



International Gay and Lesbian Human Rights Commission
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Brussels June 19, 2009

Your Excellencies,

As human rights NGOs working for equality and fundamental rights for all people we attach great importance to the introduction of comprehensive anti-discrimination legislation in all candidate and potential candidate countries for EU membership.

Therefore, we welcome the adoption of the Law Against Discrimination in the first reading in the House of Representatives and House of Peoples. It is positive to note that the executive and legislative branches of the Government are taking up their obligation to protect all citizens equally against discrimination and show strong commitment to EU membership.

At the same time we want to express our concern with regard to the language of forbidden grounds of discrimination in the law, specifically relating to sexual orientation and gender identity discrimination. According to our information, the current term used in the legislation for sexual orientation is 'spolna orijentacija' which does not pertain to 'seksualna orijentacija' and is not a term recognized in international legislation hence, could potentially weaken the effect of the law.

It is also a matter of great concern that Article 4(9) of the mentioned Law Against Discrimination bans incitement to discrimination based on national, racial or religious hatred with no mention of sexual orientation and gender identity.

We want to remind you that during the Queer Sarajevo Festival (QSF) in September 2008 at least 10 people were injured as a result of publicly promoted hate speeches and incitement to violence. Death threats have been continually issued on the Internet against individual gay rights activists months before and after the opening of the Festival, including a YouTube film showing digitally manipulated images of one of the organizers to make them look as if they were beheaded. A number of websites have called for the organizers of the festival to be lynched, stoned, doused with petrol or expelled from the country. In this atmosphere of hostility against LGBT people in Bosnia and Herzegovina it is absolutely essential to include sexual orientation and gender identity in Article 4 of the Law Against Discrimination.

We would also like to note that the anti-discrimination law is intended to fill the gaps identified by the European Commission 2008 progress report on Bosnia and Herzegovina where it underlined that a "comprehensive anti-discrimination law has not yet been adopted. Anti-discrimination legislation exists in several areas, but implementation has been deficient. Social discrimination and exclusion of people belonging to the lesbian, gay, bisexual, transgender (LGBT) community is widespread. Acts of intimidation against these groups have occurred. This is exacerbated by the State's informal and formal support to such attitudes and the lack of a proper anti-discrimination legislation and implementing measures regarding sexual orientation and gender identity."¹

The adoption of this law and the proposed amendments flow from the international human rights obligations of the Government of Bosnia and Herzegovina as well as the obligation to transpose the EU *acquis* into national legislation as a precondition for EU membership.

At the international level, the Human Rights Committee affirmed in its decision in *Toonen v. Australia* (1994) that existing protections against discrimination in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) include sexual orientation as a protected status. Other treaty bodies, such as the Committee on Economic, Social and Cultural Rights and the Committee Against Torture, require States parties to ensure that their laws are applied without discrimination on the basis of sexual orientation or transgender identity (Committee on Economic, Social and Cultural Rights General Comment No. 20, Committee Against Torture General Comment No. 2).

At the regional level, all 27 Member States of the European Union and accession states such as Croatia have adopted employment non-discrimination legislation, explicitly covering sexual orientation in accordance with the Council Directive 2000/78/EC. Most EU member states as well as candidate and potential candidate countries such as Croatia and Serbia

¹ BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, {COM(2008)674};Brussels, 05.11.2008, SEC(2008) 2693 final

adopted comprehensive anti-discrimination laws including sexual orientation and gender identity as protected grounds.

The European Court of Human Rights of the Council of Europe has also established a consistent jurisprudence in support of the elimination of discrimination based on sexual orientation and gender identity, under the European Convention on Human Rights. The Parliamentary Assembly of the Council of Europe specifically calls upon member states “to include sexual orientation among the prohibited grounds of discrimination in their national legislation” (Recommendation 1474, 26 September 2000).

As the violence during the 2008 QSF has shown, homophobic and transphobic attitudes are deeply rooted in Bosnia and Herzegovina. In addition, LGBT people are regularly subjected to discrimination in a number of fields. Without explicit and strong anti-discrimination protection in the law, LGBT people in Bosnia and Herzegovina will continue to be forced to live as second-class citizens, under the constant pressure of secrecy, job discrimination, violence from authorities or non-state agents, as well as social isolation because of societal condemnation.

With the protection of this law, if amended, public authorities would be required to treat LGBT people equally, no longer question their rights to free expression or assembly, and protect their dignity. The state’s leadership in nondiscrimination on the basis of sexual orientation and gender identity can encourage society to support these values and would allow Bosnia and Herzegovina to join the growing number of countries that respect the human rights of LGBT people.

We therefore would like to urge the Parliamentary Assembly of the Bosnia and Herzegovina to consider the above suggested amendments (also presented by Organization Q in a separate letter) in the draft Law Against Discrimination to ensure that it provides full protection from sexual orientation and gender identity discrimination.

Yours sincerely,



Cary Alan Johnson
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Dirk De Meirleir,
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The International Gay and Lesbian Human Rights Commission’s mission is to advance human rights for everyone, everywhere to end discrimination based on sexual orientation, gender identity, and gender expression. A non-profit, non-governmental organization, IGLHRC is based in New York, with offices in Cape Town and Buenos Aires.

ILGA-Europe is the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, a nongovernmental umbrella organization which represents over 300 member organizations at the European level. ILGA-Europe works towards a world in which the human rights of all people are respected and everyone can live in equality and free from discrimination on the grounds of sexual orientation and gender identity or expression.