant data concerning discrimination, and ways to protect victims of discrimination.

The following excerpt delineates the standards outlined in the Recommendation concerning the field of health, which will be analysed from the BiH implementation perspective:

**“VII. Health**

**33.** *Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.*

**34.** *Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.*

**35.** *Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.*

**36.** *Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.”*

This report seeks to assess to what extent the above standards pertaining to health are reflected in law, policy and practice in BiH.

## **Presenting the relevant findings of the 2<sup>nd</sup> comprehensive review of the CM/Rec(2010)5 implementation**

According to the “Trends and Challenges” chapter of the CDDH Report on the implementation of Recommendation CM/Rec(2010)5, Bosnia and Herzegovina revised anti-discrimination legislation to include sex characteristics as a protected ground, in addition to the previously included sexual orientation and gender identity.<sup>9</sup> BiH also reported having measures in place to ensure the enjoyment of the highest attainable standard of health without discrimination on grounds of SOGI. In practice, non-discriminatory and effective access to healthcare for LGBTI persons seems to remain a challenge.<sup>10</sup>

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<sup>9</sup> Council of Europe Steering Committee for Human Rights (2019), Combating Discrimination on Grounds of Sexual Orientation and Gender Identity in Council of Europe Member States – A review of the Recommendation CM/Rec(2010)5 of the Committee of Ministers, Council of Europe, available at: <https://www.coe.int/en/web/sogi/-/committee-of-ministers-takes-note-of-report-on-the-review-of-cm-rec-2010-05>, page 11

<sup>10</sup> Council of Europe Steering Committee for Human Rights (2019), *ibid*, page 59

In assessing the progress towards the implementation of the Recommendation, that is the extent to which BiH legislation complies with the Recommendation and considers the measures (or lack thereof) implemented in the fields of **i)** access to a high-standard of healthcare, **ii)** identification of a same-sex partner as next of kin and **iii)** transgender specific healthcare and intersex rights protection, the following observations pertain to Bosnia and Herzegovina:

- Revised anti-discrimination legislation has been enacted to include sex characteristics as a protected ground that enables the enjoyment of the highest attainable standard of health without discrimination on grounds of SOGIESC.
- A review of legislation was partially undertaken in 2022 by focusing on mapping the needs of implementing the Recommendation and developing/implementing the corresponding action plan.<sup>11</sup>
- Same-sex partners are not identified as next of kin, since same-sex partnerships are still not regulated in BiH.
- No trans-specific healthcare services exist; and reimbursement of trans-specific healthcare is not guaranteed by the state.
- The practice of “sex-normalising” surgeries on intersex children is still not researched enough and it is not clear what procedures are being used.
- there is no specific prohibition or criminal or civil sanction for so-called conversion “therapies”.

## Other relevant Council of Europe standards

The **European Court of Human Rights (ECHR)** is a strong mechanism for attaining justice in human rights violation cases, and its case-law represents a good basis for further advocacy. According to the BiH Constitution, its judgements have to be implemented in BiH. In the next few paragraphs, one can look at some of the ECHR case-law that supports equitable access to healthcare of LGBTI persons, especially the effective access of transgender persons to gender affirming services and legal gender recognition. The judgements protect the right to private life, gender identity being one of the most intimate areas of private life, connected to the right to self-determination.<sup>12</sup>

In Y.Y. v. Turkey (no. 14793/08) the Court held that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention for the Protection of Human Rights and Fundamental Freedoms finding that, in denying the applicant, for many years, the possibility of undergoing gender affirming care, the Turkish State had breached his right to respect for his private life.

In Van Kück v. Germany (no. 35968/97), the applicant complained about the alleged unfairness of German court proceedings concerning her claims for reimbursement of gender affirming medical procedures against a private health insurance company. She

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<sup>11</sup> 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina, available at: <https://arsbih.gov.ba/project/akcioni-plan-za-unapredjenje-ljudskih-prava-i-osnovnih-sloboda-lgbti-osoba-u-bosni-i-hercegovini-za-period-2021-2024-godine/>

<sup>12</sup> More judgements of the ECHR on gender identity issues in: European Court for Human Rights (2022), Factsheet – Gender identity issues. Available at: [https://www.echr.coe.int/documents/d/echr/fs\\_gender\\_identity\\_eng](https://www.echr.coe.int/documents/d/echr/fs_gender_identity_eng)

further considered that the court decisions had infringed her right to respect for her private life. The Court held that there had been a violation of the right to a fair hearing, finding that the proceedings, taken as a whole, had not satisfied the requirements of a fair hearing. It noted in particular that the German courts should have requested further clarification from a medical expert. With regard to the Court of Appeal's reference to the causes of the applicant's condition, the Court further found that it could not be said that there was anything arbitrary or capricious in a decision to undergo gender reassignment surgery. The Court also held that there had been a violation of the right to respect for private and family life. In this regard, the Court noted in particular that, since gender identity was one of the most intimate aspects of a person's private life, it appeared disproportionate to require the applicant to prove the medical necessity of the treatment. The Court found that in the applicant's case no fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.

In April 2017 the ECHR issued its judgment in the A.P., Garçon and Nicot v. France case (nos. 79885/12, 52471/13 and 52596/13), setting the legal precedent for all member states to end forced sterilisation in legal gender recognition procedures.<sup>13</sup>

In S.V. v. Italy (no. 55216/08), the Italian authorities refused to authorise a transgender person with a female appearance to change her male forename, on the grounds that she had not yet undergone gender reassignment surgery and that no final judicial decision had been given confirming gender reassignment. The Court held that there had been a violation of the right to respect for private life. It found in particular that the applicant's inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed by means of gender reassignment surgery, amounted to a failure by the State to comply with its positive obligation to secure the applicant's right to respect for her private life. In the Court's view, the rigid nature of the judicial procedure for recognising the gender identity of transgender persons, as in force at the time, had left the applicant – whose physical appearance and social identity had long been female – for an unreasonable period of time in an anomalous position apt to engender feelings of vulnerability, humiliation, and anxiety. The Court further observed that the legislation had been amended in 2011, with the result that a second court ruling was no longer required in proceedings to confirm the gender reassignment of persons who had undergone surgery, and the amendment of the civil-status records could now be ordered by the judge in the decision authorising the surgery.

The effect and application of **the European Convention for the Protection of Human Rights and Fundamental Freedoms** in Bosnia and Herzegovina is a constitutional fact, given the provision of Article II/2 of the Constitution of Bosnia and Herzegovina, which prescribes that the rights and freedoms provided for in this Convention are directly applied in BiH and that the Convention has priority over the entire law in BiH. In the context of the right to healthcare, it is important to relate this constitutional clause to the fact that the Convention guarantees, among other things, the prohibition of discrimination applicable in all areas, including the area of health insurance.

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<sup>13</sup> A.P., Garçon and Nicot v. France, (Application nos. 79885/12, 52471/13 and 52596/13) [2017]. <http://hudoc.echr.coe.int/eng?i=001-172913>

Furthermore, BiH ratified the **European Social Charter** as one of the basic documents regulating the exercise of economic and social rights. With this, BiH committed itself, among other things, to the establishment of an accessible and efficient healthcare system and the provision of health insurance rights. This obligation is reflected in the provision of Article 11 of the European Social Charter, which obliges states to take appropriate measures, either alone or in cooperation with public or private organizations, which should, among other things, eliminate the causes of the disease to the greatest extent possible, to ensure advisory and educational benefits for improving health and encouraging individual responsibility in health matters, and to prevent epidemiological, endemic and other diseases to the greatest extent possible.

By Article 12 of this Charter, the signatory states are obliged to ensure the effective establishment of rights and the use of social insurance, including the right to health care. The charter also mandates the effective application of the right, and determines that the right to social assistance must be clearly defined by law, based on objective criteria, achievable and must not be subject to any other conditions than the need of the beneficiary for social assistance. In order to achieve the effective use of the right to social and medical assistance, the signatory states have undertaken to ensure, among other things, that any person who does not have adequate resources and who is unable to provide these resources receives appropriate assistance in case of illness, and in other cases depending from the person's condition.

The CoE Parliamentary Assembly Resolution (PACE) 2048 (2015) titled **Discrimination against transgender people in Europe** recognises the widespread discrimination in many spheres of life, including health services.<sup>14</sup> In terms of legal gender recognition, it calls on member states to abolish sterilisation and other compulsory medical treatment, as well as the requisite for a mental health diagnosis, as necessary legal requirements to recognise a person's gender identity in laws regulating the procedure for changing a name and registered gender. It is important to add that the CM/Rec(2010)5 also, in regulating the Right to respect for private and family life, states that prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

The Resolution insists on making gender affirming medical procedures, such as hormone treatment, surgery, and psychological support, accessible for transgender people, and ensuring that they are reimbursed by public health insurance schemes. It also states that limitations to cost coverage must be lawful, objective, and proportionate. According to the Resolution, transgender persons should explicitly be included in suicide prevention research, plans, measures and alternative trans healthcare models, based on explicit informed consent. Moreover, it requires amending the classifications of diseases used at national level and advocating the modification of international classifications, making sure that transgender persons, including children, are not labelled as mentally ill, while ensuring stigma-free access to necessary medical treatment.

Regarding information, awareness raising and training, the Resolution calls for providing information and training to education professionals, law-enforcement officers, and

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<sup>14</sup> The Resolution 2048 (2015) available at: <https://pace.coe.int/en/files/21736>

health-service professionals, including psychologists, psychiatrists and general practitioners, with regard to the rights and specific needs of transgender people, with a special focus on the requirement to respect their privacy and dignity.

Another important PACE document is Resolution 2191 (2017) - **Promoting the human rights of and eliminating discrimination against intersex people** that comprehensively deals with the rights to physical integrity and bodily autonomy, in terms of both health treatment and civil status – legal gender recognition.<sup>15</sup> It calls on member states to end the pathologisation and harmful medical treatment of intersex persons, including surgeries and other medical treatment, and to protect intersex people against discrimination on the grounds of sex characteristics.

The European Commission against Racism and Intolerance (ECRI) protects LGBT persons' human rights through its standards. The **ECRI report on Bosnia and Herzegovina** (2017) recommends that the authorities regulate the procedure and conditions of gender reassignment, in line with Council of Europe guidelines.<sup>16</sup> ECRI recently published its report on the General Policy Recommendation no. 17 on preventing and combating intolerance and discrimination against LGBTI persons that develops a series of recommendations to the CoE member States, intended to assist them in preventing and combating discrimination and intolerance, among others, in the healthcare sector. Besides the general principles, it tackles prohibition of conversion practices, access to gender-affirming healthcare and improving intersex persons' rights.<sup>17</sup>

In 2018, the **European Committee of Social Rights of the Council of Europe** found that a legal requirement for transgender persons in the Czech Republic to undergo medical sterilisation in order to have their gender identity recognised impacts considerably a person's health, physical and psychological integrity, and dignity. The Committee emphasised the importance of the right to give freely informed consent when accessing medical treatment and the right to withdraw that consent.<sup>18</sup>

## Other international sources and developments

**European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union - Analytical Report** (2019) says that the social inclusion of intersex and especially transgender persons, who are particularly marginalised, also needs to be improved. Recommendation of the European Commission from the 5th meeting of the Subcommittee on Justice, Freedom and Security in the

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<sup>15</sup> The Resolution 2191 (2017) available at: <https://pace.coe.int/en/files/24232>

<sup>16</sup> The report available at: <https://rm.coe.int/third-report-on-bosnia-and-herzegovina/16808b5602>

<sup>17</sup> More on the General Policy Recommendation no. 17: <https://rm.coe.int/general-policy-recommendation-no-17-on-preventing-and-combating-intole/1680acb66f>

<sup>18</sup> Transgender Europe and ILGA-Europe v. the Czech Republic, Complaint No. 117/2015. European Committee of Social Rights. 1 October 2018. <https://hudoc.esc.coe.int/eng?i=cc-117-2015-dmerits-en>. See also TGEU and ILGA-Europe's joint submission here: <https://tgeu.org/wp-content/uploads/2018/10/cc-117-2015-report-en.pdf>. In: Dodo Karsay (2018), Protecting LGBTIQ rights in Europe. Submission to the second review of the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5). ILGA-Europe, Transgender Europe, OII Europe, available at: <https://tgeu.org/wp-content/uploads/2018/10/COE-Submission-18-TGEU-IE-OII.pdf>



framework of the Stabilisation and Association Agreement between the European Union and Bosnia and Herzegovina held in December 2020, reads: “Simplify the process of legal gender reassignment for transgender people and strengthen their social inclusion”.<sup>19</sup>

## **E. Understanding LGBTI Experiences and Discrimination in accessing healthcare in BiH**

In BiH there are no state-led research-surveys on the social position of LGBTI persons, their experiences, needs and the challenges they face in society. Sarajevo Open Centre (SOC), a CSO that deals with LGBTI persons’ human rights and equality, conducted **research on the needs and challenges LGBTI persons face in BiH** in 2017 and 2023. In 2023, SOC also did **research on public attitudes towards LGBTI persons in BiH** and following are some of the findings of both of these studies.

According to the latest research of experiences, needs and challenges conducted by SOC in 2023<sup>20</sup>, of 48.13% of respondents who stated that they **experienced some form of discrimination**, 91.16% were discriminated against on the basis of sexual orientation, and 7.73% on the basis of gender identity/expression. Among the forms of discrimination experienced by respondents, the most common is harassment based on LGBTIQ identity, experienced by 43.88% of respondents. The research from 2017<sup>21</sup> had a similar finding, with as many as 81.7% of respondents who experienced discrimination stating that they had encountered this type of discrimination.

According to the findings of the 2023 research, the largest number of respondents encountered discrimination at school (29.33%), and many faced discrimination at the workplace (8.21%), in police stations (4.69%), health institutions (4.99%), colleges (12.02%), restaurants/cafes (13.20%) and psychological/psychotherapeutic/psychiatric counselling (2,93%).

In the 2017 research, 83.8% of respondents stated they did not **report the discrimination they experienced**, whilst the 2023 research found that 90.63% of respondents decided not to report discrimination. Just as in 2017, it is clear that there is a lack of trust in the institutions responsible for protection against discrimination, and that the reluctance of persons who have experienced discrimination to report these cases makes discrimination less visible and hinders efforts to combat it. In 9.38% of cases when respondents decided to report discrimination, they decided to seek support from civil society organizations (35% of them) and from the Human Rights Ombudsman Institution (15%), which indicates a low level of trust in judicial institutions, and bypassing the civil court procedure as a mechanism for proving and ending discrimination.

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<sup>19</sup> More available at: <https://archive.europa.ba/wp-content/uploads/2019/05/20190529-bosnia-and-herzegovina-analytical-report.pdf>

<sup>20</sup> The research included 401 respondents (LGBTIQ+ persons).

<sup>21</sup> Amar Numanović (2017), Numbers of Equality 2. Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017 - Analysis of Findings. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/en/numbers-of-equality-2-research-on-problems-and-needs-of-lgbti-persons-in-bosnia-and-herzegovina-in-2017-analysis-of-findings/>

According to **SOC research conducted among the general public in BiH – attitudes towards LGBTI persons**<sup>22</sup>, 35,3% of citizens think that LGBTIQ+ persons are “sick” and “need treatment”, whilst 41,8% think otherwise, and 22,9% stated ‘don’t know’. Research points that the polarity of attitudes depends on the level of closeness and emotional attachment, meaning the greater the degree of social distance, the easier it is for respondents to accept LGBTIQ+ persons. So, 40% of respondents stated it is acceptable to have LGBTI persons as neighbours, university/school colleagues, co-workers or superiors at work. However, when it comes to family relationships, the acceptance is decreasing – for 34% of respondents it is still unacceptable to have LGBTIQ+ persons as family members and 43% of them considers it unacceptable to have an LGBTIQ+ child.

In the public opinion survey in 2023<sup>23</sup>, over 66% of respondents from Bosnia and Herzegovina believe that LGBTI persons should not express their identity outside their four walls. Although this regional survey from 2023 indicated that 70% of the respondents from BiH have this attitude, the public opinion survey also conducted in 2023 by SOC indicates a significantly lower percentage of people who share this opinion, only 16% of them, while an additional 4% are exclusively against the promotion of LGBTI persons. The difference in percentage can be attributed to various factors, and mostly to the difference in research methodology and the representativeness of the sample of respondents.

In terms of **access to healthcare**, the following are data from the BiH 2023 survey:

- 88% of respondents consider that LGBTI persons should have access to health insurance;
- 28,4% ranked discrimination as one of the issues LGBTI persons face;
- 5,7% of respondents consider that LGBTI persons do not have access to affirming, equitable healthcare;
- 27,5% of respondents consider that transgender persons do not have the right to legal gender recognition in line with their gender identity;
- 43% of respondents consider not acceptable for a trans person to get gender affirming care;
- 20,7% of respondents support the right to self-determination - legal gender recognition, without the mandatory surgical transition;
- 61,3% of respondents do not think the costs of gender affirming healthcare should be financed by the mandatory health insurance.

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<sup>22</sup> The research included 1023 respondents – general population. SOC (2023), Acceptance from a Distance: Attitudes Towards Homosexual, Bisexual, Trans and Intersex People in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/prihvatanje-s-distance-istrazivanje-stavova-prema-homoseksualnosti-biseksualnosti-transrodnosti-i-interspolnosti-u-bih/>

<sup>23</sup> Amarildo Fecanji (2023), Attitudes towards LGBTIQ+ People in the Western Balkans. Analytical Report of Public Opinion Poll. ERA - LGBTI Equal Rights Association for the Western Balkans and Turkey, available at: <https://lgbti-era.org/wp-content/uploads/2023/06/Analytical-Report-2023-LGBTIQ-Public-Opinion-Poll-Western-Balkans-FINAL-compressed.pdf>

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### 3. Overview of the healthcare system in Bosnia and Herzegovina

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It is important to present and briefly explain the political system of Bosnia and Herzegovina to better understand how the healthcare system works.

Bosnia and Herzegovina's political structure is complex comprising two entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) – and one District – the Brčko District (BD). The Federation is divided into 10 cantons - decentralised; the Republika Srpska is centralised. Each of these structural units has its own constitution, whereas the Brčko District has a Statute. Laws and institutions exist at all of these levels: entity/district and cantonal.

Laws and other public policies of importance for the improvement of LGBTI people's equality are under the jurisdiction of the state, Entities, cantons, and Brčko District. This complexity points to the need for a coordinated approach, developing capacities and raising awareness of the needs of LGBTI people at all levels of government. The work on advancing LGBTI people's equality must not be solely under the jurisdiction of the state and entity-level institutions; rather it is important that other institutions, especially at the level of cantons and Brčko District, undertake measures to revoke systematic discrimination against LGBTI people, and work on improving the equality of LGBTI people.<sup>24</sup>

Therefore, the implementation of the Council of Europe Recommendation CM/Rec(2010)5 to member States on measures to combat discrimination based on sexual orientation or gender identity depends on ministries and institutions at state, entity/district and cantonal level, which arguably makes the entire decision-making process slower than in the neighbouring countries. However, despite the complexity, BiH adopted the Anti-Discrimination Law which lists sexual orientation and gender identity as grounds for prohibition of discrimination, as do the criminal codes of RS and FBiH, and the Law on Sports in BiH; there are also other laws which stipulate only sexual orientation as a ground for prohibition of discrimination, such as the entity labour laws. Thus, a lot of work remains to be done, especially regarding the implementation of these laws and amending the existing ones. It is also necessary to make legislation more intersex inclusive, since the rights of intersex people remain at the margins of LGBT rights. The Anti-Discrimination Law is the only law which lists sex characteristics as a ground for prohibition of discrimination, but all other laws should accordingly be harmonised with it.<sup>25</sup>

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<sup>24</sup> Amil Brković, Branko Ćilibrk et al. (2023), 2023 Pink Report - Annual Report on the State of Human Rights of LGBTI People in Bosnia and Herzegovina. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/en/pink-report-2023-annual-report-on-the-state-of-human-rights-of-lgbti-people-in-bosnia-and-herzegovina/>, page 67

<sup>25</sup> Amina Dizdar (2018), Monitoring of the Implementation of Committee of Ministers' Recommendation CM/Rec (2010)5 on Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/site/wp-content/uploads/2018/09/Report-Monitoring-Recommendation-CM-Rec-2010-5.pdf>, page 12



### 3.1. Legislation, policies, and measures on healthcare

This section presents and elaborates the key healthcare **legislative documents**, such as laws, bylaws, strategic documents, guides, rulebooks, but also the relevant **public policies and measures** that deal with healthcare and specifically LGBTI persons' human rights in this regard. Given the many legislative documents in BiH due to its complex political structure, in the following text only a couple of the most significant ones for accessing healthcare will be mentioned.

The international and national legal framework of Bosnia and Herzegovina ensures the protection of human rights and freedoms for all its citizens, and the preamble of the BiH Constitution states that the rights and freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms and in its protocols are directly applicable in Bosnia and Herzegovina, and that these Acts have priority over all other laws.

The **universal access to health care**, its **availability** and **comprehensiveness** are principles that are proclaimed directly in BiH by the laws on health care at the entity level, i.e. Brčko District BiH, but also by international documents ratified and signed by BiH.

According to Article 3, Paragraph 1 of the Law on Health Care of the FBiH<sup>26</sup>, every person has the right to health care and to the possibility of achieving the highest possible level of health in accordance with provisions of this law and the Law on Health Insurance, as well as the regulations adopted on the basis of these laws. A more detailed elaboration of the basic principles of health care is normatively elaborated through the provisions of articles 18 to 25 of the same law.

Legal regulation of the principles in question is not limited to declaring the basic principles of this legal field, but constitutes the obligation of the FBiH to provide and ensure **physically, geographically and economically accessible health care for citizens, with the prohibition of discrimination on any basis in its provision**. Through the principle of **solidarity** prescribed by the provisions of Article 20 of this Law, the tendency is established that health care is realised by organising a health insurance system in which all citizens are covered by health care, and the principle of **comprehensiveness** from Article 21 of the same Law implies the realisation of health care by including all citizens of the Federation in the healthcare system, with the application of unified healthcare measures and procedures that include health promotion, disease prevention at all levels, early diagnosis, treatment and rehabilitation.

The provision of Article 26, paragraph 1 of this Law prescribes that every citizen has the right to health care while **respecting the highest possible standard of human rights and values**, that is, each person has the right to physical and psychological integrity and to the security of personality, as well as to respect for the persons' moral, cultural, religious, and philosophical beliefs.

Similar provisions are present in the Republika Srpska and Brčko District laws on health care: equality, availability, comprehensiveness, continuity, and coordination, as well as that health care is provided without discrimination on any basis.

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<sup>26</sup> Official Gazette of the FBiH", number: 46/10 and 75/13

Entities' laws on patients' rights, duties and responsibilities have the purpose to enable patients equal, appropriate, continuous, high-quality and safe healthcare, which is based on a partnership relationship between patients, as recipients of health services and health workers, as providers of health services. The law prohibits any form of discrimination, including discrimination based on gender and sexual orientation, when delivering health services. Article 6 defines patients' rights, some of which are particularly important for the work with LGBTI persons: availability of health care, confidentiality of information and privacy and preventive measures in preserving one's health care.

**Other relevant legislation** includes: laws on medicines and medical devices, laws on infertility treatment by biomedically assisted fertilization, on medical chambers (doctors of medicine professional associations), entities' decisions on determining the basic package of health rights, decisions on establishing priority vertical health care programs, orders on health care standards and norms from compulsory health insurance etc.

### 3.2. Healthcare institutions, medical facilities, and their competencies

Provision of health care in BH is dependent on a number of stakeholders, whose scope of authority is in establishing and implementing healthcare laws, public policies and medical practices in different aspects of the healthcare system. The table below shows BiH healthcare institutions and their competencies.

INSTITUTION	COMPETENCY
<b>Ministries of health</b> entities, cantons, district levels	Creating and implementing healthcare policies and legal regulation
<b>Health insurance funds</b> entities, cantons, district levels	Prescribing the conditions for health insurance of different social categories, monitoring its implementation  Establishing medicines' list covered by the funds  Cooperating with healthcare facilities for the provision of healthcare
<b>Public health institutes</b> entities, cantons, district levels	Preserving and improving the health of the population through organized comprehensive public health activities aimed at physical and mental health, preservation of the environment, prevention of risk factors for the occurrence of diseases and injuries based on public health procedures aimed at health promotion, disease prevention and improvement of quality of life
<b>Primary, secondary and tertiary healthcare/ medical facilities</b>  local health centres, hospitals, clinical centres – public and private	Providing healthcare
<b>Medical chambers</b> (doctors of medicine professional associations)	Gathering MDs of all specialties, organising expert-scientific events and training
<b>BiH Agency for drugs and medical devices</b>	Import and registration of medicines, issuing licences for use in healthcare practice
<b>Federation BiH Agency for quality and accreditation in healthcare</b>  <b>Republika Srpska Agency for certification, accreditation and improvement of the quality of healthcare</b>	Implementation of the certification and accreditation procedure of public and private healthcare institutions/facilities at all levels of healthcare, as well as monitoring and improving the quality of health care

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## 4. Bosnian-Herzegovinian progress regarding specific LGBTI persons' healthcare topics

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### 4.1. Analysis of the regulatory and institutional reforms undertaken in BiH on LGBTI persons' access to healthcare

Some progress has been made regarding improving the legal and institutional frameworks for the recognition, enjoyment, and exercise of LGBTI human rights in the healthcare sphere.

Several cantons in the Federation BiH adopted Gender action plans (GAPs) that do contain specific measures/activities to be undertaken for the improvement of LGBTI persons' access to healthcare. Those GAPs mainly expired/ are no longer in effect since the end of 2022 and new ones are awaiting adoption. Those cantons that adopted GAPs include Sarajevo Canton, Tuzla Canton, Zenica-Doboj Canton, Una-Sana Canton and Bosnian Podrinje Canton.

None of the cantonal GAPs' planned measures and activities (regarding the cantons that adopted GAP) for the period 2019-2022 have been fully implemented. The following are the measures that address transgender and intersex' persons position and human rights:

- *Development of a Guide for Health Professionals on the Best Treatment of Transgender and Intersex Persons* and;

*Adoption of the Rulebook on Gender Reassignment in Cantonal Medical Facilities.*  
Competent/responsible institutions: cantonal ministries of health.

In 2022, the State ***2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina***<sup>27</sup> was adopted, which recognises that social inclusion of particularly marginalised trans persons should be improved. The structure of the Action Plan is based on human rights standards and fields from the Recommendation CM/Rec(2010)5, and provides an overview of the measures that should be taken for the enjoyment of human rights of LGBTI persons. Although the Action Plan has been applied as of 2021, it was adopted in summer 2022, therefore the implementation period is less than 18 months.

The plan demonstrates BiH's commitment to contribute to respect, protection and realisation of the rights and freedoms of LGBTI people. The adoption of the Action Plan strives to contribute to a greater degree of enjoyment of the rights and freedoms of LGBTI persons, the fight against discrimination in all spheres of society, capacity building in the institutions, various training programmes, and a series of proactive measures intended to raise the awareness of the general public about prejudice and stereotypes in our society. Finally, the Action Plan represents Bosnia and Herzegovina's response to obligations arising from numerous international documents, but also to pre-accession obligations in the process of joining the European Union.

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<sup>27</sup> Action Plan available here: <https://arsbih.gov.ba/project/akcioni-plan-za-unapredjenje-ljudskih-prava-i-osnovnih-sloboda-lgbti-osoba-u-bosni-ihercegovini-za-period-2021-2024-godine/>

Neither of the planned activities have been fully implemented by the time of this report:

- *Analyse and promote existing modalities of gender reassignment for BiH nationals (medical and administrative aspects);*

Competent institutions: entities/district ministries of health and interior

- *Training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI persons.*

Competent institutions: cantonal/entities/district education and health institutions in partnership with CSOs.

An example of **negative legislative practice** is that in September 2022 the Republika Srpska National Assembly adopted a new Law on Mandatory Health Insurance, defining “diagnosis and treatment of sexual dysfunction or sexual inadequacy, including impotence, health services, drugs and medical devices related to gender reassignment or reversal of previous voluntary surgical sterilisation” as procedures that shall not be financed from mandatory health insurance funds. With this legal intervention, gender affirming healthcare has become even more inaccessible to trans people, and it is clear that the legislator treats it as an aesthetic procedure, not as a necessary health service. The problem is also the ambiguity of the term “gender reassignment”, because it lacks a definition – it is unclear which medical procedures fall under gender reassignment.

#### 4.2. Specific topics of relevance for LGBTI persons’ access to healthcare

At the beginning of this chapter, it is important to note that there is lack of state-sponsored research and data collection, which is the case for other areas the Recommendation covers. Thus, the topics presented in the following part of the report mostly rely on CSOs research and advocacy activities. The documents addressing certain aspects of LGBTI persons’ access to healthcare, specifically related to Gender-affirming healthcare (coverage of medical costs) and legal gender recognition, include the 2016 Human Rights Ombudsman Institution Special Report on Human Rights of LGBT Persons in Bosnia and Herzegovina<sup>28</sup> and the State’s 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina<sup>29</sup>.

### **Discrimination in accessing healthcare on grounds of SOGIESC**

In 2018, Sarajevo Open Centre deployed a questionnaire among competent healthcare institutions with the scope of reporting on the implementation of the Recommendation. Following are some of the data gathered.

According to the FBiH Ministry of Health, one of the ministries that responded to the questionnaire, all measures have been taken to **ensure equal treatment of LGBTI persons in healthcare and all individuals have access to health education, care and treatment programmes irrespective of their sexual orientation or gender identity.**

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<sup>28</sup> Report available here:

[https://ombudsmen.gov.ba/documents/obmudsmen\\_doc2016110413333704bos.pdf](https://ombudsmen.gov.ba/documents/obmudsmen_doc2016110413333704bos.pdf)

<sup>29</sup> Action Plan available here: <https://arsbih.gov.ba/project/akcioni-plan-za-unapredjenje-ljudskih-prava-i-osnovnih-sloboda-lgbti-osoba-u-bosni-i-hercegovini-za-period-2021-2024-godine/>

The FBiH Law on the Rights, Obligations and Responsibilities of Patients prohibits discrimination of patients on ground of their sexual orientation. It is an important legal instrument which provides a list of rights of patients, some of which are significant for the work with LGBTI persons. It guarantees to them the right to healthcare in accordance with their health condition, needs and financial means.

However, this right is not fully implemented since BiH does not have specialised health services for transgender persons and the needs of LGBTI persons have not been adequately met. Healthcare workers are obligated to respect the right to privacy of patients, which in practice, means that they are not supposed to reveal to others personal information about patient's sexual orientation, gender identity or sex characteristics. The report found that **LGBTI persons are invisible in BH healthcare system**.<sup>30</sup> They are not being recognised as a vulnerable social group, while health workers share the same opinions, convictions and norms as the majority of society, which leads to non-sensitized and unequitable provision of healthcare. Healthcare facilities' non-health staff are usually the first point of contact of LGBTI persons with the health system, so they need to take all necessary measures to help the patients through the system. Healthcare professionals are crucial in providing equitable, affirming healthcare and assuring that sexual orientation/gender identity/sex characteristics are not pathologised and given the same care as any other individual, having in mind the specific needs of LGBTI persons.

In the BH healthcare system, **fertility treatments** are not available to LGBTI persons, i.e. the laws and practices on infertility treatment do not recognize LGBTI persons, nor are the treatments available to LGBTI persons. Also, there are no **family planning services** available, which is a result of same-sex partnerships not being legally recognised. Family planning services are also not available to single women. Preventive healthcare is available, but the quality of such services for LGBTI persons remains a question and research and work with the community coordinated by human rights CSOs shows the trust in healthcare institutions is not high. There is no research in BiH that provides an overall analysis regarding the quality of healthcare and advice in that department. Most of the knowledge available is the one that comes from CSO-conducted surveys on LGBTI persons' experiences in the healthcare system, among other spheres of life.<sup>31</sup>

Regarding **availability of HIV/AIDS prevention and care**, BiH has centres for anonymous, confidential and free counselling and testing for HIV and hepatitis C virus (HVC), testing for other STDs (hepatitis B virus, syphilis, gonococcus, genital herpes, chlamydial infection and other sexually transmitted infections) can be carried out, with a prior referral from a primary medicine doctor.

Care-treatment of persons with HIV/AIDS is provided in the infectious diseases clinics of Sarajevo, Tuzla and Banja Luka clinical centres. In FBiH, antiretroviral drugs (ARV) are provided by the Federal Solidarity Fund - Health Insurance and Reinsurance Fund - Ministry of Health. Only registered medicines, which are on the List of Medicines of the FBiH Solidarity Fund, can be made available to the patient. ARV drugs are not available on the market. Only patients with health insurance have the right to treatment. ARV

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<sup>30</sup> Amina Dizdar (2018), *ibid*, page 27

<sup>31</sup> For more information, see section Understanding LGBTI Experiences and Discrimination in accessing healthcare in BiH

treatment is free and the drugs are dispensed at the Clinic for Infectious Diseases in Sarajevo, Tuzla and Banja Luka.

When it comes to anonymous and confidential testing, this is mostly available in clinics in Sarajevo, Tuzla, Bihać, Zenica, Travnik, Trebinje, Bijeljina and Banja Luka, as well as counselling centres within the public health institutes. Health ministries provide contact information online. PrEP as one of the HIV prevention strategies, as well as PEP, are available at the University of Tuzla Clinical Centre and KCUS Clinic for Infectious Diseases from the beginning of 2016. The target population for PrEP in KCUS was the 'men who have sex with men' (MSM) population. Unfortunately, as of 2021, neither PrEP nor PEP is available at the KCUS Infectious Disease Clinic. Rapid self-tests are not available on the BH market.

A couple of CSOs developed several awareness-raising campaigns and are working on prevention and education on sexually transmitted infections, focusing on removing stigma.<sup>32</sup> Public health institutes create public actions/campaigns on significant awareness-raising dates.

Sarajevo Open Centre is the only stakeholder in BiH that records discrimination cases on a regular basis, on the grounds of sexual orientation and gender identity. Unfortunately, despite persistent local and international CSOs advocacy, state judiciary databases have not yet set up SOGIESC-based data segregation in human rights violations and hate crimes cases. According to the **SOC database - recording discrimination cases**, from 2017 until 2022, four LGBTI persons reported experiencing discrimination in the healthcare domain. These numbers represent cases monitored by SOC in public or reported by LGBTI persons through the internal system of documentation of human rights violations of LGBTI persons. In 2021 and 2022, 10 trans persons sought information on getting gender affirming healthcare in BiH, two persons wanted to know how to get a refund of hormone therapy costs, one person got the refund in Republika Srpska, while one person asked SOC for help in raising funds for trans-specific healthcare.

Almost no national health plan, health survey or specific healthcare document, such as medical curricula, training courses and materials in BiH make reference to the specific needs of LGBTI persons or ways to address them.

At the Medical School in Prijedor, the module on "*Mental health in the community*" addresses the topic of transgender persons. The literature used was "Mental Hygiene" by MD Nera Zivlak Radulović, which contains a section discussing mental health of trans persons.

Discrimination in the process of **donating blood** is still present in Brčko district, in terms of the questionnaire that voluntary blood donors should fulfil before donating blood. Among the persons who are not eligible for blood donations (risky behaviour categories) the questionnaire defined "men who have had sex with men". While in the previous years, thanks to CSOs pressure and complaints, the FBiH and RS institutes for transfusion medicine changed the questionnaires by deleting this category, it still remains in the Brčko district questionnaire. Unlike the trend observed in a number of European

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<sup>32</sup> More info available here: <https://soc.ba/site/wp-content/uploads/2023/03/Testiranje-na-spolno-prenosive-bolesti-1.pdf>

countries, the policy in Brčko District part of BiH continues to discriminate MSM in blood donation policies.

In light of the **intersectionality of marginalised identities and a human rights approach**, it is important to state that in general, **persons with disabilities** in BiH face challenges in accessing healthcare, especially women in gynaecological examinations and interventions, because of limited access to medical facilities according to their needs; buildings and medical objects/instruments not equipped and adapted to their needs, and medical staff not educated enough on how to treat persons with disabilities. Also, there is a significant issue of lower quality and accessibility of healthcare, especially preventive, in rural areas or places where no bigger medical centres exist. The issue of general low quality of healthcare is an issue for LGBTI persons as well, and the lack of education of professional healthcare staff is an obstacle in meeting the healthcare needs of LGBTI persons.

The lack of segregated data available on the position of elderly and migrant LGBTI persons in the BH healthcare system means that little is known about these populations' access to health.

Lack of official data limits the capacity of the State to engage in evidence-based efforts to improve the healthcare system in all its phases and segments and make healthcare provision more accessible to LGBTI persons.

Regarding reporting discrimination, just as in the previous research from 2017 on the needs and challenges of LGBTI persons in BiH, the answers to the 2023 SOC survey<sup>33</sup> question *why respondents did not report discrimination* reveal deep fears and obstacles faced by LGBTIQ persons. Distrust in official persons in the procedure, fear of identity disclosure and lack of information about possible help and application procedures are some of the key factors. The length of court proceedings, possible financial costs, fear of retaliation and concern about the reaction of family and friends are also expressed motives for not reporting cases of discrimination. These data not only highlight the complexity of the problems faced by LGBTIQ persons, but also indicate the importance of strengthening support, information and trust in order to encourage the reporting of cases of discrimination and provide them with a sense of security and the possibility of achieving justice.

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<sup>33</sup> The report available here: <https://soc.ba/brojevi-koji-ravnopravnost-znace-3-analiza-rezultata-istrazivanja-problema-i-potreba-lgbti-osoba-u-bih-u-2023-godini/>



## Trans-specific and trans-affirming healthcare services: regulation, availability, costs

The **key issues** transgender and gender diverse persons face in accessing healthcare include:

### 1. Scarce and unregulated trans-specific healthcare

At the time of writing this report, no concrete institutional actions concerning trans-specific healthcare have been taken. No guide for health professionals regarding optimal treatment protocols and options for trans people had been developed, nor had steps been taken to regulate medical and legal procedures in relation to them.

None of the planned measures and activities outlined in the **cantonal GAPS', adopted by certain cantons** for the period 2019-2022, have been fully implemented. These include: *the development of a Guide for Health Professionals on the Best Treatment of Transgender and Intersex Persons*, and *the adoption of the Rulebook on Gender Reassignment in Sarajevo Canton Medical Facilities*.

The State **2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina**, adopted in 2022, recognises that social inclusion of particularly marginalised trans people should be improved. The competent institutions should be the ones initiating and implementing the following planned measures/activities:

- *Analyse and promote existing modalities of gender reassignment for BiH nationals (medical and administrative aspects);*
- *Training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people.*

One of the rare examples of the provision of gender affirming health services is the UCC of Republika Srpska, where psychological counselling services for the transition process, as well as psychological preparation for procedures for changing the gender in personal documents, have been provided at the Psychiatry Clinic for the last five years. They also issue endocrinologists' recommendations for changing the gender marker, as well as expert opinions for the continuation of the transition in Serbia.

In BiH, the situation is such that transgender people fully bear the costs of hormonal therapy, given that the necessary therapy is not on the essential list(s) of medicines. According to health insurance funds, transgender persons can do the tests required for an endocrinological assessment before starting hormone therapy, but given that public and private clinics did not respond to previous inquiries posed by civil society organisations, no information is available as to which tests can be done at public clinics, nor is information available about whether health insurance funds would cover the costs of medical examinations that cannot be obtained at public clinics, but are offered in private ones.

## **2. Lack of trained staff and specialised centres or teams**

Healthcare institutions in BiH do not have staff trained to support people in the process of transition, through all its stages, that is, there is no reference medical centre or medical team that would lead and monitor the process of trans-specific transition through an interdisciplinary approach.

Given that transgender persons from BiH predominantly seek certain healthcare services related to gender affirming care in neighbouring countries, civil society organisations have embarked on a series of activities to facilitate and provide transgender persons in BiH access to trans-inclusive healthcare and services. Since 2018, SOC has organised training for BiH medical professionals from various branches of medicine, focusing on the medical aspects of gender affirming care, human rights and the needs of trans persons within the healthcare system. They have also developed the manual “Medical Aspects of Sex Reassignment: Manual for Medical Professionals and Healthcare Workers on the Provision of Services and Support to Trans Persons in the Transition Process”<sup>34</sup>. This resource intended to help domestic healthcare workers, and insights from both activists and medical perspectives, drawing on experiences in working with trans persons. The authors are trans activists and medical experts from Croatia, Montenegro and BiH.

Based on previous activities conducted by SOC, and in response to the expressed need by training participants and trans persons in BiH to have a centralised resource containing the names and contact information of doctors and psychologists offering trans-specific medical care and support, a list of experts in BiH (albeit limited in number) was compiled. All the professionals on the list have completed initial training provided by SOC and are sensitised to provide trans-inclusive support and healthcare. The list is accessible on the SOC website and serves as a database for trans persons seeking healthcare services.

At the end of 2022, an online training on the topic of healthcare of trans people was recorded and released by SOC, in cooperation with Pharma Press d.o.o. and an online platform for training and professional development of medical doctors in BiH - E-medikacija. Medical doctors from BiH had the opportunity to watch/listen to a training resource on “Medical aspects of trans-inclusive healthcare – gender reassignment” that is publicly available online.<sup>35</sup>

While recognising the desirability of training and capacity building of health practitioners in BiH as a long-term solution, LGBTI rights advocates hold that covering the costs of gender affirming care accessed in neighbouring countries where expert provision already exists, is a much simpler and faster solution.

## **3. Noncoverage of gender affirming care**

The costs of gender affirming care are borne by trans persons themselves, because the official health insurance system does not reimburse them, which further prolongs the transition process and increases the trans persons’ financial costs.

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<sup>34</sup> Manual available here: <https://soc.ba/en/medical-aspects-of-gender-reassignment-manual-for-medical-professionals-and-healthcare-workers-on-providing-services-and-support-to-trans-persons-in-the-transition-process/>

<sup>35</sup> Online training available here: <https://www.youtube.com/watch?v=Nrc7KKBuNw4>

In 2018, SOC developed the **gender reassignment cost assessment**, and provided recommendations for the improvement of the legal and medical approach to transgender persons in BiH<sup>36</sup>, with a comparative analysis of costs in Croatia and Serbia. Costs for trans-specific services needed, depending on whether it is those assigned female at birth or those assigned male at birth who need gender affirming healthcare services, and the type of service required (psychological counselling, psychiatric counselling, endocrinological counselling and services, surgical procedures) range from 5 BAM for testosterone hormones to almost 16.000 BAM for gender affirming surgeries for trans women (not including the price of implants). In a situation where state clinics cannot offer the necessary tests and opinions before prescribing hormonal therapies and accompanying health services, there is a possibility of covering the costs of such examinations from the health insurance fund, while the examinations would be performed at private clinics.

Between October 2021 and December 2022, SOC implemented a project that focused directly on the need to adequately regulate legal gender recognition in Bosnia and Herzegovina, as well as cover the costs of trans-specific healthcare through the BiH health insurance system. One of the results that emerged from the project, i.e., SOC's cooperation with relevant institutions in the field of healthcare (through advocacy meetings), was an invitation from the FBiH Medical Chamber to write a paper and hold a lecture at the **Medical Law Congress** held in Tuzla, in November 2022. SOC presented the paper: *Between Law and Medicine: Legal-Medical Aspects of Transgender and Intersex Inclusive Healthcare in Bosnia and Herzegovina*.<sup>37</sup>

SOC jointly developed and offered models with the advocacy group of trans people and their parents and the institutions to address the issue of covering the costs of gender affirming care through the health insurance system, which would help strengthen the knowledge and capacity of relevant institutions to implement current legal solutions in favour of transgender human rights and equality. The specific public policy proposals that were developed will be presented in the recommendation section of this report.

## Legal gender recognition in BiH

The procedure to register a change in legal gender in the public registers and personal documents in the administrative-territorial units of BiH (entities, cantons, district) is generally perceived as inefficient, vague, potentially degrading for trans people and does not respect the rights to self-determination, privacy, and bodily integrity of trans people.

It is not clear in the existing regulations in BiH whether legal change of sex marker is conditioned by "complete" or "partial" (medical) gender reassignment. Namely, no law or by-law in the entities or the District defines what gender change is as performed by a health institution, what constitutes medical documentation proving trans-specific healthcare, and which is the competent health institution to interpret it. Furthermore, it

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<sup>36</sup> Policy paper available at: <https://soc.ba/procjena-troskova-prilagodbepola-preporuke-zanapredenje-pravnog-i-medicinskog-pristupa-transrodnim-osobama-u-bosni-i-hercegovini/>

<sup>37</sup> The Congress Abstract Collection is available at: <http://kongres.fmcbih.ba/bs/zbornik-radova/>

is necessary to recognise life in a different gender identity as a ground for administrative gender change procedures.

The current practice and the lack of regulation of gender marker change leads to a conclusion by state authorities that gender change procedures in personal documents can only be carried out after “complete” medical gender reassignment (as a rule), which implies reassignment surgeries of primary and secondary sex characteristics, often including sterilisation of trans persons, i.e., deprivation of reproductive functions. This means that the right to private and family life is not respected. In Republika Srpska, there are examples where the gender marker in personal documents was changed after an opinion from a psychiatrist and an endocrinologist, if the person has started a transition process. Such practice is not in accordance with the self-determination principle of respecting the choices of trans persons. The recommendations on this issue are presented in the last chapter of the report.

SOC advocated for the adoption of legal solutions that would systematically and comprehensively regulate the procedure for changing the sex marker in personal documents and the Unique Identification Number. These legal changes would allow trans persons to change their sex marker at their request and in accordance with their right to self-determination, without the need for prior medical intervention. The Federation BiH authorities are currently considering CSO proposed solutions to legal gender recognition based on the principle of self-determination, bodily integrity and privacy.

## **Human rights of intersex persons in healthcare**

BiH explicitly protects intersex persons in its anti-discrimination legislation by prohibiting discrimination on the ground of sex characteristics. However, there is still a lack of clear medical guidelines and procedures on practice regarding the management of intersex variations in all healthcare facilities in BiH. This lack includes the absence of guidelines and protocols intended to prevent gender "normalisation", "gender assignment" or sexaltering surgical or other interventions on the external characteristics of an infant/child solely for the purpose of conforming their appearance to normative definitions of male or female, even when the child's health is not at risk. With Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe, a significant number of intersex people, health professionals and human rights organisations around the world are calling for a ban on all aesthetic medical procedures, unless the person involved provides informed consent.<sup>38</sup>

By the time of writing this report, in BiH no guide for health workers on the best treatment of intersex persons had been developed, nor had steps been taken to regulate medical and legal procedures in the case of persons with intersex characteristics.

In a recent exercise conducted by SOC information was requested from the registry offices of municipalities throughout BiH to determine the procedures for registering the sex of newly born intersex children. Not a single municipality/city (out of a total of 22 contacted)

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<sup>38</sup> Council of Europe Parliamentary Assembly's [Resolution 2191 \(2017\)](#): Promoting the human rights of and eliminating discrimination against intersex people

had cases where it was not possible to enter the child's sex as 'male' or 'female'. The municipalities/cities state that the health institutions where the children are delivered did not provide information on the birth of intersex children in the past five years (2017-2021), i.e., that all babies were recorded as male or female in the health institutions' forms. In addition, the municipalities/cities stated that until data collection for this Report, they had no cases where they needed to extend the legal deadline to enter the child's personal data, including sex. Furthermore, some municipalities/cities emphasised that they do not have any special guidelines/protocol in case of intersex new-borns and that the FBiH Ministry of Interior is the competent institution to adopt such regulations.<sup>39</sup>

SOC released Research on the Rights of Intersex Children in the Healthcare System of BiH in 2020 in response to a lack of research and analysis of the human rights situation of intersex persons in the BiH healthcare and legal systems.<sup>40</sup>

Analysis of responses from health institutions and facilities (ministries of health, health insurance institutes, clinical centres) reveal that the concept of intersex is not easily understood by health professionals in BiH, and that there are no records on the number of children born with intersex characteristics or clear, medically established procedures/guidelines for addressing cases of intersexuality, and that it is also unclear to what extent are parents/guardians of intersex children aware of the risks of certain medical treatments.

The research, and particularly the low engagement of the competent authorities in the study, means that the knowledge gap on treatment protocols for intersex variations remains unaddressed, which opens the question on how well the principle of the child's best interests is being upheld, i.e., the child's right to bodily integrity in relation to medical treatment. It is unclear and debatable what happens when intersex characteristics are discovered later in a child's development (adolescence), and when and to what degree adolescents are involved in making decisions about their bodily integrity. Other methods of providing psychological support to intersex children and their parents remain unknown. Another conclusion of this research is that medical staff are not adequately educated on all aspects of treating intersex children/persons.

SOC is currently trying to gather and analyse data from the yearly statistical reports issued by the statistics and public health institutes in BiH on the numbers of new-born intersex children, according to the ICD diagnoses related to variations in sex characteristics.

A "Handbook on Providing Ethical and Inclusive Healthcare to Intersex Persons" was also published by SOC to provide additional training and information to health workers in BiH health facilities on how to effectively treat intersex persons and provide them with

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<sup>39</sup> Amil Brković, Branko Čulibrk et al. (2023), *ibid*, p. 45, 46

<sup>40</sup> Vanja Burić (2020). *Bodies that Transcend the Binary 2: Research on Human Rights of Intersex Children in the Healthcare System of Bosnia and Herzegovina*. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/tijela-koja-nadilaze-binarnost-2-istrzivanje-o-pravima-interspolnedjece-u-zdravstvenom-sistemu-bosne-i-hercegovine/>

inclusive healthcare.<sup>41</sup> The Handbook is intended to be used as a model by BiH's competent authorities in developing guides and guidelines for the treatment of intersex persons. One of the goals of this Handbook is to foster informed collaboration between civil society organisation and leading healthcare facilities - clinical centres, hospitals, community health centres, and their professionals, in order to share information and raise awareness about intersex issues, as well as to contribute to the revision of outdated medical classifications.

Comprehensive data in the field would allow advocacy for the right of parents to transparent and accessible information on procedures and medical treatments when they have an intersex baby, as well as for the prohibition of medically unnecessary surgical procedures and sex-‘normalising’ treatments in healthcare facilities that are performed on intersex persons without their full and informed consent.

## **Mental health and psychosocial support to LGBTI persons**

Mental health care in BiH is organised starting from local health centres (primary healthcare), which means that each municipality has a mental health centre in its administrative-territorial scope. Mental health care is also provided in hospitals and clinical centres (part of the public healthcare system), and there are CSOs/ private practice that are organised as psychological counselling and psychotherapy service providers.

Republika Srpska does have a Mental Health Development Strategy (2020-2023.), whilst Federation BiH has not yet adopted such an important strategic document, after the Policy and strategy for the protection and improvement of mental health in FBiH (2012-2020) expired, nor does it regulate this area otherwise.<sup>42</sup> The Republika Srpska Law on Mental Health Protection does not tackle SOGIESC based discrimination in any way. The current and previously applicable strategic documents in BiH have not recognised SOGIESC in any way in relation to mental health. A step forward has been made by the FBiH Draft law on mental health protection (2023) with the following provisions proposals:

- Prohibition of discrimination - specified sexual orientation, gender identity and sex characteristics.
- Dignity and integrity of persons with mental disorders - protection from violence based on sexual orientation, gender identity and sex characteristics.
- Responsibilities for informing the public about mental health - struggle against stereotypes, prejudice and harmful actions towards people with mental health difficulties in all areas of life, including those based on age, disability, gender, sexual orientation, gender identity and sex characteristics.

Mental health professionals are awaiting the adoption of the law on the work of psychologists and psychotherapists, among others, to clearly regulate

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<sup>41</sup> Erin Vlahović; Kristian Randelović et al. (2020). Between the Sexes and Reality: Handbook for Medical and Healthcare Professionals on the Treatment of Intersex Persons. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/izmedu-spolova-i-stvarnosti-prirucnik-za-medicinske-strucnjake-inje-i-zdravstvene-radnike-ce-o-postupanju-s-interspolnim-osobama/>

<sup>42</sup> There is a Draft law on mental health protection established by the FBiH Government, that is currently in the public debate, awaiting comments and final proposal to be directed to the Parliament.



psychological/psychotherapy practices, because there are currently no expert criteria for opening such services.

Transgender and gender diverse persons can access mental health services, but not all mental health professionals are educated to understand their identities and follow their needs. It is important to note the importance they have in providing comprehensive, affirming healthcare to trans persons and are an important step in legal gender recognition that in BiH, unfortunately, is not legally defined and thus inaccessible on the basis of the self-determination principle.

Research on the needs and problems of LGBTI persons in Bosnia and Herzegovina conducted by SOC in 2017<sup>43</sup>, revealed that forms of exclusionary and violent interactions towards LGBTI persons cause serious psychological difficulties or crises. Namely, more than half of LGBTI respondents said they experienced psychological difficulties or crises due to social treatment. Stress, or episodes of stress, is a condition experienced by as many as 87.7% of respondents from those who report experiencing psychological difficulties. As for the more serious psychological difficulties, depression or episodes of depression, it is considered that 70.9% of respondents experienced them, while 64% of respondents who experienced psychological difficulties due to society's relationship to their identity experienced anxiety and panic attacks. As many as 38.4% of respondents had suicidal thoughts and/or attempted suicide. Eating disorders are not an insignificant condition either, and almost a third of the respondents had experienced them.

However, what research has shown is that LGBTI persons are reluctant to ask for professional psychological support due to lack of trust in existing services and fear from coming out. As some of the main reasons why they do not seek professional help they cite fear of revealing their LGBTI identity, doubt that these services help them, providers' insufficient competencies and sensitivity, as well as lack of financial resources for the provision of professional assistance services.

The availability and access to psychosocial and peer counselling services is also uncertain. LGBTI persons outside of Sarajevo have limited access to sensitised and adequate psychosocial support to address serious consequences of discrimination on the grounds of sexual orientation/gender identity/sex characteristics, such as severe depression and anxiety, suicidal thoughts, seriously endangering full participation in social life, especially in education and the workplace. On the other hand, there are currently only two organisations in the whole of BiH, both located in Sarajevo, that provide continuous professional peer and psychosocial support for LGBTI persons free of charge. Other organisations are either not sensitised or do not have the necessary reach, resources, experience and recognition within the LGBTI community.

SOC and Wings of Hope Foundation conducted a project "Regionalising LGBTI inclusive psychosocial support and access to mental health services in Bosnia and Herzegovina"<sup>44</sup>, during 2021 and 2022, that aimed at creating an environment in which LGBTI persons

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<sup>43</sup> Amar Numanović (2017), Numbers of Equality 2. Research on Problems and Needs of LGBTI Persons in Bosnia and Herzegovina in 2017 - Analysis of Findings. Sarajevo: Sarajevo Open Centre, available at: <https://soc.ba/en/numbers-of-equality-2-research-on-problems-and-needs-of-lgbti-persons-in-bosnia-and-herzegovina-in-2017-analysis-of-findings/>

<sup>44</sup> More on the project available here: <https://soc.ba/?s=regionalizacija>

are encouraged and supported in accessing mental health systems that provide inclusive and sensitised services, and strengthen and expand institutional networks (centres for mental health and centres for social work) and network of civil society organisations in Tuzla, Mostar, Zenica, Prijedor, Banjaluka, Bijeljina that provide psychosocial support for LGBTI persons in BiH – including psychotherapy sessions and peer to peer counselling. Throughout the project implementation, the psychosocial support services were free of charge for LGBTI persons.<sup>45</sup> Wings of Hope Foundation and Association for Psychological Assessment, Support and Counselling “Domino” continue to provide psychosocial support to LGBTI persons free of charge (through project cooperation with SOC).

There is the need to further regionalise<sup>46</sup> and make available different forms of support to LGBTI persons throughout the country, since until 2022, only Sarajevo had a systematic psychosocial support to LGBTI persons free of charge, through SOC services, cooperating with mental health professionals experienced in working on specific issues LGBTI persons face. SOC continues working with CSOs and psychological counselling centres to raise their capacities and expand the network of LGBTI inclusive spaces through the *LGBTInclusive Network* it launched. The network currently includes 13 CSOs working in different cities/towns in BiH.

The SOC project also aimed at strengthening the LGBTI community and empowering them in terms of preservation of well-being and care for one's own mental health – how to use the existing psychosocial support services adequately and accessibly. The project also sought to raise public awareness of the effects of minority stress<sup>47</sup> on the mental health of the LGBTI community.

Mental health protection and improvement strategic documents do exist in BiH, but these do not recognise the inequalities that LGBTI persons experience as a result of stigma, pathologisation, social and wider determinants such as policy, practices, attitudes etc. Several **psychologists’ and psychotherapists’ associations** have expressed their support to LGBTI persons on different occasions, stressing the importance of providing mental health care to everyone without discrimination.

So-called **conversion practices - “therapies”** are not researched in BiH, but based on personal accounts of LGBTI persons in a few documentaries and through psychological counselling provided by SOC and other CSOs, there are indications that a significant part of the LGBTI community have experienced such “reparative” interventions, both from mental health, medical professionals, and religious officials, even in the quackery practice. The majority of respondents in the 2023 SOC survey - 95.58% - reported that they were not subjected to any procedures or treatments to change their sexual orientation/gender

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<sup>45</sup> The following CSOs were part of the project: Tuzla Open Centre (Tuzla), Youth Association “Kvart” (Prijedor), Women’ Rights Centre (Zenica), Centre for Psychotherapy “Budi OK” (Bijeljina), Centre for Psychological Support “Sensus” (Mostar).

<sup>46</sup> Regionalization of psychosocial support implies the introduction and development of support services for LGBTI persons in as many regions/areas of BiH as possible.

<sup>47</sup> Minority stress refers to the excess stress that members of stigmatized groups experience because of the prejudice and discrimination they face. Persons who represent a minority group in society are additionally exposed to the negative influence of social stress, because they encounter prejudice and discrimination of the majority population. Minority stress has a strong and negative impact on psychological health and overall wellbeing of the person. In working with LGBTI persons, it is important to address attention to daily exposure to this type of stress and its consequences for society as well as the individual.



identity/sexual characteristics against their will. However, 17 of them, which is 4.42%, reported that they had undergone such treatments. Of the persons subjected to conversion treatments, 77.78% did not agree to the treatment, and were subjected to it against their will.

Conversion practices” are not explicitly banned in BiH, but certain practices with those elements could be defined and sanctioned through criminal codes’ legislation, such as medical malpractice, arbitrary treatment without the consent of the person being treated, or quackery.

Much of the psychosocial services accessed by LGBTI persons is through the activities provided by CSOs. Among its programmes and activities, SOC coordinates peer to peer and psychological counselling for LGBTI persons in BiH. Peer counselling is friendly, encouraging conversation, which requires the ability of one to listen with empathy and understanding. It offers support and help to people with similar background, age or life challenges. SOC engages five peer counsellors providing services to the LGBTI community, who are on the LGBTIQ+ spectrum themselves. Psychological counselling is achieved through long-term collaboration with a group of educated and affirming psychologists and psychotherapists. They are in continuous training and education on working with the LGBTIQ+ community, from coming out processes to transgender issues.

The existence of such services has far-reaching significance for the LGBTI community not only in Sarajevo, but the whole country, given that lesbian, gay, bisexual, trans, and intersex people oftentimes experience discrimination from psychologists and therapists. LGBTI persons in BiH are still a marginalised social group even when visiting or using the services of primary healthcare. Often out of fear of judgement, many LGBTI persons are not out to their practitioners and therapists, which often leads to attributing the condition of depression or anxiety to other factors. Access to psychological counselling through LGBTI affirmative approaches that address the specific needs and circumstances of LGBTI persons can contribute to their ability to live a fulfilled life with dignity.

## **LGBTI persons’ trust in institutions regulating and providing healthcare**

According to research of needs and problems of LGBTI persons in BiH (2017)<sup>48</sup>, despite the problems and social treatment the LGBTI persons face, only 1/3 of respondents sought expert psychological / psychiatric / therapeutic help. Out of the total number of those who **have not asked for expert help** so far, 59.1% of them did not have the need for this kind of service. However, it is illustrative that more than half – or 55.9% to be exact – of persons who stated that they experienced psychological difficulties, did not ask for expert help.

As some of the main **reasons for not asking for professional help**, the respondents stated:

- being afraid of revealing their LGBTI identity (25.7%);

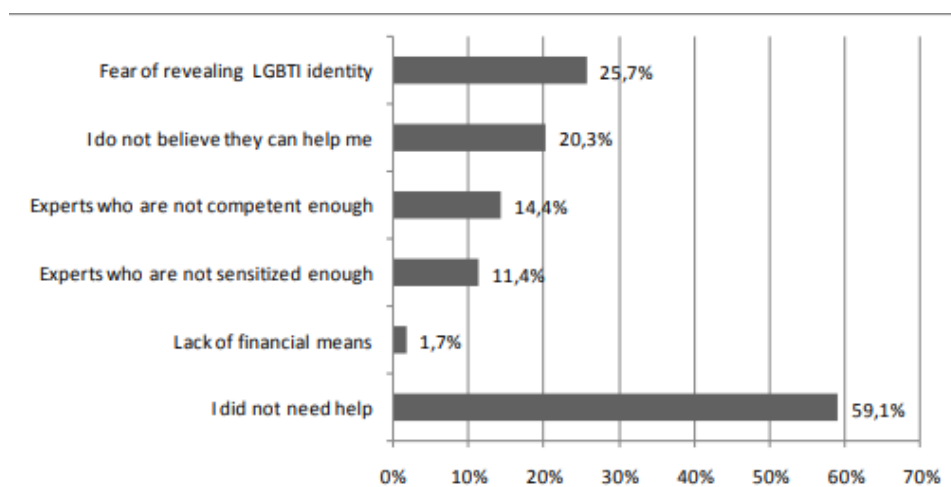
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<sup>48</sup> Research available here: <https://soc.ba/en/numbers-of-equality-2-research-on-problems-and-needs-of-lgbti-persons-in-bosnia-and-herzegovina-in-2017-analysis-of-findings/>

- they expressed doubt about this service helping them (20.3%);
- insufficient competence (14.4%) and insufficient awareness (11.4%); as well as
- the lack of financial means to ensure the services of expert help (1.7%).

Accordingly, these data suggest, to an extent, a low level of trust of LGBTI persons towards the actors offering expert psychological help and support, either because of lack of awareness or competence. Also, it is evident that a large number of respondents do not trust the efficiency of such methods, suggesting that LGBTI persons are not introduced to the procedures and benefits of expert help in this area. In that sense, adequate help and support for LGBTI persons in handling psychological difficulties is often missing, leaving these people alone in these processes.

Graph 1: Reasons for not seeking professional help, n = 237, (%)



Of all the professional medical and psychotherapeutic staff that the respondents are in contact with, psychologists are the ones they reveal to be LGBTI persons the most (in more than 60% of cases). In 4.6% of those cases the psychologists reacted negatively, i.e. unprofessionally to this information. However, most of the listed experts reacted professionally to finding out the identity of the respondent.

Activism to date has ensured that there are resources and support services available to LGBTI persons, but these findings point to the importance of further increasing LGBTI persons' awareness of the availability of these resources to ensure that all those who need support can easily access professional help. These findings point to the necessity of information campaigns for LGBTI communities in terms of where to seek professional help, as well as additional education and sensitization of experts in the field of mental health, especially those employed in public institutions.

From the data presented above, it is possible to conclude that many factors influence the level of trust in the healthcare system, including an inclusive legal and policy framework, and the availability of a wide range of services, tailored to the general and specific needs of LGBTI persons. The following recommendations will shed light on the necessary improvements needed in this regard.

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## 5. Recommendations

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The recommendations outlined herein include the initial suggestions derived from the preliminary analysis and the discussions articulated during the National Roundtable.

### **General recommendations on accessing healthcare on grounds of SOGIESC**

1. State institutions and agencies, mainly public healthcare institutes, should conduct qualitative and quantitative comprehensive research on the access of LGBTI persons to healthcare in BiH, covering all health aspects important to LGBTI persons. Research should include data collection on healthcare disparities and needs among various populations inside the LGBTI spectrum, i.e. intersections between LGBTIQ+ identities and identities related to age, migrant status and other characteristics, such as persons with disabilities, in accessing healthcare in BiH.
2. The competent state institutions (ministries of health and healthcare facilities) should regulate and create measures to enable fertility treatments/assisted reproductive technologies to LGBTI persons in an equitable way, without discrimination. Thus, family planning services should be made available to LGBTI persons without discrimination based on SOGIESC, which is connected to the need for regulation of same-sex partnerships in BiH.
3. Healthcare institutions, including ministries of health, medical chambers and healthcare facilities should establish and develop ongoing, systematic training initiatives for BH health professionals, as well as personnel working within public and private healthcare facilities. This training should encompass both medical and non-medical domains that are crucial for ensuring the provision of LGBTI affirming healthcare. Competent healthcare institutions should include the provision of PrEP and PEP in their HIV/AIDS prevention and care strategies and adopt a state strategy for sexually transmitted infections prevention and treatment. Testing and treatment should be covered by the mandatory health insurance.
4. Competent healthcare institutions in BiH (parliaments, ministries of health, medical schools, healthcare facilities) should include specific needs of LGBTI persons in national health plans, health surveys and curricula, training courses and materials for medicine, psychology and psychotherapy studies.
5. Brčko district Health Centre (Transfusion Medicine Department) should re-evaluate its blood donation criteria by moving away from systematic categorisation of 'men who have sex with men' as a high-risk group and instead adopt an individualised risk assessment approach.
6. Incorporate the SOGIESC anti-discrimination principle into all relevant legislation in BiH dealing with healthcare.
7. Adopt internal documents and develop internal mechanisms-procedures of all healthcare facilities to address cases of discrimination on the grounds of SOGIESC in accessing healthcare.

8. The High Judicial and Prosecutorial Council of BiH should create an accountability mechanism for the judiciary and other human rights bodies that do not implement the principle of urgency in all alleged discrimination-related proceedings, including cases on the grounds of SOGIESC.

## Transgender and gender diverse persons

The analysis shows that trans and gender diverse persons do not have access to gender affirming healthcare and that legal gender recognition is not based on the principle of self-determination, bodily integrity and privacy. In that sense, several steps should be made to change the situation, that are defined below.

9. BiH, its entities and Brčko District should regulate legal gender recognition by enacting laws and other regulations that will systematically and comprehensively regulate the procedure for gender marker change in personal documents and the unique identification number, based on a trans person's request and self-determination, without any need for prior medical intervention, hormones, surgery, sterilisation and psychiatric diagnosis, in line with established human rights standards.
10. Cantons that adopted GAPs should implement activities and goals related to transgender and intersex persons, including the development of a *Guide for Health Professionals on the Best Treatment of Transgender Persons*.
11. BiH should implement the measures from the 2021-2024 Action Plan to Improve the State of Human Rights and Fundamental Freedoms of LGBTI People in Bosnia and Herzegovina concerning the medical and legal aspects of gender affirming care/procedures, including: "analysis and promotion of existing modalities of gender reassignment for BiH nationals (medical and administrative aspects), and training of professionals in healthcare, education, social welfare, labour and employment on the rights and freedoms of LGBTI people".
12. Adopt and implement laws and/or bylaws which would define the duties of medical institutions to form teams, equip health facilities and train professionals who could monitor the process and perform medical gender affirming care and procedures in BiH, as well as the obligation of the health insurance institute to cover the costs of these procedures from the health insurance budgets.
13. Health workers should provide gender and sexual orientation-sensitive health services and also ensure the improvement and promotion of sexual and reproductive health of trans and gender diverse persons.
14. Some of the legislation that should be amended and would lead to the introduction of gender affirming healthcare are the following:
  - Laws on health care and health insurance,
  - Decisions on establishing priority vertical healthcare programs,
  - Decisions on determining the basic package of health rights,
  - Regulations on the conditions and procedure for referring insured persons for treatment abroad,

- Orders on healthcare standards and norms from mandatory health insurance (the so-called "Blue Book").
15. Apply the latest ICD-11 revision in the BH healthcare system and remove the mental health diagnosis (pathologisation) and requirements of psychiatric evaluation in order to start hormone treatment, according to the gender incongruence definition of all trans-related conditions (ICD Chapter – Conditions related to sexual health).
  16. Access to all health services and rights should be based on the principles of bodily integrity, self-determination and informed consent, with an individualised and flexible approach based on the specific needs and circumstances of each person, while ensuring the protection of the right to privacy (e.g. not keeping a register of trans persons, not to ask for any data that is not necessary for the realisation of the service, care, rights etc.).

## Intersex persons

17. Establish cooperation between civil society organisations and health facilities and professionals, as well as continue work on informing and sensitising on intersex issues, along with the revision of medical classifications and abandoning obsolete and offensive terms such as *hermaphrodite* and *pseudohermaphrodite*.
18. Sarajevo Canton and other cantons who have adopted GAPs should implement their activities, including clear guidelines for health workers on how to treat transgender and intersex persons in BiH, as well as regulation of medical and legal proceedings in terms of intersex persons' status.
19. Administrative-political units in BiH should ensure that health workers provide gender-sensitive healthcare services as well as sexual and reproductive health improvement services to intersex persons and all other groups/persons.
20. It is necessary to provide transparent and accessible information on procedures and medical treatment in cases of intersex birth, and to prohibit unnecessary surgical procedures and medical sex-‘normalising’ treatments in health facilities without the intersex person’s full and informed consent, until they can understand their significance and consequences, except in situations where objective circumstances require urgent medical intervention, which should be clearly defined in the procedures.
21. Ministries of health should develop treatment procedures/guidelines that health workers will be required to follow.
22. In collaboration with nongovernmental organisations dealing with these issues, ministries of health should develop a training plan for health workers on the protection of intersex human rights in the healthcare system, and conduct their training in accordance with the highest global standards in the field of trans, intersex, and gender variant persons’ care.
23. Clinical centres in BiH should systematically and continuously educate and sensitise medical staff involved in the medical treatment of intersex children.
24. Ensure continuous inclusion of government/administrative bodies (ministries of health) and institutions responsible for human rights protection (Ombudsman) in

the protection of intersex persons' human rights, self-determination and bodily integrity

## **Mental health and psychosocial support**

The general lack of support for LGBTIQ+ persons when they come out, that can be observed from the available data, highlights the importance of establishing services that support their mental health and well-being.

25. Services should include the provision of educational materials via schools and media, increasing psycho-emotional support in schools and for families and relatives of LGBTIQ+ persons.
26. Raise capacities and educate public mental health and social work centres on LGBTI affirming psychosocial support, and strengthen their cooperation with CSOs working in the fields of human rights and healthcare.
27. Strengthen, expand and raise capacities of CSOs providing psychosocial support and mental health care services to the LGBTI community in BiH.
28. Conversion practices or so called conversion “therapies” should be thoroughly researched and banned. Furthermore, victims of such practices shall be provided with proper psychological support.

## Glossary of the most commonly used terms, phrases and acronyms<sup>49</sup>

**Bisexual/Bi:** a person who is romantically, emotionally and/or sexually attracted to persons of more than one gender. A person may experience this attraction in differing ways and degrees over a lifetime.

**Conversion practices:** (also known as Sexual Orientation or Gender Identity / Expression Change Efforts (SOGIECE); previously known as so-called “Conversion therapy”) is used as an umbrella term to describe interventions of a wide-ranging nature, all of which have in common the belief that a person’s sexual orientation or gender identity and expression (SOGIE) can and should be changed or suppressed. Such practices aim (or claim to aim) at changing people from gay, lesbian or bisexual to heterosexual and from trans or gender diverse to cisgender. Depending on the context, the term is used for a multitude of practices and methods, some of which are clandestine and therefore poorly documented.

**Depathologisation:** the recognition that no sexual orientation, gender identity or gender expression is an illness. Depathologisation allows trans persons to access trans-specific healthcare without a mental health assessment or diagnosis.

**Discrimination:** every distinction, exclusion, limitation and any form of putting a person or a group of persons at disadvantage. There are various grounds and characteristics by which a person or a group of persons is led to a disadvantaged position. Lesbians, gay men and bisexual persons can be discriminated against on the grounds of sexual orientation, trans individuals on the grounds of gender identity and gender expression, and intersex persons on the grounds of sex characteristics. It is therefore essential that all three grounds (sexual orientation, gender identity and sex characteristics) be legally recognised as grounds on the basis of which discrimination is prohibited.

**Gay:** commonly understood to refer to a man whose primary romantic, sexual and/or emotional attraction is toward other men. It can include people of other genders such as non-binary persons who identify as gay men and men in relationships with non-binary persons who identify as gay.

**Gender:** refers to the socially constructed roles, behaviours, activities and attributes that a dominant group in any given society at any given time associates with a person of any sex, assuming any form of gender identity or gender expression.

**Gender affirming care:** refers to healthcare and social protection services that are gender-inclusive and affirming one’s gender identity.

**Gender expression:** refers to each person’s presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and noting

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<sup>49</sup> The terms presented here are mostly available on: <https://www.ilga-europe.org/about-us/who-we-are/glossary/>



further that gender expression may or may not conform to the socially expected expressions typically associated with a person's gender identity.

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

**Gender diverse/Gender non-conforming:** an umbrella term which refers to people who have culturally specific gender identities that do not fit under the trans/transgender umbrella. Typically, the term "trans and gender diverse" is used in human rights contexts to be as inclusive as possible.

**Gender reassignment:** this is an outdated term to refer to the process of medical transition.

**Heterosexual:** refers to a person who is romantically, emotionally and/or sexually attracted to people of a different gender. Colloquially referred to as straight. Heterosexuality refers to the romantic, emotional and/or sexual attraction to persons of a different gender.

**Homosexual:** people are classified as homosexual on the basis of their gender and the gender of their sexual partner(s). When the partner's gender is the same as the individual's, then the person is categorised as homosexual. It is recommended to use the terms lesbian and gay men instead of homosexual people. The terms lesbian and gay are being considered neutral and positive, and the focus is on the identity instead of being sexualised or pathologised. **Homosexuality** refers to the romantic, emotional and/or sexual attraction to persons of the same gender.

**Hormone Replacement Therapy (HRT):** refers to hormone therapy that can be taken as part of transition-related medical care or intersex-specific healthcare.

**Intersex:** intersex individuals are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female. The term "intersex" is an umbrella term for the spectrum of variations of sex characteristics that naturally occur within the human species. The term intersex acknowledges the fact that physically, sex is a spectrum and that people with variations of sex characteristics other than male or female exist.

**Legal gender recognition:** refers to the process of the legal recognition of a person's gender identity, including name, sex/gender marker and other gender-related information, which may be reflected in surnames, social security numbers/personal identification numbers, titles etc., in public registries, records, identification documents (identity cards, passports, driving licences) and other similar documents (educational certificates etc.).



**Lesbian:** is commonly understood to refer to a woman whose primary sexual, emotional or romantic attraction is toward other women. It can include people of other genders such as non-binary persons who identify as lesbian and women in relationships with non-binary persons who identify as lesbian.

**LGBTI:** lesbian, gay, bisexual, transgender and intersex persons. Different combinations of this acronym may be used depending on the context. Some add a 'q' for 'queer' and '+' to versions of this acronym to ensure that it is as inclusive as possible.

**Non-binary:** refers to gender identities other than male or female.

**Non-discrimination principle:** equal treatment of individuals or groups, regardless of their specific characteristics; used to assess the apparently neutral criteria and practices which can cause effects that systematically put the persons with these characteristics in an unfavourable position.

**Same-sex partnerships/couples:** covers relationships or couples consisting of two people of the same sex.

**Sex:** the classification of a person as male or female. Sex is assigned at birth and written on a birth certificate, usually based on the appearance of their external anatomy and on a binary vision of sex which excludes intersex people.

**Sex characteristics:** refers to each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty. OII Europe and its member organisations recommend protecting intersex individuals by including sex characteristics as a protected ground in anti-discrimination legislation. This is because many of the issues that intersex people face are not covered by existing laws that only refer to sex, sexual orientation and gender identity.

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

**Trans or Transgender:** umbrella terms for persons who have a gender identity that is different from predominant social expectations based on the sex assigned at birth, and for persons who wish to portray their gender identity in a different way to the expectations generally based on the sex assigned at birth. Trans persons may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer, gender-fluid, non-binary, crossdresser, trans man, trans woman and several others. A trans person may choose to modify their bodily appearance or function by medical, surgical, or other means as well as other expressions of gender, including dress, speech and mannerisms. These words should always be used as adjectives (as in "transgender persons") and never as nouns (as in "transgenders") and never as verbs (as in "transgendered").

**Transition:** refers to the process whereby persons usually change from the gender expression typically associated with their sex assigned at birth to another gender

expression that they consider better matches their gender identity. Persons may transition legally by changing their name and gender marker on documents or socially by coming out to family, friends and colleagues; or by other methods such as changing the way they dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references. Transitioning may or may not involve hormones and/or surgeries to alter the physical body. Persons may transition more than once in their lifetimes; for some persons their gender identity continuously evolves. Phrases like “fully transition” or “finish transitioning” do not speak to many persons’ experiences.

**Transition-Related Healthcare or Gender affirmative care:** refers to psychosocial support, medical interventions a person may opt to undergo, in order to better express their gender identity. This process may, but does not have to, involve hormone therapy or surgical procedures. A human rights-based approach to this care should be based on self-determination and informed consent.