



## OBSERVATION ON APPLICATION OF INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN BOSNIA AND HERZEGOVINA

**Sarajevo, 20 December 2011**

## A. INTRODUCTION

According to the International Coordination Committee (ICC) decision, Institution of the Human Rights Ombudsmen of Bosnia and Herzegovina (hereinafter: the Ombudsmen) is accredited with „A“ status as a national human rights mechanism in Bosnia and Herzegovina (BiH). Within their mandate, Ombudsmen monitor and exercise citizens' rights in BiH, including rights guaranteed by the International Pact on Civil and Political Rights (the Covenant), and regularly submit their observations to the UN bodies.<sup>1</sup>

The Ombudsmen's observation on application of the Covenant in BiH (hereinafter: Observations) are primarily focused on Ombudsmen's experience from work on individual cases,<sup>2</sup> related to human rights guaranteed by the Covenant, with maximum efforts to distinct these rights from economic, social and cultural rights, while the attention is given to prohibition of discrimination as an absolute right. Particular attention is paid to implementation of the Final reviews and recommendations by the Committee for human rights, adopted following review of Initial Reports by BiH on application of the Covenant for 1994 - 2004 (CCPR/C/BiH/1).<sup>3</sup>

Based on relevant indicators, it is to conclude that, in relation to the Initial Report and the Second Periodical Report, ***certain progress has been achieved in some segments of implementation of civil and political rights***. Further, the Ombudsmen assess that ***Committee's recommendations were partially implemented***, while ***strategic, systemic approach to regulation of civil and political rights guaranteed by the Covenant is lacking***. Such approach is problematic and inadequate, bearing in mind the fact that BiH is post-conflict, transitional country.

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<sup>1</sup>Alternative reports by BiH Ombudsmen Institution on application of the Convention on the Rights of the Child for period 2009-2011; Statement related to report of Working Group on Enforced and Involuntary Disappearances, February 2011; Observations on Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments, October 2010; Human Rights Ombudsmen's of BiH Report on Application of Facultative Protocol Under Convention on the Rights of the Child related to Participation of Children in Armed conflicts, December 2009; Human Rights Ombudsmen's of BiH Report on Application of Facultative protocol under Convention on the Rights of the Child Related to Trafficking in Children, Children's Prostitution and Pornography, December 2009; Universal Periodic Report on the Situation of Human Rights in BiH, June 2009; BiH Ombudsmen's Statement on Implementation of International Convention of the Rights of All Migrant Workers and Members of Their Families, 2009.

<sup>2</sup> With regard to effective dealing with individual complaints from the area of civil and political rights, BiH Ombudsmen decided to establish separate Department for protection of civil and political rights. In this Department, as well as in Departments for elimination of all forms of discrimination, Department for protection of the rights of the child, Department for protection of the rights of persons with disabilities, and through monitoring and analyzing of the situation in the field, complaints received are used as a source of findings on the occasion of preparation of present Submission.

<sup>3</sup> The Committee reviewed initial report submitted by Bosnia and Herzegovina on application of International Covenant on Civil and political Rights (CCRP/C/BIH/1) at its 2402, 2403 i 2404 sessions, and at the meeting held on 18 and 19 October 2006 in Geneva and adopted Concluding remarks – recommendations.

In preparation of the Observation, the Ombudsmen focus on legislative and institutional framework and procedures which ensure international standards on civil and political rights application in BiH, related to the fact that carrying out commitments set forth by the Covenant are to be observed in a general context, which inevitable include administrative structures, too.

## B. POSITIVE ASPECTS

- During this reporting period some improvements with regard to more effective application of the Covenant is noticed. Primarily, it is related to the fact that ***the Law on Prohibition of Discrimination is adopted***<sup>4</sup>, which is a guarantee of inherent dignity and equal and inalienable rights of all citizens of BiH, foundation of liberties, justice and peace, as well as basis for civil and political liberties and rights enjoyment with no discrimination on any ground.
- BiH Constitution set forth „the highest level of internationally recognized human rights and fundamental freedoms”.<sup>5</sup> The Constitution also require that European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols are „***directly applicable***” in BiH and „***have priority over all other laws***”<sup>6</sup>, while fundamental human rights are listed in a separate paragraph.<sup>7</sup> Annex I lists additional human rights treaties to be applied in BiH, *inter alia*, all UN documents.<sup>8</sup> Besides, Article II/4 of the Constitution regulates State's obligation to ensure enjoyment of rights guaranteed by the Constitution or international treaties from Annex I of the BiH Constitution without discrimination based on any ground. Although such clearly set up constitutional framework ensures direct application of the Covenant, in practice, there are a lot of weaknesses concerning ensuring of this constitutional provision.
- Finally, on May 1, 2010, necessary preconditions of fulfillment and appointment of ombudsmen<sup>9</sup> resulted in ***unification of the Institution of Human Rights Ombudsman of BiH with entity ombudsmen institutions*** in accordance with the Law on Amendments to the Law on Human Rights Ombudsman of BiH drafted in March of 2006 and adopted according to the opinion of the Venice Commission, no: 274/2004, CDL 028(2004). In this way functioning of entity ombudsmen institutions ceased to exist and united, independent State-level

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<sup>4</sup> The Law on Prohibition of Discrimination entered into force on 5 August 2009 („Official Gazette of BiH”, no: 59/09). *Central institution for protection against discrimination defined by the Law is Institution of Human Rights Ombudsman of BiH (Article 7 of the Law).*

<sup>5</sup> BiH Constitution, Article II; human rights and fundamental liberties, paragraph 1.

<sup>6</sup> Ibid, Article II, paragraph 2: International standards.

<sup>7</sup> Ibid, Article II, paragraph 3: Catalogue of rights

<sup>8</sup> Including, *inter alia*, Universal Declaration on Basic Human Rights and Liberties (UDIHR); Convention on elimination of all forms of discrimination (CEDAW), The Convention on the rights of the child (CRC), Convention against torture (CAT), Covenant on economic, social and cultural rights, (ICESCR) the Convention of all forms of gender discrimination, the Convention of all forms of gender discrimination (CEDAW), etc.

<sup>9</sup> The Ombudsmen Jasminka Džumhur and Ljubomir Sandić are appointed in December of 2008.godine, while, following resignation of previous Croat Ombudsman, Ivo Bradvica, in October of 2009, Ms. Nives Jukić was appointed for Croat Ombudsman.

ombudsman institution was established. In October 2010 this institution was accredited with status „A“, therefore, within the ICC stands for national human rights protection mechanism. Such status guarantee that the Institution is independent in its work and that it fully fulfills its obligations in conformity with Paris Principles.

- Significant improvements have been achieved concerning the issues of missing persons, **two entity missing persons institutions merged and the Institute for missing persons was established**, Board of Directors and Supervisory Board was established, by-laws guaranteeing functionality of the Institute have been adopted, including the **Rules on Verification of Missing Persons**, as basis for establishing central data base of missing persons in BiH, and process of registration and verification of missing persons in mentioned central evidence has begun.
- In the area of searching for missing persons the improvement has been done in the way that the Head BiH Prosecutor decided that BiH Prosecutor's Office, starting with January 01, 2011, **was going to take over all exhumations and identifications as investigative activities in search for missing persons**, which eliminated problems related to prosecutor's offices competencies and which influenced to delays in exhumations in the past years.
- It is important to **amendments to the Law on Criminal Procedure of BiH**,<sup>10</sup> which now stipulates that agreement with a suspect cannot be concluded without a victim being informed, that is, obligation for the court to verify whether the victims are provided with possibility for property-rights claim.
- Aiming to ensure effective application of the Covenant, **Ombudsman Institution translated the Covenant into official languages of the state and uploaded the Covenant on its web page** in order to make it available to the public.
- Competent BiH authorities **ratified the Convention on the Rights of Persons with Disabilities**.<sup>11</sup>
- BiH **signed the International Convention on Protection of all Persons against Forcible Disappearances**,<sup>12</sup> yet this document is still not ratified.
- In 2008 in BiH strategy for judiciary reform 2008 – 2012 and State Strategy for dealing with cases of war crimes were adopted. These two documents should significantly contribute to effective resolving of war crime cases.

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<sup>10</sup> „Official Gazette of BiH“, number: 58/08

<sup>11</sup> UN Convention on Rights of Persons with Disabilities and its Optional Protocol were ratified on 07.12.2009, at the 65th Session of the House of Representatives and on 15.12.2009, at the 39th Session of the House of Peoples of Parliamentary Assembly of BiH.

<sup>12</sup> International Convention on Protection of all Persons against Forcible Disappearances was signed on 6 February 2007.

## C. CONCERNS

### 1. Application of the Covenant

- Although BiH Constitution guarantees direct applicability of the Covenant, in the cases where domestic legislation is not harmonized with the Covenant. However, ***the Covenant is still not enough directly applied in judicial and administrative procedures. This fact confirms that recommendation referred to in item 9 of Concluding Reviews – recommendation of the Committee for Human Rights was not complied with,*** which requests BiH authorities to improve training for judges, prosecutors and lawyers on application of the Covenant.

### 2. Elimination of all forms of discrimination

- European Court for Human Rights considered the Sejdić-Finci vs. BiH case and on 22 December 2011 took decision no: 27996/06 and 34836/06, repeatedly stressing that the Constitution and Election Law still exclude „the others“, i.e. persons not belonging to any of „constitutive peoples“ of member-state (the Bosniaks, the Croats and the Serbs), which disables election of „the others“ in three-members Presidency and the House of Peoples of the Parliamentary Assembly of BiH. The Parliamentary Assembly established Temporary Parliamentary Commission for implementation of Sejdić-Finci verdict, which aims to achieve necessary consensus for proposing amendments with a view to implement the Verdict. Achieving political consensus in the area on constitutional and legislative changes needed for implementation of the Verdict is still on-going process.
- Adopting the Law on Prohibition of Discrimination created a legal framework for protection of persons subject to discrimination and at the same time there is an obligation set forth for establishment data base that should ensure following up the situation with regard to discrimination.<sup>13</sup> This process is still going on in most of the institutions, while in 2010 ***BiH Ombudsmen Institution introduced an electronic system for dealing with the cases*** which also created a data base for cases of discrimination. In this way it is enabled systematic following up of the situation in this area which is through annual reports presented to competent BiH authorities and the public. According to data base in 2010 ***Department for Elimination of all Forms of Discrimination registered 135 complaints, while up to December 15, 2011 235 complaints were filed before this Department, out of which 38*** were related to mobbing, 9 to discrimination on ethnic belongings or social origin, 8 to harassment and other complaints were related to other forms of discrimination. According to data, in 2011 the Ombudsmen, following investigation conducted, issued 26 recommendations to the authorities to undertake measures to stop discrimination. ***Increase of discrimination cases filed the Ombudsman Institution requests undertaking additional measures targeted to***

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<sup>13</sup> The Law on Prohibition of Discrimination, Article 8: Maintenance of evidence and coordination between competent institutions

**ensure effective application of provisions contained in the Law on Prohibition of Discrimination.**

- Unfortunately, while applying the Law on Prohibition of Discrimination it could be seen **repeated practice that BiH legislation is adopted easily, while there lacks effective measures for its application.** Although Article 7, paragraph 5, of the Law on Prohibition of Discrimination prescribes that in the budget of BiH Ombudsmen Institution there shall be „incorporated a separate budgetary item necessary for functioning of specialized department/departments for combat discrimination“, was not contained in Budgets for 2010 or 2011 due to limitations imposed to the Ombudsman Institution. Such approach to newly established mechanism, for which **on global level exists a very low level of legal practice significantly impacts on effective application of the Law and decreases possibilities of Ombudsman Institution fully to carry out its legally determined obligations.**
- Ombudsmen ascertain that **application of Article 24, paragraph 2, of the Law on Prohibition of Discrimination are not ensured**, which stipulates that within one year upon adoption, legislative should be harmonized with the provisions of this Law. court proceedings for protection against discrimination are initiated before BiH courts, but there is still no court practice and ombudsmen do monitor court proceedings when complaint is filed with the Institution. Based on monitoring of several proceedings, the Ombudsmen can conclude that in **significant degree there exist different actions by courts. Difference is expressed through some of special forms of discrimination such as mobbing, harassment, sexual harassment or victimization**, which could be linked to long-years practice of European Court that was applied before entry into force of Protocol 12 and according to which discrimination, as a separate form of rights' violation, was not recognized.
- The Ombudsmen determine that even two years following entry into force of the Law on Prohibition of Discrimination in BiH **there are still not enough effective measures taken measures to ensure permanent training of competent person, particularly in administration, to recognize discrimination.**
- Apart from the Law on Prohibition of Discrimination which includes discrimination based on sex, and which establishes general issues related to discrimination, **gender discrimination is separately regulated by the Law on Gender Equality**, which prohibits direct or indirect discrimination based on sex and guaranties equal possibilities in private and public life. **Application of this piece of legislation is generally ineffective because other adopted legislation is not harmonized with this one.** w on Gender Equality<sup>14</sup> concretely defined terms of direct and indirect discrimination, more precisely defined what is considered to be harassment, sexual harassment, violence and victimization, so it is to be expected that in forthcoming period of time application of the Law will be more effective. **Unfortunately, in**

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<sup>14</sup> “Official Gazette of Bosnia and Herzegovine”, no: 102/09

**2010 and 2011 any significant improvement in application of this piece of legislation is not registered.**

- **Discrimination based on sex is still present**, which is result of non-harmonized legislation with the Law on Gender Equality, and which should have been completed within 6 months upon entry into force of the Law in June of 2003. In the area improved by the Covenant, this is especially related to the Law on Elections in BiH,<sup>15</sup> since the results following general elections in BiH in 2010 shows decrease of women representation in legislative bodies. This springs from ineffective application of Article 15 of the Law on Gender Equality which stipulates „Everyone regardless of gender has an equal right to work for gain, which includes equal treatment in access to all economic resources, privatization, access to credit and other forms of financial assistance, licenses and registration of businesses, and the conditions in which they are obtained“. **Results of the Election show that goal promoted by the Law is not achieved.**
- According to information of the Election Commission, it could be concluded that participation of women in the parliaments of all levels in BiH is significantly decreased in relation to 2006, although at the latest election there were more women candidates. Results of this election shows that women are represented only in 83 positions, which is 17,01% and elections envisaged 488 positions. In Parliamentary Assembly of BiH women are represented at 11 positions (19,2%), in People's Assembly of RS 16 positions (19,2%), and in FBiH Parliament 17 positions out of 81 positions. Even Election Commission is not appointed in conformity with the Law on Gender Equality. There are 7 males and only one female. Gender inequality is particularly present in the area of economy and management of natural resources, which could be seen through the fact that in telecommunication enterprises managing structures, hydro-energetic potentials, natural financial resources managing positions mainly belongs to males.

### 3. Death penalty and amnesty

- BiH Constitution and FBiH Constitution prohibit death penalty. However, Republika Srpska still has not removed provision on death penalty from its Constitution (Article 11), although Criminal Code of Republika Srpska adopted in 2003 excludes death penalty as a criminal sanction.<sup>16</sup>

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<sup>15</sup> In 2010 the Law on Amendments to Election Law has been adopted („Official Gazette of BiH“ , no: 23/01, 7/02, 9/02, 52/02, 4/04, 20/04, 25/05, 528/05, 62/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 i 32/10) which significantly changed Article 4.19, paragraph 4, which reads: „Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest **higher** integer.“

<sup>16</sup> „Official Gazette of RS“, no: 49/03



- Based on findings from visits to places for deprivation of liberty the Ombudsmen BaH expresses their concerns that existing systems for pardons and amnesty are very rarely applied and without clear criteria. The Ombudsmen are of the opinion that more frequent application of these institutes, together with other measures of execution of sanctions including alternative sanctions as well, would create environment for effective re-socialization and rehabilitation of convicted persons and would decrease overcrowdings in prisons and would improve better monitoring of number of prison population.

#### 4. Torture

- Considering issue of torture, inhuman and degrading treatments and punishments, BiH Ombudsmen stress **the issue of complex legislative** framework. In a broader sense, social protection is covered by 20 laws on entity and cantonal level, while entity legislation regulates issues from area of social protection in a different ways. Main problem of legislation is that **they are frequently amended and consolidated wordings are not prepared**. At the same time, by-laws enabling application of new legislation are not adopted.<sup>17</sup> All together it creates confusion and aggravates exercise of rights, and following up of application of legal provisions.
- In BiH, as post-conflict and country in transition, even 16 years following the war **there is still highly expressed problem of non-resolving of the issues from the area of transitional justice**. The problems are present in non-processing of war crimes, insufficient and ineffective protection of witnesses in procedures against persons indicted for war crimes, unresolved status of civil victims of war and lengthy determination of destiny of missing persons.
- Although UN bodies<sup>18</sup> recommended BiH authorities do define term „torture“, in BiH Legislation **there is still not such definition and criminal legislation at State and entity levels are not harmonized**. Unfortunately in some segments of legislation certain changes took place and they resulted in **worsened position of victims of torture**, especially victims of torture that took place during the war who are now in category of civil victims of war and are exposed to various revisions so it happens that a person who had status of civil victim of

<sup>17</sup> Criminal Code of BiH, „Official Gazette of BiH“ no: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10. Criminal Code of FBiH. „Official Gazette of FBiH“ no: 36/03, 37/03, 21/04, Criminal Code of RS „Official Gazette of RS“ no: 49/03, 108/04, 37/06, 70/06, 73/10. Criminal Code of the District of Brčko, „Official Gazette of the District of Brčko“, no: 10/03, 45/04, 06/05.

The Law on Criminal Procedure of BiH, „Official Gazette of BiH“ no: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 12/09, 16/09, : 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 64/07. The Law on Criminal Procedure of FBiH, „Official Gazette of FBiH“ no:: 50/03, 111/04, 115/04, 29/07. The Law on Criminal Procedure of RS, „Official Gazette of RS“ no: 50/03, 111/04, 115/04, 29/07; 5 The Law on Criminal Procedure of the District of Brčko „Official Gazette of the District of Brčko“, no: 10/03, 48/04, 06/05, 12/07, 14/07, 21/07.

BiH Law on Execution of Criminal Sanctions and Other Measures „Official Gazette of BiH“ no:: 13/05, 53/07, 97/07, 37/09, Law on Execution of Criminal Sanctions of FBiH „Official Gazette of FBiH“ no: 44/98, 47/99 i 12/09, Law on Execution of Criminal Sanctions of RS „Official Gazette of RS“ no: 64/01, 24/04, 68/07, Law on Execution of Criminal and Petty Offence Sanctions of the District of Brčko „Official Gazette of the District of Brčko“, no: 08/00, 01/01, 19/07, 36/07.

The Law on Basic Social Protection, Protection of Civil Victims of War and Protection of the Families with Children of FBiH „Official Gazette of FBiH“, the Law on Social Protection „Official Gazette of RS“, no:: 5/93, 15/96, 110/03 i 33/08. The Law on Civil Victims of War „Official Gazette of RS“, no: 25/93, 1/94, 32/04, 37/07 i 60/07“.

<sup>18</sup> CAT/C/BiH/CO1, item 9.



war and with invalidity over 90% due to loss of some vital organ (hand, leg, etc.) is in process of revision assessed to have less degree of invalidity, which leads to conclusion that lost organ is „re-appeared“ or this is a consequence of the pressure by Government through revision to lessen decrease number of persons with recognized status of civil victim of war. In this sense not a single recommendation made by the Committee was not taken in account or implemented. **Process of determination of degree of invalidity is made more complex, lengthy and less effective** and victims are frequently requested in advance to pay costs for determination of degree of invalidity and without paying of fee, process of determination is not accessible.

- Level of quality in application of existing laws and by-laws is mainly limited **by lack of institutions of quality specialized for work with victims and their accommodation**. This is mainly excused by lack of finances. Here it is needed to stress that there is no strategic long-term approach for resolving the problems of this category of citizens. Particularly having in mind that social rights are progressive rights, realization of which are not to be expected immediately, however, a long-term approach should be visible. This particularly applies to institutions for accommodation of persons with disabilities<sup>19</sup>, institutions for accommodation of children with socially deviant behavior, institutions for execution of criminal sanctions, etc, that Ombudsmen visited and during 2010/2011.
- Significant improvements are registered in process of exhumation and identification of missing persons, yet there still exist obstacles that negatively reflect on the very process such as lengthy procedure of appointment of the boards of directors or supervisory boards with expired mandates of the Institute for Missing Persons (to some of them mandate expired even three years ago), unduly allocation of resources planned in budget of Institute for Exhumation and Identification, etc.

## 5. Prison system

- There is a limited improvement **regarding improvement of prison system** in BiH. Prison capacities are enlarged, particularly through construction of new prison in Tuzla and Orašje, reconstruction of prison in Dobož and enlargement of capacities of Banjaluka prison. However, overall prison living standard remains at a low level. **There is limited improvement in resolving the problem of overcrowdings, poor standard of living and inadequate medical treatment**. Lack of separate correctional institutions for women, minors, mentally ill persons, invalids and the elderly is still a serious problem.
- **Lack of institutions for accommodation of persons who committed a criminal offence in state of mental incompetencies is particularly** concerning. Although some consultation

<sup>19</sup> Special Report prepared by BiH Ombudsmen on the situation in institution for accommodation of mentally disabled persons in BiH, published on 10.09.2009.

processes took place between entity ministries of justice and BiH Ministry of Justice, it did not result in the change of practice. On the date of Ombudsmen visit to correctional institution in Tuzla, 05.10.2010, there happened to be a prisoner ordered to be accommodated to institution for accommodation for persons who committed criminal offence in state of mental incapacity. For this and other persons of the same status there is not possibility to be dislocated from ordinary prisons and the only institution in Sokolac designed for this purpose is not in a possibility to accommodate such persons. Accordingly, human rights of such persons are consciously violated to ensure security of the society.

- At the same time, during their visits to the prisons the Ombudsmen determined existence of such cases where due to change of mental state of a convict, further serving of the sentence became pointless, and law does not define who initiates procedure for accommodation of such convicts to institutions for accommodation of mentally ill persons in adequate institution. In most cases such persons all the time remain in prisons until they are released free without any further social care.

## 6. The institutions for accommodation of mentally disabled persons

- During their visits to institutions that accommodate mentally disabled persons the Ombudsmen noticed that ***the main characteristic is overcrowdings***, which is directly reflected in to quality of accommodation, absence of adequate care by authorities responsible to provide care to this category of citizens'. Ombudsmen also detect that functioning and years-long sustainability of the work of these institution results only through usage of own capacities and enthusiasm of the employees and their professional commitments, and that there exist no governmental support to these institutions. Attitude of the beneficiaries towards the staff, during the Ombudsmen visit, has shown ***that the employees are committed to the beneficiaries and their best interest***. At the same time, BiH Ombudsmen ***spot high level of improvisation due to lack of systemic approach to care of this category of citizens***, including lack of support by authorities in charge.

## 7. Immigration and asylum

- In BiH there is ***significant improvement related to accommodation of illegal immigrants***, through opening of Immigration Center which is completely in conformity with European standards. BiH Ombudsmen recognize importance of international law principles referred to in article 3 of the Convention - „non-refoulement“, according to which State violates absolute prohibition of torture, not only in the cases where governmental authority directly torture persons, but also if it send person to the other country where there exist justified suspicions that a person could be exposed to danger of torture. Further, one should have in mind that this procedure is not equal with the procedure of getting asylum status.

- Related to previous, The Ombudsmen welcomes establishment of Immigration Center in Bosnia and Herzegovina that falls under authority of the Ministry of Security of Bosnia and Herzegovina. Immigration Center has been established in July of 2007, and up to date the Ombudsmen visited the Center on several occasions. The Ombudsmen are of the opinion that through establishment of the Center human rights protection standards are completely fulfilled, yet ***the express concern for the rights of persons accommodated in the Center for more of one year due to ineffectiveness of judicial system.*** Namely, in practice, abolishment of court decisions and renewals of the procedure the judiciary has practice in which tries to win time so that in concrete cases Strasbourg Court take a decision, which has already taken provisional measures on prohibition of extradition of inmates until final Court decision.

## 8. Court protection

- The main number of complaints filed with Ombudsman Institution in 2009, 2010 and 2011 are related to ineffective judiciary. And the complainants allege lengthiness of procedures, frequent abolishment of the first instance decisions by the second instances and referring the cases for reconsideration. Although Central Management System (CSM) has been established, ensuring equal treatment of all cases dealt by judicial system, which enables chronological processing of the cases, in practice, there are problems related to lengthiness of procedures excused by courts by a huge caseloads, which is according to Decisions of Human Rights Court in Strasbourg unacceptable.
- A number of complaints filed with Ombudsman Institution is ***also related to non-execution of court decisions which particularly applies to BiH Constitutional Court Decisions*** determining human rights violations and implementation of which is delayed for more of several years.
- ***Slowness of judicial system*** is particularly concerning in the cases of recognition of civil victim of war, which results in limited exercise of victim's rights. According to information provided by associations of victims, ***there are a couple of thousands lawsuits for right to exercise war victim status that are still not processed,*** which arise the question of effective court protection for this category of citizens.

## 9. Trafficking in human beings

- Lately, in BiH there have been made ***significant improvements in fighting trafficking of people human beings,*** which particularly applies to sexual exploitation. Legal framework is improved, human resources increased in police, prosecutor's offices and courts so they

could secure more effectively processing cases of trafficking of people, and certain improvements are also registered in cases of care for victims of this trafficking. Unfortunately, occurrence of bagging, mainly children's bagging, appears more and more lately. It is not clear or investigated enough whether bagging is performed within trafficking, i.e., whether all elements determined by UN Protocol on suppression of trafficking in human beings or this refers only to occurrence of bagging as such. With support of Save the Children Norway the Ombudsmen published Special Report on Bagging to raise awareness of BiH the public about this negative social phenomena.<sup>20</sup>

## 10. Freedom of movement

- Freedom of movement in BiH has to be viewed in context of implementation of Annex VII of Dayton Peace Agreement related to return. ***Lack of creation of mechanisms for sustainable return***, particularly in the area of ensuring of exercise of right to health and social protection is significantly reflected to results achieved through repossession of property. This is particularly important due to the fact that exercise of social rights are not transferable from one to the other entity of the State and the returnees are forced to give up return because particularly hard economic and social situation and keeping of status of already realised rights. Therefore, they are forced to give up return and in this way their full right to freedom of movement and choice of place of residence are seriously violated.
- Despite of repossession of housing units to original pre-war holders/owners and significant resources designated for reconstructions of destructed housing units, a great number of refugees and internally displaced persons are still not back to their homes or, or following return they left their homes again. Collective centers are still present in the field and in Ombudsman Institution there is a complaints registered providing findings that ***new collective centers are opened***, designed for accommodation of displaced persons with recognized right to alternative accommodation.

## 11. Freedom of opinion, consciousness and religion

- Several complaints are registered in Ombudsman Institution related to enjoyment of the right to freedom of religion<sup>21</sup> The Ombudsmen find that not a single of these complaints could be viewed upon as exception from provision of the Convention, such as: protection of public security, order, health and morality, or fundamental freedoms and rights of other persons.

<sup>20</sup> [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

<sup>21</sup> There is complaint registered that a soldier declared himself as Croat cannot be promoted in his profession if he comes from Republika Srpska, a nun is disabled to be director of a kindergarten, a Muslim woman is forbidden to wear veil if in military service or court.

## 12. Family

- Based on individual complaints, BiH Human Rights Ombudsman conclude that in BiH mechanisms for family protection are not enough developed. It is particularly important to stress on poor position of social work centers as social institutions, which are central institutions responsible for all social issues and at the same time have significant role in development and maintenance of family relations.

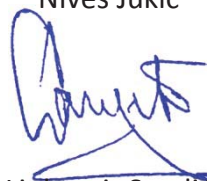
## 13. Legal aid

- The ombudsmen find that citizens have limited approach to justice and protection of human rights, since the established mechanisms of legal aid are not sufficiently effective and are of strict criteria in selection of beneficiaries of their services and are more oriented to protect persons under investigation due to commitment of criminal offence. Such system of legal aid is still not established at the State-level.

### OMBUDSMEN OF BaH



Nives Jukić



Ljubomir Sandić



Jasminka Džumhur