

BOSNIA AND HERZEGOVINA

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☐ Insufficient X Absent ☐

Please explain your reply.

BiH did not take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; measures to ensure that, once gender reassignment has been completed and legally recognised, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed;

did not ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly;

Public authorities did not publicly condemn, notably in the media, unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

BiH did not ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please explain and, if appropriate, provide examples of any such measures found:

Are there measures in place to redress any such discrimination?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Persons discriminated on the basis of sexual orientation and gender identity can redress to human rights ombudsman or to the courts. Ombudsman issued recommendation to erase questions on sexual orientation from blood donating forms and to remove inappropriate articles from public media.

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3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. ☐ b. ☐ c. ☐ d. ☐ e. X

If appropriate, please provide examples of measures adopted or in preparation.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices:

Court data collection system can show cases relating to discrimination in general, while there is no central database at the state level to include all cases of such kind of discrimination. Human Rights Ombudsman Institution has a database showing all reported cases of discrimination including on grounds of sexual orientation and it analyses this data in its annual report.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. ☐ b. ☐ c. X d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There have been several public and media campaigns aimed at encouraging victims of sexual orientation or gender identity discrimination to report such cases. Human rights ombudsman placed large posters within its public area to achieve the same goal.
In case crime has been committed, Criminal code prescribes sentences (both jail and monetary fines) for infringements while victims are entitled to reparation.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

There is no rulebook or other procedural guidelines how to collect data in comprehensive manner, as not all cases end up in courts.

There is low level of awareness among general population as well as among public officials concerning problems of victims of sexual orientation or gender identity discrimination. There are only few cases reported to Human Rights Ombudsmen, while there are virtually none referred to the courts.

The primary goal is to raise awareness, to educate the public and to encourage victims to report cases of discrimination. It is equally important to ensure that the victims will not suffer further consequences due to the reporting of the abuse, and the police have a significant role to play in this regard.

Some of the obstacles encountered in the implementation of the Recommendation are of financial nature, since Ombudsman Institution did not receive the budget for the work of Department for elimination of all forms of discrimination.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?
a. ☐ b. ☐ c. ☐ d. ☐ e. x

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?
a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Human rights ombudsmen opened ex officio investigation when person was assaulted based on his sexual orientation

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
a. ☐ b. ☐ c. X d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Republika Srpska and Brcko District have such provisions included in Criminal Code, while the procedure of amending Federation BiH Criminal Code is under way. Ombudsmen is actively involved in this process.

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11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There have been several round tables organized mainly by NGO sector where representatives of Ombudsman institution took active participation

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

a. ☐ b. ☐ c. X d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman institution issued recommendation to remove insulting press report from religious orientated newspaper

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. X e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

there are no specific measures in place

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Parade organizers received threats so it was not organized

IV. Right to respect for private and family life

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20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please provide examples of exceptions to this principle, if any:

there are no specific measures in place

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please provide examples:

national legislation does not recognise registered same-sex partnership

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

national legislation does not recognise registered same-sex partnership

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. X b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Access to employment

a. ☐ b. ☐ c. ☐ d. X e. ☐

- ii) Promotion, dismissals, pay and other working conditions

a. ☐ b. ☐ c. ☐ d. X e. ☐

- iii) Prevention and punishment of harassment

a. ☐ b. X c. ☐ d. ☐ e. ☐

- iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no "affirmative action" measures aimed at promoting employment and promotion of these categories, but any harassment or deprivation of rights is prohibited and victims can resort to Ombudsman institution or to courts

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. X c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids

a. ☐ b. ☐ c. ☐ d. X e. ☐

- ii) Information, protection and support for pupils and students

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- a. ☐ b. ☐ c. ☐ d. X e. ☐
- iii) Objective information on sexual orientation and gender identity in school curricula ?
- a. ☐ b. ☐ c. ☐ d. ☐ e. X
- iv) School equality and safety policies and action plans
- a. ☐ b. ☐ c. ☐ d. ☐ e. X

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

there are no specific measures in place

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

29. Has homosexuality been removed from the national classification of diseases?
- a. ☐ b. X c. ☐ d. ☐ e. ☐
30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?
- a. ☐ b. ☐ c. ☐ d. X e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

health insurance does not cover for gender reassignment

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?
- a. ☐ b. X c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. ☐ b. ☐ c. X d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. X e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Ombudsman did not receive such complaints

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. X b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. X b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

issuing recommendations, follow-up on recommendation, public campaigns aimed at combating discrimination, media releases, reporting to parliaments

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?
- a. ☐ b. ☐ c. X d. ☐ e. ☐

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

law enforcement authorities should take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

yes, especially in enjoyment of right to peaceful assembly and use of public space

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.