



UNIVERSAL PERIODICAL REVIEW ON THE SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA

II Cycle

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INTRODUCTION

This report is the result of monitoring the situation of human rights in Bosnia and Herzegovina (BiH), information are obtained from citizens' complaints filed with Institution of Human Rights Ombudsmen of Bosnia and Herzegovina (OI) and the research that was conducted in the period August 2009 - December 2013, which were published in annual and special reports available on website (www.ombudsmen.gov.ba).

GENERAL OBSERVATIONS

- Lack of effective measures targeted to implementation of UPR recommendations contained in the first cycle of reporting is visible.
- BiH has still not adopted a National action plan on human rights with strategic approach that would ensure protection and improvement of human rights.

I-SCOPE OF INTERNATIONAL OBLIGATIONS

1.1 BiH has still not established National Preventive Mechanism (NPM), although the Council of Ministers of BiH (CoM) decided that this body, defined by Optional Protocol to UN Convention against Torture, should be established within OI. Precondition for realization of this international obligation requires provision of adequate financial and human resources.

II-INSTITUTIONAL INFRASTRUCTURE

2.1 Cessation of the work of entity ombudsman, institutional reforms and appointment of new ombudsmen in 2008 resulted in establishment of unified OI at the State level, as fulfilment of one of the conditions for BiH to accession to EU. The process of merger of OI in BiH ended in May of 2010, which required financial and human resources consolidation.¹

2.2 Adopted Rulebook on internal organization and job classification in OI envisages 90 workplaces, and by end of 2013, 56 workplaces were filled. Taking into account the basic mandate of the Ombudsman and identified additional mandates in accordance with the Law on Freedom of Access to Information Act, the Law on Prohibition of Discrimination (LoPD) and the Law on Ministerial, Government and Other Appointments necessarily requires additional financial and human resources for implementation of prescribed mandates, including necessary preconditions for further development and strengthening of independent national mechanism for protection of human rights, including ensuring permanent premises.

2.3 OI is national mechanism for the protection of human rights (NHRIs) accredited with status "A" by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Re-accreditation of OI is envisaged for 2015. It is

¹ As to finances, it is important to point out that the total budget of the three institutions before merger in 2010 amounted to 5,080,881.00 KM and approved budget of unified Ombudsman in 2011 was 2,473,406.00 KM.

necessary for government to show more understanding for the ICC SCA recommendations, to make the Institution able to retain status "A".²

2.4 Trend of decrease of resources of OI³, raises the question of its financial independence, so it is necessary to find new solutions, a different procedure for adoption of the budget of OI in parliamentary procedure directly.

III-POLITICAL MEASURES

3.1 The Constitution of BiH guarantees human rights and liberties, and direct application of European Convention on Human Rights (ECHR) and priority of ECHR and its Protocols over all domestic legislation.

3.2 Connected to discriminatory provisions of BiH Constitution which allows exclusive "constituent peoples" right to bid for the delegates of the Parliamentary Assembly and members of the Presidency of BiH, is contrary to the judgment of EHCHR against BiH in the case of Sejdić and Finci v. BiH has not yet been implemented. The BiH authorities are declaratively ready to implement the judgment, and in this sense CoM established Working Group and adopted the action plan, but there is no political will for concrete progress and implementation of the judgment.

3.3 Generally, present disharmony of laws governing the same subject matter at different levels is particularly visible in the field of realization of social rights.

3.4 Lack of direct application of international standards results in insufficient education of the authority officials, especially police, judges, prosecutors, social workers, etc.

3.5 In the area of education on human rights, there is a lack of curricula for implementation of continuous and specialist training of public servants and law enforcement agencies.

IV-EQUALITY AND ANTI-DISCRIMINATION

4.1 Although the Law on Prohibition of Discrimination in BiH (LoPD) envisages obligation for existence of separate budget line for the work of Anti-Discrimination Department, this legal obligation was never implanted. As regards the application of (LoPD), there is a very low level of jurisprudence, which significantly affects the efficiency of law's implementation; there were only two final court judgment for discrimination.⁴ It is visible insufficient sensibility of the judges concerning cases of discrimination, particularly mobbing.

² BiH Ombudsmen, acting according to recommendations of the Subcommittee on Accreditation (SCA) ICC, on 05.02.2013 submitted to the Parliamentary Assembly the initiative to amend the Law on the Ombudsman of BiH and information about the status of the institution of Ombudsman for Human Rights in the international re-accreditation process.

³ Decrease of budgetary resources of BiH Ombudsman are as follows:

- In 2010 the budget was 2.721.000,00 KM,
- In 2011 it was 2.473.397KM,
- In 2012 it was 2.388.000 KM
- In 2013 it was 2.374.000 KM

⁴Decision of Cantonal Court Mostar, no: P 58 0 P 056658 09 P. Decision of Municipal Court Tuzla. no: 51 0 P 054 522 11 P.

- 4.2** Ombudsmen spot necessity for analyses of implementation of Framework Law on Primary Education, particularly including right to native tongue, national group of subject matters and multi-ethnic teaching staff and school boards.
- 4.3** In comparison with other vulnerable categories of citizens, members of the LGBT population rarely decide to initiate proceedings before OI, which is likely result of fear for disclosure of their sexual orientation. According to findings of OI, there were no cases of discrimination of LGBT people that got court epilogue.

V-RIGHT TO LIFE, LIBERTY AND PERSONAL SAFETY

- 5.1** Violence against women, domestic violence in general, and the different types of exploitation on the basis of gender in BiH is still present, despite all the measures taken. The reason for non-functioning of established mechanisms, i.e. insufficient and untimely responses, while, in practice, a common problem is lack of developed awareness of individuals on existence of protection mechanisms.
- 5.2** Due to slow reform of criminal law in the area of defining sexual violence, in accordance with international standards, the victims are insufficiently protected; procedures are slow causing additional fear of reporting acts of violence.
- 5.3** Although in 2012 new laws on protection of domestic violence were adopted in both BiH entities, in Republic of Srpska (RS) act of domestic violence is petty or criminal offence, while in the Federation of BiH (FBiH) it is only a criminal offense.
- 5.4** Dealing with incidents of domestic violence reveals the problem of unsustainable system of safe houses, non-effective response by competent authorities, and ultimately because of inefficiency of overall system of protection, violence often resulting in death.⁵
- 5.5** BiH women have limited approach to labour market and are majority of unemployed working-age population, and in employment in public, in particular private sector, affirmative measures are not applied to eliminate gender discrimination. Programs implemented by the State for stimulation of employment are not adapted specifically to women and have not real impact aimed to increase number of employed women.
- 5.6** A large number of BiH women is engaged in "black market" in gastronomy sector, tourism and trade, and have limited access to managerial and other well-paid positions in the labour market. Although state law protects the rights of women on paid maternity leave, in practice, employment of young women on a certain time, avoidance of serving for a person on the basis of the executive or judicial decisions is a criminal offense under both Entity criminal laws.⁶ Women are frequently confronted with billing alimony.

⁵ Ž-SA-05-1386/10;P-335/10 - Ombudsman BiH opened ex officio investigation related to murder of F.J from Tuzla, based on the citizen's complaints that the police do not take appropriate measures in cases of violence against women.

⁶ Article 223 of Criminal Code of FBiH and Article 210 of Criminal Code of RS

VI-JUDICIARY AND THE RULE OF LAW

6.1 The right to fair trial

6.1.1 In OI increased number of complaints about violations of human rights by courts. Complainants are related to lengthy court proceedings and ineffective enforcement of judicial decisions, and significant number of complaints is related to the violation of the right to fair trial.

6.2 Transitional justice

6.2.1 BiH Court and Prosecution have Witness Support Unit, which deals with psychological support to witnesses, while other forms of support lacks, resulting in the fact that crime victims, particularly sexual violence victims, are frequently stigmatized and additionally traumatized. What remains a problem is lack of judicial investigations of threats to crime victims after testifying.

6.2.2 When it comes to implementation of the National Strategy for War Crimes, certain progress is made in the field of records and databases. However, efforts should be made to implement part of strategy relating protection and assistance to witnesses. Regular reporting on implementation of the Strategy is imperative towards its full implementation,

6.2.3 BiH did not adopt a program to improve position of women victims of rape, sexual abuse and torture, although the draft law is already prepared. National Strategy on transitional justice is initiated but not adopted.

6.2.4 BiH does not have unified reliable database on women victims of rape and other forms of violence committed during the war from 1992 to 1995.

6.2.5 Achieving status of civilian victim of war differs in both entities, and rape victims in the FBiH are recognized as civilian victims of war.⁷ This situation is further hampered by lack of finances. In RS women victims of rape and other forms of sexual violence are not recognized as civilian victims of war as a special category. Brčko District only in 2012 passed legislation that prescribes manner of exercising of status of civilian women-victims of war, not limited to the terms and taking into account psychological suffering and damage. The prosecution and dynamics are related to criminal offenses with elements of sexual violence is slow.

6.2.6 BiH did not harmonize regulations in the field of criminal law. There is no separate database for rape prosecution, but these crimes are placed in the statistics of war crimes.

6.2.7 The state should identify established models of non-governmental organizations for rehabilitation (shelter) and provide assistance and support to women-survivors of rape and other forms of sexual violence, and establish institutional network to support victims and witnesses, and ensure necessary funding and other services to maintain this support system.

⁷ The Law Amendments to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children (Official Gazette of FBiH, No. 39/06)

6.3 Education

6.3.1 Plans of training centres for training of judges and prosecutors envisage training in international humanitarian law and war crimes as well as training on ECHR, but there is a lack of comprehensive education linked to international human rights standards, particularly regarding discrimination.⁸ Trainings are held exclusively for judges and prosecutors, while for professionals employed in other authorities in BiH such trainings are sporadic and insufficient.

VII-FREEDOM OF RELIGION OR BELIEF

7.1 BiH should intensify measures aimed at establishing mutual trust and overcoming of divisions. Such programs should be included in the curricula.

7.2 It is necessary to proceed with the activities aimed at the protection of religious freedoms, and reconsideration for taking of other measures on the basis of available information, such as reports on attacks on religious sites and increased level of education in community work in places where such attacks take place frequently.

VIII-FREEDOM OF EXPRESSION

8.1 Law on Prohibition of fascist and neo-fascist organizations and prohibition of use of their symbols was not adopted by the Parliamentary Assembly of BiH, because of the lack of political agreement.

8.2 Hate crimes require special treatment because they cause feeling of insecurity and mistrust within each community. Amendments to Criminal Code of RS and Brčko District, relating to hate crimes, were adopted in 2010. Adoption of the same Amendments to FBiH⁹ Criminal Code would significantly contribute to BiH effective combat against hate crimes.

8.3 It is necessary that BiH authorities, in the coming period, take measures towards combating hate speech, and consider launching campaign through which citizens would get aware of the possibilities to make complaints, since hate speech constitutes discrimination under LoPD.

8.4 The Ombudsmen points at increasingly frequent attacks on journalists, both physically and verbally, which endangers independence of the media in BiH. It is necessary to take measures for ensuring freedom of expression, promotion of diversity of opinions and guaranty for freedom of the press. Prosecution and police should make further efforts investigating threats to safety of journalists, which restricts media freedoms.

8.5 The Ombudsmen detect that in application of Freedom of Access to Information Act (FoAIA); media encounters numerous problems, and express concern regarding Amendments to FoAIA,

⁸ Plan and training program for 2014 are available on the official website of Training Centres for judges and prosecutors of FBiH and RS: www.fbih.cest.gov.ba and www.rs.cest.gov.ba;

⁹ In December of 2012 the Ombudsmen initiated Amendments to Criminal Code of FBiH. In January of 2013 the Parliament of FBiH informed that the initiative is accepted, and that representatives of the Institution will be invited to take part in the work of competent parliamentary committees for preparation of draft law.

which would significantly limit application of the Act, as important tool for combating corruption and increasing transparency of public organs work.

IX-RIGHT TO PARTICIPATE IN PUBLIC AND POLITICAL LIFE

- 9.1** Gender equality in public and private spheres and application of domestic law and international obligations including CEDAW is marginalized, since in public discourse dominate ethnic issues, slowing social, economic and political development, which affects level of protection of women's basic human rights and ability of women to enjoy their rights on equal basis.
- 9.2** Women are not sufficiently represented in political decision-making at all authority levels. The quota of 40 % of the seats in legislative and executive power for less represented gender, is not reached
- 9.3** Discrimination against women is manifested through appointment of men in leadership positions in state-owned companies and boards of directors, including executive bodies in the economy sector. In practice, there are still cases where provisions that seek to ensure gender equality and prevent discrimination are not respected, even when women appear as the best candidates.

X-RIGHT TO SOCIAL SECURITY AND THE RIGHT TO ADEQUATE STANDARD OF LIVING

- 10.1** Although BiH adopted Poverty Reduction Strategy ten years ago, it was not carried out. Measures were not taken to improve the quality of life of socially disadvantaged people. Rate of registered unemployed citizens in September of 2013 was 44.8 %.
- 10.2** Due to social exclusion most vulnerable categories have diminished chances for employment and education. Social policy measures do not essentially prevents poverty, due to which there is need for greater governmental care, sensibility and consistency in resolving issues of economic and social rights.¹⁰

XI-THE RIGHT TO HEALTH

- 11.1** In BiH there are problems in exercise of the right to health care, and citizens have different access to this right, depending on resident place. There is no system that would enable equal access to health care.

XII-THE RIGHT TO EDUCATION

- 12.1** In BiH there are numerous problems in education, requiring strategic approach especially aimed to elimination of discrimination, segregation, assimilation and politicization.

¹⁰ This message was sent by Ombudsmen of Slovenia, Croatian, Bosnia and Herzegovina, Serbia, Montenegro, Albania, Kosovo* and Macedonia from a regional conference held in Ljubljana in February of 2014.

XIII-PERSONS WITH DISABILITIES

- 13.1** Human rights of persons with disabilities in BiH is still worrisome, for violations of rights in all spheres of social and health care, including nursing care or orthopaedic aid
- 13.2** In BiH there is no accurate statistics on persons with disabilities or uniform definition of persons with disabilities.
- 13.3** Although BiH by its entity laws and by-laws established standards and rules for access to public institutions - architectural barriers, while relevant authorities in taking decisions narrowly interpret regulations, ignoring the best interests of persons with disabilities.
- 13.4** There are recorded cases of violation of Articles 15, 19 and 20 of UN Convention on the Rights of Persons with Disabilities¹¹, in the cases where beneficiaries of the institutions, who have already been adapted to life in the local community, are again returned to another facility of closed type.¹²

XIV-RIGHTS OF THE MINORITIES

- 14.1** In 2013 OI produced Special report on the situation of Roma in BiH and competent institutions of all levels of government were sent recommendations relating to improvement of conditions and quality of life of the largest national minority, their rights to employment, education, health care, and raising of public awareness about the needs of this vulnerable category.
- 14.2** Ombudsman welcomes the efforts taken by the State to join project "Decade of Roma Inclusion 2005-2015". Improvements relating to access of Roma to identification documents, establishment of records for Roma rights, especially regarding employment, but there remains a need for such records to other areas on all governmental levels.¹³

XV-MIGRANTS, REFUGEES, DISPLACED PERSONS AND ASYLUM-SEEKERS

- 15.1** In 2012 BiH adopted strategy in the field of migration and asylum policy and action plan for the period 2012-2015.
- 15.2** Constitutions of BiH and its entities guaranty right to all refugees and displaced persons freely to return to their homes. Ombudsmen stress that they still receive complaints relating to Annex VII, which regulates right to return, because political, economic, and social conditions are not fulfilled so as to ensure return and re-integration of refugees and displaced persons.
- 15.3** Many displaced persons and returnees are in state of social need, faced with existential difficulties and frequently unbearable social situation both in places of dislocation and return to their pre-war homes.

¹¹ Case (Ž-SA-02-467/13), which was addressed by two persons with disabilities due to legal unregulated model of living supported by local community. Due to the fact that they have already contacted various institutions, the only suggestion was that the occupants should be placed in some institution.

¹² Case (Ž-SA-02-697/13) Case of rights violations of people with disabilities in complaint initiated by the Federation Ministry of Labour and Social Policy

¹³ Special Report on the situation of Roma in BiH, Ombudsman BiH, 2013.

XVI-HUMAN RIGHTS DEFENDERS

16.1 Ombudsmen express concern about increased number of attacks on activists and defenders of human rights. Most cases remain unresolved; therefore it is necessary that competent institutions rapidly and transparently conduct investigation of these cases.

16.2 BiH has not yet adopted legislation for protection of "whistleblowers". They should be fully protected against victimization through relevant legislation.

XVII-THE RIGHTS OF THE CHILD

17.1 In 2009 Ombudsmen submitted report on implementation of Optional Protocol on sale of children, child prostitution and child pornography. With regard to the Committee's recommendations, it should be noted that there are certain developments regarding amendments to the criminal legislation. However, the Government has not taken adequate measures to ensure the application of the law passed, and education of professionals in areas covered by the Optional Protocol.

17.2 BiH Ombudsmen express concern that the ban on corporal punishment of children is not fully incorporated into all relevant legislation at all levels in BiH.

17.3 Ombudsmen particularly express concern that the State does not strengthen human resources, technical and financial support to social work centres, while they spot that in schools there is not sufficient sensibility by teaching staff and professional associates for special needs of children, particularly in detection and prevention of violence over children.