



Universal Periodic Review on Human Rights in Bosnia and Herzegovina

August 2009

I - Introduction

This report is prepared on the basis of consultations between BiH Ombudsmen and representatives of the NGOs, human rights activists, authorized servants of competent institutions but, before all, on the bases of complaints filed with the Ombudsmen Institution and three special reports prepared from April to August of 2009 by the Ombudsmen Institutionⁱ

In period 2005 -2006 UN Committees reviewed Reports by Bosnia and Herzegovina (BiH) on application of UN conventionsⁱⁱ and adopted a number of recommendations implementation of which should contribute to improvement of human rights situation in BiH. Unfortunately, these recommendations were poorly implemented, which is the reason why the Ombudsmen at the time of preparation of this Report paid significant attention at this issue.

II – General observations

- With regard to UN recommendations, positive development is seen in adoption of national Gender Plan of Action, completion of appointment of BiH Ombudsmen with notion that envisaged merger of State-level institution and two entity institutions is still not completed because entities have still not perform their duty.ⁱⁱⁱ Improvement is also seen in adoption of the Law on Prevention of Discrimination, as well as adoption of the Law on Freedom of Access to Information, only there is still present problem of insufficient qualification, including lack of interest of competent organs to ensure application of this mechanism.
- BiH never adopted strategic approach ensuring protection and further development of human rights. Instead, dealing with certain issues is mainly resolved on “ad hoc” principle, which frequently leads to mutual collision, So, series of plans of actions regarding different issues from human rights area and for different vulnerable groups^{iv} have been adopted in the past and their harmonization and coordination lacks, that is, BiH never adopted Human Rights National Plan of Action which would be a platform for activities in this area.^v
- Measures taken on ad hoc principle do not establish lasting resolutions for certain endangered rights, which all together creates legal insecurity. So, instead to be resolved by legislation certain rights are decided through acts of lower legal force, such as guidelines, instructions that are frequently not published in Official Gazette, so that citizens are not informed on their rights. Introduction of certain legally non-defined “revision procedures” are present, too, particularly in the area of social rights that are applied following ordinary decision-making procedures related to citizen’s rights. Revision procedure results in delay of the beginning of enjoyment citizens’ rights recognized by first instance organs^{vi}

III – Data collection

- Evidently, in BiH there is a problem of impossibility of systemic follow up of situation of human rights because lack of mechanisms for collection of up-dated statistical data separated on the bases of age, ethnicity, social or other relevant status. Particularly significant problem is in the fact that the latest Census was conducted in 1991 and that conduction of new Census is permanently postponed due to impossibility of reaching consensus about which facts should be comprised by the Census.

IV – Normative institutional framework

- BiH did not significantly harmonize its legislation with international standards and undertaking of effective measures for ensuring direct application of these standards lacks, too. Disharmony of legislation that covers the same areas at different level of the authorities is present as well^{vii} which leads to inequality of citizens in exercise of the same rights and discrimination. Lack of direct application of international standards comes from insufficient education of authorized persons in governmental institutions, particularly police, judges, prosecutors, social workers, etc.

V – Equality and non-discrimination

- Certain improvement are done in BiH in ensuring of gender equality manifested through establishment of gender mechanism, adoption of the Law on Gender Equality and National Plan of Action, however, there lacks activities on harmonization of other pieces of legislation with Gender Law, consequence of which is large exclusion of women from decision-making bodies.^{viii}

- In BiH there is ongoing process of ratification of the Convention on the Rights of Persons with Disabilities adopted by the BiH Presidency in March of 2009. Delay of ratification procedure and non-implementation of “Standard Rules for Equalization of Possibilities for Persons with Disabilities” adopted by the Council of Ministers in 2003 are negatively reflected to status of this category. The situation of human rights of persons with disabilities in BiH is still concerning because of which such persons are forced to seek their fundamental human rights through numerous organizations and associations of persons with disability such as right to social and health protection, care by the others or orthopaedic equipment. In BiH there is not exact statistics on number of persons with disabilities.^{ix}
- Out of 17 national minorities recognized by the Law on Protection of Rights of National Minorities^x the position of Romas evidently could be described as the most vulnerable and is still on non satisfactory level.^{xi} The situation of human rights of other national minorities is more satisfactory than the position of Romas due to their self-organization manifested through organization in associations^{xii} and numerous activities performed by these associations such as maintenance of their culture, language and habits. Significant improvement regarding more active participation of national minorities in politics and decision-making-process has been done through establishment of Minority Council^{xiii} on the BiH level and adoption of plan of action resolution of Roma’s problems in the areas of employment, housing and health care.^{xiv}

VI – The rule of law – application of legislation

- In BiH there is present problem of application of legislation, since effective mechanism of supervision of application was never established. Inspections responsible for such supervisions are not enough effective and in certain area such inspections were never established or they are not provided with material and technical preconditions for their work. Consequently, inspections are disabled permanently and autonomously *ex officio* to supervise application of legislation or upon allegations by citizens due to which citizens address BiH Ombudsmen institution, since significant number of such complaints are settled in administrative procedure. Supervision of work of certain organs is even performed by ad hoc bodies, for members of which it is additional work, and the model established in this manner significantly induces the issue of its effectiveness.^{xv}
- Particular consideration is related to rights of persons with disabilities in FBiH where, through the latest interventions in the law, their rights are abolished or reduced. Complaints filed with BiH Ombudsmen Institution show that even recognized rights of disabled persons are not applied, which competent ministries explain by lack of financial resources. Further, another concerning fact is lack of building of capacities of social institutions responsible for realization of social rights such as social work centres, etc. In BiH in this area there exist additional problem of jurisdiction divided between FBiH, cantons and municipalities, which significantly aggravate citizens’ access to exercise of the rights guaranteed by BiH Constitution and international standards.

VII – Torture

- Although BiH ratified UN Convention on Prevention of Torture, Inhuman or Degrading Treatment or Punishment and European Convention on Human Rights and Fundamental Liberties, in this area it has been done very little.^{xvi} The Criminal Code of BiH contains explicit legal definition of torture in accordance with UN Convention on Prevention of Torture, while FBiH, RS and District Brčko still have not harmonised their legislation. Even 14 years following the end of the war there is still not adequate resolution of the issue of the civil victims of war and their position in criminal proceedings, where they appear as a damaged party, is significantly weakened by adoption of new Criminal Code and Procedure legislation. BiH did not adopt the Law on Victims of the War and by this very fact official programs for rehabilitation of victims of torture and restore of their rights are not developed.

7.1. Situation in prisons and institutions for accommodation of mentally ill persons

- The situation in BiH prisons is concerning^{xvii} and the main concern is related to the fact that minimal standards for respect of prisoners/detainees’ rights which particularly applies to health care, usage of non-institutional benefits, hygienic and sanitary conditions, etc. Having in mind absence of adequate supervision over work of these institutions, which should be performed by entity ministries of justice, prisoners/detainees’ address Ombudsmen Institution with their complaints, so that the number of complaints from this area and from the area of social rights filed with BiH Ombudsmen Institution is higher than the other type of complaints. Human resources of entity ministries of justice following up of the situation and supervision in this area are not enough and harmonization of legislation covering

execution of criminal sanctions lacks, too. There are not mechanisms for imprisonment with respect to criteria such as type of offence committed and length of punishment, age of convict, unless the latter are minors, which has impact on the process of re-socialization of convicts, as one of the most important aims of execution of criminal sanctions^{xviii} In certain correctional institutions still there are minors serving their sentences together with adult prisoners, although they are to some extent accommodated in separate prison units. This fact induces issue of accommodation of the minors in special minors' correctional institutions where the minors would serve their sentences in appropriate manner.

- Criminal Code and Procedure legislation adopted in BiH in 2003 prescribes additional criminal sanctions such as socially useful work, yet, unfortunately, their application is not rooted in practice, which put a lot of pressure on prisons and makes them overcrowded.
- Situation in mental health institutions is even worse than in the prisons, particularly in FBiH. Until 2008 competent organs failed to take over the role of the founders of these institutions and the functioning of these institutions worked only on the efforts provided by the employees.^{xix} Institutions work without standards and normative and it is unclear are these institutions of social or health character. In some institutions there is not even a minimal level of protection of rights, such as hygienic or health care. Due to insufficient capacities and permanent following up of the situation of this category of citizens waiting lists are formed and accommodation is in exclusive competence of the institutions and according to existing capacities. Number of patients multiply overrides accommodation capacities and the space, particularly sanitary facilities, is not adjusted according to the needs of persons with physical disabilities who can not move without orthopaedic equipment, since there are not accession ways for such persons. Unfortunately, there exist no systemic resolution for accommodation of mentally disabled persons in such institutions and there is present segregation based on gender.^{xx}

VIII – Gender violence

- Despite of all undertaken measures, trafficking, domestic violence, sexual harassments as forms of gender violence are still to great extent present in BiH. Satisfactory level of protection of victims and punishment of the offenders is still not reached in BiH. The victims are stigmatized, since there are not adequate legal instruments for protection of their rights. All rights of a victim, as damaged persons, are in the hands of prosecutors and non-initiation investigation or abandonment of investigations or non-putting forward criminal charges by the prosecutors constitute decision subject only to an objection by a victim, by which all legal remedies are exhausted. Unfortunately, practice has shown that this is non-effective legal remedy and the BiH Ombudsmen Institutions initiated investigation related to this issue.

IX – Fundamental rights and liberties

9.1. Employment

- Employment and social and economic situation in the country is reflected in increased number of unemployed persons with a trend of further increase, which particularly impacts young persons and indirectly impacts the rights of children and the right to enjoyment of family life. Additionally, there are not programs for employment of the young persons and intention for extension working life of employed persons, explained by lack of money in pension funds.

9.2. Pensioners

- In BiH there still exist discrimination of the pensioners as direct consequence of the war, which is manifested through different bases pension in different entities, although the pension is gained in accordance with the same piece of legislation. This is an additional problem to pensioners who gained the right to pension in some of former republics of SFRY, or realized this right in BiH and now live in some of former SFRY republics. This problem automatically arise the question of their health protection.

9.3. Environment and natural resources

- In BiH there are not enough measures undertaken to protection of environment and management of public goods without discrimination. The issue of allocation of public goods to usage is not adequately covered by legislation, which leaves opportunity for appearance of privileged individuals and corruption. This, in economical and social sense, induces issue of distribution of national resources to all citizens. The practice has shown the high degree of exclusion of women and children fro decision-making process

related to national resources such as energetic sector, water potentials in certain parts of the country, etc. In BiH there is not ecological awareness of the citizens on the need for protection of nature and there also lacks establishment of effective programs in this area. It resulted in aggravated access to drinking water in certain parts of the country.

9.4. Adequate housing

- In BiH adequate measures are not undertaken with a view to establishment of system of adequate housing, and there also lacks application of UN Committee's Recommendations for Economic, Social and Cultural Rights, according to which the state is committed at state level to adopt housing legislation and state housing strategy to resolve housing needs of the citizens. The Committee also recommended the state to allocate enough resources for insurance of social apartments, particularly for the persons with low income, the poor and marginalized groups.^{xxi}

9.5. Health protection

- Established system of health protection disables adequate access to this right. The citizens are of different access depending on territory where they live, since the right to health care is not transferable. It is possible to exercise this right exclusively at citizen's place of residence. Such approach endangers citizens who temporarily live out of the place where they have registered place of residence, e.g. persons accommodated in mental health institutions located out of the territory where such citizens are of the status of health insured persons. The similar problem applies to students, pensioners, etc.

9.6. Education

- In BiH there still exists concept of two or three schools under one roof, although UN Committees requested BiH to take measures to eliminate this modal leading to discrimination and segregation of the school children on ethnic principle.

X – Return of refugees and displaced persons

- With regard to return of refugees and displaced persons in their pre-war places of living, there is visible improvement realized by BiH concerning renewal and reconstruction of housing units, since every year in entity budgets there are funds envisaged for this purpose. However, the returnees in certain part of BiH are deprived of employment opportunity or are in some other way deprived of income (this issue directly impacts on number of returnees). Returnees with status of civil victim of war are particularly discriminated particularly those who return to Republika Srpska. This comes from the fact that relevant legislation applied in FBiH regulates that such rights are entitled only to the persons whose place of residence is in FBiH, while RS legislation prescribes that rights of civil victim of the war can not be realized by persons who already realized these rights in FBiH. A certain number of complaints related to repossession of property is filed with Ombudsmen Institution, alleging lengthy administrative and court procedures. In certain cases such procedures takes more than 10 years, which leads to violation of Article 6 of European Convention on Human Rights and Fundamental Liberties.

XI – Children

- Establishment of Department reflects efforts of BiH Ombudsmen Institution^{xxii} to promote and protect children's rights and to approach this issue systemically, which also ensures taking measures aimed to improvement of children's rights, which request long-term planning and mutual frame-working of a number of subjects and individuals active in this area.^{xxiii} Complaints filed with the Department are mainly related to problems of execution of court decisions, as well as administrative organs' decisions, related to assigning of children to one of the parents, disabling of other parents to contact a child, refusal of parent to whom a child is not assigned to provide a consent for issuance of passport for a child, including lack of actions and non-cooperation of competent organs concerning application of the Law on Passports. Regarding children's rights, there exists problem of non-issuance of documents related to registration in birth registers for children who are not born in , particularly in those municipalities whose seats were dislocated during the war and registry books destroyed. BiH Ombudsmen fully support Report on the Rights of a Child that was referred to UPR body by non-formal group of organizations (Save the Children Norway, Save the Children UK, UNICEF, World Vision, SOS Kinderdorf and Hope and Homes for Children)

RECOMMENDATIONS

- BiH should ensure implementation of all recommendations by UN Committees adopted following review of reports on application of UN conventions provided by BiH. It is necessary to establish effective mechanism for permanent monitoring, reporting and informing the public on implementation of mentioned recommendations with active involvement of the NGOs. BiH authorities should undertake activities targeted to establishment of systemic approach to protection and improvement of human rights having in mind that this is about crosscutting issue. This primarily means that it is necessary to adopt national plan of action for human rights, including harmonization of all previously adopted action documents covering certain issues from the area of human rights;
- BiH authorities should strengthen capacities of BiH Ombudsmen Institution, particularly having in mind importance and role of the Institution in ensuring application of the Law on Prevention of Discrimination and need that this Institution is established as national mechanism for OPCAT with active involvement of the NGOs. Process of merger of three ombudsmen institution in BiH should be completed;
- With a view to ensuring implementation of the Law on Prevention of Discrimination it is necessary organization of education of authorized persons, which particularly applies to judges, prosecutors, police officers and social workers;
- BiH authorities should ensure harmonization of domestic legislation with international standards and undertake measures that harmonization becomes permanent activity in the process of adoption of legislation, which would lead do decrease of court procedures initiated by citizens whose violated rights are guaranteed by international standards.
- It is necessary urgently to undertake measures aimed to direct application of international standards in practice, which particularly applies to lack of harmonization between domestic legislation and international standards. Before all this applies to organization of permanent education of judges, prosecutors, police officers social workers and other authorized persons. Special focus should be on persons conducting administrative procedures, where human rights violations most frequently takes appear. It is necessary to undertake measures targeted to improvement of law faculties curricula by introduction of international law with special focus on application of international standards;
- In BiH it is necessary to stop the practice of covering of certain rights by acts of lower legal force than law, as well as to eliminate non-legislative decisions on rights through establishment of ad hoc bodies, since such method creates legal insecurity among citizens;
- It is necessary that BiH as soon as possible do the Census of population and undertake effective measures with purpose of creation of preconditions for establishment and maintenance of updated statistical data;
- BiH should urgently conduct qualitative analyses of the situation of social rights in BiH with special stress on vulnerable categories such as civil victims of war, persons with disabilities, children without parental care, etc. This analyses should also includes situation in institutions responsible for provision of social rights such as social work centres and should contain recommendation on concrete measures for improvement of the situation in this area;
- Measures for improvement of the situation in prisons and mental health institutions should be of priority. These measures should also include strengthened supervision of these institutions, including education and supervision of the staff.
- It is necessary that competent BiH organs provide additional efforts to educate Roma population on their rights and the way of exercise. Competent institutions should be accessible to Roma population. Romas must be enabled to use their language, if it makes it easier for them to communicate with competent organs.

-Annex-

ⁱ Special reports are related to situation of human rights in BiH prisons, institution for allocation of mentally ill persons and violation of the right to remuneration at the time of maternity leave in BiH institutions. The Reports are available on the webpage of the BiH Ombudsmen Institution: www.ombudsmen.gov.ba

ⁱⁱ The reports reviewed are: Initial Report on Application of the Convention on the Rights of a Child, May of 2005; Initial Report on Application of Covenant on Economic, Social and Cultural Rights, November of 2005, and at the same time Initial Report on Application of the Convention on Prevention of Torture; BiH Report on Application of the Convention on Elimination of Racial Discrimination, February of 2006; Report on Application of the Convention on Elimination of all Forms of Discrimination of Women, May of 2006; and BiH Report on Application of Covenant on Civil and Political Rights, November of 2006.

ⁱⁱⁱ Merger of three ombudsmen institutions in BiH is one of the conditions for conclusion of Agreement on Accession and Stabilization, in accordance with Opinion of the Venice Commission, no: 274/2004 of 20.04.2004. According Article 19, paragraph 3 of the Law on Amendments to the Law on Human Rioghts Ombudsmen of BiH the entities are obligated to adopt legislation on cessation of functioning of enity ombudsmen institutions until 31.12.2006. The RS never adopted mentioned piece of legislation, while the Law adopted by the Federation is, due to its numerous failures, simply can not be applied.

^{iv} National Plabs of Action are adpted for prevention of trafficking and illegal migrations, prevention of family violence, protection of a child, minorities, etc.

^v This specially goes for FBiH where first instance organs recognize right to saocial expenses (e.g. benfits for disabled persons) and then the case is referred to the Ministry of Social Protection of FbiH for „revision“, which frequently takes more than one year. Before the end of procedure a citizen does not enjoy rights recognized by first instance organ, and remains without basic resources.

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^{vii} E.g. legislation that covers issue of execution of criminal snctions, matarnity leave, social protection citizenship, etc.

^{viii} In thew House of Representatives of Parliamentary Assembly of BiH (PSBiH) out of 42 representatives there are only 5 women (11,9%), while in the House of Peoples of PSBiH out of 15 representatives there are only 2 women (13,33%). The situation in BiH exacutive authorities at the state level is even worse then in PSBiH. So, in the Council of Ministers there is not a single woman-minister, while 2 women are Deputy Ministers (22,23%) and on Ministry's Secretary (11,12%). There are 5 permanent bodies of the Council of Ministers and in 2 of them there are no women.

^{ix} Above mentioned facts were the reason why BiH Human Rights Ombudsmen conducted analyses of the situation of human rights of mentally disabled persons accommodated social protection institutions, based on which the Ombudsmen prepared Special Report with recommendations and its implementation should improve protection of the rights of this category of citizens.

^x The Law on Protection of Rights of National Minorities („Official Gazette of BIH“, no: 12/2003)

^{xi} BiH Human Rights Ombudsmen established special Department for Protection of national, Religious and Other Minorities with view to improve and promote rights of minorities.

^{xii} Each of national minorities listed in article 3 of the Law has at least one association active in entire BiH territory

^{xiii} Decision on establishment on Minority Council of BiH („Official Gazette of BiH, no: 38/06)

^{xiv} BiH tried to improve position of Romas population through activities within implementation of Strategy for Resolution of Romas' problems. Yet, still lacks active role of Romas, which is consequence of long-years discrimination, lack of education and general lack of inclusion of Romas in the society. Lack of communications between governmental institutions and Romas is obvious.

^{xv} Commission for supervision of work of police officers

^{xvi} Article 2 of the Constitution of Bosnia and Herzegovina (Annex IV of General Framework Agreement for Peace in BiH) concluded in Dayton and signed in 21.11.1995 in Paris, when it entered into force it is prescribed that “that rights

and liberties guaranteed by European Convention on Human Rights and Fundamental Liberties and its Protocols shall be directly applied in BiH. These documents have priority over all other legislation.

^{xvii} In period March – August 2009 BiH Ombudsmen visited all 12 correctional institutions existing in BiH, as well as institutions for accommodation of mentally disabled persons and, based on these visits and individual complaints filed with the BiH Ombudsmen Institution, prepared Special Report with recommendations available at webpage of the Institution. Generally, reports draw attention at concerning situation, although there is different level of respect for the rights, varying from institution to institution. In some corectional istitutions the food is poor, in some hygienic and sanitary conditions, etc.

^{xviii} This results in the fact that persons convicted foer war crime or organized crime and persons convicted for criminal offence from the area of traffic are placed in the same cell.

^{xix} Unfortunately, taking over of the role of the founders by the Ministry of Work and Social Protection of FBiH did not result in significant improvements except for the fact that these institutions are now obligated to pay, out of resources paid for accommodation of patients, remunerations for members of the board of directors and supervisory boards.

^{xx} Special Report on the situation in these institution with recommendations is available on the webpage of the Institution of Human Rights Ombudsmen of BiH.

^{xxi} E/C.12/BIH/CO/1, Concluding remarcks of rthe Committee for Economivcal, Social and Cultural Rights, item 46.

^{xxii} In June of 2009 BiH Ombudsmen, in accordance with the Law on Human Rights Ombudsmen of BiH, established Department for Protection of the Rights of a Child), which was recommended in Recommendations by Committee for the Rights of a child of 2006.

^{xxiii} Department should be national mechanism that would contribute and enable equalization of children’s rights and protection of these rights in the entire territory of BiH. „Save the Children Norway” supported strengthening of capacities of Department, and this cooperation will be continued in 2010 as well. At the moment Department prepares analyses of harmonization of BiH legislation with the Convention on the Rights of a Child, which would be available to the public in November of 2009.