

INSTITUCIJA OMBUDSMENA/OMBUDSMANA
ZA LJUDSKA PRAVA BOSNE I HERCEGOVINE



ИНСТИТУЦИЈА ОМБУДСМЕНА/ОМБУДСМАНА
ЗА ЉУДСКА ПРАВА БОСНЕ И ХЕРЦЕГОВИНЕ

**REPORT ON THE IMPLEMENTATION OF OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF A CHILD RELATED TO CHILDRENS'
ENGAGEMENT IN ARMED CONFLICT PREPARED BY HUMAN RIGHTS
OMBUDSMAN OF BOSNIA AND HERZEGOVINA**

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Introduction

Optional Protocol to the Convention on the Rights of a Child regarding the involvement of children in armed conflicts, as addition to the Convention on the Rights of a Child was adopted by the UN General Assembly 24 May 2000.

The decision on ratification of the Optional Protocol to the Convention on the Rights of a Child related to the engagement of the children in armed conflict¹, adopted by the Parliamentary Assembly of Bosnia and Herzegovina and based on the decision of the Bosnia and Herzegovina Presidency in 2002.

Bosnia and Herzegovina signed the Optional Protocol on 7 September 2000, and ratified it 10 October 2003. According to the Constitution of Bosnia and Herzegovina², the state shall assure the highest level of internationally recognized human rights and fundamental freedoms, and their enjoyment in accordance with international agreements referred to in Annex 1 of the Constitution.

Ratifying, Bosnia and Herzegovina has taken over the obligation to take appropriate measures, including adoption of legislation regulating the prohibition of violations and sanctioning provisions, which will guaranty that the members of the armed forces who are under 18 shall not directly participate in conflicts.

Submitting this report under Article 8, Paragraph 1, of the Optional Protocol, provides a view on legislative, administrative, judicial and other measures, applied in Bosnia and Herzegovina, in connection with the Protocol.

1 Jurisdiction of Human rights ombudsman of Bosnia and Herzegovina

Institution of Human rights ombudsman of Bosnia and Herzegovina is established by Agreement on human rights (Annex 6 of the General Framework Agreement on Peace for Bosnia and Herzegovina) as a national mechanism for protection of human rights. Under Article 1 of the Law on Human rights ombudsman of Bosnia and Herzegovina³ and Article 2 of the Rules on Functioning of the Institution of Human rights Ombudsman⁴, the Institution is independent, established with the aim to promote good governance and rule of law, protect freedoms of individuals and legal entities, as it is guaranteed by the Constitution and international agreements, appended thereto.

The Institution has organised separate organizational units to monitor implementation of childrens' rights, persons with disabilities and the rights of ethnic, religious and other minorities, organizational units for monitoring economic, social and cultural rights, political and civil rights, and prevent all forms of discrimination. According to its powers, the Ombudsman Institution conducts investigations of all complaints of violations of human rights and freedoms allegedly committed by the military authorities.

Following the appointment of the new Ombudsman in December 2008, change of institutional policy and Institutional reform of the Ombudsman of Bosnia and Herzegovina, there occurred significant progress in the field of protection of the rights of the children.

¹ Official Gazette B&H, no 5/02

² The Constitution B&H, article II- human rights

³ Official Gazette B&H, no 19/02

⁴ Official Gazette B&H, no 45/04

The Department on monitoring the rights of children with a very broad mandate was established, and has realized with the support of Save the Children "Norway, a number of activities during 2009, with the aim of strengthening the capacity of the Department on monitoring children's rights, in order to create all necessary conditions for full promotion of the children, especially through education of children on their rights.

The need for strengthening and promoting of the rule of law, human rights and freedoms of military personnel and cadets of the Armed Forces of Bosnia and Herzegovina and Bosnia and Herzegovina Ministry of Defence, as guaranteed by the Constitution and international agreements in its appendix, has created the conditions for the establishment of the Parliamentary Commissioner for military issues of Bosnia and Herzegovina, regardless of their competence in performing his/her work and shall cooperate with the Institution of Human Rights ombudsman of Bosnia and Herzegovina.⁵

II Ratification of Optional Protocols

On the basis of decisions of the Presidency of Bosnia and Herzegovina in 2002, Parliamentary Assembly of Bosnia and Herzegovina passed a decision on the ratification of the Optional Protocol to the Convention on the Rights of a Child concerning the involvement of children in armed conflict.⁶

On 7 September 2000 Bosnia and Herzegovina signed, and on 10 October 2003 ratified the Optional Protocol to the Convention on the Rights of a Child, which refers to involvement of children in armed conflict.

III Recommendations to the UN CRC

Committee on the Rights of a Child⁷ reviewed the initial report of Bosnia and Herzegovina 2005 and in the final considerations noted that accepts the information that the existing State Ombudsmen will continue their activities including a department for children's rights. However, it expressed concern that there are not enough public information on existence of the Department, as well as information about its function and mechanism for submission of individual complaints.⁸

The Committee has recommended the State-party to provide support to the Office of the Ombudsman to launch a campaign to raise public awareness, which will especially be aimed to parents and children in an effort that they provide information about the existence and functions of the Department of Children's Rights with the Office of the Ombudsman, and especially about its powers to receive and investigate complaints concerning violations of children's rights. Member States are further encouraged to ask for technical cooperation with UNICEF and OHCHR and other organizations.⁹

The Committee also expressed concern due to the fact that between 1992 and August 2000, 4371 persons were injured of mine, out of which 300 are children, and there is still a million of not removed mines in about 30,000 minefields throughout the country, some located close to schools and children's playground. According to data from the Red Cross, every month 50 children suffer from the consequences of this situation. The Committee is especially concerned about the situation of children who are victims of

⁵ Official Gazette B&H, no 49/09, 51/09

⁶ Official Gazette B&H, no 5/02

⁷ CRC/C/15/Add.260 from 21 September 2005

⁸ CRC/C/15/note 14-Independent monitoring

⁹ CRC/C/15/note 15-Independent monitoring

armed conflicts in the sense of war consequences on physical condition and psychological state of mind of the children.¹⁰

It is therefore recommended to Bosnia and Herzegovina to continue with campaigns that raise awareness about mines, mining run programs and expand psychological and social support for children who were injured by mine explosion or suffer from other consequences of armed conflict.¹¹

IV National legislation

Legislation of Bosnia and Herzegovina 2003-2005

Bosnia and Herzegovina is consisted of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter "the Entities"); all governmental functions and powers, not expressly vested by the Constitution to the institutions of Bosnia and Herzegovina, are entrusted to the Entities.¹²

The issue of the military service in Bosnia before the ratification of the Optional Protocol to the Convention on the Rights of a Child concerning the involvement of children in armed conflict was under jurisdiction of entities of Bosnia and Herzegovina. Therefore, the legislative framework is presented for the period from ratification until transfer of jurisdiction from the entities to the state of Bosnia and Herzegovina in 2005.

Legislation of Republika Srpska

Up to 2005, in the Republika Srpska, the Law on the army of Republika Srpska¹³ prescribed the obligation for the Ministry of Defence of Republika Srpska to pay education of a trainer who shall join the army.¹⁴

Obligation of recording conscripts, has taken rise by the beginning of the calendar year in which a citizen reaches 17¹⁵, and recruiting in year when the citizen completes 18, while, during the war and imminent threat of war, recruiting was possible with at the age of 17.¹⁶

Military service lasted 9 months, except for recruits who, for religious or other conscience objections did not want to serve military service under arms, or would like to serve in the civil service where the service lasted 12 months.¹⁷ Amendments to the Law on the army of Republika Srpska reduced deadline for military service from 9 to 6 months.

The regulations on military service without weapons, as well as in civil service¹⁸, set forth approval process and the manner of military service for recruits who, for religious reasons or conscientious objection do not want to serve military service under arms.

¹⁰ Ibid, note 63

¹¹ Ibid, note 64

¹² The Constitution of Bosnia and Herzegovina

¹³ Official Gazette no.31/96, 46/01, 33/04

¹⁴ Ibid, article 64

¹⁵ Ibid, article 207

¹⁶ Ibid, article 210

¹⁷ Ibid, article 215

¹⁸ Official Gazette of Serbian Republic, 16/02

Legislation of the Federation of Bosnia and Herzegovina

In the Federation of Bosnia and Herzegovina Law on Defence¹⁹ in the same way as in the Republika Srpska regulates recruitment, with the difference that recruitment could be made when the conscript reaches 17, on his personal request.²⁰

A recruit who was not willing to use military service carrying and using weapons could be sent on civil military service.²¹ Military service lasted four months, and the civil service six months.²²

Legislation of Bosnia and Herzegovina after 2005

The Agreement between the Federation and Republika Srpska on the transfer of competencies in the area of defence,²³ because of the need to establish a unified defence system in Bosnia and Herzegovina and integration of Bosnia and Herzegovina into Euro-Atlantic integration, in accordance with the Bosnia and Herzegovina Constitution²⁴, transferred all responsibilities in defence from entities are to the institutions of Bosnia and Herzegovina.

Since 1 January 2006, ***Law on Defence of Bosnia and Herzegovina***²⁵ prescribes that army in Bosnia is professionalised, and conscription regulated by entity laws is abolished in the entire Bosnia and Herzegovina²⁶. The law stipulates that a condition for admission to the military service is that a person is under 18 or older than 27.²⁷

V Conclusion

1. In National legislation of Bosnia and Herzegovina is not incorporated the definition of a child under the Convention on the Rights of a Child, but laws on different levels of government built on the same terms with the acquisition of legal age 18, as the basis for the acquisition of full legal capacity. In exceptional cases, legal capacity can gain by persons under the age of 18 and only on the basis of court decision in extra-judicial proceedings in the cases marriage conclusion or where a minor becomes a parent at age 16.
2. Bosnia and Herzegovina legislation does not regulate the provision of appropriate psychological and social help to children who are hurt by explosion of the mines, or who suffer from the consequences of the war in Bosnia and Herzegovina. In December 2003. Handicap International completed a research related to victim assistance in Bosnia and Herzegovina. The document was published titled: "Assistance to mine victims in Bosnia, working document for supporting the preparation of studies of long-term strategy to help mine victims." An analysis of the existing legislation, the system of rehabilitation care, programs for victim assistance and information system is included in the research.²⁸

¹⁹ Official Gazette of Federation of B&H, 34/04

²⁰ Ibid, article 70

²¹ Ibid, article 75

²² Ibid, 89

²³ Official Gazette of Serbian Republic, 4/06

²⁴ Article III(5)(a)

²⁵ Official Gazette B&H, 88/05, 53/07, 59/09

²⁶ Ibid, article 79

²⁷ Article 9

²⁸ Strategy for helping mine victims in Bosnia and Herzegovina

3. Based on analysis of the legislation of Bosnia and Herzegovina, in connection with the Articles 1 and 2 Optional Protocol can be concluded that there is a general prohibition of direct participation in combats and recruitment of persons under the age of 18 years.
4. A strong national mechanism for the protection of childrens' rights, including the protection of children against involvement in armed conflicts was created through reconstruction of the Office of the Ombudsman of Bosnia and Herzegovina and the establishment of the Department for the rights of children.

Sarajevo, December 2009.

Ombudsman of Bosnia and Herzegovina:

/ Jasminka Džumhur /

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