

The Ombudsmen Institution of  
Bosnia and Herzegovina



Institucija ombudsmena/ombudsmana  
za ljudska prava Bosne i Hercegovine

*in association with*



**Save the Children**  
Norway

***Analysis of the  
harmonization  
of the legislation in BiH  
with the Convention  
on the Rights of the Child***



*Sarajevo, November 2009*



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**ANALYSIS OF THE HARMONIZATION OF THE  
LEGISLATION OF BIH WITH THE CONVENTION  
ON THE RIGHTS OF THE CHILD**

Publisher:

**Institution of the**

**BiH Ombudsmen for Human Rights**

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Cover illustration and DTP:

**TRIPTI H Design Studio**, Sarajevo

Printed by:

**SAVART**, Sarajevo

First edition

**1000** copies

Sarajevo, 2009.

CIP – Catalogization in publication

National and University library of

Bosnia and Herzegovina, Sarajevo

342.721-053.2:[340.134:341.24(497.6)

**Analysis of the harmonization of the legislation of BiH with the Convention  
on the Rights of the Child** / [authors Ljiljana Krunić Zita . . . [et al].

- Sarajevo: Institution of the BiH Ombudsmen for Human Rights,

Outreach office in Sarajevo: Save the Children Norway, 2009. - 180 pp; 30 cm

Bibliography and references

ISBN 978-9958-503-00-9

1. Krunić Zita, Ljiljana

COBISS.BH-ID 17780230

## Introduction

Compliance Analysis of Bosnia and Herzegovina legislation with the Convention on the Right of the Child is a result of the project „Capacity strengthening of the Office for children’s rights monitoring“ carried out by the Institution of Human Rights Ombudsmen in Bosnia and Herzegovina in the period May-December 2009.

Main goal of the analysis was to draw attention to disparity in legislation of Bosnia and Herzegovina in all relevant areas that treat the rights of the child and to ensure implementation of international standards set forth in the Convention on the Rights of the Child through application of recommendations of the UN Committee on the Rights of the Child.

This analysis will make available the recommendations of the UN Committee on the Rights of the Child in relation to reports on situation in the area of children’s rights and the Convention, which was ratified by Bosnia and Herzegovina, to all interested parties.

This project is just a first step towards the capacity strengthening of the Office for children’s rights monitoring, the mandate of which is to protect the rights of the child in a systemic, comprehensive and interdisciplinary manner.

We owe a special thanks to Save the Children Norway SEE Regional Office Sarajevo, without whose financial support this project would not have been possible.



# I Methodology

Methodology applied in this analysis was governed by the contents and the structure of the Convention on the Rights of the Child, legal system of Bosnia and Herzegovina (BiH), Recommendations of the UN Committee regarding the BiH Report on situation of the rights of the child and practice of BiH Ombudsmen, particularly the part that provides the comments and conclusions with a critical overview of the situation of children's rights in BiH and recommended actions.

Due to its comprehensive and universal nature and holistic approach to protection of the rights of the child, the Convention on the Rights of the Child required that in development of this analysis a large number of regulations from different fields of legislation be examined, as well as their mutual correlations and possibilities of protecting certain rights of the child through multiple protection mechanisms.

Constitutional and legal systems of Bosnia and Herzegovina, which are based on shared competence of different levels of government, required that parts of legislation that treat territorially restricted issues also be included in the analysis. Complex establishment of Bosnia and Herzegovina required that the analysis include regulations at all levels of government – state level, entity level, level of Brčko District and partly cantonal level.

It is particularly important to highlight that in the Federation of Bosnia and Herzegovina both the federal and cantonal governments in exercise of their mandates can make policies and laws in some of the fields relevant to this Analysis: guaranteeing and implementing human rights, health and social protection and protection of environment.<sup>1</sup> Areas that are not subject to shared competencies, as well as those that are not exclusive competence of the Federation government fall under the competence of the cantons.<sup>2</sup> Due to this fact, in the analysis there are several legal provisions treating the very same matter but at different levels of government. These provisions are tied to certain articles of the Convention and many of them shall be repeated in several fields subject to this analysis.

In agreement with the donors, the analysis encompassed legislative frameworks of Bosnia and Herzegovina, of the entities and Brčko district, as well as the framework of the cantons but only to the extent needed for making an overview of possible access to the rights. Considering the territorial aspect, we found out that a large number of legal provisions at the entity and cantonal levels treating the same legal matter differ from one another mainly in terms of language variation used or numeration of sections in the text of the law. At the same time, we found out that there are several issues that have not been regulated at all by the law, although according to international standards and the Constitution they should have been. This brings into question the implementation of the international requirements assumed by the state. When it comes to the children's rights set forth in the Convention on the Rights of the Child, one of the most significant examples is certainly the right to health protection and maternity leave compensation, as a form of protection of the right of newly born children.

1 Constitution of the Federation of Bosnia and Herzegovina, Article III.3(3).

2 *Ibid.*, Article III 3 (4) comment: in spirit of legal logic and justice these regulations must not provide lesser scope of rights from those guaranteed at a higher level of government, because such regulations would lead to injustice, as it will be elaborated in the comments and conclusions.

Selection of cantonal regulations was made solely for the purpose of making a comparative sample, since it is only the state of Bosnia and Herzegovina that is subject to international law and the obligation to report to the UN Committee on the Rights of the Child. All levels of government are obliged, according to the Constitution, to ensure the exercise of the human/children's rights guaranteed. In other words, all regulations must be harmonized with the Constitution of Bosnia and Herzegovina, that is, the human rights and international instruments guaranteed by the Constitution in our state have the constitutional power. They also have to be harmonized with the national strategies and action plans, framework regulations defining the scope of certain rights at the state level and relevant entity regulations. The harmonization must be both vertical and horizontal, if the state is to ensure the mechanisms for real and practical protection and exercise of human/children's rights in Bosnia and Herzegovina. Practice and life in Bosnia and Herzegovina indicates and proves otherwise.

## II Convention on the Rights of the Child

The Convention on the Rights of the Child (hereinafter referred to as: Convention) was adopted in the UN General Assembly held on November 20, 1989.

The Convention is the first comprehensive document guaranteeing the rights of the child in all fields of life and the only international document that was almost universally ratified. According to the Convention, **a child is every human being below the age of eighteen**. State parties are obliged to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. The Convention also thoroughly treats political, civil, economic, social and cultural rights from the perspective of a child as a supplement to specific provisions aimed at child protection.

Special attention is paid to the rights of children who have breached the law. It is reiterated that they should be treated as equal human beings, which implies that the rigid „*parens patriae*“ relation, restricting their possibility to express their opinions and participate in all activities concerning their lives, should be abandoned.

UN Committee on the Rights of the Child identified the four principles underlying all the rights contained in the Convention:

- **Principle of non-discrimination** according to which children must not be discriminated against „irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status“;
- Children have **the inherent right to life and development** in all aspects of life, including physical, emotional, psychosocial, cognitive, social and cultural;
- When deciding or executing decisions concerning a child or children as a category, **the best interest of the child** must be a primary consideration. This refers not only to decisions of administrative authorities or legislative bodies but also to decisions made by family;
- Children must be given the opportunity to participate in all matters concerning their lives and must be free to **express their opinions**, which should be seriously taken into consideration.

Having ratified the Convention, State Parties shall be responsible for:

1. Undertaking all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention (Article 4);
2. Undertaking the measures «to the maximum extent of their available resources» aimed at ensuring the exercise of cultural, social and economic rights (Article 4);
3. Promoting, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children (Article 23, paragraph 4);
4. Making the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike (Article 42);
5. Reporting to the UN Committee on the undertaken measures that affect the rights recognized in the Convention and reporting on progress achieved in terms of exercising these rights within two years after acceding to the Convention, and then every five years.

## 2.1. Status of the Convention in Bosnia and Herzegovina

Bosnia and Herzegovina assumed this international document by signing the note on succession on November 23, 1993 and thereby it became obliged, according to international law, to implement the Convention. This means that BiH must harmonize its legislation with the provisions of this instrument and undertake all necessary actions to ensure an efficient implementation of the Convention. Monitoring over the progress the State Parties achieved in implementation of assumed obligations is carried out by **the Committee on the Rights of the Child** (hereinafter referred to as: Committee), which periodically examines reports of the State Parties on measures undertaken to ensure the exercise of the rights recognized in the Convention. After examination of reports, the Committee adopts **concluding observations** - a document that refers to the specific State Party. In this document the Committee primarily highlights the positive examples of implementation of the Convention, then it refers to shortcomings and failures of the State to comply with the Convention provisions and ultimately, based on overall observations, it provides appropriate recommendations to the State whose report was subject to its examination.

The Committee examined the Initial Report of BiH (CRC/C/11/Add.28) in the session (see: CRC/C/SR.1030 and 1031) held on May 19, 2005, but it adopted its Concluding observations in the 1052nd session held on June 3, 2005. These Concluding observations were used as a basis for this analysis. It is particularly important to point out the positive measures that Bosnia and Herzegovina undertook in order to ensure implementation of the Convention, which were also recognized by the Committee.

The Committee identified the following positive measures:

- Adopting of a Law on protection of national minorities;
- Adopting of a Rulebook on protection of human trafficking victims;
- Adopting of a Framework law on primary and secondary education;
- Adopting of a 2002-2010 Children Action plan and establishing of a BiH Council for Children;
- Adopting of a Law on protection of mentally handicapped persons and BiH Council of Ministers decisions dated December 30, 2003 on adopting Standard rules on equalization of opportunities for persons with disabilities, which were adopted by UN General Assembly on December 20, 1993 (GA Resolution 48/96);
- Direct application of the rights and freedoms listed in the European Convention on Human Rights and Fundamental Freedoms and its protocols, which are guaranteed by the Constitution of Bosnia and Herzegovina.

Articles 4.42 and 44(6) of the Convention establish an obligation of the State Party to ensure general information about the Convention and implementation measures thereof. According to Article 4, State Party shall undertake «all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.» According to Article 42 of the Convention, «State Parties shall make the principles and provisions of the Convention widely known, by appropriate and active means, to

both adults and children», and pursuant to provision of Article 44(b) State Parties are obliged to submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have adopted in order to give the effect to the rights recognized in the Convention and on the progress made on the enjoyment of those rights every five years.

Considering the extent to which Bosnia and Herzegovina as a State Party to the Convention implemented the aforementioned obligations, in reviewing the BiH Report, the Committee addressed several concerns and made appropriate recommendations to the authorities of BiH.

Having in mind the importance of the concerns and recommendations of the Committee for implementation of the Convention in Bosnia and Herzegovina, we pointed them out in the text of this analysis as well.

### **National Plan of Action**

The Committee welcomes the launching of the Action Plan for Children 2002-2010, as well as the establishment of the Council for Children responsible for the implementation of the Action Plan, but it expresses concern that «the budgets and implementation remain at Entity level, that the Council for Children has not been able to stimulate sufficient political will for organized action to implement the plan and that it suffers from both technical and authority constraints.» Therefore, the Committee recommends that the State Party implement effectively its national Action Plan for children, which should aim at implementing the principles and provisions of the Convention, taking into account the Declaration and the Plan of Action «A World Fit for Children» adopted by the General Assembly in the special session held in May 2002. Furthermore, the Committee recommends that the State Party should undertake all necessary measures to ensure the effective functioning of the Council for Children, including appropriate responses of the State authorities and bodies in line with the recommendations of the Council. The Committee also recommends that the State Party should consider extending the membership in the Council for Children to representatives of non-governmental organizations.<sup>3</sup>

### **Coordination**

The Committee noted that since 2000 the Government had adopted a number of programmes and plans of action relevant to the promotion of children's rights. It is concerned, however, that «the divergence of policies and practices resulting from the political and administrative fragmentation may hamper their correct implementation.»<sup>4</sup> The Committee is further concerned by the fact that despite of having over 100 ministries in the State, none of them has exclusive competence over children issues. Having aforementioned in mind, the Committee recommended that the State Party further strengthen and support the Council for Children with adequate human and financial resources, in order to empower it to develop and coordinate a comprehensive and uniform implementation of all policies throughout the country.<sup>5</sup>

<sup>3</sup> CRC/C/15/Add.260, points 10 and 11.

<sup>4</sup> CRC/C/15/Add.260, point 12.

<sup>5</sup> *Ibid.*, point 13.

## Independent monitoring

In its Concluding observations, the Committee welcomed the information that the existing State Ombudsmen will continue their activities and that the Office of Ombudsmen in its structure has a Department for the Rights of the Child. However, the Committee is concerned about the fact that this department is inefficient due to poor public awareness about its existence and function, in particular about its individual complaints mechanism. The Committee recommended that the State Party should provide support to the Office of Ombudsmen in launching public-awareness campaigns targeting in particular parents and children in order to inform them about the existence and functions of the Ombudsmen's Office Department for the Rights of the Child, in particular its power to receive and investigate complaints related to violation of children's rights. The State party is further encouraged to seek technical cooperation in this regard from the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other organizations.<sup>6</sup>

## Resources for children

Considering the BiH report, the Committee acknowledged the efforts of the State Party aimed at allocating adequate resources for social protection services, however it also expressed its concern that the children's rights are still neglected and that insufficient resources are allocated for child related programmes and policies. The Committee is further concerned that there is a significant difference in public expenditure between the two Entities in the areas of social security, education and health care and that the complex structure of the State Party is not conducive to an optimal realization of the limited resources available. Due to all this, the Committee recommended that the State Party should pay particular attention to the full implementation of Article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of economic, social and cultural rights of children, in particular those belonging to economically disadvantaged families, «to the maximum extent of ... resources available and, where needed, within the framework of international cooperation.» The Committee further recommends that the State party should harmonize the expenses for children's rights protection between the Entities so that a minimum level of social and health protection for all children throughout the country is guaranteed.<sup>7</sup>

## Data collection

The Committee expressed its concern about the fact that the last census was carried out in 1991 and that there is no clear division of responsibilities for collection, consolidation and analysis of data among the different government bodies. This results in limited availability of statistics on situation of children, especially those belonging to different ethnic groups and the most vulnerable groups (e.g. children of internally displaced and refugee families, victims of sexual and economic exploitation, victims of human trafficking) and makes it difficult to calculate basic human development indicators such as infant mortality rate, adult literacy, employment and poverty rate. Therefore, the Committee recommended that the State Party should urgently carry out a census of the population and develop a coordinated system for a comprehensive collection of data that should cover

<sup>6</sup> *Ibid.*, points 14 and 15.

<sup>7</sup> *Ibid.*, points 16 and 17.

all children below the age of 18 and be disaggregated by those groups of children who are in need of special protection. The State Party should also develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies that affect children.<sup>8</sup>

### **Cooperation with civil society**

When it comes to cooperation with civil society in the process of meeting the requirements deriving from the Convention, the Committee noted that there are no permanent communication channels between the Government and the NGO sector, and accordingly recommended that the State Party should increase its level of cooperation with the NGO and other civil society sectors working with and for children in Bosnia and Herzegovina and establish a permanent communication channel with them in order to facilitate this cooperation.<sup>9</sup>

### **Training/ public awareness**

Acknowledging the efforts of the State Party in promoting the Convention in collaboration with UNICEF and local NGOs, the Committee is concerned with the fact that report of the State Party was neither published nor presented to public via media, and that public awareness activities are mainly carried out by international organizations and local non-governmental organizations.

Also, the Committee recommends that the State Party should increase and strengthen its efforts aimed at disseminating the Convention and raising public awareness about its principles and provisions, in particular among children and their parents. The Committee recommends that the State Party should strengthen its efforts aimed at providing adequate and systematic training and/or ensuring public perceptiveness about children's rights and professional groups working with and for children, in particular law enforcement officials, parliamentarians, judges, lawyers, medical staff, teachers, school administration and other relevant stakeholders.<sup>10</sup>

## **2.2. Conclusion**

- Revised Plan of Actions for Children for the period 2002-2010 has not yet been adopted. It is still in the form of a draft, although the adoption thereof was defined and recommended by the UN Committee on the Rights of the Child. Since after the expiration of the tenure of previous members of the Council for Children no new members were elected, one can conclude that this Council no longer exists.
- In BiH there is neither efficient nor systemic mechanism for protection of the rights of the child in place, these rights are usually considered a part of additional competence mandated by the Constitution or law to the bodies or institutions dealing with some other matters. Due to this fact, the rights of the child are treated as additional obligation, often imposed one. Thus, **the children's rights are not the primary focus of interest and actions of the institutions.**

<sup>8</sup> *Ibid.*, points 18 and 19.

<sup>9</sup> *Ibid.*, points 20 and 21.

<sup>10</sup> *Ibid.*, points 22, 23 and 24.

- With reform of the BiH Institution of Ombudsmen and subsequent appointment of the new ombudsmen in December 2008 and adoption of a new policy, significant progress was made in terms of children's rights protection because this reform resulted in establishment of a Department for children's rights with a very broad mandate defined by the Law on BiH Ombudsmen. Support of „Save the Children“ Norway to the Institution of BiH Ombudsmen is particularly important for the capacity strengthening of the Department for children's rights because thanks to their support this Department has the capacity to respond to all challenges in the area of protection of children's rights.
- Certain positive steps are evident in BiH when it comes to strategic documents development because **these documents, significantly more than the legislation, appear to include, to a greater extent, the aspects of the rights of children.**
- It is evident that there are no measures in place to either harmonize the legislation in BiH regulating the rights of children or to ensure equal allocation of resources. In practice, this situation results in a different treatment of children and non-compliance with Article 4 of the Convention according to which the State Parties are obliged to undertake all measures required to ensure the rights set forth by the Convention, taking into account that the economic and social rights are of a progressive nature.
- In BiH there is still no database based on which the situation of the rights of children could be monitored and the problem identification process could be facilitated. Census has not yet been carried out and in reality there are neither statistics on the number of children in general nor the number of children with special needs, children without parents, etc.
- As a part of the civil advocacy campaign aimed at defining joint activities of BiH authorities, non-governmental and other civil society organizations in BiH focused on promotion and strengthening of institutional dialogue and cooperation, in May 2007 an Agreement on cooperation was signed between the BiH Council of Ministers and NGO sector in BiH. This Agreement created a basis for official cooperation between the two sectors and democratization of society as whole. Realistic expectations are that in the future civil sector will become well-defined in different fields of action.
- BiH Ministry for Human Rights and Refugees in cooperation with UNICEF has made a significant progress in promoting the Convention, Concluding observations and recommendations of the Committee. Unfortunately, the lower levels of Government failed to take an adequate participation in promoting the rights set forth by the Convention. System of communication, exchange of information and cooperation among the different levels of Government - both horizontal and vertical, is not established in a satisfactory manner and it is mainly the result of individual efforts.
- Media played an important role in disseminating the information about the Convention, as well as Media Center Sarajevo, which made significant efforts in educating and building sensitivity of the journalists who report on the rights of the child.

### III Legislation of Bosnia and Herzegovina

Analysis of legislation and strategic documents of BiH shows the whole complexity of legal framework and variety of legal definitions used, as well as a large number of changes and amendments to the laws, which alienates the citizens, confuses them and aggravates their access to justice and ultimately leads to discrimination in practice. This fact was noted by the UN Committee for the Rights of the Child, which in its concluding observations noted the following: „this specific political and administrative structure, which grants a large autonomy to the two Entities established under the Dayton Peace Agreement of 1995 - the Republika Srpska and the Federation of Bosnia Herzegovina, may create disparities in the enjoyment of rights and difficulties in planning, developing and implementing comprehensive and coordinated laws and policies for children at the State level.“<sup>11</sup>

While the Committee noted that a numerous pieces of legislation recently adopted aimed at ensuring better implementation of the Convention in the State Party, it is concerned that the State Party's particular political and administrative structure (2 Entities, 10 Cantons and an administrative district, each with widespread budgetary and administrative autonomy) may constitute an obstacle for the development and implementation of cohesive State policies and comprehensive and coordinated legislation in full compliance with the principles and provisions of the Convention.<sup>12</sup> Therefore, the Committee recommended that the State Party, „ should continue its efforts aimed at ensuring the uniform application of the principles and provisions of the Convention throughout the country and expedite the process of adoption of the legislation currently under review.“<sup>13</sup>

Accordingly, in the next Chapter we will present the legislation of BiH - the State, Entity, District of Brčko and cantonal levels, following the content and the structure of the Convention on the Rights of the Child.

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11 CRC/C/15/Add.260, Concluding observations of the Committee for the Rights of the Child, point 5.

12 CRC/C/15/Add.260, Concluding observations of the Committee for the Rights of the Child, point 8.

13 CRC/C/15/Add.260, Concluding observations of the Committee for the Rights of the Child, point 9.



# DEFINITION OF A CHILD

## *Article 1 – Definition of a child*



### 3.1. Definition of a child

#### Convention

**The Convention on the Rights of the Child, in Article 1** *defines a child as a human being under the age of 18, unless under the law applicable to the child majority is attained earlier.*

#### Legislation of BiH

##### *Criminal legislation*

According to provisions of **the BiH Criminal Code, Criminal Code of the Federation of BiH and Criminal Code of Brčko District**<sup>14</sup>, a child is every human being under the age of 14, while a juvenile is every human being under the age of 18.

**Criminal Code of Republika Srpska (RS)**<sup>15</sup> does not contain the definition of a child or a juvenile, but it stipulates that no penal sanctions can be applied to a juvenile who at the time of committing the crime was under the age of 14 (a child).

##### *Code of Criminal Procedure*

Code of Criminal Procedure does not define the notion of a child, but it does set the age limit for criminal responsibility. A juvenile is considered to be criminally responsible if at the time of committing the crime he/she reached the age of 14.

**BiH Code of Criminal Procedure, FBiH Code of Criminal Procedure and Code of Criminal Procedure of Brčko District**<sup>16</sup> stipulate that if in the course of the proceeding is established that the minor who committed the criminal offense had not reached the age of fourteen (14) at the time of committing the crime, the criminal proceeding shall be dismissed, and the juvenile authorities shall be so informed.

**Code of Criminal Procedure of RS**<sup>17</sup> stipulates that no proceeding can be initiated against a minor under the age of 14.

<sup>14</sup> Article 1, paragraphs 8 and 9 of the BiH Criminal Code, Official Gazette of BiH, no: 03/03,32/03, 37/03, 54/04, 61/04,30/05, 53/06, 32/07; Article , paragraphs 9 and 10 of the Federation BiH CC, Official Gazette of FBiH, no. 36/03, changes and amendments no. 37/03, 21/04, 69/04, 18/05; Articles 9 and 10.2 of the Brčko District Criminal Code, Official Gazette of BDBiH, nos. 10/03, 45/04, 6/05.

<sup>15</sup> Article 64 of the RS Criminal Code, Official Gazette of RS, nos. 49/03, 108/04, 37/06, 70/06.

<sup>16</sup> Article 341 of the BiH Code of Criminal Procedure, Official Gazette of BiH, nos. 03/03, 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, 58/08, 12/09 and 16/09; Article 362 of the FBiH Code of Criminal Procedure, Official Gazette of FBiH, no.35/03, correction no. 56/03, correction nos. 37/03, 28/05, 55/06, 27/07, 53/07 and 9/09; Article 341 of the Brčko District Code of Criminal Procedure, Official Gazette of BDBiH, nos. 10/03, 48/04, 6/05, 14/07,19/07, 21/07 and 2/08.

<sup>17</sup> Article 347 of the RS Code of Criminal Procedure, Official Gazette of RS, nos. 50/03, 111/04, 115/04, 29/07.

### *Misdemeanor legislation*

**Misdemeanor legislation of the FBiH**<sup>18</sup> stipulates that no misdemeanor proceeding can be initiated against a minor who at the time of committing the offence was under the age of 14, while the **Law on misdemeanor offences of RS and Brčko District**<sup>19</sup> say that these laws do not apply to minors under the age of 14.

### *Family legislation*

**Family legislation of the Federation of BiH**<sup>20</sup> provides no definition of a child in the context of the Convention.

The Law stipulates that the adulthood is reached at the age of 18, when the person attains the legal capacity.<sup>21</sup> The legal capacity can be attained even earlier, through the marriage or if a minor over the age of 16 becomes a parent, but this is to be decided by the court in a civil non-contentious proceeding, taking into account the mental capacity of the minor.<sup>22</sup>

The issues of adulthood and the age limit for marriage have been regulated in identical manner in **the Family legislations of RS and Brčko District**.<sup>23</sup>

### *Social protection legislation*

**Law on social protection, protection of civil victims of war and families with children of FBiH**<sup>24</sup> defines a child as a person who has not yet reached the age of 18.

**Law on social protection of RS and Law on social protection of Brčko District**<sup>25</sup> define neither the notion of a child nor the notion of a minor in the sense of his/her age. However, they define the category of minors who have certain rights (e.g. a minor without parental care or an educationally neglected minor).

### *Legislation on special categories*

Laws on protection of mentally challenged persons in the Federation of BiH, RS and Brčko District<sup>26</sup> define a child as a person under the age of 14, while person above the age of 14 who have not yet turned 18, i.e. have not attained legal capacity, is considered a minor.

18 Article 24.2 of the Federation of BiH Law on misdemeanor, Official Gazette of FBiH no. 31/06

19 Article 23.2 of the Misdemeanor Law of RS, Official Gazette of RS 34/06, 1/09; Article 24.2 of the Misdemeanor Law of BDBiH, Official Gazette of BDBiH, no. 24/07.

20 Family Law of FBiH, Official Gazette of FBiH, no. 35/05 and 41/05.

21 *Ibid.*, Article 157, para 1 and 2.

22 *Ibid.*, Article 157, para 3 and 4 in relation to Articles 355 and 356.

23 Article 108, para 2 and Article 36 of the RS Family Law, Official Gazette of RS no. 54/02 and 41/08; Family Law of BDBiH, Article 139.2 and Articles 2 and 26, Official Gazette of BDBiH, no. 23/07.

24 Article 6.1 of the Law on social protection, protection of civil victims of war and families with children, Official Gazette of FBiH, nos. 36/99,54/04,39/06 and 14/09.

25 Article 10 or 11 of the RS Law on Social Protection, Official Gazette of RS, no. 05/93,15/96,110/03,33/08; Article 12 of the Law on Social Protection of BD BiH, Official Gazette of BDBiH, nos. 01/03, 04/04, 02/08.

26 Article 3 of the Law on protection of mentally challenged persons, Official Gazette of FBiH, no. 37/01 and 40/02; Article 3 of the Law on protection of mentally challenged persons, Official Gazette of RS, no. 46/04, Article 3 of the Law on protection of mentally challenged persons, Official Gazette of BDBiH, no. 12/06.

### *Legislation on health care*

**Law on health care in the Federation of BiH**<sup>27</sup> does not define the notion of a child, only of the beneficiary of the Health Care. The beneficiary can be a child who reached the age of 15, i.e. a minor under the age of 18 who has not completed primary education or who after completing the primary education did not find a job, provided that such a person is registered with the Employment Bureau.

The beneficiary can be a child from its birth, as well as a child during its full-time education in primary and secondary schools, i.e. higher schools and universities who is the citizen of BiH with the residence in the territory of the Federation of BiH and who is not insured as a family member of the beneficiary, but only until the child reaches the age of 26.

**RS Law on health care**<sup>28</sup> provides an explicit definition of a child. The Law contains the provision according to which the members of immediate family of the beneficiary are entitled to health care during the time of a medical treatment, provided that they meet the terms stipulated by the Law: if they are children of the beneficiary age of 15 to 26 or more who are attending a full-time education.

**The Law on health care of Brčko District**<sup>29</sup> in the identical manner as the Law in the Federation regulates the rights of a child to health insurance in the capacity of a family member of the beneficiary, provided that the child is attending a full-time education.

### *Legislation on education*

**Framework Law on primary and secondary education in BiH** stipulates that a child is every person under the age of 18.<sup>30</sup>

**Law on primary education in RS and Law on education in primary and secondary schools in Brčko District** provide no definition of a child that resembles the definition given in the Convention on the Rights of the Child, but they define the age covered by the primary education.<sup>31</sup> Accordingly, **Law on education in primary and secondary schools of Brčko District** stipulates that a pupil who reaches the age of 15 is no longer obliged to attend primary school in that calendar year, and that full-time student of a secondary school cannot be a person older than 18, i.e. 19 years of age in case of a child with special needs.<sup>32</sup> Cantonal regulations on primary education, e.g. **Law on primary education in Zenica-Doboj canton** (hereinafter referred to as: ZE-DO Canton) and **Law on primary education in Canton 10** define a child as a person under the age of 18,<sup>33</sup> while **Law on primary education in Sarajevo Canton**<sup>34</sup> provides no definition of a child, but stipulates that primary education shall last nine (9) years and it shall be mandatory for children age of 6 to 15.

27 Article 19, para 1, items 13 and 13a of the Federation Law on Health Insurance, Official Gazette of FBiH, nos. 30/97,07/02 and 70/08.

28 RS Law on health insurance, Official Gazette of RS nos. 18/99, 70/01,51/01,17/08, and 01/09.

29 Law on health insurance of Brčko district, Official Gazette of BD BiH, nos. 01/02, 07/02,19/07,02/08 and 34/08.

30 Article 16.6 of the Framework Law on primary and secondary education in BiH, Official Gazette of BiH no. 18/03.

31 From Article 3 of the Law on primary education, Official Gazette of RS no. 74/08.

32 Articles 55 and 56 of the Law on primary and secondary education of Brčko District, Official Gazette of BD BiH no. 10/08 correction no. 25/08.

33 From Article 2 of the Law on primary school of ZE-DO Canton, and from Article 5.4, Official Gazette of ZE-DO Canton no. 5/04, changes and amendments no. 20/07 and Law on primary education of Canton 10, Official Gazette no. 12/04.

34 Official Gazette of Sarajevo Canton no. 10/04,21/06 and 26/08.

**RS Law on secondary education** also provides no definition of a child, but it defines the age of the students who can enroll to the first grade of secondary school – person who is under the age of 17, except for the students with special needs who have different age limit for enrollment into the first grade of secondary school.<sup>35</sup>

### *Labor legislation*

Labor legislation in BiH does not provide the definition of a child, however, it does prescribe the age required for conclusion of a labor contract. According to **the RS Labor Law**<sup>36</sup> the labor contract cannot be concluded with a person who is under the age of 15 and who does not have a general health capacity. **Labor Law of the Brčko District of BiH**<sup>37</sup> regulates this matter in a slightly different manner, prohibiting that labor contracts be concluded with the persons under the age of 15 and prohibiting employment of minors, unless their physical and mental capacity is confirmed by an authorized GP or relevant medical institution and unless one or both of the parents or legal guardian consented to such an employment. **Labor Law in the Federation of BiH**<sup>38</sup> stipulates that a labor contract can be concluded with a minor person age of 15 to 18, provided that an authorized GP or relevant medical institution confirmed his/her general medical capacity for carrying out the job in question.

### *Legislation on obligations*

Legislation regulating the obligations in BiH provides no direct provision that defines the notion of a child, but indirectly deals with the matter through the provisions regulating the legal capacity. Accordingly, **Laws on obligations of RS, BDBiH and FBiH**,<sup>39</sup> stipulate that a person with limited legal capacity can independently - without consent of his/her legal guardian, conclude only the agreements permitted by Law. All other contracts shall be considered null and void unless supported by a subsequently submitted consent.

### *Legislation on civil procedure*

Civil procedure Code provides no definition of a child, but it does define a minor and the way in which the minor may attain the capacity. **Codes of Civil procedure of RS, FBiH and BDBiH**<sup>40</sup> in the same manner stipulate that a minor who have not attained the full legal capacity can be legally responsible only to the extent in which his/her capacity has been recognized. Practically, this means when a child reaches the age of 14, he/she attains a limited capacity and as a party or a participant in the procedure can take only those civil actions whose legal consequences he or she is capable to comprehend.

35 Article 43, para 1 and 2 of the Law on secondary education, Official Gazette of RS no. 74/08.

36 Article 14, para 1 of the RS Labor Law, Official Gazette of RS no. 55/07 – consolidated text.

37 Article 10 of the BD BiH Labor Law, Official Gazette of BD BiH no. 19/06 – consolidated text, changes and amendments nos.19/07 and 25/08.

38 Article 15, para 2 of the FBiH Labor Law, Official Gazette of FBiH nos. 43/99, 32/00 and 29/03.

39 Article 56, para 2 of the RS Law on obligations, Official Gazette of RS nos.17/93, 3/96, 39/03 – basic text; Federation Law on obligations, Official Gazette of FBiH nos. 02/92,13/93, 13/94 and 29/03 and BD BiH Law on obligations (former Law on obligations of SFRY, Official Gazette of SFRY nos. 29/78, 39/85).

40 Article 292 of the RS Code of Civil Procedure, Official Gazette of RS nos. 58/03, 85/03, 74/05; Article 293, para 3 of the FBiH Code of Civil Procedure, Official Gazette of FBiH nos. 53/03, 73/05 and 19/06; Article 41, para 3 of the BD BiH Code of Civil Procedure, Official Gazette of BDBiH, no. 8/09.

## Opinion of the UN Committee on the Rights of the Child

Examining the BiH Report on implementation of the Convention, the UN Committee for the Rights of the Child made no remark about the definition of a child despite the fact that there is a significant difference in the manner and scope in which BiH legislation ensures the rights of the child, depending on the age of the child.

### Conclusion

In order to ensure the enjoyment of the children's rights guaranteed by the Convention on the Rights of the Child, one should first ensure that the definition of a child from the Convention be incorporated into national legislation. In relevant legislation in BiH, which was included in this Analysis, different levels of authorities anticipated the identical provision on attainment of full age – the age of 18, as a basis for attainment of legal capacity. In exceptional cases, legal capacity can be attained by a person under the age of 18, but only upon the decision of the court in the civil proceedings, e.g. in case of a marriage or when a minor of the age of 16 became a parent.<sup>41</sup>

When it comes to definition of a child in legislation regulating the health insurance, after the intervention of the RS Ombudsmen it was ensured that all children until the age of 15 are entitled to health care and are insured under the terms of the RS General Act of the Health Insurance Fund, regardless of whether they attend the full time education or not. Unfortunately, the right to health insurance of children over the age of 15 has not been ensured and in practice there are many problems with this population if parents of such do not enjoy the status of a health care beneficiary.

When it comes to criminal and misdemeanor responsibility and terms and manners in which the rights of children can be exercised, there is a significant difference in legislation that deals with the matter, and these rights depend on the age of the child. There are differences in the definition itself: misdemeanor legislation in the Federation of BiH says that no misdemeanor proceeding can be initiated against a person under the age of 14, while the legislation in RS and BD BiH say that the Law does not apply to such persons.

The analysis showed that the definition of a child has not been incorporated into BiH legislation in the manner anticipated by the Convention. This can be observed through the prism of methodological approach to nomotechnics of legal act development.

### Recommendation

In order to ensure the application of provisions of the Convention defining the notion of a child, one should harmonize nomotechnical principles according to which legislation shall contain the definitions of the notions treated by the Act. In this way, one should ensure not only the application of the provisions of the Convention on the Rights of the Child but also provisions of other international standards that bind BiH to introduce the definition of certain notions.

<sup>41</sup> Provisions defining a partial/full capacity of a minor, contained in the other regulations on the State level or Entity level shall be further analyzed in the following chapters, i.e. sections that explicitly treat the other rights.



## GENERAL PRINCIPLES

*Article 2 – Non-discrimination*

*Article 3 – The best interest of the child*

*Article 6 – Right to life, survival and development*

*Article 12 – Right to participation (involvement)*



## 3.2. Non-discrimination

### Convention

Article 2 of the **Convention** defines **non-discrimination as a basic principle**. According to this principle:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### Legislation of BiH

#### *Constitutional framework in BiH*

In the **Preamble of the BiH Constitution** it is said that that the Constitution is inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments.

Provisions of **the BiH Constitution**<sup>42</sup> defined that BiH and both the Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina **without discrimination on any ground** such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>43</sup>

Preamble of **the Constitution of the Federation of BiH** calls for respect of human rights and freedoms, rejection of the violence of war, promoting peace and supporting individual freedoms and development of a free market governed by the principles of the **UN Charter, Universal declaration on Human Rights**, national equality, democratic relations and the highest standards of human rights and freedoms. The Constitution also contains the Annex with pertaining instruments for protection of human rights, which have the power of constitutional provisions. The Constitution guarantees the application of the highest level of internationally recognized rights and freedoms set forth in the Annex, and it also provides a separate list of human rights that are enjoyed by all persons within the territory of the Federation of Bosnia and Herzegovina. According to the Constitution, authorities of the Federation and cantons shall guarantee and ensure enjoyment of human rights,<sup>44</sup> while every municipality, in exercise of its competencies, shall

42 BiH Constitution – Article II Human rights and fundamental freedoms1 - Human rights and 3 - Catalogue of rights.

43 *Ibid.*, Article 4 Non-discrimination.

44 *Ibid.*, Article II.2 para 1 item a).

undertake all necessary measures to ensure protection of rights and freedoms set forth in Articles II.A. 1-7 Human rights and fundamental freedoms and instruments listed in the Annex.<sup>45</sup>

**Constitution of the Federation of Bosnia and Herzegovina** gives precedence to application of international human rights instruments over national legislation, and in case of „disagreement between the international contracts or agreements with the Federation legislation“, the contracts or agreements shall prevail.<sup>46</sup>

Preamble of **the RS Constitution**, which was replaced with the Amendment LXVI, calls for respecting the will of its constituent peoples and citizens to establish and preserve the

Republika Srpska and to base its constitutional establishment upon the respect for human dignity, freedom and equality, national equality, democratic institutions, rule of law, social justice, pluralistic society, guarantees for and protection of human freedoms and rights, as well as the rights of minority groups, in line with the international standards, ban on discrimination and respect for the rules of market economy, wishing to provide peace, tolerance and general welfare.<sup>47</sup> The constitutional arrangement shall be based upon the guarantee and protection of human freedoms and rights in accordance with international standards.<sup>48</sup> Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status and other personal attributes.<sup>49</sup> Apart from containing a list of human rights and basic freedoms guaranteed, The Constitution of RS, just as the Constitutions of BiH and FBiH, in certain Articles provide individual guarantees for certain human rights and freedoms. The rights and freedoms guaranteed by this Constitution may not be denied or restricted. The court protection of the rights and freedoms guaranteed by this Constitution shall be ensured.

Everyone violating the human rights and fundamental freedoms guaranteed by this Constitution shall be held personally responsible for it and may not be justified by having obeyed somebody's order to that effect.<sup>50</sup>

Given the specific nature of Brčko District, all matters relevant for functioning of Brčko District of Bosnia and Herzegovina are regulated by **the Statute**<sup>51</sup>, which stands as a supreme act of the district. In Brčko District *Everyone is entitled to the enjoyment of all rights and freedoms guaranteed under the Constitution and laws of Bosnia and Herzegovina and laws of the District without discrimination of any kind, including discrimination based on sex, race, sexual orientation, color, language, religion, national or social origin, political or other opinion, association with a national minority, property, birth or other status. Every person in the territory of Brčko District shall enjoy the rights and freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms and these rights and freedoms have precedence over any other law contradicting the Convention. Courts shall provide appropriate protection in case of violation of human rights and freedoms.*<sup>52</sup>

45 *Ibid.*, Article VI 1 para 1 item a).

46 *Ibid.*, Amendment XVIII.

47 Amendment LXVI to the RS Constitution.

48 Article 5 para 2 item 1 of the RS Constitution.

49 *Ibid.*, Article 10.

50 *Ibid.*, Article 48.

51 Statute of BDBiH, Official Gazette of BDBiH, no. 17/08 – revised text.

52 *Ibid.*, Article 13.

### *Law against discrimination*

**Anti-discrimination Law**<sup>53</sup> sets the framework for exercise of equal rights and opportunities of all persons in Bosnia and Herzegovina and establishes the protection system against discrimination. In line with the Constitution of BiH and international standards concerning human rights and fundamental freedoms, this Law establishes the responsibilities and duties of legislative, judicial and executive powers in BiH, as well as those of legal persons and individuals holding public offices to ensure the protection, promote and create conditions for equal treatment.

### *BiH Gender Equality Act*

**Law on Gender Equality in BiH**<sup>54</sup> in general provisions governs, promotes and protects gender equality and guarantees equal opportunities for all in both public and private domain, and prohibits direct and indirect discrimination on the grounds of gender. Full gender equality is guaranteed in all sectors of society, particularly in the fields of education, economy, employment and labor, social welfare, health care, sport, culture, public life and the media, regardless of marital or family status. Discrimination on the grounds of gender and sexual orientation is prohibited.

### *Legislation on protection of national minorities*

**The BiH Law on protection of national minorities**<sup>55</sup> and **the FBiH Law on protection of national minorities**<sup>56</sup> stipulate the protection of national minorities as well as the rights and freedoms thereof, as an integral part of international protection of human rights and freedoms. **The RS Law on protection of national minorities**<sup>57</sup> grants every member of a national minority group the right to freely choose whether or not he/she wants to be treated as a minority, and this choice must not bring them into unfavorable position. As for the Federation of BiH,<sup>58</sup> **the CoE Framework Convention on protection of national minorities** directly applies.

### *Law on movement and stay of aliens and asylum*

**The Law on movement and stay of aliens and asylum** prohibits discrimination of aliens on any grounds such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority group, property, status attained by birth or other status.<sup>59</sup>

**Rulebook on ways of exercising the rights of persons granted an international protection in BiH**<sup>60</sup> prohibits any form of discrimination against persons granted an international protection in BiH in exercising their rights in the field of social protection, provided that they meet the requirements for such a form of protection.

53 Article 1 of the Law against discrimination, Official Gazette of BiH, no. 59/09.

54 Gender equality Act of Bosnia and Herzegovina, Official Gazette of BiH, No. 16/03.

55 BiH Law on protection of national minorities, Official Gazette of BiH, no. 12/03 and 93/08.

56 FBiH Law on protection of national minorities, Official Gazette of FBiH, no. 56/08.

57 RS Law on protection of national minorities, Official Gazette of RS, no. 2/05.

58 Article 2 of the Law on protection of national minorities in the Federation of BiH.

59 Article 8 of the Law on movement and stay of aliens and asylum, Official Gazette of BiH no. 36/08.

60 Rulebook on ways of exercising the rights of persons granted an international protection in BiH, Official Gazette of BiH no. 3/09.

### *Criminal legislation in BiH*

Criminal legislation of BiH contains provisions that prescribe sanctions for criminal offences committed against the freedom and rights of an individual and a citizen. The Criminal Code treats an infringement of equality of an individual and a citizen as a special criminal offence. The BiH Criminal Code sanctions only an official or responsible person who on the ground of differences in race, skin color, national or ethnic background, religion, political or other belief, sex, sexual orientation, language, education or social status or social origins, denies or restricts the civil rights as provided by the Constitution, Law or international agreement and whoever on the ground of these differences or background or other status grants unjustified privileges or does unjustified favors to individuals. The Law also stipulates sanctions for an official or responsible person who in contravention of the regulations of Bosnia and Herzegovina on the equal use of languages and alphabets of the constituent peoples and others living on the territory of Bosnia and Herzegovina, restricts or denies to a citizen the use of his language or alphabet while addressing the official bodies.<sup>61</sup>

**Criminal Codes of the FBiH and BDBiH**<sup>62</sup> in the same manner as **the BiH Criminal Code** define the elements of criminal offences of infringement of the equality of citizen, but these laws do not sanction only the official or responsible persons as the State law does, but also any person who commits such a crime. When it comes to official or responsible persons, these laws anticipate more severe sanctions for them.

**RS Criminal Code** anticipates sanctions for any person who based on difference in terms of race, color, religion, sex, language or else deprives or restricts some of the human rights set forth by the Constitution, law or international agreement or persons who on the same grounds provides any privileges or benefits. The same sanctions apply to those who assist the prosecution of persons who advocate respect for equality, while more severe sanctions are stipulated for the officials who commit such a criminal offence by misuse of office.<sup>63</sup>

### *Law on inheritance*

Illegitimate children, children born in marriage and fully adopted children shall be treated equally in terms of inheritance and they are considered the heirs of the first (1) rank.<sup>64</sup>

### *Legislation on child protection*

**Laws on child protection of BDBiH and RS** anticipate the right to allowance for purchasing necessary accessories for newly born child, without exception.<sup>65</sup>

In the Federation of BiH there is no Law on child protection, and the Law on protection of families with children is in the form of a draft since February 24, 2009.<sup>66</sup>

<sup>61</sup> Article 145 of the BiH Criminal Code.

<sup>62</sup> Article 177 of the FBiH Criminal Code. Article 174 of BD BiH Criminal Code.

<sup>63</sup> Article 162 of the RS Criminal Code.

<sup>64</sup> Article 5 para 1 of the Law on inheritance of the Federation of BiH and BD BiH (former Law of SR BiH, refined version published in the Official Gazette no. 7/80, correction no. 15/80), Article 4. para 1 of the Law on inheritance in RS, Official Gazette of RS no.1/09 correction No. 55/09.

<sup>65</sup> Article 3, Changes published in the Official Gazette of BDBiH no. 21/05, which replaced Article 12, para 1 of the Law on child protection, Official Gazette of BDBiH, no. 1/03, 4/04, 21/05, 19/07, 2/08 and Article 17, para 1 of the RS Law on child protection, Official Gazette of RS 4/02, consolidated text, changed and published in O.G. no. 18/09.

<sup>66</sup> [www.rtvmo.ba/index.php?option=com](http://www.rtvmo.ba/index.php?option=com)

### *Legislation on civil victims of war*

**Law on the principles of social protection, protection of civil victims of war and families with children in the Federation of BiH** in Article 54 defines a civil victim of war as a person who suffered at least 60 percent of disability due to injury or wound sustained in abuse or deprivation of liberty through the war situation or immediate war danger, in war events (bombardment, street fights, ordnance explosion, a stray bullet) from the explosion of ordnance after the war ended diversionist terrorist actions which endanger the security and order in the Federation of BiH. By changes of this Law, rights of the persons with disabilities have been abolished for all persons whose disability is less than 90%.<sup>67</sup> A huge number of civil victims of war were children, and this provision is rather discriminatory to this population because the Law did not make a clear distinction between recognition and definition of the category of civil victims of war, regardless of the degree of disability and criteria against which civil victims of war shall be granted certain benefits.

**Republika Srpska** regulated the issues of form and scope of the rights of civil victims of war, as well as terms and conditions for exercise of these rights in **the Law on protection of civil victims of war**.<sup>68</sup> Article 37 of this Law prescribes that an application for exercise of this right can be submitted within five years from the date of adoption of this Law, i.e. from the day when a person, under the circumstances defined by the Law had suffered the bodily injury, had been killed, had died or had disappeared. Thus, this provision contained a restriction – time framework for submitting the application for exercise of this right, which affected the possibility of a displaced person to exercise the rights based on this Law. Changes and amendments to the Law on protection of civil victims of war from July 11, 2007 established that a person who believes that he/she is entitled to the rights of civil victims of war under the RS Law on protection of civil victims of war, and who had not submitted a request for these rights before, may do so by December 31, 2007. Unfortunately, these changes and amendments of the RS Law from July 11, 2007 did not bring any improvement to the previous solution, because it still restricts the access to the right to establish the status of a civil victim of war to those people who due to short deadline failed to file a request for exercise of this right.

### *Legislation on protection of persons with mental disorder*

**RS and BD BiH Laws on protection of persons with mental disorder**<sup>69</sup> guarantee equal treatment conditions to any person regardless of their sex, race, nationality, or religion, while **the FBiH Law on protection of persons with mental disorder**<sup>70</sup> explicitly stipulates that persons with mental disorder may not be brought into unequal position because of their mental disorder.

### *Legislation on education*

According to **the Framework Law on primary and secondary education in BiH**, a general goal of education is to «promote respect for human rights and fundamental liberties, and prepare each person for a life in a society,

<sup>67</sup> Law on changes and amendments to the Law on principles of social protection, protection of civil victims of war and families with children in FBiH.

<sup>68</sup> Official Gazette of RS no. 25/93 dated December 30, 1993 with changes published in the Official Gazette no. 1/94 – Special issue no. 32/94, 37/07 and 60/07.

<sup>69</sup> Article 4, para 2 of the RS Law on protection of persons suffering mental disorders and Article 4, para 2 of the BD BiH Law on protection of persons suffering mental disorders.

<sup>70</sup> Article 5, para 3 of the Law on protection of persons suffering mental disorders.

which respects the principles of democracy and the rule of law.<sup>71</sup> All State, Entity, Cantonal and District of Brčko laws, as well as other relevant regulations in the field of education, shall be harmonized with the provisions of the Framework Law on primary and secondary education no later than six (6) after the date of entering this Law into force.<sup>72</sup>

**RS Law on pre-school education** stipulates equal access to education for any pre-school child.<sup>73</sup> Pre-school education and upbringing shall be carried out in accordance with the Law and international conventions.<sup>74</sup>

**Law on primary education in RS** stipulates that every child shall have the right to equal access and opportunities in primary education without discrimination on any ground.<sup>75</sup>

**Law on secondary education in RS** stipulates that no child shall be discriminated against in accessing secondary education based on race, color, sex, language, religion, political and other opinion, national or social origin, disability or any other ground.<sup>76</sup>

**Law on primary and secondary education in BDBiH** bans discrimination or favoring based on national affiliation, religion, sex, and political, social or any other ground.<sup>77</sup>

In the Federation of BiH, primary and secondary education is under the exclusive jurisdiction of cantons, therefore we decided to refer to some of the legal solutions from the cantonal level. **Law on primary education in Herzegovina-Neretva Canton** (hereinafter referred to as HNK) does not speak of discrimination and it is not harmonized with the Framework Law on primary and secondary education.<sup>78</sup>

**Law on secondary education in HNK** also is not harmonized with the Framework Law on primary and secondary education in BiH. However, the Law directly refers to non-discrimination in the provision in which it says that the secondary education shall be available to every person under the equal conditions and in accordance with their abilities and capacities.<sup>79</sup>

**Law on primary education in Zenica-Doboj Canton (ZE-DO Canton)** stipulates that no student shall be discriminated against in school because he or she, verbally or in writing, uses any of the official languages in BiH.<sup>80</sup> **Law on secondary education in ZE-DO Canton** stipulates that the schools shall be responsible for developing a culture in their own environment that respects the human rights and fundamental freedoms in accordance with the Constitution and other international human rights documents assumed by BiH.<sup>81</sup> This Law, in identical manner as the Law on primary education prohibits discrimination of students who use any of the official languages in BiH.<sup>82</sup>

71 Article 3 c) of the Framework Law on primary and secondary education in BiH.

72 *Ibid.*, Article 59, para 3.

73 Article 3, para 1a) of the RS Law on pre-school education and upbringing, Official Gazette of RS no. 119/08

74 Article 2, paragraph 4 *Ibid.*

75 Article 9, para 1 of the RS Law on primary education.

76 Article 5 of the RS Law on secondary education.

77 Article 6 of the BD BiH Law on primary and secondary education.

78 Law on primary education in HNK, Official Gazette of HNK no. 5/00.

79 Article 3 of the Law on secondary education in HNK, Official Gazette of HNK no. 5/00.

80 Article 3, para 4 of the Law on primary education in ZE-DO canton.

81 Article 3, para 1 of the Law on secondary education, Official Gazette of ZE-DO no. 5/04, Changes in O.G. No. 20/07.

82 *Ibid.*, Article 7, para 2.

**Law on primary education in Sarajevo Canton** stipulates that no student shall be discriminated against in the process of enrollment, involvement in school activities or any other decision concerning that student because the student, verbally or in writing, uses one of the official languages in BiH. The Law also stipulates that the school shall adhere to the provisions of the Law on Gender Equality in BiH.<sup>83</sup>

**Law on secondary education in Sarajevo Canton** stipulates that in secondary education all forms of discrimination based on sex, race, color, language, religion or faith, political and other beliefs, national and social origin shall be prohibited.<sup>84</sup>

**Law on primary education in Canton 10** as general goals of education define promotion of the respect for human rights and fundamental freedoms, and preparation of every person for life in a society which respects the principles of democracy and the rule of law; ensuring equal opportunities for education and choice at all levels of education, regardless of sex, race, national background, social and cultural origin and status, family status, religion, mental and physical and other personal features.<sup>85</sup>

**Law on secondary education in Canton 10**<sup>86</sup> in identical manner as the Law on primary education regulated the general goals of education.

### *Legislation on sports*

**Law on sports in BiH** as a basic principle for organization of sports defines the right of all citizens to play sports under the same conditions, regardless of their national, religious, political, racial, social affiliation and sex.<sup>87</sup>

**Law on sports in RS**<sup>88</sup> stipulates that practicing of sports in RS is voluntary, unrestricted and available to all citizens under the equal terms, regardless of the race, national, religious and political affiliation and sex and that it shall take place under professional supervision.

### *Labor legislation*

**Labor laws in the Entities and Brčko District of BiH** ban discrimination against or favoring of a person who seek employment or have got employment based on race, color, sex, language, religion, political or other opinion, national or social background, property, birth or any other status.<sup>89</sup>

Aforementioned laws contain the provision according to which the father of a child may take paternity leave in case of death of the mother, if the mother abandons the child or if she is justifiably prevented from exercising this right. In practice, the father exercises this right only in the case of death of the mother or abandoning of a child, because the competent bodies do not evaluate justifiable reasons. This provision can be considered discriminatory because it prevents the father from exercising the parental right, i.e. it does not allow the parents to decide on their own who is going to take the leave after the birth of a child. It is

83 Article 7, para 4 and Article 6 of the Law on primary education in Sarajevo Canton.

84 Article 5 of the Law on secondary education in Sarajevo Canton, Official Gazette of KS no. 10/04, Changes in the Official Gazette no.34/07.

85 From Article 3, para 2, items c) and e) of the Law on primary education in Canton 10.

86 From Article 4, para 2, items c) and e) of the Law on secondary education in Canton 10, Official Gazette no. 12/04.

87 Article 6, para 1, item c) of the Law on sports in BiH, Official Gazette of BiH no. 27/08.

88 Article 4 of the Law on sports in RS, Official Gazette of RS no. 4/02.

89 Article 5, para 1 of the BiH Labor Law, Article 5 of the RS Labor Law, Article 4, para 1 of the Labor Law of BD BiH.

very important to highlight this because of the economic aspect, which is particularly important in the situations when the mother earns better salary than the father.

### **Recommendations of the UN Committee on the Rights of the Child**

In its Concluding observations, the Committee expressed its concern with the fact that discrimination on grounds of ethnicity, political affiliation, national origin, social status, status as internally displaced persons or returnees, residence in rural areas and gender or disability continues to be widespread. The Committee also expresses concern at the information that despite some improvements the media sometimes contribute to stigmatization and social exclusion by conveying stereotyped messages and distrust of people belonging to minority and/or ethnic groups.<sup>90</sup>

The Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment of the rights by children and, on the basis of that evaluation, undertake the necessary steps to prevent and combat all discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures to prevent and eliminate de facto discrimination against children, in particular children with disabilities, Roma children and children belonging to ethnic and/or religious minorities or other nationalities. The State party is also encouraged to develop, in consultation with the media, a code of conduct with a view to eliminating stereotyping and stigmatization of minority and/or ethnic groups in the media. The Committee also requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account general comment No. 1 on article 29, paragraph 1 of the Convention (aims of education).<sup>91</sup>

### **Conclusion**

From the legislation presented one can conclude that the non-discrimination principle prescribed in the Convention has not been adequately introduced into legislation in BiH. Deviations are evident in all spheres, and particular in the field of education, which is particularly concerning. Although the Framework Law on primary and secondary education defines the principle of non-discrimination, failure of lower levels to harmonize their respective legislation with this Law within 6 months after the adoption of the Law created a situation in which the principle of non-discrimination is not considered a basis for regulating the primary and secondary education. Cantonal legislations, which prescribe education based on equal access and equal terms is an evident example of this position. The principle incorporated into legislation in this way is no guarantee for non-discrimination. In some cantonal legislation, the principle of non-discrimination is prescribed in the manner to cover only the segment of discrimination based on language, i.e. through the provision, which ensures the use of language and scripts without discrimination.

<sup>90</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, point 25.

<sup>91</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, points 26 and 27

## Recommendation

Competent bodies must urgently undertake the activities aimed at harmonizing the legislation by applying the principle of non-discrimination and adhering to the criterion according to which lower level authorities cannot prescribe the scope of the rights less than those guaranteed by the framework legislation of the higher level authorities. In order to ensure legal security, the legislation must be harmonized within legally prescribed deadlines (e.g. education). When it comes to terminology, consolidated and refined versions of the legislation that suffered changes and amendments should be made, as well as of the pertaining implementation documents.

### 3.3. The best interest of a child

#### Convention

*In Article 3 of the Convention, the best interest of the child is defined in the following manner:*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Legislation in BiH

##### *Criminal procedure legislation*

**BiH Code of Criminal Procedure** prescribes „circumspect treatment“ of a minor in the proceedings attended by a minor. This particularly refers to examination of a minor, where the bodies participating in the proceedings must be circumspect, mindful of the mental development, sensitivity and personal characteristics of the minor, to prevent an adverse effect on the minor’s development. A judge who pronounced a measure against a juvenile shall, ex-officio (or at the proposal of a prosecutor, head of an establishment or a guardian supervising the minor) pass a decision on changing the decision and changing the enforcement. A minor must have a defense attorney from the outset of the preparatory hearing.<sup>92</sup>

##### *Legislation on execution of criminal sanctions in BiH*

**BiH Law on execution of penal and misdemeanor sanction** stipulates that juveniles must be separated from adults.<sup>93</sup> If a person committed to detention or imprisonment has children or another person for whom s/he

<sup>92</sup> Article 342, para 1 and 2 of the BiH Code of Criminal Procedure, Article 348 of the RS Code of Criminal Procedure, Article 363, para 2 of the FBiH Code of Criminal Procedure and Article 342, para 1 of the BD BiH Code of Criminal Procedure, O.G. BDBiH.

<sup>93</sup> Article 11, para 1, item 3 of the Law on execution of criminal sanctions, detention and other measures, O.G. BiH no. 13/05, 97/07).

is the exclusive provider, the Court shall inform the social welfare authority of the competent municipality.<sup>94</sup> A convicted person who is at liberty can be granted, upon his/her request, or upon the request by immediate family members and approved by him/her, or upon the request made by the competent municipality social welfare authority, postponement of serving prison sentence if a convicted person is a woman nursing her baby younger than 1 year of age, or who is pregnant or if the convicted person is a sole provider and serving of the sentence would be detrimental to the support of the family.<sup>95</sup>

**FBiH Law on execution of criminal sanctions** stipulates that juveniles shall, as a rule, serve the prison sentence in separate facilities from the adult convicts.<sup>96</sup> Convicted persons can be granted postponement of serving prison sentence if postponement is necessary to complete education or to take exams for which s/he is studying, if the spouse of a convicted person is already serving the time and if serving the sentence simultaneously by both spouses would be detrimental to the support of minor and ill members of their household, or if a convicted person is a woman nursing her baby younger than 1 year of age, or who is pregnant or if the convicted person is a sole provider of the family.<sup>97</sup>

**RS Law on execution of criminal and misdemeanor sanctions** stipulates that, as a rule, the minors shall serve the sentence separately from the adult convicts.<sup>98</sup> Postponement can be granted to a pregnant woman or to a mother of a child under the age of three (3), i.e. six months after delivery, if a woman gave birth to a stillborn child or if the child had died within that period. Also, the postponement can be granted to a father whose wife is to deliver in three months time, or if no more than six months have passed from the delivery and if there are no other household members to assist the mother and the child.<sup>99</sup>

**Law on execution of criminal and misdemeanor sanctions in BD BiH<sup>100</sup>** stipulates that, as a rule, the minors shall serve the sentence separately from the adult convicts.<sup>101</sup> The Law allows the postponement of serving prison sentence if a motion was filed on behalf of a person who needs to complete education, or if together with the convicted person, the sentence is to be served by a spouse and if serving the sentence simultaneously by both of them would be detrimental to the support of minors, ill or elderly members of their household, or if a convicted person is a woman nursing her baby younger than 1 year of age, or who is pregnant or if the convicted person is a sole provider and serving of the sentence would be detrimental to the support of the family.<sup>102</sup>

### *Family legislation*

**Family Law in Republika Srpska** ensures a special protection for family, mother and child in accordance with internationally recognized human rights and fundamental freedoms.<sup>103</sup> A municipal body in charge of social welfare affairs shall provide protection and legal aid to the family and its members. Family and its members shall enjoy court protection, and all the bodies, organizations and individuals shall be obliged to report to the guardian

94 *Ibid.*, Article 51.

95 *Ibid.*, Article 118, para 1, items 7 and 8.

96 Article 15, para 4 of the FBiH Law on execution of criminal sanctions, O.G. FBiH no. 44/98, 12/09

97 *Ibid.*, Article 27, para 1, items 5), 6), 7), and 8).

98 Article 14, para 4 of the RS Law on execution of criminal sanctions, O.G. RS no. 64/01, 24/04

99 *Ibid.*, Article 106, para 1, items 7) and 8).

100 Law on execution of penal and misdemeanor sanctions, O.G. BDBiH no. 8/00 corr. 1/01, 36/07.

101 Article 12, para 2, item b) of the Law on execution of criminal sanctions

102 *Ibid.*, Article 22, para 1, items 5, 6, 7, and 8.

103 Article 3 of the RS Family Law.

institution any breach of children's rights, in particular violence, sexual abuse and child abuse.<sup>104</sup> If in the interest of a child, the guardian institution shall provide assistance to parents in resolving their social and material situations and personal relations or it shall refer them to appropriate counseling institution.<sup>105</sup> If in the interest of a child, the guardian institution may impose a permanent supervision over the exercise of parental rights over individual child.<sup>106</sup> **Family law of FBiH** regulates the relationships in a family, stipulating that parents shall be primarily obligated to ensure the protection of interests and wellbeing of a child, while the State shall be obliged to provide protection to the family and the child when needed, through guardian protection of children and children without parental care.<sup>107</sup> Professional assistance and protection of the rights and interests of the child and other family members in the case of unsettled family relations shall be provided by competent centers for social work (guardian institution)<sup>108</sup> and judicial bodies<sup>109</sup> i.e. assigned agents<sup>110</sup> and ombudsmen institution.<sup>111</sup> According to the Law, these institutions shall, in procedures regulating the relationships of parents and children, pay particular attention to the need of urgent actions aimed at protection of the interests of the child.

A juvenile shall be allowed to see the documents on his/her adoption only if the guardian institution establishes that such an action is in his/her best interest. If a child lives with a single parent because the other parent is prevented to take care of it or the parent's address is unknown or he/she does not pay the alimony or is unavailable, the parent whom with the child lives shall independently, without consent of the other parent, decide on protection of personal, property and other interests of the child. Decision on the parent whom with the child shall live shall be made by court.<sup>112</sup>

Having in mind the best interest of the child, in a non-contentious civil procedure the court shall determine the relations and regulate direct contacts between a child and its grandparents i.e. between children who do not live with the same parent, as well as contacts with other persons.<sup>113</sup> In these procedures, the court shall summon the guardian institution to take part in the proceeding and to represent the best interest of the child.<sup>114</sup> The guardian institution is obligated to appear before the court.<sup>115</sup>

The Law stipulates that the guardian institutions shall, *ex officio*, undertake appropriate measures to protect the best interest of a child, based on knowledge and information received from institutions, organizations and individuals who are bound to report to the guardian institution any breach of children's rights. Assistance to the guardian institutions shall be, *ex officio*, provided by the bodies of territorially competent police departments. In case of neglected health and upbringing of a child or when the parents require assistance in raising the child, the guardian institution shall order a measure of parental care supervision, which will stay in force for as long as it is in the best interest of the child. The guardian institution shall order the supervision program and appoint a person

104 *Ibid.*, Article 13.

105 *Ibid.*, Article 95.

106 *Ibid.*, Article 96.

107 Article 2, para 2, items c), d) and e) of the FBiH Family Law.

108 *Ibid.*, Article 50, para 2.

109 *Ibid.*, Article 268 and Article 269, para 1.

110 *Ibid.*, Article 50, para 1.

111 *Ibid.*, Article 5.

112 *Ibid.*, Article 142, para 1 and 2 in relation to Article 304, para 1.

113 *Ibid.*, Article 148.

114 *Ibid.*, Article 281.

115 *Ibid.*, Article 282.

to monitor the child development and periodically report on the progress to the guardian institution.<sup>116</sup> In a civil non-contentious proceeding, the court can deprive a parent of the right to live with the child and entrust the care, upbringing and education of the child to another person or institution, if the parent(s) works against the interest of the child or if one of the parents fail to prevent the other parent or household member from such a behavior towards the child. The same court shall grant back this right to the parents, when such an action proves to be in the best interest of the child.<sup>117</sup> Public Procedures concerning disputes between children and parents shall be closed for public.<sup>118</sup> In family matters, the court shall, *ex officio*, be mindful of protection of the rights and interests of children and, if needed, it shall appoint a special guardian to the children.<sup>119</sup> The court may rule that the appeal shall not delay the execution of the measures aimed at protecting the rights and interests of the child.<sup>120</sup>

**Family law of Brčko District of BiH** regulates the family and legal relations and procedures that are to be applied by the competent bodies in charge of such relations and child custody matters. Family relations are based on the obligation of parents to ensure the protection of the interests and wellbeing of the child and their responsibility to raise and educate the child. Family relations are based on the obligation of Brčko District of BiH to ensure the protection of family, the mother and the child in accordance with relevant international conventions and to ensure protection to the children without parental care.<sup>121</sup> Professional assistance and protection of the rights and interests of the child and other family members, as well as resolution of family disputes and disturbed family relations are the matters under the competence of Department for health and other services – Subdivision for social welfare, i.e. a guardian institution.<sup>122</sup>

#### *Legislation on movement and the stay of aliens*

**Law on movement and the stay of aliens and asylum** in Article 120, para 3 stipulates the right to reunification of a family, whereby the legislator anticipated the protection of the best interest of a child. However, further provisions of the law and relevant bylaws do not elaborate the terms and conditions under which this right can be exercised. Therefore it is questionable whether this right can be realized in reality.

**Rulebook on international protection (asylum) in BiH** in Article 5, referring to the principle of the best interest of a child, highlights that all rights of a minor asylum seeker shall be protected in accordance with the Convention on the Rights of the Child and regulations in BiH concerning the care for juveniles and protection thereof. The Law also stipulates that separated children, as well as unescorted children shall have priority in terms of identification, special protection and care, and in terms of finding their parents and reuniting them with their children. The body tasked with ensuring this right is Ministry of Security – Sector for asylum, in cooperation with other competent bodies in BiH.

#### *Legislation on inheritance*

The children and the spouse, who are considered the first-rank heirs, shall inherit estate of an intestate, in equal shares.<sup>123</sup> Children and adopted children are statutory heirs of the intestate in case they have disposed of the

116 Paragraphs (1), (2) and (4) of Article 150, and paragraphs (1) and (2) of Article 152 of the FBiH Family Law.

117 *Ibid.*, Article 153, para 1 and 4.

118 *Ibid.*, Article 277.

119 *Ibid.*, Article 269.

120 *Ibid.*, Article 321, para 2.

121 Article 1, para 1 of the BDBiH Family Law.

122 *Ibid.*, Article 2, para 2, items c), d) and e) and para 3.

123 Article 10 of the Inheritance law in the Federation and Brčko District of BiH and Article 9 of the RS Law on inheritance

intestate's property before the intestate's death, which means that they shall inherit  $\frac{1}{2}$  of the share they would have inherited in accordance with the legally defined inheritance rank.<sup>124</sup> A child conceived at the moment of opening of inheritance procedure shall be considered as if it had been born, if born alive.<sup>125</sup>

### *Legislation on education*

**Framework Law on primary and secondary education in BiH** stipulates that children's rights concerning education, and the proper care and welfare for their physical and mental health and safety in schools and other places where they receive education, have primacy over any other rights, and in the case of conflict of rights, the advantage is given to the right, interpretation thereof or action that is in the best interest of the child involved.<sup>126</sup>

## **Recommendations of the UN Committee on the Rights of the Child**

In its concluding observations the Committee recognized that the majority of laws and programs in BiH is in line with the principle of the best interest of the child, but it was concerned that this principle is in reality limited allegedly due to lack of adequate financial resources. The Committee recommends that the State party strengthen its efforts to ensure that the general principle of the best interests of the child is understood, appropriately integrated and implemented in all legal provisions, as well as in judicial and administrative decisions and in projects, programmes and services that have an impact on children.<sup>127</sup>

## **Conclusion**

Family laws, as *lex specialis* legislation, regulate the matters of family and family relations, in particular relations between parents and children, adoption, child custody for children without parents and procedures of the authorities in charge of these relations. Although principle of the best interest of the child is particularly mentioned in all segments, some provisions of the current legislation are not applied in practice. One such example is Article 237 of the Family Law of FBiH, whereby an obligation was stipulated for the centers for social work to ensure the funding for child support in the Federation budget in order to support the parents and other persons who are obliged but unable to support the child under their custody. In reality there is no record of a single application of this Article, because the relevant bodies in the Federation of BiH refused to plan the budget for this purpose, explaining that centers for social work are funded from the cantonal and municipal budgets, despite the fact that in this case the funding is required for implementation of the federal regulation.

There are some legal provisions, which do not mention the best interest of a child explicitly, but it is clear from the body of the provision that the legislator was mindful of this interest. For example, in Article 18 of the Law on travel documents of BiH<sup>128</sup> the legislator stipulated that a travel document can be issued to a child without consent of the other parent, provided that the other parent is a missing person, person whose temporary and permanent address is unknown or person who cannot be reached by the competent body, or when, by court decision, the child custody was awarded to one parent without exclusive obligation to consult the other parent.

<sup>124</sup> Articles 28 and 29. of the Inheritance law in the Federation and Brčko District of BiH and Article 30 of the RS Law on inheritance.

<sup>125</sup> Article 128, para 2 of the Inheritance law in the Federation and Brčko District of BiH and Article 148, para 2 of the RS Law on inheritance.

<sup>126</sup> Article 5 of the Framework Law on Primary and Secondary Education in BiH.

<sup>127</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, points 28 and 29.

<sup>128</sup> Law on travel documents of BiH, O.G. 4/97,1/99,27/00,19/01,47/04,53/07,15/08,33/08,39/08.

According to recommendation of Ombudsmen, centers for social work in the Federation of BiH acted only in the cases when one of the parents refused to give consent for issuing a travel document. Only in such situations, the opinion of the centers for social work was considered a substitute for a parental consent.

Also, based on accepted recommendations of Ombudsmen, in RS children under the age of 15 have free health care regardless of whether they are members of the healthcare beneficiary's family. However, the issue of health care for children over the age of 15 whose parents have no status of a healthcare beneficiary remains open.

Laws on social welfare and child protection neither underline the meaning of «the best interest of a child» nor they set the criteria for establishing such an interest, which should have been derived from the intention of legislator.

Framework Law on Primary and Secondary Education in BiH stipulates that rights of the child concerning education, proper care for wellbeing and physical and mental health and security in schools and other places of education shall be given priority over all other rights, and in case of conflict of rights, the law, interpretation or action in the best interest of a child shall prevail. Unfortunately, lower levels of government failed to harmonize their respective legislations regulating this matter with the Framework Law and failed to integrate the principle of the best interest of a child in this field.

In BiH there is still a problem with the application of the principle of the best interest of a child because of lack of understanding, in particular when the right of a child is linked to the rights of parents. In such situations, the common position is that only parents can assess what the best interest of a child is.

### **Recommendation**

Measures should be taken to build-in the principle of the best interest of a child into legislation of BiH and to ensure the mechanisms that would guarantee an efficient application of the principle. In practice this implies not only a high level of awareness and knowledge among the professional staff who make decisions on the rights of children, but also ensuring appropriate funding for implementation of those decisions.

### **3.4. Right of a child to life, survival and development to the maximum extent possible**

#### **Convention**

Right of a child to life and survival and development to the maximum extent possible has been defined by Article 6 of the Convention on the Rights of the Child, which establishes the obligation according to which:

1. States Parties shall recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

## Legislation of BiH

### *Family legislation*

**Family Law of the Federation of BiH** stipulates that a child has the right to care, health and personal development and employment that is not detrimental to its health and development.<sup>129</sup> Parents shall be obliged to ensure that a child has the living conditions appropriate for the child's development.<sup>130</sup>

**RS Family Law** in a slightly different manner defines the right to survival and development, and „shifts“ the responsibility for ensuring this exercise of this right to the parents. Accordingly, Article 6 of the RS Family Law stipulates that the parents shall be obliged to take care of the life and health of their children, as well as of their upbringing and education, and they have the right and duty to protect their minor children, i.e. their life and health.<sup>131</sup>

**Family Law of BDBiH** stipulates that a child has the right to proper care for his/her life, health and personal development, but the Law does not define who is responsible for ensuring this right.<sup>132</sup>

### *Legislation on child protection*

**RS Law on child protection** defines the child protection system, which is based on the rights and duties of parents to take care of raising and educating their children, the rights of the child to appropriate living conditions suitable for appropriate psycho-physical development and obligations of the State to enable this development.<sup>133</sup> The same regulation establishes a public child protection fund with aim to ensure equal terms for satisfying the development needs of all children in RS. **Child Protection Law of BDBiH**<sup>134</sup> stipulates that child protection is aimed at ensuring approximately the same conditions to all children for a healthy and appropriate physical, intellectual and emotional development in a family.<sup>135</sup>

### *Legislation on education*

**Framework Law on primary and secondary education** in Article 3, paragraph 2, item b) defines that a goal of education is to ensure an optimal development for every person, including those with special needs, according to their age, possibilities, and mental and physical abilities.

**Law on primary and secondary education in RS**<sup>136</sup> in Article 55 says that a child with mild mental disorder or physical challenge shall attend regular school classes, and shall be provided professional assistance during the observation period of a minimum 6 months. Competent ministry shall adopt a **Rulebook on education of children with difficulties in psycho-physical development**.<sup>137</sup> This Rulebook stipulates

129 Article 124, para 1, Article 187, para 2 of the FBiH Family Law, and Article 126, para 2.

130 *Ibid.*, Article 138, para 2.

131 Article 81, para of the RS Family Law.

132 Article 107, para 1 of the Family Law of BDBiH.

133 Article 1 of the Law on child protection, O.G. RS.

134 Law on child protection, O.G. BDBiH.

135 *Ibid.*, Article 1.

136 Law on primary and secondary education in RS.

137 Article 1 of the Rulebook on education of children with special educational needs in primary and secondary schools, O.G. RS no. 85/04.

inclusion, which shall be implemented in accordance with the pedagogic standards and norms for education of children with special needs and recommendation of an expert team.

**RS Law on secondary education**<sup>138</sup> in Article 48 stipulates that children with special educational needs shall have the right to secondary education, which is a part of uniform education system. The minister shall also adopt a curriculum for children with special needs for every single type and level of difficulty in development.

**Law on primary and secondary education in BDBiH**<sup>139</sup> in Article 2 stipulates that the District must ensure education of all children under the same conditions, appropriate to optimal development of their personality, adjusted to their age, abilities, and mental and physical capacities.

In the Federation of Bosnia and Herzegovina, education falls under the competence of cantons. According to Article 3.2.2 of the Law on primary education of Tuzla Canton, one of the goals of education is to ensure optimal development of all children, including those with special needs, suitable to their age, abilities and mental and physical capacities. Article 5 of the same Law defines „inclusion“ as a comprehensive integration of children with difficulties in development, learning and social integration into educational system.

### *Labor legislation*

**FBiH Labor Law** stipulates that a minor may not work on particularly hard manual works, works underground or under water, nor on other jobs which could have a harmful effect or increased risk to his life or health, development or moral, given his psycho-physical qualities.<sup>140</sup> RS and FBiH Labor laws stipulate that a person between 15 and 18 years of age may be employed, providing that he/she has the general health ability to perform those jobs, established by a competent doctor or health institution and consent of the legal guardian. A person younger than 15 years of age cannot conclude an employment contract for jobs implying danger of injuries or increased adverse effect on the health.<sup>141</sup> **Labor law of BDBiH** explicitly forbids that minor should work in night shifts, except in extraordinary circumstances, and it precisely defines the notion of night time schedule for minors.<sup>142</sup> Also, a minor may not work on dangerous and hard manual works, works underground or under water or some other jobs that could have a harmful effect to his/her life, health physical development or moral.<sup>143</sup>

## **Recommendations of the UN Committee on the Rights of the Child**

In considering the BiH report, the Committee made no specific recommendations concerning Article 6 of the Convention, however, all other recommendations do have direct impact on ensuring the right of child to life and development to the maximum extent possible.

<sup>138</sup> Law on secondary education in RS.

<sup>139</sup> Law on primary and secondary education in BDBiH, O.G. BDBiH no. 10/08.

<sup>140</sup> Article 32. 4, Article 36. 1 and Article 51.1 of the Labor law of FBiH.

<sup>141</sup> Article 14, para 2 and 3 of the RS Labor Law.

<sup>142</sup> Article 28 of the Labor Law of BDBiH.

<sup>143</sup> *Ibid.*, Article 41.

## Conclusion

Analyzing the legislation of BiH one can conclude that a series of measures has been undertaken to ensure the right of a child to life and development to the maximum extent possible. This is particularly evident in the labor legislation, the provisions of which forbid night work, work under difficult working conditions and promote protection and development of the child. Family legislation, to a great extent, shifts the responsibility for ensuring the survival and development of a child from the State to parents in the cases when the State is unable to provide an adequate support and protection to the family through its institutions.

## Recommendation

In order to implement the provisions of Family legislation, whereby the rights of a child to survival and development are regulated, the State shall establish efficient mechanisms that will ensure development and survival of the child whose parents are unable to ensure it. Establishing of a mechanism for economic support to the families would guarantee the implementation of the right of a child to survival and development.

### 3.5. Right of a child to express his/her views

#### Convention

Position of the Convention concerning the right of a child to his/her own views has been expressed in Article 12 of the Convention, which reads:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## Legislation of BiH

### *Legislation on citizenship*

**Law on citizenship of BiH** requires that a child over 14 years of age must give its consent in cases of acquisition of citizenship by naturalization, renouncing the citizenship of BiH and losing citizenship by release.<sup>144</sup> The Law allows that the parent who has the citizenship of BiH may apply for acquisition of the citizenship of BiH on behalf of a minor child, and if the child is over 14 years of age, his or her consent is required.<sup>145</sup>

<sup>144</sup> Article 6 of the Law on citizenship of BiH, O.G. BiH no. 4/07, 13/99, 41/02, 6/03, 14/03, 82/05. *Ibid.*, Article 19.2. *Ibid.*, Article 22.2.

<sup>145</sup> Article 11.2 of the Law on citizenship of BiH.

When it comes to issue of acquisition of citizenship of the entities, cessation of citizenship by renouncement and release, the Entity laws contain the identical provisions as those contained in the Law on citizenship of BiH.<sup>146</sup>

### *Family legislation*

According to provisions of **FBiH Family Law** a child shall have the right to freely express his/her views and for his/her views to be taken into consideration in accordance with the age and maturity of the child. Accordingly, the child is entitled to seek protection of his/her rights before competent authorities,<sup>147</sup> and the child over 10 years of age who is capable of understanding the meaning of the adoption must give his/her consent to adoption.<sup>148</sup> In the procedure of protecting the rights and best interest of a child, the guardian institution shall, prior to undertaking of measures, consult the child about the matters relevant for decision-making, provided that the child is capable of understanding the meaning of the procedure. Opinion of the child shall be particularly taken into consideration in the case of separation of the child from parents. A judge shall have an informal conversation with the child prior to making decision on custody award, as well as on personal relations and direct contacts of the child with the parent who does not live with him/her, and judge shall inform the child about his/her right to express his views,<sup>149</sup> provided that the child understand the meaning of legal consequences of the procedure. If the guardian runs the affairs relevant to the property of the child, the opinion of the child shall be taken into consideration, provided that the child is capable of understanding the meaning of the affairs.<sup>150</sup> **RS Family Law** stipulates that the Court, i.e. institution that decides on awarding guardianship over a child shall take into consideration the wishes of the child, provided that the child is capable of expressing them.<sup>151</sup> In adoption procedure, the guardian institution shall inform the adopted child over 10 years of age about the rights and duties deriving from the adoption procedure.<sup>152</sup>

**Provisions of the BD BiH Family Law** stipulate that the change of personal name of an adopted child over 10 years of age shall require consent of the child,<sup>153</sup> and the child is entitled to seek protection of his/her rights before the competent authority.<sup>154</sup>

### *Legislation on protection of persons with mental disorders*

**Laws on protection of persons with mental disorders of FBiH and RS** stipulate that a child or a minor suffering mental disorder who is not capable of expressing his/her consent to medical treatment may be subjected to examination and other medical treatment only upon consent of his/her legal guardian, while the opinion of the minor shall be taken into consideration in accordance to his/her age and level of maturity.<sup>155</sup>

146 Article 10.2, Article 19.2 and Article 22.2 of the Law on citizenship of FBiH, O.G. FBiH no. 43/01,22/09 and Article 15.2 of the Law on citizenship of RS, O.G. RS no. 35/99, 17/00, 64/05.

147 Article 125 para 1 and 2 of the FBiH Family Law and Article 108.1 of the BDBiH Family Law.

148 *Ibid.*, Article 103.2.

149 *Ibid.*, Article 150.5 and Article 271.2.

150 *Ibid.*, Article 176.2.

151 Article 92.1 of the RS Family Law.

152 *Ibid.*, Article 165.1.

153 Article 101.3 of the Family Law of BDBiH.

154 *Ibid.*, Article 108.2.

155 Article 8, para 4 of the FBiH Law on protection of persons with mental disorder and Article 9, para 3 of the RS Law on protection of persons with mental disorder and Article 6, para 3 of the BD BiH Law on protection of persons with mental disorders.

## **Recommendations of the UN Committee on the Rights of the Child**

In its recommendations the Committee on the Rights of the Child expressed its concern about the fact that article 12 of the Convention is not adequately applied in families, schools and other institutions and not fully taken into account in practice in judicial and administrative decisions and the development and implementation of laws, policies and programmes. Therefore the Committee recommended that the State Party invest additional efforts in ensuring that the views of the child are respected in practice. In this connection, particular emphasis should be placed on the right of every child to participate in the family, at school, within other institutions and bodies, and in society at large, with special attention to vulnerable and minority groups. This right should also be incorporated in all laws, judicial and administrative decisions, policies and programmes relating to children.<sup>156</sup>

### **Conclusion**

Legislation in the field of family relations undoubtedly paid a significant attention to respect for views of the child. Unfortunately, such a measure is lacking not only in the segment of education but also in other spheres of life relevant to survival and development of a child.

### **Recommendation**

Measures should be undertaken to eliminate the stereotypes according to which children's views shall not be taken into consideration in all spheres of their lives, particularly in the field of education, which by definition has a developmental dimension. Such measures would result in development of children into adults who are aware that they shall bear the consequences of their respective decisions. The measures should be implemented through activities aimed at raising the awareness of public, schools, governmental bodies and institutions and promoting the principle of respect for views of the children in all matters concerning their rights.

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<sup>156</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, points 30 and 31.



# CIVIL RIGHTS AND FREEDOMS

*Article 7 - Right to name and citizenship*

*Article 8 - Right to preservation and protection of identity*

*Article 13 - Right to freedom of expression*

*Article 14 - Right to freedom of thought, conscience and religion*

*Article 15 - Right to freedom of association and peaceful assembly*

*Article 16 - Right to privacy*

*Article 17 - Right to information*

*Article 37 a) - Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment*



### 3.6. Right to name, citizenship and preservation and protection of identity

#### Convention

The right to name and citizenship and right to preservation and protection of identity have been established in **Articles 7 and 8 of the Convention on the Rights of the Child**. Article 7 of the Convention stipulates that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8 establishes** that:

1. *States Parties shall undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*

#### Legislation

##### *Family legislation*

**Family Law of the FBiH** says that parents shall decide on the first and last name of the child, and should they fail to reach agreement on this, the decision shall be made by a guardian institution.<sup>157</sup> Adoptive parents shall, by mutual consensus, give the name to an adopted child, who shall take their last name, and in the case of disagreement, the last name of the child shall be decided by the guardian institution.<sup>158</sup>

**Family law of RS** considers both parents equal in exercising parental rights and duties. A parent may not renounce of this right.<sup>159</sup> In case of partial adoption, the decree on adoption shall contain the agreement on the last name of the child.<sup>160</sup>

**Family Law of BDBiH** stipulates an obligation of the parents to decide, by mutual agreement, on the name of their child, and in the case of disagreement, the name shall be as decreed by the guardian institution.<sup>161</sup> Adoptive parents shall, by mutual consensus, give the name to an adopted child, and in the case of disagreement the guardian institution shall decide.<sup>162</sup>

<sup>157</sup> Article 133 of the FBiH Family Law.

<sup>158</sup> *Ibid.*, 115.

<sup>159</sup> Article 80 of the RS Family Law.

<sup>160</sup> *Ibid.*, Article 167, para 1.

<sup>161</sup> Article 116 of the BDBiH Family Law.

<sup>162</sup> *Ibid.*, Article 98.

### *Law on personal name*

**Law on personal name in the FBiH** says that parents shall, by mutual consensus, name their child. The child shall take the last name of one or both parents. In case of disagreement, personal name of the child shall be as decreed by competent center for social work (guardian institution). Personal name of a child whose parents are unknown shall be decreed by the guardian institution.<sup>163</sup> A juvenile under the age of 10 shall change the personal name, the first name or the last name at the request of parents or adoptive parents or a guardian, but only upon consent of the guardian institution, while in case of a juvenile over the age of 10, the child consent is required.<sup>164</sup>

**Laws on personal name in RS and BD BiH**<sup>165</sup> define the obligation of parents and procedures in the same manner as the Law on personal name of the Federation of Bosnia and Herzegovina.

### *Law on citizenship of Bosnia and Herzegovina*

**Law on citizenship of Bosnia and Herzegovina** stipulates that all citizens of the Federation of Bosnia and Herzegovina and Republika Srpska are thereby citizens of BiH, that a change of the citizenship of one of the Entities to the citizenship of another Entity does not affect the citizenship of BiH, and that the Entity laws on citizenship must be compatible with the Constitution of Bosnia and Herzegovina and with this Law.<sup>166</sup> The Law anticipates acquisition of citizenship by descent, by birth on BiH territory, by adoption, by naturalization and by international agreement.<sup>167</sup> A child acquires citizenship by descent under the conditions stipulated by the Law.<sup>168</sup> Citizenship of BiH shall be acquired by child who has been born or found on the territory of BiH, whose parents are unknown or of unknown citizenship or stateless, or if the child is stateless.<sup>169</sup>

**Law on citizenship of FBiH** stipulates that citizenship of the FBiH can be acquired if the child was born in the territory of FBiH and whose parents, at the time of birth, were citizens of BiH and RS with residence in the Federation or RS and if they agreed that the child should have the Entity citizenship of the Federation.<sup>170</sup>

**RS Law on citizenship** stipulates that a child born in the territory of RS shall also acquire the citizenship of the Entity.<sup>171</sup> A child under the age of 18 who has the citizenship of another state or is stateless or is fully adopted by a citizen of RS shall acquire the citizenship of RS.<sup>172</sup>

**Law on choosing the Entity citizenship of persons with permanent residence in BD BiH** stipulates that parents with different Entity citizenship have the right to choose the Entity citizenship for their child, but in the case of a child over the age of 14, the child's consent is required.<sup>173</sup>

163 Article 4 of the Law on personal name in FBiH, O.G. SR BiH no. 35/71, 38/86, 37/88 and 33/90.

164 *Ibid.*, Article 7.

165 Law on personal name, O.G. RS, no. 27/93, 15/00 and Law on personal name, O.G. BDBiH no. 8/02, 29/05.

166 Article 1 and 2 of the BiH Law on citizenship.

167 *Ibid.*, Article 5.

168 *Ibid.*, Article 6.

169 *Ibid.*, Article 7.

170 Article 6.2 of the FBiH Law on citizenship.

171 Article 8.1, item a) of the RS Law on citizenship.

172 *Ibid.*, Article 9.

173 Article 3.2 of the Law on choosing the Entity citizenship of persons with permanent residence in BD BiH, O.G. BDBiH no. 1/04, 3/04, 40/04.

Right to travel document has been regulated by **the BiH Law on travel documents**. Travel document<sup>174</sup> - passport, is a public document **proving the identity and citizenship of BiH**. The travel document can be used exclusively by the person to whom the document has been issued. Children are entitled to have passports on their own. If the passport holder is a child under the age of 14, such a child can travel abroad only under escort of a parent or legal guardian, i.e. must have a consent of both parents or legal guardian, verified by competent body, if it travels with another person.

Issuance of travel documents is under the jurisdiction of bodies in the Entities and Brčko District, Ministry of Civil Affairs of BiH, Ministry of Foreign Affairs of BiH and Ministry of Security of BiH.<sup>175</sup> Application for issuance of a passport on behalf of a child shall be submitted by one parent only, upon consent of the other, except when one of the parents is considered a missing person, if his/her temporary and permanent address is unknown, if he/she is unavailable to the bodies authorized for issuance of passports and if court explicitly decreed that the consent of both parents is not needed for issuance of a passport to their child.

Along with application, a parent shall submit a document proving the identity of the child (birth certificate). In other words, a child who has not been registered into the register of births cannot be issued a passport.

#### *Law on personal identification number*

**Law on personal identification number** regulates the manner, allocation, registration, storing and using of a personal identification number of BiH citizens and aliens in BiH. Personal identification number is assigned according to the place of birth, the place in which the registration of person was made. The number shall be assigned upon registration in the register of births, no later than 15 days after the day of registration in the register of births.<sup>176</sup> Failure to file an application for assignment of a personal identification number within legal deadline shall be sanctioned as a misdemeanor offence with appropriate fine.<sup>177</sup>

#### *Law on temporary and permanent residence of citizens of BiH*

**Law on temporary and permanent residence of citizens of BiH** regulates the matters concerning the temporary and permanent residence of BiH citizens and temporary residence of displaced persons. Residence of a newly born child shall be registered within 60 days after the birth. In order to register the residence of the child, the parent shall submit a birth certificate. Failure to report the residence of the child within legally prescribed deadline shall be sanctioned as a misdemeanor offence with appropriate fine.<sup>178</sup>

#### *Law on identity card of BiH citizens*

**Law on identity card of BiH citizens** defines the identity card as a document proving the identity of a person, place and date of birth and citizenship, and in case of a displaced person, it proves his/her temporary

<sup>174</sup> Passport, diplomatic passport, official passport, common passport, travel sheet and sea (maritime) book

<sup>175</sup> *Ibid.*, Article 13.

<sup>176</sup> Article 9 of the Law on personal identification number, O.G. BiH, No. 32/01, 63/08.

<sup>177</sup> *Ibid.*, Article 53.

<sup>178</sup> Article 30.1.1 of the Law on temporary and permanent residence of citizens of BiH, O.G. BiH no. 32/01.

or permanent residence.<sup>179</sup> A BiH citizen over the age of 15 and under the age of 18 who have residence in BiH can be issued an identity card valid for two years, at his/her own request or at the request of parent or other legal representative.<sup>180</sup>

### *Law on movement and the stay of aliens and asylum*

An alien who was granted a temporary or permanent stay in the country shall report his/her address or change of the address within legally prescribed deadline.<sup>181</sup> Competent bodies in BiH are obliged to treat minor aliens with special care and respect, acting in accordance with the principles of the Convention on the Rights of the Child and BiH regulations concerning the care for juvenile persons and protection thereof. In that sense, a minor who entered BiH illegally, without escort of a parent/guardian, shall be accommodated in a specialized minor institution and relevant guardian institution shall be informed. Such a minor shall not be returned to his original country or any other country ready to admit him/her until the admission of the child by a parent/legal guardian i.e. by a proxy or by representative of relevant body of the receiving country is ensured. A minor without escort cannot be returned to his/her home country under no circumstances that would stand as a breach of European Convention on Human Rights and Fundamental Freedoms and BiH Law on movement and the stay of aliens and asylum.<sup>182</sup> Failure to act within prescribed deadlines (application/registration) defined under this Law shall be considered a misdemeanor punishable by a fine.<sup>183</sup>

**Rulebook on personal status and entering data into register of births and deaths of refugees and persons under international protection in BiH** defines basic principles, manner and special conditions in the process of entering the facts deriving from personal situation of persons under international protection in BiH, terms and conditions under which administrative support is provided to such persons in BiH, and recognition of the status acquired in the country of origin or country of residence.<sup>184</sup> In case of unification of family of a refugee whose refugee status is recognized as such by the law, family members of the refugee shall enjoy the same rights as the refugee in terms of entering of data deriving from the personal status.<sup>185</sup>

### *Criminal legislation*

**BiH Criminal Code** stipulates that any person who denies the access to identification documents to another person shall be punished by imprisonment.<sup>186</sup>

**FBiH Criminal Code** sanctions any person who unlawfully takes a child or a juvenile away from his/her parents, adoptive parents, guardian or person to whom he/she has been entrusted, or who holds or prevents him/her from being with the person who is entitled to him/her, or who prevents the execution of a court decision on the supervision of a child or a juvenile and who in committing this criminal offence take the

179 Article 2.1. of the BiH Law on identity card, O.G. BiH no. 32/01, 16/02, 32/07, 53/07, 56/08.

180 *Ibid.*, Article 8.2 in relation to Article 17.2.

181 *Ibid.*, Article 74.

182 *Ibid.*, Article 139, para. 2, 3 and 4.

183 *Ibid.*, Article 149.

184 Article 1 of the Rulebook on personal status and entering data into register of births, marriages and deaths of refugees and persons under the international protection in BiH, Official Gazette of BiH no. 51/07.

185 *Ibid.*, Article 2, para 2.

186 Article 188 of the BiH Criminal Code.

child or the juvenile away from the territory of FBiH or BiH.<sup>187</sup> Any person who commits the crime by placing a child upon another, substituting it or in some other way changes the family status of a child shall be held criminally responsible.<sup>188</sup>

**Criminal Codes of RS and BD BiH** define the elements of criminal offences and stipulate sanctions of perpetrators in identical manner as the Criminal Code of FBiH.

### **Recommendations of the UN Committee on the Rights of the Child**

When it comes to registering children into birth registers, the UN Committee was concerned by the fact that, according to data delivered by Entity ombudsman offices, there are about 5.000 children with incomplete data in birth registers and certain number of children in some regions that have not at all been registered into birth registers. The Committee was further concerned by the fact that Roma children have not been registered into birth registers because their parents have no personal documents and because the authorities discriminate this population by denying them the right to have their children registered in the birth registers. Therefore, the Committee in its recommendations requires that the State Parties urgently further and strengthen their efforts in ensuring the system that will enable registration into birth registers of all children born within their respective territories, regardless of their national background or status of their parents. The same shall also apply to all children born abroad, but whose parents are citizens of the State Party. The State Parties shall also undertake appropriate steps to ensure registration of Roma children in birth registers.

### **Conclusion**

Competent authorities in BiH recognized the problem of children not being registered into registers of births and undertook appropriate measures aimed at detecting the causes and removing the consequences that accumulated over the years of non-registration of children in the birth registers and lack of control of birth registers. UNICEF developed a Legal analysis of legislation in Bosnia and Herzegovina concerning the birth registration. The BiH Ministry for Human Rights and Refugees accepted this analysis as an official document that is now used as a basis for interventions in legislation and practice.

### **Recommendations**

The analysis showed that the situation in terms of registration of births and exercise of other status-related rights of children require urgent actions aimed at improving the system and ensuring that the status related rights of children can be resolved in a short period of time. In order to ensure that children are registered in birth registers, a Law needs to be adopted in BiH to regulate the matters of registration in the birth registers and an electronic database needs to be established. Development of legislative framework concerning registration into birth registers should be part of a broader reform process of legislation regulating the matters of status and other issues of citizens, including citizenship, right to identity card and passport, residence, etc.

In order to avoid misuse of health books and personal identification documents of other persons in the situations of child delivery, the State should: ensure a free delivery to all parturient women; sanction those

<sup>187</sup> Article 217, para 1 and 2.

<sup>188</sup> *Ibid.*, Article 218.

who fail to register children upon their birth and submit information about mothers, whereby the number of unregistered children would be reduced and the right of children to identity, citizenship, passport and other personal documents necessary for exercise of other rights, primarily right to health protection and education would be ensured; harmonize legislation and regulations on birth registers, improve communication and cooperation of all bodies in the chain of actions relevant for registration of personal data in BiH.

### 3.7. Right to freedom of expression

#### Convention

The right to freedom of expression is stipulated in **Article 13 of the Convention** on the rights of the child, which reads:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order, or of public health or morals.

#### Legislation

##### *Law on protection of national minorities*

**Laws on protection of national minorities in BiH, Law on protection of the rights of national minorities in FBiH and RS Law on protection of the rights of national minorities** stipulate that members of national minorities have the right to establish radio and TV stations, publish newspapers and other print materials in the language of their respective minority group. These laws also impose an obligation to public broadcasters to ensure the space in their programs for special informative programs for the members of national minorities.

##### *Family laws*

**Family law of FBiH and Family law of BDBiH** stipulate that a child shall have the right to expressing its own views in accordance with its age and maturity,<sup>189</sup> while **Family law of RS** does not have such a provision, but it does stipulate that court, when deciding on assigning the custody over the child, shall take into consideration the wishes of the child, provided that the child is capable of articulating his/her wishes.<sup>190</sup>

<sup>189</sup> Article 125, para 1 of the BDBiH Family Law.

<sup>190</sup> Article 92, para of the RS Family Law.

## Recommendations of the UN Committee on the Rights of the Child

When it comes to child's freedom of expression, the Committee referred to its positions and recommendations presented in relation to application of Article 12 of the Convention, which binds the State Parties to take into consideration and respect the views of children, as one of the basic principles of the Convention.

### Conclusion

In Bosnia and Herzegovina there is not enough awareness about the importance of freedom of expression, which also reflects on the right of child to freely express its views. This was particularly evident in the course of project activity conducted by BiH Ombudsmen with assistance of organization „Save the Children Norway“ called „Ombudsmen in your school“. Ombudsmen's initiative to encourage children to present their views on all aspects relevant to their rights came as a big surprise to children and it opened the question of how important it is for children to express their views if (according to children), their views will not be taken into consideration anyways. This activity of BiH Ombudsmen showed that children have little knowledge about their right to freedom of opinion, in particular about the freedom of expression.

### Recommendations

The activity launched by BiH Ombudsmen should be continued and upgraded as a model for activities of all other institutions in BiH mandated with the issues concerning the rights of the child, particularly the institutions in the field of education.

## 3.8. Right to freedom of thought, conscience and religion

### Convention

The right to freedom of thought, conscience and religion is established in **Article 14 of the Convention** and it commits the State Parties to the following:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

## Legislation

### *Law on freedom of religion and legal status of churches and religious communities in BiH*

**Law on freedom of religion and legal position of churches and religious communities in BiH** prohibits<sup>191</sup> discrimination based on religion, which can lead to direct or indirect, intentional or unintentional denial or reduction of recognition, equal enjoyment or exercise of human rights and freedoms in civic, political, economic, social and cultural rights. Everyone has the right to freedom of religion or belief, including the freedom to publicly profess religion, adopt or change his or her religion, and the freedom to manifest his religion or belief in any manner in worship, practice and observance, maintenance of customs and other religious activities. Everyone shall have the right to religious education, which shall be provided solely by persons appointed so to do by an official representative of his Church or religious community, whether in religious institutions or in public and private pre-school institutions, primary schools...<sup>192</sup>

### *Framework Law on pre-school education in BiH*

Framework Law on pre-school education in BiH stipulates that pre-school institutions shall develop, promote and respect the national and religious freedoms, customs, tolerance and culture of dialogue in accordance with the BiH Constitution, European Convention on Human Rights and Fundamental Freedoms, Framework Convention for Protection of National Minorities and the Convention on the Rights of the Child.<sup>193</sup>

### *Framework Law on primary and secondary education in BiH*

**Framework Law on primary and secondary education in BiH** regulates the principles of education among which developing awareness of commitment to the State of BiH, one's own cultural identity, language and tradition, in a way appropriate to the legacy of the civilization, learning about others and different by respecting the differences and cultivating mutual understanding and solidarity among all people, ethnic groups and communities in BiH and in the world. In accordance with the Law the schools shall promote and protect religious freedom, tolerance and dialogue in BiH. The pupils shall attend religious classes only if latter match their beliefs or beliefs of their parents, and students who do not wish to attend religious education classes shall not in any way be disadvantaged compared to other students.<sup>194</sup>

### *Family legislation*

**Family law of the Federation of BiH** defines the rights and duties of parents to raise their children in spirit of peace, dignity, tolerance, freedom, equality and solidarity, and in accordance with the age and maturity of a child to foster and promote his/her right to freedom of thoughts, conscience and religion.<sup>195</sup>

191 Article 2, para 1 in relation to Article 5, para 1 of Law on freedom of religion and legal position of churches and religious communities in BiH, O.G. BiH no. 5/04.

192 *Ibid.*, Article 4, para 1.

193 Article 11 in relation to Article 10 of the Framework Law on pre-school education in BiH, O.G. BiH, no. 88/07.

194 Article 9 of the Framework Law on primary and secondary education in BiH.

195 Article 135 of the Family Law of FBiH.

**Family law of RS** stipulates that in the procedure on awarding guardianship over a child, the Court shall take into consideration the wishes of the child, provided that the child is capable of expressing them.<sup>196</sup>

**Family law of BDBiH** establishes the right of a child to express his/her views, and it stipulates that the views of the child shall be given due weight in accordance with the age and maturity of the child.<sup>197</sup>

### **Recommendations of the UN Committee on the Rights of the Child**

UN Committee did not make a direct recommendation referring to application of this Article of the Convention, but the application of this Article can be observed in the context of recommendations concerning the application of other Articles of the Convention.

### **Conclusion**

The right to freedom of thought, conscience and religion, as a principle, is not appropriately integrated in the education system to ensure tolerance and make a clear distinction between this right and the right to education, and ensure appropriate synergy between the two. This became particularly evident when the right to religious education was established by the Law on freedom of religion and legal position of churches and religious communities in BiH whereby the religious education can be delivered exclusively by persons appointed so to do by an official representative of the Church or religious community, whether in religious institutions or in public and private pre-school institutions, primary schools. The system established this way neglected the need for ensuring the application of pedagogic standards in the segment of religious education, which is delivered in the sphere of education, thereby eliminating the possibility for this form of education to be regulated by laws on education.

### **Recommendations**

Competent authorities should take appropriate actions to develop a comprehensive analysis of the different ways of ensuring the application of pedagogic standards in the field of religious education in schools and to investigate the possibility of introducing the course «culture of religions» in all educational institutions.

## **3.9. Right to freedom of association and peaceful assembly**

### **Convention**

Provisions of **Article 15 of the Convention** set forth the right to freedom of association and peaceful assembly. These provisions establish the obligation according to which:

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

<sup>196</sup> Article 92 of the RS Family Law.

<sup>197</sup> Article 108, para 1 of the BD BiH Family Law.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

## Legislation

### *Legislation on protection of national minorities*

**Law on protection of national minorities of BiH, Law on protection of the rights of national minorities of FBiH and Law on protection of national minorities of RS** define the right of national minorities to free organization and assembly with an aim to express and protect their cultural, educational, religious, social, economic and political freedoms, rights, interests and identities.<sup>198</sup>

### **Law on association of citizens**

**Law on associations and foundations of BiH** anticipates that associations can define their own criteria for membership, which can be restricted only to the extent that they do not conflict the ban on discrimination set forth by the Constitution and laws of BiH.<sup>199</sup>

**Law on associations and foundations in FBiH and Law on associations and foundations in RS** contain the provisions allowing the minors to participate in the work of associations as members and in the manner stipulated by the Statute.<sup>200</sup>

### **Legislation on organization of Red Cross**

**Law on organization of Red Cross of BiH** stipulates that the Company shall operate within the entire Bosnia and Herzegovina and that the Company includes the Red Cross of FBiH, Red Cross of RS and all their organizations.<sup>201</sup> Through its activities the Company shall bring together the students and the young, who participate in the Red Cross Sunday or Week of combat against TBC and other solidarity actions and sell commemorative stamps and collect voluntary contributions.

**Law on position and authorities of Red Cross of RS and Red Cross of FBiH**<sup>202</sup> define the organization as a humanitarian organization, which acts as a part of the Company of Red Cross of BiH and in line with the Law of BiH.

### *Legislation on public assembly*

According to the **FBiH Constitution** cantons have jurisdiction over the areas that are not under explicit jurisdiction of federal authorities.<sup>203</sup>

198 Article 5 of the RS Law on protection of national minorities.

199 Article 15 of the BiH Law on associations and foundations, O.G. BiH no. 32/01, 42/03, 63/08.

200 Article 15 of the FBiH Law on associations and foundations, O.G. FBiH no: 45/02, 63/08 and Article 16 of the RS Law on associations and foundations, O.G. RS 52/01, 42/05.

201 Article 4, para 1 of the Law on Red Cross Company in BiH, O.G.BiH no. 49/04.

202 Law on Red Cross in RS, O.G. RS no. 18/94, 110/03 and Law on Red Cross in FBiH, O.G. FBiH no. 28/06.

203 Constitution of FBiH, Article II.4.

According to the **Law on public assembly of Tuzla Canton** (hereinafter referred to as TC), citizens have the right to public assembly, which can be restricted only in the situations defined by the Law. Public assembly implies peaceful gatherings, public protests, processions and other forms of public assemblies in an open or closed space, organized with an aim to publicly express thoughts or positions or achieve political interests of citizens, as well as cultural, religious, sports and other interests of citizens. Organizer of a public gathering, under the same terms and conditions, can be either legal person or an individual.<sup>204</sup> Similar provisions are also present in the laws of other cantons.<sup>205</sup>

**Law on public assembly of RS** stipulates that citizens are free to gather, but the convention and organizations of the gathering has to take place in an appropriate space.<sup>206</sup> An application for organization of a public gathering can be submitted by any individual, i.e. legal person.<sup>207</sup>

**Law on public assembly of BDBiH** guarantees the freedom of public assembly, except in the cases when such a gathering is banned by Law.<sup>208</sup> Assembly, in the context of Law, means convention and organization of public meetings, street processions, cultural and entertaining programmes, sport competitions and other gatherings in spaces appropriate for such occasions.<sup>209</sup> Also, **Statute of BDBiH** speaks of the freedom of peaceful gathering and association.<sup>210</sup>

**Law on youth organization in RS** defines the youth organizations as the forms of organization of the young, established on different principles such as territorial, peer, interest, etc.<sup>211</sup> Youth organization is a voluntary association of citizens, operating in accordance with the principles of democracy and rule of law, and contributing with its work to improvement of the status of the young, inclusion of the young in the life of social community and resolution of the problems of the young.<sup>212</sup>

## Recommendations of the UN Committee on the Rights of the Child

UN Committee did not have any recommendations in relation to application of this Article of the Convention.

204 Articles 2, 3 and 4 of the Law on public assembly of Tuzla Canton, O.G. TC no. 4/04.

205 Law on public assembly of Bosnia-Podrinje Canton, O.G. BPC no. 5/03; Law on public assembly of Sarajevo Canton, O.G. SC no.17/01, text of the new law is in the procedure since 2009. Law on public assembly of Middle Bosnia Canton, O.G. MBC no.15/00, 4/05; Law on public assembly of West Herzegovina Canton, O.G. WHC no. 13/98, 8/05; Law on public assembly of Herzegovina-Neretva Canton. O.G. HNC No. 4/00; Posavina Canton applies relevant provisions of the Law on public peace and order, since it does not have a separate Law on public assembly, O.G. no. 6/00; Una-Sana Canton applies the Law of former SR BiH, O.G. SRBiH, no. 41/90 and 13/93, Canton 10 applies Law on public peace and order, O.G. no. 13/98; Zenica-Doboj Canton applies relevant provisions of the Law on public peace and order, O.G. no. 8/00 and 15/03 and Law on Strike (O.G. FBiH no. 14/00).

206 Articles 1 and 2 of the RS Law on public assembly, O.G. RS no. 118/08.

207 *Ibid.*, Article 4, para 1.

208 Article 1 of the Law on public assembly of citizens of BDBiH, O.G. BDBiH, no.26/04.

209 *Ibid.*, Article 2, para 1.

210 Article 14, para 1 of the Statute of BDBiH.

211 Article 2 of the Law on youth organization, Official Gazette of RS no. 98/04 and 119/08.

212 *Ibid.*, Article 5.

## Conclusion

The matter of the right to freedom of association and peaceful assembly being regulated by different government levels in BiH and without minimum principles, leaves the room for arbitrary interpretation of provisions and thereby reduces the insurance of this right. The best example is legislation, which regulates the matter of public gatherings. In the Federation of BiH public gatherings are regulated by various laws, and in some cantons law of SR BiH still applies.

## Recommendation

In order to ensure development of a democratic society based on the principle of full respect for human rights it is necessary to set the minimum principles for adoption of legislation concerning the right to freedom of association and peaceful assembly with full respect of international standards.

### 3.10. Right of a child to protection of privacy

#### Convention

**Article 16 of the Convention** guarantees the right to privacy, according to which:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honor and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

#### Legislation

##### *Legislation on protection of personal data*

**Law on protection of personal data** is aimed at ensuring full respect for human rights and fundamental freedoms of all persons within the territory of BiH and secrecy in processing their personal data. All public bodies, individuals and legal entities who independently keep, process and determine the purpose and manner of personal data processing are defined by Law as **controllers**, and thereby every municipal office in charge of keeping registers of births, marriages and deaths is considered a controller, and as such it is obliged to update, delete and correct personal information of citizens.<sup>213</sup>

##### *Family legislation*

**Family law of FBiH, Family law of RS and Family law of BDBiH** stipulate that public shall be excluded from procedures concerning adoption, paternity disputes, maternity disputes and disputed between parents and children.

<sup>213</sup> Law on protection of personal data, Official Gazette of BiH, no. 49/06.

### *Criminal legislation*

**Criminal Code of BiH** stipulates sanctions for unlawful deprivation of freedom and non-allowed use of personal data.<sup>214</sup> With the purpose of ensuring personal protection, it stipulates that juvenile imprisonment for a term not exceeding one year, shall be deleted from the criminal record after the lapse of the period of five years from the day on which the punishment has been served, pardoned or amnestied, or has been barred by the statute of limitation, provided that the convicted person does not perpetrate a new criminal offence within that period.<sup>215</sup>

**FBiH Criminal Code** sanctions infringement of the inviolability of an apartment, illegal search, impairing the secrecy of letters and other consignments, preventing or hindering a public gathering, unauthorized use of personal data.<sup>216</sup> Records on the educational measures pronounced shall be kept with the competent social care body, and such records can be revealed only to the court, public prosecutor's office, internal affairs bodies and social care institutions in relation to criminal proceedings against persons to whom the educational measures were pronounced.<sup>217</sup>

**Criminal Code of RS in identical manner defines certain criminal offences in this field.** Copies from the Register of measures pronounced can be shared exclusively with courts, public prosecutors, interior affairs institutions and social protection services.

**Criminal Code of BDBiH** contains the provisions identical to those contained in RS and the Federation of BiH.

### *Codes of Criminal Procedure*

**Code of Criminal Procedure of BiH, Code of Criminal Procedure of FBiH, Code of Criminal Procedure of RS and Code of Criminal Procedure of BDBiH** forbid that either the course of a criminal proceeding against a minor, or the decision rendered in that proceeding is made public, except when a legally binding decision of the Court is published, but in that case no personal data of the minor that might serve as the basis for identifying the minor can be released.<sup>218</sup>

**Code of Criminal Procedure of BDBiH** contains the provisions on exclusion of public from the procedures involving the minors. This Code stipulates that a judge may allow presence of persons in charge of protection and education of a minor or prevention of juvenile crimes and scholars in the main trial involving a juvenile.

## **Recommendations of the UN Committee on the Rights of the Child**

In its concluding observations the Committee expressed its concern that children's right to privacy is not fully respected, in schools, media and other institutions, and accordingly recommended that **the State party take all possible measures to guarantee the conditions for respecting the right to privacy for children.**

214 Articles 147 and 149 of the BiH Criminal Code.

215 *Ibid.*, Article 121, para 4.

216 Articles 184, 185, 186, 190 and 193 of the FBiH Criminal Code.

217 *Ibid.*, Article 109.

218 Article 349, para. 1 and 2 of the BiH Code of Criminal Procedure, Article 370 of the FBiH Code of Criminal Procedure; Article 355 of the RS Code of Criminal Procedure.

## Conclusion

Competent authorities in BiH implemented certain activities aimed at protecting the privacy of children, especially in the criminal and civil proceedings. However, not enough efforts have been invested in ensuring the protection of child privacy in media. Sensation-driven media articles and lack of severe controlling mechanism significantly contribute to maintenance of the current situation. Efforts of the Regulatory Agency for Communication and the Media Council made some significant efforts in this segment, but their reactions usually take place once the child privacy is already violated. On the other hand, sanctions for those who breach the privacy of the child are extremely mild, and as such have no preventive effects.

## Recommendations

Competent authorities in BiH should take appropriate measures to raise awareness and sensibility of media about the importance of protecting the rights of the child, in particular in the sphere of the right to privacy. Mechanisms for protection of the right of a child to privacy shall be established in the manner to ensure ex officio reaction to violation of the privacy of a child, and only in exceptional situations reaction upon reporting of the breach.

### 3.11. Right of a child to information

#### Convention

The right to information is established in **Article 17 of the Convention** and according to it:

- States Parties shall recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

## Legislation

### *Freedom of Access to Information Act*

**Freedom of Access to Information Act of BiH, Freedom of Access to Information Act of RS and Freedom of Access to Information Act of FBiH**<sup>219</sup> stipulate that every natural and legal person has the right to access information in the control of a public authority. This right is restricted only in case of protection of privacy, confidential commercial information and legitimate functions of authorities, but this restriction is not absolute. In each individual case, by applying a public interest test, it is determined whether the private or public interest prevails.

At the level of cantons individual Information laws, i.e. Media laws shall be adopted.<sup>220</sup>

### *Family legislation*

**Family laws of FBiH and BDBiH** stipulate that parents shall be obliged to inform the child about his/her rights and to ensure the enjoyment of those rights.<sup>221</sup>

**Family laws of RS and BDBiH** stipulate that guardian bodies, in the child adoption procedure, shall be obliged to inform the child, who is older than 10 years of age, about the rights and duties deriving from such a relation.<sup>222</sup>

### *Legislation on education*

**BIH Framework Law on pre-school education** contains provisions concerning the pre-school education based on a humanistic approach, contemporary scientific achievements and theories on child development and rights, respecting the level of child development, specific developmental capacities and individual needs of a child.<sup>223</sup>

**Framework Law on primary and secondary education** as some of basic goals of education defines the following: ensuring that students under the equal terms enjoy the right to secondary education and training in line with his/her interests and capabilities and providing support to students in choosing their vocation and integrating into social life.<sup>224</sup>

**Framework law on secondary vocational education in BiH** as a basic goal of education defines equal rights to secondary education and training for all students in line with their interests and capabilities and providing support to students in choosing their vocation and their integration into social life.<sup>225</sup>

219 Freedom of Access to Information Act of BiH, O.G. BiH no. 28/00, 45/06; RS Freedom of Access to Information Act, O.G. RS no. 20/01; FBiH Freedom of Access to Information Act, O.G. FBiH, no. 32/01.

220 Law on media in Canton Sarajevo, O.G. no.13/98, 10/02, Law on public information of Tuzla Canton, O.G. of Tuzla Canton no. 15/00, 9/04, Law on public information of ZE-DO Canton, O.G. ZE-DO Canton no.13/98), Law on Media of Bosnia-Podrinje Canton, O.G. No. 17/01, Law on public information, O.G. no. 8/97.

221 Article 132 of the FBiH Family Law and Article 115 of BDBiH Family Law.

222 Article 165, para 1 of RS Family Law and Article 77 of BDBiH Family Law.

223 Article 5 of the Framework Law on pre-school education in BiH.

224 Article 3, para 1, items a) and b) of the Framework Law on primary and secondary education.

225 Article 3, para 1, items a) and b) of the Framework Law on secondary vocational education in BiH, Official Gazette of BiH no. 63/08.

## Recommendations of the UN Committee on the Rights of the Child

UN Committee did not have any recommendations in relation to application of this Article of the Convention.

### Conclusion

Everything that was presented as a conclusion in points 3.5 (right to personal view), 3.7 (right to freedom of expression) and 3.8 (freedom of thought, conscience and religion) refers to the right to access to information.

### Recommendations

Everything that was presented as a recommendation in points 3.5 (right to personal view), 3.7 (right to freedom of expression) and 3.8 (freedom of thought, conscience and religion) refers to the right to access to information.

## 3.12. Prohibition of torture or other cruel treatment of a child

### Convention

Prohibition of torture or other cruel treatment of a child is set forth in **Article 37a) of the Convention** according to which:

State Parties shall ensure that (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

### Legislation

#### *Criminal legislation*

**Criminal Code of BiH** in Chapter X contains provisions on educational recommendations, measures and punishments for juvenile perpetrators of crimes aimed at helping the juvenile perpetrators, protecting them and discouraging them from committing new crimes.<sup>226</sup>

**FBiH Criminal Code** stipulates that long term imprisonment cannot be pronounced to a person who was not twenty one at the time of committing the crime.<sup>227</sup> If a person convicted to juvenile imprisonment commits a criminal offense punished with a fine or punishment of up to one year of imprisonment, he/she shall be punished with disciplinary punishment.<sup>228</sup> Special criminal provisions apply to juveniles, and they include educational recommendations, educational measures and punishment.

<sup>226</sup> Title X of the BIH Criminal Code.

<sup>227</sup> Article 43, para 4 of the FBiH Criminal Code.

<sup>228</sup> *Ibid.*, Article 56, para 3.

**Criminal Code of RS** stipulates special provisions applicable to juvenile perpetrators of criminal acts. Only educational measures may be pronounced to a juvenile who at the time of commission of a criminal offense had attained the age of fourteen years but had not reached the age of sixteen years. The purpose of the educational measures and juvenile imprisonment is to provide assistance to a juvenile perpetrator in rehabilitation and a proper development, protection and influence on juvenile perpetrators aimed at discouraging them from committing new crimes.<sup>229</sup>

**Criminal Code of BDBiH stipulates that** special provisions of this Code shall apply to juvenile perpetrator of crimes. Only educational measures and certain security measures may be pronounced to a juvenile, while the senior juvenile may be sentenced to a juvenile imprisonment. Purpose of the educational measures and juvenile imprisonment is to rehabilitate the convicts and to discourage them from committing new crimes.<sup>230</sup>

### *Legislation on execution of criminal sanctions*

**BiH Law on execution of criminal sanctions, detention and other** measures stipulates that a juvenile prisoner who has not reached 23 years of age may exceptionally be pronounced the disciplinary measure of solitary confinement for a period of up to five days,<sup>231</sup> but it also stipulates that no administrative measure of isolation can be applied to a juvenile convict.<sup>232</sup>

**Law on execution of criminal sanctions in FBiH** prescribes that a solitary confinement, as a disciplinary punishment, can be pronounced for the maximum of five days. If a juvenile is the prisoner who attends school, he/she shall be able to regularly attend school during solitary confinement and to read technical books and do homework. that No administrative measure of isolation can be applied to such a juvenile prisoner.<sup>233</sup>

**Law on execution of criminal and misdemeanor sanctions of RS** allows pronouncement of a disciplinary measure of solitary confinement for a juvenile for the period of up to 10 days (more than what the Law on BiH anticipates), but it also exempts the juvenile prisoners from the measure of isolation.<sup>234</sup>

**Law on execution of criminal and misdemeanor sanctions of BDBiH** stipulates that convicted persons from BD BiH who serve time in prison or correctional establishments of the Entities shall have the same conditions as all other persons and that appropriate provisions of the Entity legislation on execution of criminal sanctions and disciplinary responsibility shall apply to them.<sup>235</sup>

### *Family legislation*

**Family law of FBiH** prescribes the right of a child to protection from all forms of violence, abuse and neglect.<sup>236</sup>

229 Title VI of the RS Criminal Code.

230 Title X of the BDBiH Criminal Code.

231 Article 173, para 1 of the Law on execution of criminal sanctions, detention and other measures in BiH.

232 *Ibid.*, Article 174.

233 Article 107 of the FBiH Law on execution of criminal sanctions.

234 Article 205 of the RS Law on execution of criminal and misdemeanor sanctions.

235 Article 8 of the BD BiH Law on execution of criminal and misdemeanor sanctions.

236 Article 127 of the FBiH Family Law.

**Family law of RS** stipulates that parents and other members of the family shall not subdue the child to humiliating treatment, mental and physical punishment, i.e. abuse.<sup>237</sup>

**Family law of BDBiH** bans violent behavior in a family, which includes any behavior that contains the elements of domestic violence defined under the Criminal Code of BDBiH.<sup>238</sup> The Law stipulates a special procedure for protecting the right to protection from a violent behavior in a family and this right shall be enjoyed by all members of the family.<sup>239</sup>

### *Anti-violence legislation*

**FBiH Law on protection from domestic violence** anticipates protection from domestic violence, manners in which the protection shall be delivered to all members of the family, types and purpose of sanctions anticipated for the abusers.<sup>240</sup> Domestic violence is any act any of inflicting physical, psychological, sexual or economic harm or suffering, as well as threats as regards the aforementioned, and lack of due care and attention which may seriously impede family members from enjoying their rights and freedoms in all areas of public and private life which are based on equality.<sup>241</sup>

**RS Law on protection from domestic violence**<sup>242</sup> regulates the protection from domestic violence in identical manner as the Law on protection from domestic violence in FBiH.

## **Recommendations of the UN Committee on the Rights of the Child**

UN Committee on the Rights of the Child made no recommendations with regard to application of Article 37a of the Convention.

## **Conclusion**

In Bosnia and Herzegovina a certain progress has been made in terms of developing appropriate legislation to prevent abuse and torture of minors in the procedure of execution of criminal sanctions. However, in practice, as noted by Ombudsmen of BiH in their Special report on situation in the institutions for execution of criminal sanctions in BiH<sup>243</sup> – adopted legislative solutions for protection of the rights of juveniles committed to the institutions for execution of criminal sanctions have not been applied. A burning problem in this segment is lack of institutions for execution of other measures pronounced to juvenile offenders.

## **Recommendations**

Security situation in BiH, especially the situation with the human rights of juvenile offenders, requires that competent bodies take an urgent action to ensure the application of Article 37a of the Convention.

<sup>237</sup> Article 97, para 1 of the RS Family Law.

<sup>238</sup> Article 3 of the BDBiH Family Law.

<sup>239</sup> *Ibid.*, Article 288 in relation to Article 218 of the BDBiH Criminal Code.

<sup>240</sup> Article 1 of the FBiH Law on protection from domestic violence, O.G. FBiH no. 22/05.

<sup>241</sup> *Ibid.*, Article 6, para 1.

<sup>242</sup> RS Law on protection from domestic violence, O.G. RS no. 118/05, 17/08.

<sup>243</sup> [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

## FAMILY ENVIRONMENT AND ALTERNATIVE CARE

*Articles 5, 9, 10 and 18 - Responsibility, rights and duties of parents*

*Articles 5, 9, 10, and 21 - Participation of children in decision-making process in family*

*Articles 19 and 39 - Right to protection of physical integrity on a family*

*Articles 9, 10, 11 and 27.4 - Situations in which a child is separated from one or both  
parents*

*Articles 20 and 21 - Situations in which a child is temporarily or permanently deprived  
of parental care of one of the parents and when alternative solutions are required*

*Article 25 - Situation in which a child is placed in an institution for care, protection or  
treatment*



### 3.13. Ensuring the exercise of children's rights under the Convention

#### Convention

**Article 5 of the Convention** on the Rights of the Child stipulates that States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention

#### Legislation of BiH

##### *Family legislation*

According to the **Family laws of FBiH and BDBiH** it is the parents who have the primary responsibility to raise and educate their child and to ensure all forms of protection required for the wellbeing of the child.<sup>244</sup> Parents cannot renounce their right to parental care, but this right can be restricted or taken away from them by a decision of the competent body.<sup>245</sup> In order to protect their child in accordance with his/her age and maturity, parents are obliged to control his/her behavior,<sup>246</sup> take care of his/her education, which should be focused on development of child capacities in line with the mental and physical abilities of the child.<sup>247</sup> Parent shall provide appropriate living conditions required for the child development<sup>248</sup> and they shall do so jointly and in agreement with one another, unless otherwise prescribed by the Law.<sup>249</sup>

If parents do not live together, future parental care of the child shall be decided by the Court. The Court shall decide which parent shall the child live with, who is going to take care of health protection, education and extracurricular activities of the child, placing a child into another family or institution, responsibilities and certain duties of the parents.<sup>250</sup>

When circumstances require, the Court shall at the request of parent or a guardian institution make a new decision on the child custody.<sup>251</sup> When deciding on the child custody, the Court shall also decide on the future personal relations and direct contacts of the child with the parent who does not live with him/her.<sup>252</sup>

When required by special circumstances, parents can temporarily entrust the child to an institution or a foster person, if a guardian institution approves such a decision.<sup>253</sup>

<sup>244</sup> Article 130 of the FBiH Family Law and 113 of the BDBiH Family Law.

<sup>245</sup> Article 131 of the FBiH Family Law and Article 114 of the BDBiH Family Law.

<sup>246</sup> *Ibid.*, from Article 134.

<sup>247</sup> *Ibid.*, Article 136.

<sup>248</sup> *Ibid.*, Article 138.

<sup>249</sup> *Ibid.*, Article 142.

<sup>250</sup> *Ibid.*, from Article 142.

<sup>251</sup> *Ibid.*, Article 143.

<sup>252</sup> *Ibid.*, from Article 145.

<sup>253</sup> *Ibid.*, Article 146, para 1.

At the request of grandmother and grandfather or a child, the Court shall determine the personal relations and direct contacts of the child with them, and if in the best interest of the child, the Court shall also decide on the personal relations and direct contacts of the child with other persons.<sup>254</sup>

Guardian institutions shall, *ex officio*, undertake appropriate measures to protect the best interest of a child, based on knowledge and information received from institutions, organizations and individuals who are bound to report to the guardian institution any breach of children's rights. Assistance to the guardian institutions shall be, *ex officio*, provided by the bodies of territorially competent police departments.<sup>255</sup>

**Family law of RS** stipulates that parents are obliged to equally exercise their parental rights and duties and they cannot renounce this right.<sup>256</sup> The parents shall protect their children, support them and take care of their education, represent them in protecting and exercising their rights. It is presumed that parents shall exercise their rights and duties in agreement, but in case of disagreement, exercise of these rights shall be decreed by a competent guardian body. Guardian body shall assist in protecting the best interest of the child whenever these interests are brought into question, either by parents of the child or a parent to whom the childcare was entrusted or by any other person. The guardian body shall take appropriate measures to protect the personal and property rights and interests of the child.<sup>257</sup> Guardian body may provide assistance to parents in resolving their social and material situations and personal relations or refer them to appropriate counseling institution, or it may order supervision over the exercise of parental rights and initiate a procedure for placing a child into another family or institution, or depriving the parents of the child custody.<sup>258</sup> Guardian institution shall have custody over a minor whose parents have died or are considered missing persons, or whose parents' address is unknown for the period longer than one year, or whose parents have been deprived of child custody or whose working capacity is limited or not attained at all. The same applies to children whose parents have neglected their parental duties, or whose parents have been absent for a longer period of time or are unable to take proper care of the child.<sup>259</sup> Guardian body shall appoint a special guardian to a minor who is involved in the dispute over conflicted interests of the child and his/her parents/adoptive parents.<sup>260</sup>

### *Legislation on social protection*

**FBiH Law on principles of social protection, protection of civil victims of war and families with children** treats social protection as a field of special interest for the Federation of BiH<sup>261</sup> focused on ensuring social protection to citizens and their families. Beneficiaries of this assistance are persons in social need: children without parental care, educationally neglected and uncared children, children whose development has been obstructed due to family situation, children with arrested physical and psychological development persons and families in need of social protection, who, due to extraordinary circumstances, require appropriate

<sup>254</sup> *Ibid.*, Article 148.

<sup>255</sup> *Ibid.*, from Article 150.

<sup>256</sup> Article 79, 80 and 85 of the RS Family law.

<sup>257</sup> *Ibid.*, Article 94.

<sup>258</sup> *Ibid.*, from Articles 96 - 103 and 106.

<sup>259</sup> *Ibid.*, Article 201.

<sup>260</sup> *Ibid.*, Article 215.

<sup>261</sup> Article 2 of the Law on principles of social protection, protection of civil victims of war and families with children.

form of social protection.<sup>262</sup> Social protection rights are: financial and other material assistance, placement into another family, placement into social care institution, training for work and living, social services and other professional services.<sup>263</sup>

**RS Law on social protection and Law on social protection of BD BiH** regulate the rights in the field of social protection, principles of organization and funding of this activity and other matters relevant for realization of social protection right.<sup>264</sup> Rights from this Law are personal rights, the exercise of which is kept in a record. Beneficiaries of this right can be both minors and adults: children without parental care, children with arrested psychological and physical development, children whose development has been obstructed by family situation and educationally neglected children.<sup>265</sup> Rights under this Law are: material assistance, allowance for the care for another person, training of children and the young for work and living, placement into social care institution or another family, and social protection services.<sup>266</sup>

**Rulebook on ways of exercising the right to social protection of persons under international protection in BiH** stipulates that beneficiaries of social protection are children without parental care, educationally neglected children, children uncared for, children whose development has been obstructed by family situation, persons with disabilities, children with arrested psychological and physical development, children with socially unaccepted behavior and families with children.

Aforementioned categories are entitled to (permanent) financial allowance, one-time financial allowance, allowance for training of children and the young for work and living, placement into another family, placement in social care institution, child support allowance, allowance to employed women who are on maternity leave, financial assistance to unemployed women who gave birth to a child and one-time assistance for child equipment.

### Opinion of the UN Committee on the Right of the Child

When it comes to securing a family environment, in its concluding observations the Committee noted the important work and the broad mandate of the social work centers as guardianship authorities dealing with several issues i.e. placement of children in institutions, adoption regulation, administrative and other assistance to children and families. The Committee however identified a series of weaknesses and therefore recommended that Bosnia and Herzegovina provide the social work centers with adequate human and financial resources, ensure systematic training of its staff and take all other necessary measures to guarantee quality, efficiency and transparency of all activities of these institutions.<sup>267</sup>

### Conclusion

From the legislative framework presented one can conclude that there is a high level of disharmony among the laws regulating the right to family environment, primarily between the Family law and Law on social

<sup>262</sup> *Ibid.*, from Articles 11 and 12.

<sup>263</sup> *Ibid.*, Article 19.

<sup>264</sup> Article 1 of the Law on social protection, O.G. RS and Article 2, para 1 of the Law on social protection of BDBiH.

<sup>265</sup> Article 10 of the RS Law on social protection.

<sup>266</sup> Article 20 of the RS Law on social protection and Article 28 of the BDBiH Law on social protection.

<sup>267</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, points 36 and 37.

protection, which is particularly evident in the Federation of Bosnia and Herzegovina. Since legislative framework development was not coordinated by a competent ministry of BiH, the legislative framework concerning the family environment was established without integrating the basic principles, which are particularly important in terms of defining the role and competences of the centers for social work. Centers for social work are important because they stand as a link between the social protection system and its beneficiaries. Thus, the centers are in charge of implementation of social policies defined by the Entity governments, i.e. in the case of the Federation, implementation of social policies at the Entity and cantonal levels. Providing for a family environment is the matter that should be defined in social policies of the Entities and Brčko District, but at the same time, it is the matter of human rights guaranteed by international standards, which are also under the State jurisdiction. Given the constitutional structure of BiH, matters under the State jurisdiction have no institutional structure that could provide for the rights deriving from the competence of the State itself. In BiH there are 114 centers for social work, employing over 1000 people of which 462 work on administrative and other ancillary matters. A large number of centers have no full time pedagogues, lawyers, defectologists and other professional staff. The centers are buried with administrative work related to registration of beneficiaries and evaluation of formal legal criteria for realization of the right to social assistance. It is obvious that centers for social work, with their financial, human and other resources, are unable to ensure the minimum required in the sphere of family environment. With such a narrow interpretation of the role of centers for social work, we neglect the fact that all institutions, at all levels of government, have the obligation to ensure protection of basic human rights guaranteed by international standards and that the international standards shall have precedence in implementation over national legislation.

Based on cases registered in the Ombudsmen's Office, we can say that in BiH there is still a problem related to the status of centers for social work. This problem was also recognized by the UN Committee, which said that these institutions have a very important role in creating of a family environment, but that no sufficient measures were undertaken to strengthen their capacities.

### **Recommendation**

The priority should be given to development of a proper analysis of the competence of centers for social work, especially from the aspect of a series of laws determining the competence of centers for social work that were adopted on different levels over the past decade. Based on this analysis, the standards should be set forth to ensure an adequate approach of centers for social work to the exercise of their legal duties and obligations. This also includes an evaluation of the capacities – human and financial, that are required for an appropriate work of the centers and meeting the needs of the citizens.

### 3.14. Guarantee that no child shall be unlawfully separated from parents

#### Convention

Guarantee that no child shall be unlawfully separated from his/her parents is prescribed by **Article 9 of the Convention**:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Legislation of BiH

##### *Family legislation*

**Family law of RS** imposes an obligation to both parents to equally and in agreement with one another exercise their parental rights and duties.<sup>268</sup> If one of the parents is prevented from exercising parental rights, or if this right has been denied to him/her, or if his/her working ability has been reduced, or if the parents do not live together, this rights shall be exercised by the parent to whom the child custody has been entrusted by a court decision or a decision of the guardian institution.<sup>269</sup> If it is in the best interest of a child, the child's protection and education can be entrusted to another person or institution, upon prior approval of the guardian body.<sup>270</sup>

In cases when a parent(s) abuses child, or take advantage of parental rights or have left the child and neglected his/her parental duties, the Court shall, in a civil non-contentious procedure, deprive such a parent of his/

<sup>268</sup> Article 79. 1 and Article 85 of the RS Family Law.

<sup>269</sup> *Ibid.*, Article 86 in relation to Article 90.

<sup>270</sup> *Ibid.*, Article 87.

her parental right.<sup>271</sup> Decision on deprivation (and reinstatement) of parental rights shall be delivered to a competent registrar and land registry office, if the child owns a real-estate.<sup>272</sup>

**Family law of the Federation and Family Law of BD BiH** stipulate that both parents have the right and obligation to live with their children and jointly, equally and in agreement with one another take care of their children. If one of the parents is unable to take care of the child because he/she was prevented, or his/her address is unknown, he/she is unavailable or incompetent of taking care of his/her child, the care for child shall be entrusted to the other parent. If both parents are unable to take care of their child because they were prevented or incompetent, the Court shall decide on entrusting the child to another person or institution.<sup>273</sup>

A parent who takes care of the child, or both parents, can temporarily entrust their child for care and education to an institution or to a person who meets the requirements of a guardian, but for such an action parents must have consent of the guardian institution.<sup>274</sup> These include situations when parents are temporarily prevented from taking care of the child (extraordinary circumstances, education of parents, work abroad, etc.) or situations when the child requires special protection because of his/her health condition or behavior/development disorder.

The Law anticipates special measures that competent national bodies should enforce in case the parents fail to exercise their rights and duties as defined by the Law.

Thus, the Law anticipates that a parent may be deprived of his/her right to live with the child as well as of the right to entrust the child for care and education to another person or institution if it is established that the parent(s) work against the interest of the child, by neglecting the child's education and upbringing or preventing their other parent or member of the family to provide proper upbringing and education, and if such behavior resulted in improper upbringing of the child.<sup>275</sup> The Court may impose this measure ex officio or at the proposal of the parent whose right has been denied, and the maximum duration of the measure is one year.<sup>276</sup>

The Court may deprive parents of their parental right if it finds that a parent, by misusing his/her right or by neglecting his/her duties or by failing to take care of the child, or by preventing the other parent or another person from doing so, brings into question the health, security and moral of the child.<sup>277</sup> This measure shall stay in force for as long as there are the reasons for such a measure. However, the parent may restore his/her parental right at his/her own request, request of the child or a guardian body.<sup>278</sup>

Both decisions shall be made in a civil non-contentious procedure, and the guardian body shall be immediately informed of such decisions in order to promptly assign a special guardian to the child. Court shall inform the competent registrar of the decision on deprivation (or reinstatement) of the right to parental care, so that record of this be made in the register.<sup>279</sup>

<sup>271</sup> *Ibid.*, Article 106.

<sup>272</sup> *Ibid.*, Article 107.

<sup>273</sup> Article 142 of the Family Law in relation to the Law on principles of social protection, protection of civil victims of war and families with children of FBiH.

<sup>274</sup> Article 146 of the FBiH Family Law and Article 129 of the Family Law of BDBiH.

<sup>275</sup> *Ibid.*, Article 154.

<sup>276</sup> *Ibid.*, 350.

<sup>277</sup> Article 153 of the Family Law of FBiH and Article 135 of the Family Law of BDBiH.

<sup>278</sup> Articles 351 of the FBiH Family Law.

<sup>279</sup> Articles 350 and 351 of the FBiH Family Law.

### *Legislation on social protection*

**Law on principles of social protection, protection of civil victims of war and families with children of FBiH**, apart from providing accommodation and care for children without parental care or children in need due to poor financial situation in the family, regulates also the issue of accommodating children in need for special protection due to health condition – disability or difficulties in psychological and physical development, and behavior disorder of educationally neglected and untended children.<sup>280</sup>

**RS Law on social protection** stipulates the terms and manners of separating a child from parents in the situations: when the child with arrested psychological and physical development is to be trained for work; when a child without parental care is to be placed into social care institution or another family; when a child is to be placed into social care institution or another family because of interrupted development due to family situations, or health condition or educational neglect.<sup>281</sup> Decision on placing a child into social care institution or another family shall be made by a center for social work i.e. ministry in charge of social protection.<sup>282</sup>

**Law on social protection of BDBiH** anticipates the possibility of placing a child with arrested psychological and physical development into institution or another family, i.e. separation of a child from family due to training of such a child for work and living.<sup>283</sup> Educationally neglected child as well as a child whose development has been interrupted due to family situation shall be separated from the family.<sup>284</sup>

### *Criminal legislation*

**Criminal Code of FBiH** anticipates educational recommendations, educational measures and punishments for juvenile perpetrators of crime.<sup>285</sup> Some of the measures also imply separation of a juvenile perpetrator from his/her family. Accordingly, a juvenile perpetrator can be pronounced an educational recommendation of placing him/her into another family, home or institution, or subjecting him/her to treatment in appropriate health institution. The law also stipulates educational measures such as committal to a disciplinary center, intensified supervision in another family, committal to an educational institution for juveniles, to an educational reformatory home or some other training establishment, if the juvenile perpetrator is a person with difficulties in mental and physical development. A juvenile perpetrator can be sentenced to a juvenile imprisonment. Facts crucial for deciding on the type of measure or punishment for a juvenile are the age of the perpetrator, type of criminal offence committed and the best interest of the juvenile.

**Criminal Codes of RS and BDBiH** anticipate educational recommendations, measures and punishments for juvenile perpetrators of criminal offences.<sup>286</sup> The educational recommendations, whereby the juvenile is separated from his/her family are: committal to another family, home or institution or medical treatment in appropriate institution. Educational measures, whereby the juvenile is separated from his/her family

280 Articles 12 and 24 of the Law on principles of social protection, protection of civil victims of war and families with children (manner, procedures, disclosure, capacity assessment, categorization and registration shall be carried out in line with cantonal regulations).

281 Articles 37 and 38 of the RS Law on social protection.

282 *Ibid.*, Articles 73 and 74.

283 Article 48 of the Law on social protection of BDBiH.

284 *Ibid.*, Article 53.

285 Articles 79 - 109 of the FBiH Criminal Code.

286 Title VI of the RS Criminal Code, Title X of the BDBiH Criminal Code, Articles 82 -108.

are: committal to another family, to a disciplinary center for a certain number of days, to a reformatory institution, to an educational and reformatory home or some other treatment establishment, if the juvenile is a person with mental or physical disorders. A juvenile perpetrator can be referred to a juvenile prison.

### *Codes of Criminal Procedure*

**Codes of Criminal procedure of FBiH, RS and BDBiH** stipulate that the judge for juveniles may order that the minor against whom a criminal procedure has been launched during the preparatory proceeding be placed in a juvenile home or similar institution or put in the care of another family if this is necessary to separate the minor from the environment in which he has been living or to provide the minor with aid, protection or a place to live.<sup>287</sup>

Exceptionally, the judge for juveniles may order that the minor be placed in custody when the reasons for the custody exist, but the custody may not exceed 30 days, and after completion of the preparatory proceeding, the custody may be extended to another six (6) months at a maximum.<sup>288</sup>

### **Opinion of the UN Committee on the Rights of the Child**

In its concluding observations, the Committee noted that, during and after the armed conflict, the number of children's homes receiving children without parental care more than doubled. The Committee is concerned that these institutions may become, in some cases, places of potential discrimination, because of, inter alia, limited access to health care, lack of adequate life skills training, lack of adequately educated professionals, poor facilities and lack of adequate resources. Furthermore, the Committee is concerned that, once a child is in alternative care, little effort is made to reunify the family.

The Committee recommends that the State party ensure that institutionalization is used **only as a measure of last resort**, meaning that it is professionally indicated and in the best interests of the child, and that it systematically conduct periodic reviews of the placement of children, in conformity with Article 25 of the Convention. The Committee also recommends that the State party develop quality standards for foster care and significantly decrease the time spent in institutions by children without parental care. It further recommends that adequate resources be allocated for the proper functioning and monitoring of the care institutions and foster care.<sup>289</sup>

### **Conclusion**

In this analysis, the concept of separation of a child from family was considered in two segments: Placing of a child into institution as a form of social protection and placing a child into institutions as an educational

<sup>287</sup> Article 378. 1 of the Code of Criminal Procedure of FBiH, Articles 363 and 364 of the RS Code of Criminal Procedure, and Article 358 of the BD BiH Code of Criminal Procedure.

<sup>288</sup> Exceptional circumstances include: possible flight, fear that he/she will destroy, hide, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices, if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, punishable by a prison sentence of five (5) years or more.

<sup>289</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, points 40 and 41.

measure pronounced to a child who committed an offense. However, in this analysis, the focus of interest was given to the issue of placing a child into institution as a form of social protection, because there is an increasing trend of providing this form of protection to children without parental care and children with disability, while at the same time nothing has been done in terms of improving the capacities of the receiving institutions. As a result of the current situation, the quality of care provided is reduced, as well as the enjoyment of rights, particularly the right to health protection of children who are placed in the institution that is located outside of territory of the child's residence. Namely, according to Constitution, this right is to be exercised on the Entity/Cantonal level, i.e. in accordance to the place of residence of the beneficiary and it cannot be transferred to another territory.<sup>290</sup> No sufficient measures were undertaken to either ensure the placement of children into foster families or to provide daily care to children with disabilities. In the seminars organized for social workers, it was pointed out that the price of placing a child into foster family is two time lesser than the price of placing a child into institution, which is why more children is often placed into institutions. There is also a high level of social exclusion of children without parental care or children with disability, which can be related to the lack of capacities of the centers for social work for development of appropriate measures.

### **Recommendation**

In order to improve standard of living for children without parental care and children with disabilities, it is necessary to ensure implementation of the recommendations of the Committee and to **review the justification of the price difference for foster care, i.e. placing children in the care institutions**, paying attention to the best interest of the child. There is a need for an urgent analysis of the capacities in the care institutions in BiH and analysis of needs of the society in order to develop long-term measures for improvement of situation in this field.

## **3.15. Family reunification**

### **The Convention**

#### *Convention on the Rights of the Child*

Family reunification is defined by **Article 10 of the Convention**.

1. In accordance with the obligations of States Parties, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end

<sup>290</sup> See: [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba), Institution of BiH Ombudsmen, Special report on situation of human rights in the institution for care of mentally handicapped persons, September 2009.

States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (order public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### *Convention on Contact Concerning Children*

Besides the Convention on the Rights of the Child, the issue of family reunification is also defined by the **Convention on Contact Concerning Children**.<sup>291</sup> In the Preamble this Convention refers to Article 9 of the Convention on the Rights of the Child which provides for the right of a child, who is separated from one parent, to maintain personal relations and direct contact with its parent on a regular basis, except when this is contrary to the child's best interests. The Convention recognizes the need, when children and parents and other persons having family ties with children live in different States, to encourage judicial authorities to make more frequent use of transfrontier contact and to increase the confidence of all persons concerned that the children will be returned at the end of such contact. In that respect the Convention on Contact Concerning Children elaborates on the general principles to be applied to contact others.<sup>292</sup> A child and his or her parents shall have the right to obtain and maintain regular contact with each other.<sup>293</sup> In the process of taking a decision concerning contact between a child and his or her parents or persons other than his or her parents, the responsible authority must take into account that the child has the right to be informed, consulted or express his or her views about the suggested way of contact.<sup>294</sup> The Convention also prescribes the safeguards and guarantees, which the state/judicial authorities undertake concerning contact. In that sense it may ensure supervision of contact, the obligation for a person to provide for the travel and accommodation expenses of the child and of any other person accompanying the child, a security to be deposited by the person with whom the child is usually living to ensure that the person seeking contact with the child is not prevented from having such contact and fines to be imposed should this person refuse to comply with the contact order, safeguards and guarantees for ensuring the return of the child such as: the surrender of passports or identity documents of the person seeking contact, financial guarantees (charges on property), undertakings or stipulations to the court, obligation of the person having contact to present himself or herself before a competent body etc.<sup>295</sup>

### *The Hague Convention on the Civil Aspects of International Child Abduction*

**The Hague Convention on the Civil Aspects of International Child Abduction** regulates also the right to promote the peaceful enjoyment of access rights.<sup>296</sup>

<sup>291</sup> Council of Europe Convention on Contact Concerning Children, Strasbourg 15 May 2003.

<sup>292</sup> *Ibid.*, Chapter II.

<sup>293</sup> *Ibid.*, Article 4.

<sup>294</sup> *Ibid.*, Article 6.

<sup>295</sup> *Ibid.*, Article 10.

<sup>296</sup> Article 21 of the Convention on the Civil Aspects of International Child Abduction, published in Official Gazette of SFRJ (Socialist Federal Republic of Yugoslavia) – international contracts, No 7/91, the Convention is binding for BiH.

## BiH legislation

### *Law on Refugees and Displaced Persons*

**Law on Refugees from BiH and Displaced Persons in BiH** regulates the rights of refugees and displaced persons based on laws of BiH and of the entities, and based on the same rights and freedoms which are guaranteed by the international regulations, in the same way as those rights are guaranteed also to other citizens of BiH.<sup>297</sup> Status of refugees in BiH during their stay in the host country is regulated by legislation of those countries.<sup>298</sup> Refugees from BiH during their stay in the host countries have also the right to use consular and other services of BiH in the host countries for the purpose of regulating their rights, especially the right to return to BiH.<sup>299</sup> Obstruction or unjustified postponement of realizing the rights of refugees from BiH and displaced persons by the employees in the state, entity, cantonal or municipal authorities, whose responsibility is to process the requests from refugees and displaced persons related to exercising their rights, as well as obstruction or unjustified postponement of realizing these rights by other persons, is subject to *accountability*.<sup>300</sup>

**Law on Displaced Persons and Returnees in FBiH and Refugees from BiH**<sup>301</sup> temporarily ensures to persons who have a recognized status of a displaced person or of a returnee a number of rights, such as temporary accommodation, social and health care, education for children etc.<sup>302</sup>

**Law on Refugees and Displaced Persons in RS** prescribes that refugees and displaced persons have the same rights and obligations under the same conditions as the citizens with the permanent residence in RS, except when otherwise defined by the Law.<sup>303</sup>

### *Legislation on foreigners*

**Law on Movement and Stay of Foreigners and Asylum** regulates also family reunification, which is granted to the foreigner who has a temporary or permanent residence in BiH for the purpose of preserving family unity. Close family members of a BiH citizen with permanent residence in BiH, or of a foreigner holding a temporary residence permit in BiH in duration of one year, may be granted temporary residence for the purpose of family reunification for his close family members (children under 18 years of age or adult children who live in the same household, who are born within or outside the marriage, adopted children or foster children).<sup>304</sup> A child who was born on the territory of BiH or outside BiH, whose parents are foreigners holding a temporary residence permit in BiH, is granted a temporary residence permit in BiH for the same period of time as his parents.<sup>305</sup>

297 Article 2 of the Law on Refugees from BiH and Displace Persons in BiH, Official Gazette of BiH, No 23/99, 21/03, 33/03.

298 *Ibid.*, Article 5 paragraph 1.

299 *Ibid.*, Article 16 paragraph 1 item c).

300 *Ibid.*, Article 20.

301 Law on Displaced Persons and Returnees in FBiH and Refugees from BiH, Official Gazette of FBiH, No 15/05.

302 Article 11 of the Law on Displaced Persons and Returnees in FBiH and Refugees from BiH, Official Gazette of FBiH No 15/05.

303 Article 6 of the Law on Refugees and Displaced Persons in RS, Official Gazette of RS, No 26/97.

304 Article 57 paragraph 1 and 2 item b) of the Law on Movement and Stay of Foreigners and Asylum.

305 *Ibid.*, Article 61 paragraph 1.

### *Family legislation*

**Family Law of FBiH** prescribes that in situation when the child care is entrusted to one of the parents by the court ruling, the court decides at the same time about maintaining personal relations and contacts with the other parent by taking into account the child's best interest.<sup>306</sup>

**Family Law of RS** and **Family Law of Brčko District BiH** prescribe that if a child lives with one parent, the child maintains personal relations with the other parent, except when this is contrary to the child's best interests. Parents can agree upon this arrangement by themselves, or if there is no such agreement, the decision will be passed by the authority in charge for custody.<sup>307</sup>

### **Opinion of the UN Committee on the Rights of the Child**

The Committee expresses in the Concluding observations its concern about the worrying phenomenon of illegal intercountry adoption of children from BiH, who live abroad. The Committee also notes that the adoption process is not in full conformity with article 21 of the Convention as well as that the State party has not ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993. Given these observations, the Committee recommends that the State party take the necessary legislative, administrative and other measures to ensure that national adoption procedures are in full conformity with article 21 of the Convention as well as to consider becoming a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Furthermore, the Committee recommends that the State party submit disaggregated data in its next report on children involved in domestic and intercountry adoption.<sup>308</sup>

### **Conclusion**

Unfortunately, no substantive change took part in BiH in order to improve the situation regarding family reunification in relation to the situation, which was stated in the Concluding observations of the UN Committee. The problem with family reunification in case of foreigners is especially noticeable, because the by-laws which regulate the way of implementing the Law on Movement and Stay of Foreigners and Asylum are not harmonized with international standards since the prescribed conditions for family reunification are not precise enough to ensure the implementation of the Law.

### **Recommendation**

It is necessary to ensure that the recommendations of the UN Committee on the Rights of the Child will be applied as well as the recommendations of other UN reporting bodies, and take steps to harmonize the by-laws which are passed on the basis of the Law on Movement and Stay of Foreigners and Asylum with international standards.

<sup>306</sup> Article 145 of the Family Law of FBiH.

<sup>307</sup> Article 93 of the Family Law of RS and Article 128 of the Family Law of Brčko District.

<sup>308</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, item 38 and 39.

## 3.16. Abduction

### Convention

#### *Convention on the Rights of the Child*

Issue of abduction is regulated by **Article 11 of the Convention on the Rights of the Child** in the way that:

1. State Parties shall take measures to combat the illicit transfer and non-return of children abroad,
2. To this end, State Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### *The Hague Convention on the Civil Aspects of International Child Abduction*

The objective of this Convention is to secure the prompt return of children wrongfully removed to or retained in any Contracting State and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State.<sup>309</sup> The state is responsible to appoint a central executive body which in its full capacity implements the provisions of the Convention. The appointed body in BiH is the BiH Ministry of Justice, which cooperates internally with the entity ministries of justice and the Judicial Commission of Brčko District BiH. In relation to the requests from abroad, the requests are sent solely to the BiH Ministry of Justice which then forwards those requests to the entity and Brčko District BiH authorities' level of competence, which are responsible to take actions and inform about the outcome the Ministry of Justice for further procedure towards the foreign central body.

### BiH legislation

#### *Criminal legislation*

**Criminal Law of BiH** sanctions the criminal offence of buying, selling, giving over to another person or of acting as an intermediary in such activities, of a child or minor for the purpose of adoption, organ transplantation, exploitation of child labor or other illegitimate purposes.<sup>310</sup> At the same time, **Criminal Law of FBiH, Criminal Law of RS and Criminal Law of Brčko District BiH** sanctions a person who illegally imprisons, or keeps imprisoned or under threat of murder or physical pain, takes away or limits freedom of movement to a child or minor, all for the purpose that the child or minor or someone else be forced to do or not to do something, or to suffer.<sup>311</sup>

<sup>309</sup> Article 1 of the Convention.

<sup>310</sup> Article 185 of the Criminal Law of BiH.

<sup>311</sup> Article 180 of the Criminal Law of FBiH, Article 165 of the Criminal Law of RS and Article 177 of the Criminal Law of Brčko District BiH.

## Opinion of the UN Committee on the Rights of the Child

In its Concluding observations the UN Committee does not give any opinion on the issue of abduction of children regulated by Article 11 of the Convention on the Rights of the Child.

### Conclusion

Several laws within BiH legislation regulates in the same way the sanctions for abduction of a child, which is a rather rigorous legal mechanism which should be a preventive measure in combating child abduction. Concrete cases of child abduction where addressed also by Ombudsmen, where a child was abducted by one parent after divorce. There are no records or statistics about such cases.

### Recommendation

Responsible authority needs to take measures in order to prevent child abduction by parents and to react more efficiently in such cases by using the current legislative framework, and to analyze these phenomena and to create a data base on perpetrator of this criminal offence to prevent recurrence of any such offence.

## 3.17. Common responsibility of parents for the upbringing and development of the child

### Convention

#### *Convention on the Rights of the Child*

Common responsibility of parents for the upbringing and development of the child is regulated by **Article 18 of the Convention on the Rights of the Child**. This right and responsibility is regulated in the following way:

1. State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. State Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

### *Convention on Contact Concerning Children*

This Convention takes into account the common responsibility of parents for their children and, therefore, regulates the process of taking a decision concerning contact with the parent who is separated from the child, the carrying into effect of contact order and all other circumstances which are important for safeguards and guarantees to ensure the contact between the parent and the child is carried out and that the child is returned safely at the end of the period of contact to the place where her or she usually lives.<sup>312</sup>

## **BiH legislation**

### *Education legislation*

According to the **Framework Law on Preschool Care and Education in BiH** one of the functions of preschool care and education is also assistance to parents in their responsibility for care, protection, development, upbringing and general well-being of the child, it is also a complement to the family's upbringing, investing of the society into the well-being and progress, all of which for the purpose of optimal development of each child.<sup>313</sup> From the point of view of organization, preschool care and education is carried out in nursery schools for children from age six months to three years of age and in kindergartens for children from three years of age to school starting age.

**Framework Law on Primary and Secondary Education** acknowledges the right and responsibility of parents and adoptive parents for upbringing their children, in accordance with this and other laws.<sup>314</sup>

### *Family legislation*

**Family Law of FBiH** and **Family Law of Brčko District BiH** define a family as a living community of parents, children and other blood relatives, in-laws, adoptive parents and adopted children and persons from a common-law marriage, if they live in a common household, and it refers to the children born in a marriage or outside of a marriage, as well as to the adopted children. Arranging the relations within a family is based on the responsibility of parents to ensure the protection of interest and well-being of a child and their responsibility for care, upbringing and education of the child. Furthermore, the state is responsible to ensure family and child care and legal guardianship for children without both parents and care for adults who are not able to take care of themselves and protect their rights, interests and property.<sup>315</sup>

**Family Law of RS** regulates that parental rights are exercised in agreement and that a parent cannot give up that right. The Law prescribes that RS creates conditions, establishes authorities and employs staff to offer advice to parents about all important issues concerning their parental rights and responsibilities.<sup>316</sup> If it is in the best interest of children, the authority for legal guardianship will support parents to take care about their social, material and personal matters and relations, or refer them to a proper counseling service.<sup>317</sup>

312 Chapter II of the Convention on Contact Concerning Children, Council of Europe, Strasbourg 15 May 2003.

313 Article 14 of the Framework Law on Preschool Care and Education in BiH.

314 Article 22 of the Framework Law on Primary and Secondary Education.

315 Article 2 of the Family Law of FBiH and Article 2 of the Family Law of Brčko District BiH.

316 Article 5 paragraph 2 of the Family Law of RS.

317 *Ibid.*, Article 95.

### *Labor legislation*

**Labor Law of FBiH** in domain of maternity protection prescribes that a mother has the right during pregnancy, at birth and child care to a maternity leave of absence for the period of one year in continuation, and after the expiration of that period a mother of twins and of three children has the right to work part time until the child reaches two years of age.<sup>318</sup> If the child, based on medical finding, needs intensified care and nursing, one of the parents has the right to work part time until the child reaches three years of age.<sup>319</sup> In addition, a parent can be absent from work until the child reaches three years of age, if it is foreseen by the collective agreement or book of rules, during which time all rights of the parent based on his or her employment contract are at rest.<sup>320</sup> One of the parents whose child has more severe development disorders has the right to work part time (if it is a single parent or if both parents are employed) in case when the child is not under a health care institution protection, based on a report of a responsible medical institution.<sup>321</sup>

**Labor Law of RS** and **Labor Law of Brčko District BiH** defines that a family member can be a child from a marriage, common-law marriage, adopted child, stepchild, a child in legal guardianship or other children without both parents under social care.<sup>322</sup> The Law prescribes that a mother has the right to maternity leave in the period of one year, and for the mother of twins or three children for the period of 18 months in continuation, as well as the right that after 60 days of leave after the child birth the father may continue to use the leave of absence.<sup>323</sup> If the mother on her own initiative starts to work before expiry of maternity leave, but not before the first 60 days after delivery, she has the right to take additional one hour absence from work per day during the breast-feeding period.<sup>324</sup> In case that a child needs intensified care and nursing based on a medical finding, one of the parents has the right to work part time until the child reaches two years of age. The same right is granted to the adoptive parent or legal guardian of the child without parental care.<sup>325</sup> One of the parents whose child has psycho physiological disorders in development and is not under a health care institutional protection has the right to work part time and receive and receive a benefit for the second half of the working hours, which is paid to the parent by the Fund for Child Care of RS. The parent is granted the right to the part time work as long as the child needs intensified care and nursing.<sup>326</sup>

### *Legislation on social care*

**Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH**<sup>327</sup> defines the basis for protection of families with children, financing and other issues relevant for realizing basic rights in domain of social protection, protection of civilian war victims

318 Article 55 and 57 of the Labour Law of FBiH.

319 *Ibid.*, Article 58.

320 *Ibid.*, Article 61.

321 *Ibid.*, Article 63.

322 Article 66 paragraph 2 of the Labour Law of RS and Article 37 of the Labour Law of Brčko District BiH.

323 *Ibid.*, Article 79.

324 *Ibid.*, Article 80 paragraph 2.

325 *Ibid.*, Article 82 and Article 48 of the Labour Law of Brčko District BiH.

326 *Ibid.*, Article 83 based on the Book of Rules about the way and procedure of realising rights of the employed parent to work part time due to intensified care and nursing for a child with psycho-physiological disorders in development, Official Gazette of RS, No14/03) and Article 52 item 1 of the Labour Law of Brčko District BiH.

327 Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

and protection of families with children in FBiH.<sup>328</sup> Based on this Law the family members are children from marriage and common-law marriage, adopted children, foster children and children without both parents under social care.<sup>329</sup> Social protection rights – financial and other material assistance, training for independent life and work, accommodation in another family, accommodation in social care institutions, social care and other type of professional services, care and assistance at home<sup>330</sup> – are measures of assistance to a family in social need (permanent or temporary situation in which a citizen or a family is in, caused by war events, natural disasters, general economic crisis, psycho physiological state of an individual or other reasons which cannot be eliminated without the help of others).<sup>331</sup>

**Law on Social Protection of RS** and **Law on Social Protection of Brčko District BiH** regulate social protection as an organized service aimed to prevent and eliminate causes and effects of the state of social needs of citizens and their families.<sup>332</sup> Responsible bodies to ensure social protection in RS are RS and municipalities in their area of competence, and the beneficiaries are children without parental care, children with psycho physiological disorder in development, children raised in problematic family relations as well as neglected and children without proper upbringing.<sup>333</sup> Social protection rights which are granted to persons/families in social need are: material support, allowance for support and care for another person, assistance for training of children and youth for work, accommodation in a social care institution or in another family and social care services.<sup>334</sup> Social protection rights are realized through centers for social work and social care institutions.<sup>335</sup>

### *Child care legislation*

**Law on Child Care of RS** defines the assistance to a family as one of the child care rights for the purpose of ensuring its reproduction, protection, upbringing and economic function; the right of children without parental care and of children with development disorders under longer hospital treatment to preschool education; the right of children of preschool age who do not realize the right to a day care in a preschool institution with an organized educational programme as a preparation before going to school, aiming to contribute to social, intellectual, cultural, emotional and physical development; right to care for children of primary school age in preschool institutions; rest and recreation of children up to 15 years of age in children's recreation centre.<sup>336</sup>

**Law on Child Care of Brčko District BiH** prescribes that the goal of child protection is to ensure approximately same conditions for healthy, proper physical, intellectual and emotional development in a family.<sup>337</sup> Rights which are granted in domain of child protection are: allowance for the period of maternity

328 *Ibid.*, Article 2 items 4 and 5.

329 *Ibid.*, Article 5 paragraph 1.

330 *Ibid.*, Article 19.

331 *Ibid.*, Article 11 paragraph 1.

332 Article 2 of the Law on Social Protection of RS and Article 2 of the Law on Social Protection of Brčko District BiH.

333 Article 9 and 10 of the Law on Social Protection of RS.

334 *Ibid.*, Article 20.

335 *Ibid.*, Article 70.

336 Article 10 Law on Child Care of RS.

337 Article 1 Law on Child Care of Brčko District BiH.

leave (regular and extended), compensation for the mother, support for the newborn supply kit, children allowance and special psychosocial counseling for pregnant women and married couples who want to have children.<sup>338</sup>

### **Opinion of the UN Committee on the Rights of the Child**

In its Concluding observations the UN Committee does not raise concerns and does not give recommendations regarding the application of Article 18 of the Convention on the Rights of the Child.

### **Conclusion**

Established BiH legislation, especially in domain of family, social and child protection, aims at strengthening the family to ensure that common responsibility of parents is applied in upbringing and development of the child. Thus, the legislation in the mentioned areas prescribes a series of measures, which should ensure common responsibility of parents. The only problem arising is an unequal approach of different levels of authority: Republika Srpska and Brčko District BiH passed the Law on Child Care while in Federation BiH such law was not passed although it is being drafted. Consequently, the level of the child protection and the level of possibility to ensure common responsibility of parents is lower in FBiH than in RS and Brčko District BiH, although it is the same state which needs to ensure the application of the Convention on the Rights of the Child on the whole territory and equally for all children. The rights of parents based on the labor legislation are also not identical, which can be seen on the example of the duration period of maternal leave of absence for mothers who give birth to the third child. Thus, the Labor Law of RS prescribes leave of absence of 18 months and in FBiH 12 months of maternal leave of absence. Second example is the possibility for fathers to use a leave of absence after the child was born. This possibility is prescribed by the Labor Law of RS, whereas this fathers' right is restrictive in FBiH in the situations when the mother died or is seriously ill and cannot, therefore, take care of the child. Therefore, we cannot speak about common responsibility of the parents for the care and nursing of the child, because the legislation set certain limitations in exercising this right.

### **Recommendation**

Responsible authorities should take measures towards harmonization of family legislation and labor legislation in BiH, as well as towards their harmonization with the Law on Gender Equality in BiH, Law on Prevention of Discrimination, as well as with the international standards.

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<sup>338</sup> *Ibid.*, Article 8.

### 3.18. Child protection from all forms of violence

#### Convention

The issue of child protection from all forms of violence is regulated by Article 19 of the Convention on the Rights of the Child:

1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all form of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### BiH legislation

##### *Family legislation*

**Family Law of FBiH** prescribes to parents to take care of their children, satisfy their regular needs and protect them from all forms of vices such as: drugs, alcohol, tramping, robberies, theft, prostitution, begging, as well as all forms of minor delinquency, violence, injury, economic exploitation, sexual abuse and all asocial phenomena.<sup>339</sup> Abuse of parental right in instances of physical and mental child abuse is a reason for taking away parental care rights.<sup>340</sup>

**Family Law of RS** prescribes that all authorities, organizations, and private persons inform without delay the body for legal guardianship about the violation of child's rights, especially violence, maltreatment, abuse.<sup>341</sup> Furthermore, the Law prescribes that parents and other family members are not allowed to subject the child to humiliating actions, mental and physical punishment, that is maltreatment, which is the reason for taking away parental care rights. Under abuse of parental right are especially considered instances of physical and mental violence over child; sexual abuse of the child; exploitation of the child; instigating the child to consume of alcohol, drugs and other damaging substances; instigating the child to any form of socially unacceptable behavior.<sup>342</sup>

**Family Law of Brčko District BiH** explicitly forbids family violence, which has traits of criminal offence prescribed by the Criminal Law of Brčko District BiH.<sup>343</sup> Duty of the parents is to take care of the child, protect him or her from all forms of vices and delicts – drugs, alcohol, tramping, robbery, prostitution, begging, violence,

<sup>339</sup> Article 134 paragraph 2 of the Family Law of FBiH.

<sup>340</sup> *Ibid.*, Article 154 paragraph 2.

<sup>341</sup> Article 13 paragraph 3 of the Family Law of RS.

<sup>342</sup> *Ibid.*, Article 97 paragraph 1 related to Article 106.

<sup>343</sup> Article 3 of the Family Law of Brčko District BiH.

economic exploitation, sexual abuse and all other forms of asocial phenomena.<sup>344</sup> A parent can be deprived of his or her parental care rights when the parent abuses his or her rights, or severely neglects his or her duties, or abandons the child, or does not care for the child with whom he or she lives in the same household, the parent who obviously jeopardizes health and moral of the child, or who does not protect the child from such behavior from the other parent or another person.<sup>345</sup> The police and the body for legal guardianship of Brčko District BiH are obliged to protect the child from violent behavior, based on information from a person or persons who finds out about the violence and reports it to the responsible bodies.<sup>346</sup> A procedure against the perpetrator of violence is carried out according to provisions of the Law on Criminal Procedure of Brčko District BiH.<sup>347</sup>

### *Legislation on protection from family violence*

**Law on Protection From Family Violence in FBiH** defines family members as children born in a marriage and in a common-law marriage, adopted children, protégés and foster children, and that the relations among family members are based on mutual respect, support, affection, maintenance of harmonious relations, development and revealing of best traits, with the responsibility to protect children and respect of gender.<sup>348</sup> The Law defines violence as each action, which causes physical, mental, sexual or economic damage or pain, as well as the threat of such action, or failing to act responsibly, which seriously inhibits the family members. Violent actions are: each application of physical force or mental coercion on physical or mental integrity; each action can cause a threat to physical or mental pain or economic damage; provoking fear or causing personal threat or abuse of dignity of a family member or other kind of coercion; physical assault of one over another family member, regardless of the fact whether the assault caused an injury or not; verbal assault, insult, swearing, calling names, and other kind of brutal abuse; sexual abuse and abuse of other family member; stalking and other forms of abuse; failing to act responsibly towards another family member or failing to give help and protection to that family member, although legal and moral responsibility to do so exists, which, consequently, causes physical, mental or economic and social threat of that family member.<sup>349</sup>

Each person who finds out about family violence is obliged to report it, especially the persons who find out about the violence in the course of fulfilling their work duty – medical staff, teachers, educators, medical, educational and other institutions, non-governmental organizations, especially if the victim of violence is a minor.<sup>350</sup> According to this Law, the perpetrator of the family violence is pronounced protective measures as offence charges.<sup>351</sup> These charges can be pronounced as independent offence charges regardless of the outcome of the criminal procedure, and the decision about the pronounced measure is submitted also to the authority for legal guardianship, which keeps a record about it.<sup>352</sup>

344 *Ibid.*, Article 17.

345 *Ibid.*, Article 135 paragraph 1.

346 *Ibid.*, Article 288.

347 *Ibid.*, Article 289.

348 Article 5 of the Law on Protection From Family Violence.

349 Article 6 of the Law on Protection From Family Violence of FBiH and Article 7 of the Law on Protection From Family Violence of RS.

350 Article 7 of the Law on Protection From Family Violence of FBiH and Article 7 of the Law on Protection From Family Violence of RS.

351 Article 9 of the Law on Protection From Family Violence in FBiH, in accordance with the Book of Rules about the manner and place of implementation of protective measures of obligatory medical treatment from alcoholism, drug addiction or other psychotropic substance of the perpetrators in the family, Official Gazette of FBiH, No 23/08 and Article 8 and 10 of the Law on Protection From Family Violence in RS.

352 Article 19 of the Law on Protection From Family Violence in FBiH.

Rulesbook about the way of implementation of protective measures which are under the responsibility of the police regulates the manner of implementation of the pronounced protective measures: moving out of the perpetrator of violence from the apartment/house or other residence area and ban to return in it, ban to come close to the victim of violence and ban to disturb or stalk the persons exposed to violence.<sup>353</sup>

A special law about the protection from violence was passed in Brčko District BiH, but the provisions relating to this area are a component of the Family Law of Brčko District BiH – Chapter IX, Special proceedings, which regulate the protection measures from violent behavior in the family.

### *Criminal legislation*

**Criminal Law of FBiH** sanctions all actions against life and body caused by violence towards someone,<sup>354</sup> which can appear as the following criminal offences: serious physical injury, failure to offer help to a person who is in danger, abandoning the person who is unable to protect him- or herself who is entrusted in care to this person or whose obligation is to take care of the weak and the disabled person.

**Criminal Law of RS** and **Criminal Law of Brčko District BiH** sanctions criminal offences against life and body which can also cause family violence, such as: physical injury, serious physical injury, exposure to danger, abandoning of weak and disabled person, failure to offer help.<sup>355</sup>

### **Opinion of the UN Committee on the Rights of the Child**

In its Concluding observations the Committee notes the importance of the new legislative measures being undertaken in both entities aims at improving protection of children against violence in family (the new Family Law and the new Law on Protection from Domestic Violence), it is concerned that children are often and increasingly exposed to domestic violence and other forms of abuses, including sexual abuse. Furthermore, the Committee is concerned that **corporal punishment of children at home is not expressly prohibited** in the State party. Consequently the Committee recommends in the light of Article 19 of the Convention that the State party:

- Make sure that the legislative measures currently being undertaken (namely, the new Family Law and the new Law on Protection from Domestic Violence) are expeditiously adopted and adequately implemented in both entities;
- Undertake a comprehensive study on violence against children, more particularly on sexual abuse in order to assess the extent, the causes, scope and nature of this phenomenon;
- Expressly prohibit corporal punishment at home and in institutions;
- Strengthen awareness-raising and education campaigns with the involvement of children in order to prevent and combat child abuse and to promote positive, non-violent forms of discipline and respect for children's rights, while raising awareness about the negative consequences of corporal punishment;
- Evaluate the work of existing structures and provide training to the professionals involved in these types of cases;

<sup>353</sup> Article 1 of the Book of Rules about the manner of implementing of protective measures which are under responsibility of the police in FBiH, Official Gazette of FBiH, No 9/06.

<sup>354</sup> Article 172, 173, 175 and 176 of the Criminal Law of FBiH.

<sup>355</sup> Article 155, 156, 159, 160 and 161 of the Criminal Law of RS and Article 169, 170, 172 and 173 of the Criminal law of Brčko District BiH.

- Strengthen measures to encourage reporting of instances of child abuse and to prosecute the perpetrators of these acts;
- Provide care, full physical and psychological recovery and reintegration for child victims of violence.<sup>356</sup>

## Conclusion

BiH notes a considerable improvement in the area of introducing legislative measures aiming at protection of child from all forms of violence. Adoption of entity laws, which regulate the issue of family violence, represents an important progress, although the lack of harmonization of these laws with offence and criminal legislation represents huge obstacle in ensuring the application of this legislation and, at the same time, prevention and punishment of family violence. Slow pace of passing the by-laws and lack of implementation of other recommendation of the UN Committee regarding the implementation of Article 19 of the Convention, such as permanent training to the professionals involved in these types of cases, are also important factors which preclude effective protection of child abuse, especially in the family. It is especially important to note the insufficient dedication of the responsible bodies to ensure the capacity of the centers for social work, which should have a key role in preventing family violence through organizing family counseling.

## Recommendation

For the purpose of establishing priority measures to prevent family violence a comprehensive analysis of the situation in this area – with a focus on the institutional capacity, and especially human resources in these institutions, and mutual cooperation and coordination – needs to be the basis to make the analysis. All research in this area, undertaken so far, show that the very lack of the procedures and institutional capacities is the main obstacle in preventing family violence.

It is necessary that the responsible bodies **undertake necessary measures without delay to ensure more efficient application of legislation on protection from family violence**, and to ensure the application of the Recommendations of the UN Committee regarding Article 19.

### 3.19. Children's right to placement

#### Convention

**Article 20 of the Convention** regulates the right of the child to placement:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

<sup>356</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, item 42 and 43.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

## **BiH legislation**

### *Family legislation*

**Family Law of FBiH, Family Law of RS and Family Law of Brčko District of BiH** regulate the right of the child to live with his or her parents,<sup>357</sup> the same as the right of the parents to live with their child, except when this is contrary to the child's best interests.<sup>358</sup> Parent/s can temporarily entrust their child for care and upbringing to an institution or to another person, with necessary approval of the authority for legal guardianship, and the person to whom the child is entrusted to must fulfill conditions for legal guardianship.<sup>359</sup> If both parents are unable or prevented to care about the child, the court will decide about the placement of the child by another person or in an institution. Considering such decision, the court will at the same time decide about the responsibilities and certain duties and rights of each parent.<sup>360</sup> The child can be placed and entrusted for care and upbringing to another person or an institution upon request of one or both parents, if this is in the child's best interest.<sup>361</sup> This decision is brought by the authority of legal guardianship even without the approval of the parents, if they are absent, prevented or unable to care about the child, and if they did not entrust the child to another person capable to be the child's legal guardian, and this decision can last two months the most.<sup>362</sup> If the parent endangers the interest of the child who lives together with the parent by considerable neglect of the child's care, upbringing and education, or if the parent does not prevent the other parent or other family member of the same household to neglect the child, or if, consequently, the child suffered serious disorders in upbringing, the parent will be deprived of the right to live with the child by the court outside of a legal proceedings. With such court decision, the parent does not lose the other rights and obligations towards the child. The court will return this right to the parent when it assured that it is in the child's best interest.<sup>363</sup> Minor children without parental care must have a legal guardian who cares about their rights, interests and obligations, as a replacement for parental care.<sup>364</sup> Care and upbringing can be entrusted to legal guardian, other person or institution. The guardianship is terminated when the child reaches the legal age.

<sup>357</sup> Article 124 paragraph 2 of the Family Law of FBiH and Article 81 paragraph 2 and 3 of the Family Law of RS and Article 107 paragraph 2 of the Family Law of Brčko District BiH

<sup>358</sup> Article 140 paragraph 1 of the Family Law of FBiH

<sup>359</sup> Article 146 of the Family Law of FBiH and Article 87 of the Family Law of RS and Article 129 paragraph 1 of the Family Law of Brčko District BiH

<sup>360</sup> Article 142 paragraph 5 and 6 of the Family Law of FBiH

<sup>361</sup> Article 147 paragraph 1 of the Family Law of FBiH

<sup>362</sup> Article 147 paragraph 2 and 3 of the Family Law of FBiH and Article 130 of the Family Law of Brčko District BiH

<sup>363</sup> Article 153 regarding Article 350 of the Family Law of FBiH, Article 106 of the Family Law of RS and Article 135 of the Family Law of Brčko District BiH.

<sup>364</sup> Article 160 of the Family Law of FBiH, Article 205 paragraph 2 of the Family Law of RS and Article 161 regarding Article 167 of the Family Law of Brčko District BiH.

### *Legislation on Social Care*

**Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH** regulates the manner of ensuring placement of children in another family and placement in an institution<sup>365</sup> by which social and other needs of the beneficiaries of social care are met in full or partially. Institutions are established as centers for social work, institutions for children (children without parental care, neglected children and children under negligent treatment, children with physical and mental disturbances in development), institutions for social care of persons with disability and institutions for daily care of the beneficiaries of the social care.<sup>366</sup>

According to the **Law on Social Protection of RS** and **Law on Social Protection of Brčko District BiH** the minor children who are eligible for social care belong to the following categories: children without parental care, children with disturbances in psycho physiological development, children disturbed by unsettled family relations and neglected children and children under negligent treatment.<sup>367</sup> Children without parental care, as well as the children whose family cannot ensure proper protection, are placed in an institution or in another family.<sup>368</sup> This Law also defines the issue of social institutions, their founding, scope of work etc.<sup>369</sup>

### *Legislation on institutions*

**Law on institutions**<sup>370</sup> regulates that the institutions are founded in order to offer services of education, science, culture, physical culture, health, child care, social care, social security and other services prescribed by the law, unless they do not aim at gaining profit.<sup>371</sup> Supervision of work of these institutions is carried out by the responsible administrative authority, which is also the seat of the institution, unless otherwise provided by the Law.<sup>372</sup>

According to the **Law on Founders' Rights and Obligations over Institutions of Social Protection in FBiH**<sup>373</sup> the Federation took over the rights and obligations of founders for five institutions for social care in FBiH, which offer the services of social and health care, education and training for life and work together with the remaining skills and affinities, as well as services of implementing the working activities of children and youth with disabilities up to 25 years of age, that is social and health care and training for young boys and youth who were neglected and negligently treated.<sup>374</sup>

365 Article 31-45 of the Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

366 *Ibid.*, Article 48.

367 Article 10 of the Law on Social Protection of RS and Article 27 of the Law on Social Protection of Brčko District BiH.

368 Article 33 paragraph 1 of the Law on Social Protection of RS and Article 28 of the Law on Social Protection of Brčko District BiH.

369 Chapter VI of the Law on Social Protection of RS.

370 Law on Institutions, Official Gazette of RBiH, No 6/92, 13/93.

371 *Ibid.*, Article 2.

372 *Ibid.*, Article 42.

373 Law on Founders' Rights and Obligations over Institutions of Social Protection in FBiH, Official Gazette of FBiH, No 31/08.

374 *Ibid.*, Article 4, 5, 6 and 7.

## Opinion of the UN Committee on the Rights of the Child

In its Concluding observations the Committee did not give any opinion about the issues of the rights of the child to accommodation, although the Committee indirectly addressed this issue through the observations about the issue of alternative form of legal guardianship for the children without parental care..

### Conclusion

Limited capacity of the centers for social work but also of other institutions, especially those where children are placed regardless of the criteria, creates to a great extent a limiting factor in ensuring the right of the child to placement. In order to ensure that the child is not left on the street, the child is placed in institutions where the occupancy is larger than their capacity and without clear criteria, which hinders a normal development of the child. The Ombudsmen of BiH noted this fact in their analysis of the human rights situation in the institutions for placement of mentally disabled persons and through contacts with responsible ministries, especially in FBiH and the cantons. Based on this finding, it can be concluded that the similar situation is present also in other institutions for placement of children. Cantons are most often the founders of placement institutions in FBiH but without any coordination by FBiH. Consequently, it is impossible to have a comprehensive overview of the situation in this area, so that there are objective preconditions for discrimination.

The very fact that the Law on Founders' Rights and Obligations in the FBiH is only passed for the institutions for placement of mentally disabled persons, without clearly and precisely defined rights and obligations of the founders, especially regarding the source of financing, shows the insufficient care about the status of these institutions and their beneficiaries. Other institutions are, based on the existing laws, under the responsibility of cantons, which results in different treatment, work conditions and placement of beneficiaries, because this primarily depends on the economic potential of the cantons, which in itself creates conditions for discrimination. An especially concerning fact is that the law on institutions on the level of BiH is not passed, which makes impossible to carry out the registration of an institution on the state level. The established legal framework for the institutions directly affects the fact that these forms of organizing are established exclusively on the lower levels of authority, which represents a basis for different practice and, among other factors, for different treatment of beneficiaries. It is important to also point out the fact that institutions are founded in accordance with the law which is passed before the war, so that the model of organization does not follow the social needs, especially when taking into account that BiH is a post conflict country with certain specific needs.

### Recommendation

It is necessary to urgently consider the possibility to adopt the law on institutions in BiH and ensure harmonization of legislation, which regulates this area on the lower levels of authority. Reform of legislation needs to ensure that rights and obligations are clearly defined as rights of beneficiaries, taking into account suggestions and opinion of the representatives of the centers for social work, whose recommendations are often followed for the placement of children in institutions...

### 3.20. Adoption

#### Convention

**Article 21. of the Convention** prescribes:

State Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### BiH legislation

##### *Family legislation*

**Family Law of FBiH** and **Family Law of Brčko District BiH** regulates the adoption as a special form of family and legal protection of children without parents or without proper parental care, based on which a parental, that is family relation is being created. In FBiH and Brčko District BiH full adoption is possible for a child up to 10 years of age and partial adoption for a child up to 18 years of age.<sup>375</sup>

Common conditions for adoption are: (a) adoption can be carried out only if it is in interest of adopted child; (b) adoptive parent can be BiH national, but also foreign national only when the child cannot be adopted in BiH; (c) kindred relation, brother and sister cannot be adopted; (d) a child from minor parents cannot be adopted, only when it is evident that after a year there is no possibility that the child will be raised by his or her parents or by other closer relatives; (e) a child of unknown parents can be adopted only three months after the child was abandoned; (f) the adoptive parent can be a person from 25 to 45 years of age, who is at least 18 years older than the adopted child. If there are especially justified reasons,

<sup>375</sup> Article 91 regarding Articles 101 and 103 of the Family Law of FBiH and Article 76 and 78 of the Family Law of Brčko District BiH.

the adoptive parent can be a person older than 45, but the age difference between the adoptive parent and the adopted child cannot be larger than 45 years.<sup>376</sup> The Law excludes a possibility that the adoptive parent is a person who is deprived of parental right, who has a limited or no working ability, and a person who is not able to offer a sufficiently strong guarantee that he or she will properly provide parental care. It is stated that, if the previous excluding criteria apply to the partner of the potential adoptive parent, it could also be the obstacle towards adoption.<sup>377</sup>

Consent by the parents/or by one parent is needed for the adoption, and it needs to be explicit to the type of adoption. Exceptions are in case that: (a) the parent is deprived of parental care rights; (b) the parent does not live together with the child and he or she has neglected the child for the past three months; (c) the parent is a minor and not able to understand the meaning of adoption; (d) the parent has a limited or no working ability; (e) the place of residence of the parent has been unknown for at least six months and he or she has not been taking care of the child during that period. If the child is under legal guardianship, the consent is given by the legal guardian, except when the consent is given by the minor parent and the guardian is a person employed in the authority for legal guardianship. In that case the consent must be given by the guardian for special cases.<sup>378</sup>

The child can be fully adopted jointly by married couples, a step mother or step father of the adopted child, and the common-law marriage couples who live at least five years in a common-law marriage relationship, whereas partial adoption is possible jointly by married couples, one partner with the consent of another, step mother or step father of the adopted child, and common-law marriage partners who live at least five years in a common-law marriage relationship, if there are especially justified reasons for that.<sup>379</sup>

Adoption procedure is carried out before the authority of legal guardianship in the temporary or permanent place of residence of the child. If the adoptive parents are foreign nationals it is necessary to have the approval of the federal body responsible for the social care affairs. Adoption procedure starts with the submission of an application by the potential adoptive parents to the local competent authority of legal guardianship, and the procedure is closed for the public. The adoptive parents are obliged to explain to the child that it is adopted before his or her seventh year of age, that is if the child is older than 10 years, his or her consent is necessary and the child is given the information about the consequences of adoption. Prior to the decision about the adoption the child is placed in the adoptive family without any benefits and the legal guardianship authority follows up the placement in order to establish whether the adoption is in the best interest of the child. In case of full adoption the mutual rights and obligations between the adopted child and his or her blood relatives are no longer in force, except when the adoptive parents are step mother or step father. The adoptive parents decide about the name/surname of the adopted child. After the full adoption is carried out, it is not allowed to contest and determine the motherhood and fatherhood.<sup>380</sup>

The adoptive parents are entered in the birth-registry as the parents of the adopted child in case of full adoption. In case of partial adoption does not affect the rights and obligations of the adopted child towards

376 Articles from 93 to 96 of the Family Law of FBiH.

377 Article 97 of the Family Law of FBiH and Article 86 and 87 of the Family Law of Brčko District BiH

378 Article 99 and 100 of the Family Law of FBiH.

379 *Ibid.*, Article 102 and 104.

380 Articles from 113 to 116 of the Family Law of FBiH and Articles 96 and 97 of the Family Law of Brčko District BiH

his or her parents and other blood relatives. The adoptive parents can determine name/surname of the adopted child except when the adopted child wants to keep his or her last name or to add the last name of the adoptive parents to his or her last name. Partial adoption cannot be terminated except when this is in the best interest of the adopted child. After the partial adoption is being terminated the adoptive parents can still keep the obligation of support the minor adopted child in case that the child does not have any blood relatives who are obliged by the law to support the child.<sup>381</sup>

**Family Law of RS** prescribes that the adoption is carried out in the interest of the child. Only a minor child can be adopted. Full adoption can be carried out only for a child up to five years of age.<sup>382</sup> The adoptive parent is as a rule a national of BiH, however, in exceptional cases the adoptive parents can also be foreign nationals if there are justifiable reasons for that, with the preliminary approval of the administrative authority responsible for social affairs. Partial adoption between the adopted child and the adoptive parents establishes a kindred relation, as well as rights and obligations, which exist between parents and children, but such adoption does not affect the rights and duties of the adopted child towards his or her parents and other relatives.<sup>383</sup> Partial adoption needs the approval of both parents, if the child has them, except when the parent is deprived of parental rights, and when the parent is unable to work or when his place of residence is unknown for at least one year during which the parent did not take care about the child.<sup>384</sup> Partial adoption is possible for married couples jointly, or by one of the partners with the consent of the other partner in a marriage, whereby at least one of the spouses needs to be at least 18 years older than the adopted child. First-line relatives cannot be adopted, nor brother or sister, and the legal guardian can adopt his or her protégé after he or she is suspended from the legal guardian status.<sup>385</sup> Partial adoption can be terminated if it is in the best interest of the adopted child. Full adoption establishes kindred relation between the adopted child and adoptive parents the same as by blood relation, whereby the all mutual rights and obligations between the adopted child and his or her blood relatives are terminated.<sup>386</sup> Adoption procedure is carried out before the legal guardianship body without the presence of the public and with obligatory record keeping and documentation about the adopted children in accordance with the Guideline for Child Adoption Procedure<sup>387</sup> and Guideline for Record Keeping and Documentation on Adopted Children.<sup>388</sup>

### Opinion of the UN Committee on the Rights of the Child

In its Concluding observations the Committee notes the State party's concern about the worrying phenomenon of illegal intercountry adoption of children from BiH who live abroad. The Committee also notes that the adoption process is not in full conformity with article 21 of the Convention as well as that the State party has not ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993. The Committee recommends that the State party take the necessary

381 Article 120 and 121 of the Family Law of FBiH and Article 104 and 105 of the Family Law of Brčko District BiH

382 Article 146 of the Family Law of RS, regarding Articles 149 and 157

383 *Ibid.*, Article 150.

384 *Ibid.*, Article 152.

385 *Ibid.*, Article 154.

386 *Ibid.*, 160.

387 Guidelines for Child Adoption Procedure, Official Gazette of RS, No 27/04.

388 Guidelines for Record Keeping and Documentation on Adopted Children, Official Gazette of RS No 27/04.

legislative, administrative and other measures to ensure that adoption procedures are in full conformity with article 21 of the Convention as well as to consider becoming a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Furthermore, the Committee recommends that the State party submit disaggregated data in its next report on children involved in domestic and intercountry adoption.<sup>389</sup>

### Conclusion

The sole fact that BiH legislation differs in regard to the age limit for the full adoption shows that this provision is still not in conformity with the Convention. Special concern is caused by the lack of record about the number of children who wait for adoption and about the number of applications submitted for the adoption. The public and even the representatives of the centers for social work raise the issue whether there is a need to a possible introduction of certain control over this process, because there is an impression that there are more applications for adoption than the children who could be adopted. At the same time the institutions for placement of children without parental care are over occupied, with a tendency of increase of the number of children in the need of a placement.

### Recommendation

Competent authorities need to urgently make a data base of children who are waiting for adoption and of the submitted requests for adoption, in order to eliminated every possibility that a child, due to administrative procedures, is deprived of the possibility for a life in a family and to prevent the abuse of procedures for adoption. It is necessary to take measures to harmonize the legislation regarding the upper age limit of the child eligible for adoption.

## 3.21. Supervision of the child's placement

### Convention

**Article 25 of the Convention on the Rights of the Child** establishes the obligation by the state to carry out supervision and review in the way that:

State Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

<sup>389</sup> CRC/C/15/Add.260, Concluding observations of the Committee on the Rights of the Child, item 38 and 39.

## BiH legislation

### *Family legislation*

**Family Law of FBiH** prescribes the supervision of the legal guardianship body (CSR) over parental care in all situations when the legal guardianship body puts a child in a placement and when the child is placed in a family and there are failures in the child care. Supervision is provided also in the case when the child is placed in the family of the future adoptive parent and it is carried out for the period of six months so that the legal guardianship body could evaluate whether the adoption is in the best interest of the child.<sup>390</sup> The legal guardianship body keeps special record and documentation about the adopted child, which provides room for control at all times.<sup>391</sup> In cases when the parent is deprived of parental care rights, the legal guardianship body will appoint a special guardian to the child.<sup>392</sup>

The legal guardianship is carried out by the appointed guardian or indirectly by a professional person. In order to implement the role of legal guardian in the best possible way, the legal guardianship body can also establish a professional commission whose task is to give professional opinions and suggestions to undertake individual measures of guardianship.<sup>393</sup> If the legal guardianship body appoints a guardian and it does not directly perform the role of a guardian, this person must have personal traits and abilities for such a function. If the CSR carries out the guardianship indirectly, then a person employed in the legal guardianship body is appointed as the guardian. Decision about the appointment of a guardian or carrying out direct guardianship will be passed by this body in regard to the child's interest, circumstances of the case and the opinion of the child as well, if he or she is able to express it.<sup>394</sup>

If the child is placed in an education and upbringing, medical or other type of institution, the legal guardianship body will appoint a child's legal guardian to carry out those activities, which the institution does not perform within its regular tasks. It is also possible that the legal guardianship body restricts the responsibilities of the guardian by its decision on appointment of a guardian and perform some of the activities by itself. As soon as the decision on legal guardianship is put into effect, the local responsible registrar is being informed and the competent land-registry office if the child has immovable property.<sup>395</sup>

Legal guardian cannot perform activities which exceed the domain of regular management of child's property without a prior consent of the legal guardianship body, the guardian cannot seize or put the property in pledge, or seize the movable property of greater and special value, give up the inheritance, decide about the choice and change of the school and occupation, termination of school education, employment and other measures regarding the child's personality as prescribed by the law.<sup>396</sup> Legal guardian reports about his or her work and the state of property of the child/ protégé to the legal guardianship body and the report is submitted upon request of the legal guardianship body.

<sup>390</sup> Article 110 of the Family Law of FBiH.

<sup>391</sup> *Ibid.*, Article 112 paragraph 1.

<sup>392</sup> *Ibid.*, Article 153 paragraph 5.

<sup>393</sup> *Ibid.*, Article 163 and 164.

<sup>394</sup> *Ibid.*, Article 165.

<sup>395</sup> *Ibid.*, Article 170.

<sup>396</sup> *Ibid.*, Article 179.

The same procedure is applied in case of an employee of the legal guardianship body when the guardianship is carried out directly. The report must contain information about how the child care is carried out, about the personality of the child/protégé, protection of the interest of the protégé, and especially about his or her health, upbringing, education and property. Legal guardian is obliged to also, apart from the regular reporting, inform the legal guardianship body about all important changes which refer to the relations with the child/ protégé. The legal guardianship body carries out periodical supervision of the work of the guardian also by direct insight in his or her work.<sup>397</sup> This body also takes respective measures by itself in case needed, such as the suspension of the guardian from the function and the compensation of the damage that the child/ protégé suffered. The guardian has a right to receive an allowance for his or her work, except in case when the guardian is a person who is obliged by the law to support the child/ protégé.<sup>398</sup>

**Family Law of RS** and **Family Law of Brčko District BiH** define the issue of child's guardian in a similar way.<sup>399</sup> The difference exists only in the fact that the guardian does not get any compensation for his or her the work based on the provisions of the Family Law of RS, and if a compensation is established, it is paid from the fund of the child/protégé, except when it would be damaging to the child's support, in case of which the payment is being carried out from the municipal budget.<sup>400</sup> In accordance to the Family Law of RS the guardian must have an explicit approval by the legal guardianship body such as: placement in upbringing and educational institution, entrusting of the child to another person for care and upbringing, interrupting the school education, change of school, choice of occupation etc.<sup>401</sup> The guardian, that is the institution in which the minor is temporarily placed, are obliged to inform the legal guardianship body about all important changes regarding life, health, upbringing and education of the protégé.<sup>402</sup>

Based on the **Family Law of Brčko District BiH** the guardian has the right to compensation, depending on the work and dedication shown in protection of the child's interest during guardianship.<sup>403</sup> The guardian can be suspended from the function even before the child reaches the legal age and put under obligation to compensate the damage if the legal guardianship body concludes from the submitted report that such decision is necessary in the interest of the child/protégé.<sup>404</sup>

### *Legislation on social protection*

**Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH** prescribes that in cases when the centre for social work passed the decision about the placement of the child in another family, it also carries out the supervision of that family,<sup>405</sup> and if the child is placed into an institution, the centre is obliged to follow up on the child's treatment in that institution,

397 *Ibid.*, Article 180.

398 *Ibid.*, Article 181 based on the Book of Rules about the amount and the way of payment of the monthly allowance for the work of the legal guardian and the person appointed to act as legal guardian in the authority of legal guardianship, Official Gazette of FBiH 18/06.

399 Article 176, 179, 181, 182, of the Family Law of RS and Article 151 and 161 of the Family Law of Brčko District BiH.

400 *Ibid.*, Article 197.

401 *Ibid.*, Article 204.

402 *Ibid.*, Article 206.

403 Article 162 of the Family Law of Brčko District BiH.

404 *Ibid.*, Article 165.

405 Article 33 paragraph 2 of the Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

due to the need for a constant care and assistance.<sup>406</sup> The founder – canton or the Federation carries out the supervision of the professional work of the institution.<sup>407</sup>

**Law on Social Protection of RS** prescribes the obligation for the supervision of the professional work of social services. The supervision is carried out by the ministry responsible for social protection.<sup>408</sup>

**Law on Social Protection of Brčko District BiH** regulates also the work of institutions, which offer social protection,<sup>409</sup> supervised by Department for Health, Public Security and Other Services of the Government of Brčko District BiH<sup>410</sup>.

### Opinion of the UN Committee on the Rights of the Child

In its Concluding observations the Committee did not directly address the issues of supervision of the child placement. Through its recommendations regarding the need of defining the conditions for the work of the centers for social work the Committee indirectly pointed out the problems connected to supervision of the child placement, because the centers for social work and their staff most often step in the role of the child's guardian.

### Conclusion

Legal solutions in BiH which regulate the issues of supervision of the child placement are foreseen, but they are not properly implemented in practice, because the staff of CSR who play the role of a guardian do not have enough time to perform these activities due to their regular tasks, so that they can devote only their free time to the protégé. Besides, it is also discouraging that the compensation to the employee of CRS is not paid, although the issue of compensation payment is arranged by the law or other by-law, because the funds are not allocated for that purpose in the budget.

When we speak about the rights of the guardian for compensation, that issue is differently regulated in the entities and in Brčko District BiH. Thus, according to the Family Law of FBiH and the Family Law of Brčko District BiH the guardian has the right to compensation for the performed tasks, while the Family Law of RS defines the compensation as an exception. Right of the guardian to the compensation is, therefore, just a word on paper. When the Special Report on the Situation on Human Rights in the Institutions for Placement of mentally ill persons in BiH was drafted, it was noted that one employee of the centre for social work is the guardian for more than 40 persons, so that the issue of objective possibilities for a quality performance of guardians is raised. The fact that the guardians are not able to follow up the development of children placed in the institution, due to the work overload, causes special concern. As a result, such child remains in the institution its whole life, which is particularly noticeable by children with mental disability.

<sup>406</sup> *Ibid.*, Article 42 paragraph 2.

<sup>407</sup> *Ibid.*, Article 49.

<sup>408</sup> Article 77 of the Law on Social Protection of RS and based on the Book or Rules about carrying out the supervision over the professional work and offering professional assistance to the social care institutions of RS, Official Gazette of RS No 32/02.

<sup>409</sup> Article 67 of the Law on Social Protection of Brčko District BiH.

<sup>410</sup> *Ibid.*, Article 98.

## Recommendation

Competent authorities need to make a performance analysis of the established guardianship for the children, especially under conditions when such guardianship is performed by the staff of the centers for social work. It is necessary to take measures so that the guardianship would not only be formal but realistic activity, especially in regard of protection of property rights of the beneficiaries, because the guardians are often not able to give this issue proper attention due to their work overload.

### 3.22. Child support

#### Convention

##### *Convention on the Rights of the Child*

**Article 27 paragraph 4 of the Convention** states that:

States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### **Convention on Enforcement of Foreign Maintenance Claims**

**Convention on Enforcement of Foreign Maintenance Claims** aims to ensure legal and practical difficulties in providing maintenance to which the person is eligible if the maintenance provider lives on the territory, which is not the country in which the supported person has a permanent residence.<sup>411</sup> Reasons for adopting this Convention is are of humanitarian nature. Based on the Convention, the Ministry of Justice of BiH is the intermediary body in BiH towards the foreign country for all claims of BiH nationals and all claims towards BiH nationals in the country, and based on the activities carried out in the entities by the Ministry for work and social policy of FBiH and the Ministry of Health and Social Protection of RS, that is by the Judicial Commission of Brčko District BiH.<sup>412</sup>

#### **BiH legislation**

##### *Family legislation*

**Family Law of FBiH, Family Law of RS and Family Law of Brčko District BiH** prescribe that the parents are obliged to provide support for their children, which is necessary for their development, and

<sup>411</sup> Introduction, the Convention is published in Official Gazette of FNRJ (Federal People's Republic of Yugoslavia) Appendix 2/60.

<sup>412</sup> *Ibid.*, Article 2.

to employ all their possibilities and abilities in doing so.<sup>413</sup> If the parent does not support his or her child longer than three months (Family Law of RS: longer than one month), it is considered a severe neglect of the duty which results in taking away parental care rights with the reason.<sup>414</sup> This obligation the parents are due to fulfill even when they do not provide parental care, or it is being restricted/taken away from them, as long as the child is enrolled in the regular school education, and the latest until the child reaches 26 years of age, or longer if the child, due to illness, physical and mental disabilities, is not able to work and does not have its own means of support, and as long as this disability is present.<sup>415</sup> Step mother and step father also have this obligation, if the parents are not able to fulfill it.<sup>416</sup> Grandmother and grandfather are also obliged to support their grandchildren, if the parents are not able to do it.<sup>417</sup> If the obligation about the support is determined by the court, then the needs of the child will be taken into account, the child's age, school needs, having in mind the costs of living from the annual official report by the Minister of Work and Social Policy of FBiH.<sup>418</sup> A working parent cannot be exempted from payment duty for his or her child.<sup>419</sup> However, if it is established that the parent or the other person who is in obligation to pay the child support is not able to do it, the funds will be provided by the legal guardianship bodies from the budget of FBiH.<sup>420</sup> The legal guardianship body is obliged to start the procedure of implementing the decision on the child support or to ask for an increase of the amount of the support in accordance with the child's needs, if the parent/guardian, with whom the child lives, fails to do it without a justified reason.<sup>421</sup> The legal guardianship body keeps records on support of parents and children.<sup>422</sup>

If the child has its own earnings (the child is allowed to work after reaching 15 years of age), it can only dispose of the salary and wage, with an obligation to contribute to its support, upbringing and education.<sup>423</sup> The child can dispose of its own property or put it in pledge only with the consent by the parents,<sup>424</sup> whereas the parents are obliged to present an account about managing the property of their children and the revenues gained from that property, and if it is necessary for the protection of the property interests of the child, the parents should be given the status of a guardian in regard to the property of their children.<sup>425</sup> Revenues from the child's property can be used by the parents primarily for the purpose of child support, medical treatment, upbringing, education and others, keeping in mind the child's best interest,<sup>426</sup> and they

413 Article 138 regarding Article 215 of the Family Law of FBiH, Article 82 regarding Article 232 paragraph 2 of the Family Law of RS and Article 121 regarding Article 194 of the Family Law of Brčko District BiH.

414 Article 154 paragraph 3 of the Family Law of FBiH, Article 106 paragraph 3 item 2 and 4 of the Family Law of RS and Article 136 paragraph 3 and 7 of the Family Law of Brčko District BiH.

415 Article 216 of the Family Law of FBiH and Article 233 of the Family Law of RS.

416 Article 220 of the Family Law of FBiH, Article 237 of the Family Law of RS and Article 199 of the Family Law of Brčko District BiH.

417 Article 222 of the Family Law of FBiH and Article 201 of the Family Law of Brčko District BiH.

418 Article 235 of the Family Law of FBiH.

419 *Ibid.*, Article 236.

420 *Ibid.*, Article 237.

421 Article 239 of the Family Law of FBiH and Article 217 of the Family Law of Brčko District BiH.

422 Article 242 of the Family Law of FBiH and based on the Instructions on Record Keeping of Decisions and Agreements on Support of Children and Parents, Official Gazette of FBiH, No 17/06 and Article 257 paragraph 3 of the Family Law of RS regarding the Instructions on Record Keeping on Support of Children and Parents, Official Gazette of RS, No 27/04.

423 Article 217 of the Family Law of FBiH, Article 234 of the Family Law of RS and Article 196 of the Family Law of Brčko District BiH.

424 *Ibid.*, Article 137 regarding the Law on Labour of FBiH.

425 *Ibid.*, Article 155.

426 Article 265 of the Family Law of FBiH and Article 285 of the Family Law of RS..

can put the property in pledge and the property rights of their child for that purpose, but only under the prior consent of the responsible legal guardianship body.<sup>427</sup>

The court cannot ex officio determine a temporary measure for the provision of support in the procedure for child support.<sup>428</sup> In case when the support provider changes the employer, he or she is obliged to immediately submit to the new employer the decision about the support for the further procedure, and the employer is obliged to inform the supported person about it.<sup>429</sup>

### *Criminal legislation*

**Criminal Law of FBiH, Criminal Law of RS and Criminal Law of Brčko District BiH** sanction the evasion of support payment, which is an obligation that a person is obliged to fulfill based on an executive court decision or executive agreement concluded before another responsible body.<sup>430</sup> The official or responsible person who fails to comply with the valid court decision will also be sanctioned.<sup>431</sup>

### *Legislation on executive procedure*

**Law on Executive Procedure of FBiH, Law on Executive Procedure of RS and Law on Executive Procedure of Brčko District BiH** define the urgency of this procedure.<sup>432</sup> The person who seeks the execution of the legal support can submit a proposal to the court in the place of permanent/temporary residence.<sup>433</sup> Claim can amount to the half of the salary amount, compensation instead of salary, compensation for part time work and other financial earnings of the support provider.<sup>434</sup> In case of employment termination or the change of employer, the previous employer submits the decision on execution by which he or she is obliged to act in the future.<sup>435</sup> The employer is responsible for the damage due to the suspension of payments of legally determined support.<sup>436</sup>

## **Opinion of the UN Committee on the Rights of the Child**

In its Concluding observations the Committee did not give recommendations regarding the provision of the right based on Article 27 paragraph 4 of the Convention that regulates the issue of support.

427 Article 266 of the Family Law of FBiH and Article 287 of the Family Law of RS.

428 Article 226 of the Family Law of Brčko District BiH.

429 *Ibid.*, Article 224 and 225.

430 Article 223 of the Criminal Law of FBiH, Article 210 of the Criminal Law of RS and Article 219 of the Criminal Law of Brčko District BiH.

431 Article 351 of the Criminal Law of FBiH, Article 371 of the Criminal Law of RS and Article 345 of the Criminal Law of Brčko District BiH

432 Article 5 paragraph 1 of the Law on Executive Procedure of FBiH, Official Gazette of FBiH, No 32/03, 33/06 correct. 39/06

433 Article 136 paragraph 4 of the Law on Executive Procedure of FBiH, Article 136 paragraph 4 of the Law on Executive Procedure, Official Gazette of RS, No 59/03, 85/03, 64/05, 118/07 and Article 124 of the Law on Executive Procedure, Official Gazette of Brčko District BiH, No 8/00, 1/01, 5/02, 8/03, 19/07, 2/08

434 Article 138 paragraph 1 of the Law on Executive Procedure of FBiH and Article 138 of the Law on Executive Procedure of RS

435 Article 162 of the Law on Executive Procedure of FBiH, Article 162 of the Law on Executive Procedure of RS and Article 151 of the Law on Executive Procedure of Brčko District BiH

436 Article 163 of the Law on Executive Procedure of FBiH and Article 163 of the Law on Executive Procedure of RS and Article 152 of the Law on Executive Procedure of Brčko District BiH

## **Conclusion**

Responsible bodies of BiH took a series of measures in order to establish a legislation to ensure child support within the family but also after the parents' divorce. The legislation even defines the offence charges in case of evasion of the child support, and in FBiH the corresponding law defines that, if it is established that the parent or another person obliged to child support, is not able to fulfill the needs of the child support, that the necessary support will be provided through the legal guardianship bodies from the budget of FBiH. Unfortunately, the given provision was never applied in practice.

Alimony claims are hard to implement in practice because the legal decisions for alimony claims from the past were passed on the basis of percentage in relation to the realized earning, so that there is no fixed amount needed to realize the alimony claim. This problem is especially visible in cases of alimony claims which need to be implemented abroad. Consequently, the states in which the alimony needs to be realized request a submission of a new claim taken up in a new procedure, which makes it impossible to collect alimony payments retroactively and leads to the termination of rights. Therefore, it is not possible to collect due payments from the past period before the submission of the new claim, because the bad debt has been created in the meantime from the due payments in the past. An additional difficulty for the claimants in the procedural sense is the fact that all written correspondence runs through the Ministry of Foreign Affairs of BiH, which causes a delay of even three years of claims which are by their nature and in the procedural sense urgent.

At the same time, the alimony claim can be realized in some countries only for the last three years and not for a period longer than that during which the alimony was not paid (example of Sweden). The claimant faces a special difficulty to realize his or her alimony claim due to the fact that he or she must ensure financial means for translation of all the documents by the court interpreter, pay fees and find the last address of the support giver who lives abroad, which is sometimes impossible because the claimant does not even have enough money for the child support, let alone for additional expenses. This is the reason why many claimants give up the right on alimony claim for due payments.

It is obvious that in BiH there is no efficient mechanism to realize the rights for child support.

## **Recommendation**

It is necessary that the responsible bodies take measures in order to establish procedures which will make the existing legislation relating to child support efficient, and to establish a unique data base of the alimony providers, which will be a basis for restriction of his or her rights, such as right to a travel document, as prescribed by the provisions of the Law on Travel Documents

### 3.23. Reintegration of a child victim

#### Convention

Reintegration of a child victim is regulated by **Article 39 of the Convention on the Rights of the Child** in the way that the Convention ensures to:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

#### BiH legislation

In BiH there are no laws to define the measures of assistance, protection and prevention regarding children as victims and taking into account the best interest of the child. On the other hand, there are no adequate measures in compliance with international standards, not even at the entity level, responsible for the social and health care. Laws on social protection in both entities do not have special provisions to regulate the status of children victims, especially the children victims of human trafficking, nor do they define the assistance which should be offered to them for the purpose of rehabilitation as it is regulated by the international standards.

The issue of the rights of children as victims is defined exclusively by the by-laws in case when the children are victims of human trafficking. Thus, when we speak about the protection of domestic victims of human trafficking the most important progress is the adoption of the Rules on Protection of Victims and Witnesses Victims of Human Trafficking of BiH Nationals (in further text: Rules),<sup>437</sup> whereas the issue of protection of foreign victims of human trafficking is defined by the Book of Rules on protection of foreigners victims of human trafficking. When we speak about the Rules, they are adopted as a binding standard of the protection of human rights of the victims and witnesses of human trafficking, of BiH nationals, and they establish principles and common standards of work which relate on the identification procedure, organization of protection and assistance, primary and secondary prevention and other activities regarding the protection and assistance to the victims of human trafficking and witnesses victims of human trafficking of persons from Bosnia and Herzegovina.

Article 15 of the Rules regulates the issue of children protection, and this provision is not harmonized with the provisions of the Family Law. Namely, the best interest of the child is a binding standard for all responsible institutions in BiH and competent organization, and its goal is to ensure an automatic protection of the child in case that its rights are threatened, to offer an adequate help, reintegration and rehabilitation, that is the final rehabilitation and permanent placement of the child victim and witness victim. It is not clear in the Rules where the difference between the child victim and an adult victim is. There is no clear definition of the best interest of the child and in which cases this principle can be applied. Similar situation

<sup>437</sup> Adopted by the Council of Ministers of BiH, at the session held on 5 July 2007, Official Gazette BiH, No 66/07 from 03 September 2007.

is also with the definition of the status of the child of a foreigner as a victim of human trafficking. Thus, Article 7 of the Book of Rules prescribes a special treatment and child protection, but it is not clear what exactly is meant by this special treatment and protection. Paragraph 2 of the Article 7 of the book of Rules defines that the activities regarding the rights and interests of children are considered as urgent.

### *Social protection legislation*

Legislation on social protection does not regulate the exact issue of the reintegration of the victim, but it can be used in a certain, indirect way for realizing this right.

Thus, the **Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH** considers the advisory work as a service of the social and other type of professional work which is carried out by institutions through solving family problems, and this right can also be exercised by individuals and families for the purpose of protection of their rights and interests, prevention of phenomena and mitigation of the consequences of social problems.<sup>438</sup>

**Law on Social Protection of RS** defines social protection as an organized activity aimed at combating and elimination of causes and effects of the state of social need and providing assistance to the citizens and their families when they find themselves in such a need.<sup>439</sup>

**Law on Social Protection of Brčko District BiH** defined in a more quality way the issue of assistance to the children victims by establishing the obligation of provision of social care also for the abused children, to which category belong the minors victims of physical and mental abuse or injury, which causes the threatens their health, physical and mental integrity, or they are unable to have a normal development.<sup>440</sup>

Therefore, we can conclude that only the Law on Social Protection of Brčko District BiH explicitly states the child as a victim of inhuman behavior who needs rehabilitation. Still, other mentioned laws state the right of the child as a beneficiary of social care in case of its neglect or negligent treatment.

### **Opinion of the UN Committee on the Rights of the Child**

The Committee did not give a specific recommendation regarding this Article.

### **Conclusion**

It is obvious that the established standard framework for protection of children does not exist, but there is only a framework for the protection of victims of human trafficking, which only represents a declarative statement by the state and it was drafted more as a result of pressure to provide the international standards. The established model represents an isolated system which is not harmonized with the existing legal and institutional framework in BiH, which fully eliminates a possibility for their application. A practical example shows that, for example, the centers for social work do not recognize the issue of trafficking of children

<sup>438</sup> Article 46 paragraph 1 of the Law on Social Protection of FBiH

<sup>439</sup> Article 2 of the Law on Social Protection of RS

<sup>440</sup> Article 16 of the Law on Social Protection of Brčko District BiH.

within BiH as such, nor do they undertake any measures to provide the necessary assistance. It is certain that in addition to the past efforts in BiH there is no protection and assistance for the victims of human trafficking based on the principles set by international standards. There is a high degree of disharmony between the legal framework, established procedures and existing capacities of the institutions, which are obliged to provide the protection for the victims. The existence of separate system of protection of domestic and foreign victims of human trafficking is particularly causing the concern.

A deeper analysis of the Rules which regulate the protection of victims of human trafficking among BiH nationals show that the Rules and the Decision about the adoption of the Rules do not result from the law or any other document coming from higher levels, which brings the legal efficiency of these documents in question, and the possibility of their application on concrete cases. The Rules, which also define certain questions that had been regulated before by a separate law, are the cause of particular concern. Specifically, this relates to the issue of witness protection, which is regulated by the Law on Criminal Procedure but also by the Law on Witness Protection.

### **Recommendation**

For the purpose of improvement of the situation in this area it is necessary:

- Make a detailed analysis of legislation, procedures and capacities of the institutions in relation to the principles established by international standards for protection of victims, especially children, and for the provision of their reintegration;
- To review the adequacy of establishing a separate system of standards for protection of domestic and foreign victims of human trafficking, and ensure the awareness raising about other forms of human trafficking from the point of view of exploitation, such as children as beggars;
- Based on the results of analysis make a review of the National Action Plan for Preventing and Combating Human Trafficking in BiH.



# HEALTH AND SOCIAL CARE

*Article 6 - Life, survival and development*

*Article 5 and 18 - Assistance to family, especially to parents*

*Article 23 - Right to mentally and physically disabled children*

*Article 24 - Right to the highest attainable standard of health*

*Article 25 - Right to periodic review of placement*

*Article 27 - Right of the child to an adequate standard of living, in regard of nutrition,  
clothing and housing*

*Article 19, 32, 33, 34, 35, 36 - Various forms of child protection from exploitation*

*Article 39 - Right to recovery and social reintegration*



### 3.24. Right to life, survival and development

#### Convention

Right to life is defined by **Article 6 of the Convention** in the way that:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### BiH legislation

##### *Family legislation*

According to the **Family Law of FBiH** and **Family Law of Brčko District BiH** the child has the right to care for life, health, and personal development.<sup>441</sup> The child also has the right to employment which is not threatening to his or her health and development.<sup>442</sup> It is the duty of the parent to provide living conditions needed for the child's development.<sup>443</sup>

Based on the **Family Law of RS**, parents' duty is to take care about life and health of their children, and to raise them, proved for their upbringing and education.<sup>444</sup> They have a duty and right to protect their minor children and to care about their life and health.<sup>445</sup>

##### *Labor legislation*

Based on provisions of **Law on Labor of FBiH** a minor cannot work overtime, at night, and especially not on extra difficult jobs, works under earth and water surface etc., which could be damaging with higher risk of affecting the child's life and health, development and moral, in regard to his or her psycho physiological traits.<sup>446</sup>

**Law on Labor of RS**<sup>447</sup> regulates the right of persons between 15 and 18 years of age to conclude an employment contract under condition to provide appropriate medical opinion about their general health working ability and the approval of the legal representative. Person under 18 years of age cannot conclude an employment contract for types of job with higher risk of injuries or increased damaging influence on health.<sup>448</sup>

**Law on Labor of Brčko District BiH**<sup>449</sup> explicitly forbids to minor employees to work at night except in instances of extraordinary circumstances. The same provision the legislator defines precise working hours

441 Article 124 paragraph 1 and Article 187 paragraph 2 of the Family Law of FBiH and Article 107 paragraph 1 of the Family Law of Brčko District BiH.

442 *Ibid.*, Article 126 paragraph 2.

443 *Ibid.*, Article 138 paragraph 2.

444 Article 6 of the Family Law of RS.

445 *Ibid.*, Article 81 paragraph 1.

446 Article 32 paragraph 4, Article 36 paragraph 1 and Article 51 paragraph 1 of the Law on Labour FBiH.

447 Law on Labour of RS.

448 Article 14 paragraph 2 and 3 of the Law on Labour of RS.

449 Law on Labour of Brčko District BiH, Official Gazette of Brčko District BiH.

at night for minors.<sup>450</sup> It is also forbidden to a minor to work on dangerous or hard physical jobs, jobs under earth or water surface, or other jobs which could be damaging for the child, threaten his or her life, health, physical development or moral.<sup>451</sup>

### *Legislation on child care*

**Law on Child Care of RS** defines the system of child care which is based on the right and duty of parents to care about raising and upbringing or their children, the right of the child to life conditions which provide for the proper psycho physiological development of the child and the obligation of the state to provide that kind of development.<sup>452</sup> The same regulation ensures the establishment of a Public Fund for Child Care aiming to provide equal conditions to satisfy development needs of all children in RS.

**Law on Child Care of Brčko District BiH** states that the child care aims to provide almost equal conditions for healthy and proper physical, intellectual and emotional development in the family.<sup>453</sup>

### **Opinion of the UN Committee on the Rights of the Child**

The Committee did not give direct recommendations regarding the right to life.

### **Conclusion**

BiH legislation guarantees to the child not only the right to life, but it also states that the child has the right to care for life, health and personal development. A series of legal provisions, especially in the labor legislation, aims to ensure survival and development of the child. Unfortunately, lack of efficient control mechanisms, especially bodies for inspection, makes it difficult to ensure the application of the mentioned legal provisions, which is the reason for frequent forms of abuse and exploitation of children, often even from their own parents.

### **Recommendation**

Competent bodies need to take the measures in order to strengthen the work of inspection bodies to prevent child abuse. Special measures need to be taken to prevent children from living on the street, including begging, to which they are often exposed to even by their own parents.

<sup>450</sup> Article 28 of the Law on Labour of Brčko District BiH.

<sup>451</sup> *Ibid.*, Article 41.

<sup>452</sup> Article 1 of the Law on Child Care of RS.

<sup>453</sup> Article 1 of the Law on Child Care of Brčko District BiH.

### 3.25. Common responsibility of parents for upbringing and development of the child

#### Convention

The issue of common responsibility of parents for upbringing and development of the child is prescribed also by **Article 18 of the Convention**:

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Convention on Contact Concerning Children** takes into consideration the responsibility of parents for their common children and defines the way of passing the decision about contact concerning the parent who does not live with the child, carrying out such decision and all other circumstances which are important for safe and regular contact between the child and the parent, the child's safe return to the place of residence.<sup>454</sup>

#### BiH legislation

As the provision of the right of the child from the Convention is guaranteed by Article 5 of the Convention, the legislation which regulates this area of responsibility showed in the part of this Analysis is called Family Environment and Alternative Care, item 3.13 – Provision of the Rights of the Child and item 3.17 – Common Responsibility of Parents for Upbringing and Development of the Child.

### 3.26. Right of a disabled child to dignified life and active participation in the community

#### Convention

Right of a disabled child for a dignified life and active participation in the community is regulated by **Article 23 of the Convention**, according to which:

<sup>454</sup> Chapter II of the Convention on Contact Concerning Children, Council of Europe, Strasbourg 15 May 2003.

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

## **BiH legislation**

### *Legislation on sports*

**Law on Sports of BiH** notes that sports in BiH are based on European Convention on Protection of Human Rights and Basic Freedoms and on the Convention on the Rights of the Child,<sup>455</sup> and that the sport activities also include the activities organized for disabled persons.<sup>456</sup>

**Law on Sports of RS** includes provisions according to which sport activities are accessible to all citizens<sup>457</sup> and prescribes that the programmes co-financed from the city or municipal budget refer also to creating conditions for sport activities of disabled persons.<sup>458</sup> Obligation of Republika Srpska, city and municipality is to create conditions with additional measures to promote sport activities of disabled persons.<sup>459</sup>

### *Legislation on social care*

**Book of rules on the way of realizing the rights to social protection of persons who are eligible to international protection in BiH** defines basic principles, responsible bodies and conditions and ways of

<sup>455</sup> Article 4 of the Law on Sports of BiH.

<sup>456</sup> *Ibid.*, Article 2.

<sup>457</sup> Article 4 of the Law on Sports.

<sup>458</sup> *Ibid.*, Article 17 item 8.

<sup>459</sup> *Ibid.*, Article 35 paragraph 2.

realizing rights to social protection and protection of families with children/child protection in BiH of persons who are eligible to international protection.<sup>460</sup> Right to social protection is granted to persons who are granted a refugee status as well as to their family members (children) in case of family reunification.<sup>461</sup> Therefore, the beneficiaries of protection can be only children with disabilities and persons with physical and mental disorder in development.<sup>462</sup> Right to social protection also includes the training assistance for independent life and work (of children and youth).<sup>463</sup> Funds for financing this right are provided from the budget of the Ministry for Human Rights and Refugees,<sup>464</sup> which keeps records about the persons who are granted this right.<sup>465</sup>

**Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH** defines basic rights and beneficiaries in social protection, to whom also belong the persons with disabilities and persons with physical and mental disorder in development.<sup>466</sup> The Law defines persons/children with disabilities and physical and mental disorder in development and notes that such beneficiaries are: (a) blind and partially sighted children; (b) deaf and hearing-impaired children; (c) children with disorder in speech and voice; (d) children with physical impairment and permanent disorder in physical development; (e) children with disorder in mental development; (f) children with combined disorder.<sup>467</sup> Children with such disorders have the right to: personal disability benefit, allowance for care and assistance from other person, allowance for orthopaedic aids, financial assistance for covering costs of medical treatment and purchase of orthopaedic aids, training assistance for independent work and priority employment, with the possibility that canton also defines other rights and extends the range of rights defined by this Law.<sup>468</sup>

Procedure for realizing rights is carried out before the centers for social work or municipal administrative services responsible for the provision of social protection.<sup>469</sup>

Cantonal regulations on the territory of FBiH define also the way of assessing the capabilities, classification and record keeping of the children with psycho physiological disorder in development.<sup>470</sup> The Law established that the rights based on this Law could be granted only to persons with 100 % and 90% impairment.<sup>471</sup> Training assistance for life and work is provided to children with disorder in psycho physiological development regardless of the cause for disability if they can, based on their age, be trained for work.<sup>472</sup>

460 Article 1 of the Book of rules of the way of realising the rights to social protection of persons who are eligible to international protection in BiH.

461 *Ibid.*, paragraph 2 of Article 3.

462 *Ibid.*, Article 6 paragraph 1a) item 4.

463 *Ibid.*, Article 8 paragraph 1 item d) .

464 *Ibid.*, Article 21.

465 *Ibid.*, Article 28 paragraph 1.

466 Article 1 regarding Article 12 of the Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

467 *Ibid.*, Article 14.

468 *Ibid.*, Article 18a of Changes and Amendments of the Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

469 *Ibid.*, Article 18 g.

470 Article 24 of the main text of the Law Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

471 *Ibid.*, Article 3 of Changes and Amendments of the Law on Basic Social Protection, Protection of Civilian War Victims and Protection of Families with Children of FBiH.

472 *Ibid.*, Article 29 paragraph 1.

**Law on Social Protection of RS and Law on Social Protection of Brčko District BiH** defines as beneficiaries of social protection also the minor children with physical and mental disorder in development.<sup>473</sup> This category consists of minors with visual impairment, hearing impairment, disorder in voice and speech, physical impairment, mental retardation or combined disorders.<sup>474</sup> Right to allowance for the assistance and care from other person have the following categories of beneficiaries, regardless of their material security: persons with serious physical or hearing impairment, persons who cannot fulfill their basic needs without the assistance of other person; persons with moderate severity or serious mental disorder in development; persons who have multiple disorder in development with moderate severity or serious mental illness; autistic persons; persons with chronically mental illness.<sup>475</sup> Right to assistance in training for work is granted to children and youth with physical and mental disorder in development who, based on their age and abilities, can be trained for work.<sup>476</sup> The Law also provides the right to placement in an institution for social care to the child with moderate, moderate severity and serious mental disorder or multiple disorder in development, autistic child and the child with physical impairment who does not have appropriate conditions in his or her family as long as there is a need for such form of care.<sup>477</sup> Children with psycho physiological disorder who are placed in an institution are provided a corresponding degree of upbringing, education and training for work within their abilities, assistance towards mitigating or eliminating the consequences in their development, work participation under special circumstances, full and permanent placement (housing, nutrition, care, health care, cultural and entertainment and other activities) in accordance with their abilities.<sup>478</sup> Children and youth with physical impairment and healthy mental abilities are provided housing, health care, upbringing, recreational and cultural and entertainment activities, assistance with education and training for work, in accordance with their abilities and degree of disability.<sup>479</sup>

### Legislation on persons with mental illness

**Law on Protection of Persons with Mental Illness in FBiH** prescribes that rights and freedoms of persons with mental illness can be restricted only by the Law, if it is necessary for the protection of health or security or protection of other persons.<sup>480</sup> Medical treatment will be organized in the way that it restricts their rights and freedoms to the least possible extent, causes physical and mental inconvenience, and insults their personality and human dignity.<sup>481</sup> Psychiatric treatment of children and minors is carried out at the department of medical institutions aimed at treatment of children and youth, which is separated from the same department for persons of legal age.<sup>482</sup>

**Law on Protection of Persons with Mental Illness in RS** prescribes that dignity of persons with mental illness must be protected in all circumstances and that they cannot be put in an unequal position

473 Article 10 of the Law on Social Protection of RS.

474 Article 12 of the Law on Social Protection of RS and Article 13 of the Law on Social Protection of Brčko District BiH.

475 Article 28 of the Law on Social Protection of RS.

476 *Ibid.*, Article 30.

477 Article 37 of the Law on Social Protection of RS and Article 52 of the Law on Social Protection of Brčko District BiH.

478 Article 62 of the Law on Social Protection of RS.

479 *Ibid.*, Article 63

480 Article 4 paragraph 3 of the Law on Protection of Persons with Mental Illness of FBiH

481 *Ibid.*, Article 6

482 *Ibid.*, Article 12 paragraph 4

due to their mental illness.<sup>483</sup> Psychiatric treatment of children is carried out in the competent medical institutions.<sup>484</sup> The child and the minor child cannot be placed in a medical institution without consent of the legal representative according to the procedure for forceful placement, unless they seriously and directly endanger their personal life or health, that is life, health or security of other persons.<sup>485</sup>

**Law on Protection of Persons with Mental Illness in Brčko District BiH** prescribes that biomedical research over children and minors can be undertaken under the assumption that the research results will be of substantial and direct benefit for the health of that person, that the consent of the interviewed person is ensured, that is that the person did not show an explicit objection to such research and with the approval of the commission for protection of persons with mental illness and ethical commission for mental illness.<sup>486</sup> The child or minor child with mental illness who is not able to give consent for placement in a medical institution will be placed according to the procedure for forceful retention and placement based on this Law.<sup>487</sup>

### *Legislation on temporary residence*

**Regulation on Temporary Residence** defines that blind and deaf persons and children with disabilities are exempt from temporary residence fee, if they reside outside of their permanent residence in a tourist place and use the services of overnight stay and accommodation in catering and tourist facilities.<sup>488</sup>

### *Legislation on city planning*

**Regulation on Environmental Standards, Urban and Technical Conditions and Standards for Prevention of Creating Barriers to Persons With Reduced Physical Disabilities** defines environmental standards, urban and technical conditions and standards for prevention of creating architectural and urbanistic barriers which could hinder or prevent movement of disabled, ill and old persons, pregnant women, small children and other persons in fulfilling their every day and working needs. Provisions from this regulation do not represent a limitation to apply other conditions to provide higher degree of accessibility for the afore-mentioned persons and especially for the persons with walking difficulties.<sup>489</sup> The existing public and other urban areas where persons with reduced physical abilities temporarily or permanently reside must adjust to the provisions of this Regulation within five years from the date the Law on Construction enters into force.<sup>490</sup> Government of FBiH passed the Decision on **Establishing the Foundation of Disabled Persons**<sup>491</sup> on 24 November 2000, but no activities of the Foundation were recorded in practice.

483 Article 5 of the Law on Protection of Persons with Mental Illness of RS

484 *Ibid.*, Article 15

485 *Ibid.*, Article 22

486 Article 12 paragraph 3 of the Law on Protection of Persons with Mental Illness of Brčko District BiH

487 *Ibid.*, Article 17.

488 Article 4 of the Regulation on Temporary Residence Fee, Official Gazette of FBiH, No 18/09.

489 Article 39 paragraph 3 of the Regulation on Environmental Standards, Urbanistic and Technical Conditions and Standards for Prevention of Creating Barriers to Persons With Reduced Physical Disabilities, Official Gazette of FBiH, No 10/04.

490 *Ibid.*, Article 40 of the Regulation.

491 Decision on Establishing the Foundation of Disabled Persons, Official Gazette of FBiH, No 57/00.

### *Legislation on child care*

**Law on Child Care of RS** regulates child care as the right of children with development disorders to organized work and activities<sup>492</sup> of upbringing and education within education institutions.<sup>493</sup>

**Law on Child Care of Brčko District BiH** regulates the right to children allowance regardless of the material situation of the family if the child has a development disorder and is not placed in an institution.<sup>494</sup>

### *Legislation on lottery and games of chance*

**Law on Lottery and Games of Chance in FBiH** does not mention in a single provision of the Law to which purposes the income. This is the reason why it is not possible to determine in practice whether there is a constant obligation to finance humanitarian, sport and other socially useful services.<sup>495</sup>

**The Law on Lottery Games in RS** anticipates that the Government of RS will prescribe criteria and way of income distribution, whereby the priority will be given to financing projects and programmes which address problems and needs of people with disabilities.<sup>496</sup> **The Decision on Distribution of Income from the Lottery to Finance Social and Humanitarian Activities**<sup>497</sup> was also passed in connection to the afore-mentioned Regulation.

**Law on Lottery and Games of Chance in Brčko District BiH**<sup>498</sup> anticipates that the lottery games are organized with the aim to provide a part of income to answer the needs in domain of social and humanitarian activities, physical culture and sports, program activities for youth, as well as to be used for other purposes.<sup>499</sup> The Law does not elaborate on the type of those activities or on the percentage of the realized income.

### *Legislation on professional training of disabled persons*

**Law on Professional Rehabilitation, Training and Employment of Disabled Persons** is important also for the children, because it defines the rights, conditions and procedure for professional rehabilitation, training and employment of persons with disabilities and reduced working ability, as well as for establishing organizations which deal with professional rehabilitation and employment of disabled persons.<sup>500</sup> Professional rehabilitation is carried out and organized within the regular education system according to an adjusted or special programme.<sup>501</sup> The Law grants the right to employment under special conditions to persons with at least 40% of disability, to persons with 70% of physical impairment and to persons with mild to moderate retardation.<sup>502</sup> Companies which employ disabled persons, protection workshops and working centers have the right to tax, customs and other reliefs.<sup>503</sup>

492 Article 2 item 5 of the Law on Child Care of RS.

493 *Ibid.*, from Article 10.

494 Article 18 of the Law on Child Care of Brčko District BiH.

495 Law on Lottery and Games of Chance in FBiH, Official Gazette of FBiH No 1/02.

496 Article 20 of the Law on Lottery Games in RS, Official Gazette of RS, No 110/08.

497 Decision on Distribution of Income From the Lottery to Finance Social and Humanitarian Activities, Official Gazette of RS No 7/09.

498 Law on Lottery and Games of Chance, Official Gazette of Brčko District BiH No 37/04, 17/07.

499 *Ibid.*, Article 3.

500 Article 1 of the Law on Professional Rehabilitation, Training and Employment of Disabled Persons, Official Gazette of RS, No 98/04, 91/06.

501 *Ibid.*, Article 8.

502 *Ibid.*, Article 11.

503 *Ibid.*, Article 45.

### *Legislation on education*

An overview of the legislation on education is not given in this part of the Analysis, because education is reviewed as a separate right under section 3.29 titled Education of this Analysis; however, an overview of bylaws which define the way of realizing rights to education for children with special needs is presented in this section. Thus, the Book of Rules on Upbringing and Education of Children With Special Needs in Primary and Secondary Schools defines the inclusion of pupils with special educational needs in primary and secondary schools, criteria followed by the Ministry of Education and Culture of RS in defining conditions and way of forming groups and classes for upbringing and education, which integrate pupils with special needs.<sup>504</sup> A child with special educational needs receives also the support from a professional team in mastering the mainstream and individually adjusted curriculum.<sup>505</sup>

Teaching classes for pupils with sight and hearing impairment and for pupils with mild to moderate retardation are carried out according to adjusted curricula. For that purpose the following documents are passed: Book of Rules on Curriculum for Primary Education and Upbringing of Sight Impaired Pupils; Curriculum for Secondary Schools for Pupils With Mild Mental Retardation With Special Educational Needs and Curriculum for Secondary Schools for Hearing Impaired Pupils With Special Educational Needs<sup>506</sup>

### **Opinion of the UN Committee on the Rights of the Child**

In its Concluding observations the Committee notes with concern that discriminatory practices and prejudices still exist towards disabled persons, including children and that they lack sufficient medical care and educational opportunities. The Committee especially notes the problem of lack of implementation of the Framework Law on Primary and Secondary Education from 2003, which requires inclusive learning and integration of children with special needs into mainstream education.

In its Recommendation the Committee encourages the State party to actively pursue its current efforts and to continue to:

- a) Review existing policies and practice in relation to children with disabilities, taking due regard of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Resolution 48/96 of the General Assembly) and of the Committee's Recommendations adopted at its day of general discussion on „Children with disabilities“ (see CRC/C/69);
- b) Make efforts to detect disabilities within the educational system and ensure better evaluation of the overall needs of students with disabilities;
- c) Take concrete and specific measures to ensure that children with disabilities may exercise their right to education to the maximum extent possible and facilitate inclusion in the mainstream education system, including vocational education;

<sup>504</sup> Article 1 of the Book of Rules on Upbringing and Education of Children With Special Needs in Primary and Secondary Schools, Official Gazette of RS, No 85/04.

<sup>505</sup> *Ibid.*, Article 4.

<sup>506</sup> Book of Rules on Curriculum for Primary Education and Upbringing of Sight Impaired Pupils, Official Gazette of RS, No 19/05; Curriculum for Secondary Schools for Pupils With Mild Mental Retardation With Special Educational Needs and Curriculum for Secondary Schools for Hearing Impaired Pupils With Special Educational Needs, Official Gazette of RS, No 83/07.

- d) Undertake greater efforts to make available the necessary professional (i.e. defectologists and other disability specialists) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent self-support groups;
- e) Strengthen public awareness campaigns to change negative public attitudes towards persons with disabilities.

## **Conclusion**

Unfortunately, in spite of very clear Recommendations of the UN Committee, BiH did very little to establish a legal framework to define the rights of children with disabilities. The issue of social inclusion is mentioned mainly in general context without concrete measures for its real application in practice. The problem of children with mental disability is especially noted in the Special Report on the Situation of Human Rights in Institutions for Placement of Mentally Disabled Persons produced by the BiH Ombudsmen Institution.<sup>507</sup> Legislation which defines the status and rights of mentally disabled persons is inadequate and uncoordinated with the international standards, and especially with the “Standard Rules on the Equalization of Opportunities for Persons with Disabilities“. This fact creates space for arbitrary solutions and failure to ensure principles of equal treatment of all mentally disabled persons without discrimination. This is the best seen on the issue of placement in institutions, because it is unclear by which criterion the list of admissions into an institution is being made in regard to a long list of mentally disabled persons who wait on a placement. Inadequacy of a placement also raises the issue of granting the rights to mentally disabled persons as well as of insufficient legislation which defines the establishment and functioning of institutions for placement of mentally disabled persons, especially in FBiH. This problem is especially emphasized after FBiH took over the role of the founder of these institutions without solving the transitional issues first. It is not clear why there was a lack of consultations with cantonal ministries for social protection who pay the costs for placement, as well as with the centers for social work who send mentally disabled persons to those institutions and whose employees are mostly guardians to persons placed in institutions.

## **Recommendation**

Having in mind a lack of quality activities aiming to ensure access to basic rights of children with disabilities over many years, which is a result of creation of a large number of vulnerable groups of citizens as a consequence of war, who were prioritized, it is important to ensure to undertake urgent measures to protect these categories of citizens. It is especially important to ensure progressive removal of physical barriers for persons with physical disabilities, consistent application of legal provisions on construction, according to which not a single object cannot be granted an occupancy permit if it is not built according to standards which ensure an access for the persons with disabilities. It is also necessary to ensure a more quality traffic regulation and introduce more rigorous sanctions for drivers who occupy sidewalks and pedestrian areas with their cars and thus restrict the movement of persons with physical impairment. As for the children with mental disabilities the responsible bodies should ensure the implementation of BiH Ombudsmen recommendations given in the Special Report on the Situation of Human Rights in Institutions for Placement of Mentally Disabled Persons.

<sup>507</sup> See [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

### 3.27. Health care

#### Convention

Right to the highest standard of health care is defined by **Article 24 of the Convention** on the Rights of the Child in the way that:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - a) To diminish infant and child mortality;
  - b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - d) To ensure appropriate pre-natal and post-natal health care for mothers;
  - e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### BiH legislation

##### *Family legislation*

**Family Laws of FBiH, RS and Brčko District BiH** prescribe the parental care for life and health of the child.<sup>508</sup>

<sup>508</sup> Article 134 paragraph 1 of the Family Law of FBiH, Article 81 of the Family Law of RS, Article 117 paragraph 1 of the Family Law of Brčko District BiH.

### *Legislation on health care and insurance*

According to the Constitution of FBiH the responsibility for the issue of health care is divided between the federal and cantonal authority. This is the reason why certain by-laws are passed by both levels of authority.

**Law on Health Care of FBiH** defines principles, way of organizing and implementing health care on the territory of FBiH. The Law also defines that the responsible Ministry for Education, with the consent of the responsible Ministry for Health, ensures health education and the implementation of education on medical self care of preschool children and pupils through the mainstream curricula.<sup>509</sup>

**Law on Health Insurance of FBiH** regulates health insurance as a part of social insurance of citizens, which together create a unique system. Within this system the citizens maintain payments into the fund on the cantonal level on principles of reciprocity and solidarity, based on which they are granted the right to health care.<sup>510</sup> Health insurance of the citizens of FBiH includes obligatory insurance (for the persons under employment contract and their family members), as well as the additional and voluntary health insurance.<sup>511</sup> The persons covered by this insurance in accordance with the Law are: children at the age of 15 i.e. older minors up to 18 years of age who did not finish their primary school education or who did not find an employment after finishing the school and are registered by the unemployment office,<sup>512</sup> as well as the newborn children, children who are enrolled in regular education in primary and secondary schools or who are enrolled in regular studies at a university, children who are BiH nationals with a permanent residence on the territory of FBiH, and who are not granted health insurance as family members of an insured employed person. Family members of the insured are defined as follows: children born in matrimony, adopted children, stepchildren and grandchildren, if they are not able to live and work independently and cannot support themselves, so that they have to be supported by the insured,<sup>513</sup> but only up to the age of 26 years the latest.<sup>514</sup>

Children of the insured who terminated regular school education due to illness or injury, have the right to health care also during the period of illness i.e. injury. Children of the insured who become fully and permanently disabled before they turned 15 years of age have the right to health insurance for the period of disability as well as in case they become fully and permanently disabled and are older than 15 years of age, if they are supported by the insured. The same right is granted also to the children in foster care by the insured.<sup>515</sup> By analogy, and based on item 13 of Article 19, it is to understand that the same right is granted also to the children whose parents do not have the status of the insured.

The body, who has the obligation for payment of health care contributions for the children from the birth up to the enrolment in the primary school, who are not insured as family members of an insured person, is the cantonal authority responsible for the social and child protection,<sup>516</sup> and the body, who has the obligation to provide health care for the pupils and students enrolled in the mainstream education system up to the age of

<sup>509</sup> Article 4 paragraph 3 of the Law on Health Care of FBiH.

<sup>510</sup> Article 1 of the Law on Health Insurance of FBiH.

<sup>511</sup> *Ibid.*, Article 5.

<sup>512</sup> *Ibid.*, Article 19 item 13.

<sup>513</sup> *Ibid.*, Article 20 paragraph 1 item 2 and 4.

<sup>514</sup> *Ibid.*, Article 19 item 13a.

<sup>515</sup> *Ibid.*, Article 22 paragraph 2.

<sup>516</sup> *Ibid.*, Article 1 paragraph 2 under 13a) of the Law on Changes and Amendments of the Law on Health Insurance of FBiH.

26 years of age, is the cantonal authority responsible for education. The same rights are granted to pupils and students who attend an internship in teaching.<sup>517</sup> Children up to the age of 15 i.e. older minors up to 18 years of age are exempted from paying contributions when receiving health care services, since these are taken over by the cantonal body responsible for social and child protection.<sup>518</sup> The Law ensures health care and transport costs related to receiving health care for the afore-mentioned categories of beneficiaries.<sup>519</sup>

A series of other laws and by-laws are adopted for the purpose of implementation of the system of health care, such as: Law on the System of Quality Improvement, Security and on Accreditation in Health System; Book of Rules on the Way of Realizing Health Insurance Rights; Basic Standards and Regulations on Primary Health Care Package; Decision on Defining the Primary Health Care Package; Agreement on Manner and Procedure on Receiving Health Care Outside of the Cantonal Health Care Fund Responsibility of the Insured; Law on Protection of Population From Infectious Diseases; Decree for a Programme of Obligatory Immunization of Population Against Infectious Diseases in 2009; Decision on establishing priority vertical programmes in health care in the interest of FBiH and the most complex priority forms of health care in certain specialist areas which will be offered to the insured on the territory of FBiH.<sup>520</sup>

**Decision on maximum amounts of direct contributions of the insured to the costs of receiving certain forms of health care in the primary health care**<sup>521</sup> defines that children at 15 years of age, pupils and students up to 26, who are enrolled in the mainstream education system, civilian war victims and disabled persons with the assessed degree of disability higher than 60% are exempted from payment of participation for receiving health care.

**Law on Health Care of RS** defines the system of health care, organization and work of health services,<sup>522</sup> similarly as FBiH, in the way that citizens realize the highest level of health care as individuals, as well as their families and the society as a whole.<sup>523</sup> Health care consists of measures for improvement and maintenance of health condition of citizens, preventing and combating diseases, injuries, and early detection of diseases, timely medical treatment and rehabilitation.<sup>524</sup>

**Law on Health Insurance of RS** defines the system of obligatory and additional insurance, right to insurance, right from insurance, way of realizing the right and principles of private health insurance.<sup>525</sup> The Law defines

517 *Ibid.*, Article 2.

518 *Ibid.*, Article 3.

519 *Ibid.*, Article 31.

520 Law on the System of Quality Improvement, Security and on Accreditation in Health System, Official Gazette of FBiH, No 59/05; Book of Rules on the Way of Realising Health Insurance Rights, Official Gazette of FBiH, No 31/02; Basic Standards and Regulations on Primary Health Care Package, Official Gazette of FBiH, No 30/97, 7/02, 5/03, 53/03, 18/04; Decision on Defining the Primary Health Care Package, Official Gazette of FBiH, No 21/09; Agreement on Manner and Procedure on Receiving Health Care Outside of the Cantonal Health Care Fund Responsibility of the Insured, Official Gazette of FBiH, No 41/01; Law on Protection of Population From Infectious Diseases, Official Gazette of FBiH, No 29/05; Decree for a Programme of Obligatory Immunization of Population Against Infectious Diseases in 2009, Official Gazette of FBiH, No 14/09; Decision on establishing priority vertical programmes in health care in the interest of FBiH and the most complex priority forms of health care in certain specialist areas which will be offered to the insured on the territory of FBiH, Official Gazette of FBiH, No 8/05.

521 Decision on maximum amounts of direct contributions of the insured to the costs of receiving certain forms of health care in the primary health care package, Official Gazette of FBiH, No 21/09.

522 Article 1 of the Law on Health Care of RS.

523 *Ibid.*, Article 2.

524 *Ibid.*, Article 3.

525 Article 1 of the Law on Health Insurance of RS, Official Gazette of RS, No18/99, 70/01, 51/01,17/08, 1/09.

the term of the insured and of his or her family members, including children, as well as the conditions under which children have the right to health insurance, similarly as in FBiH.

Implementing by-laws, similarly as in FBiH, are: Book of Rules on the Way of Realizing Health Care which, based on the Law on Health Insurance, regulates issuing and certification of the health-insurance card which cannot be tied with the paid contributions for the children up to 15 years of age<sup>526</sup>; Book of Rules on the Content and Scope of the Rights and Contributions to Health Care accompanied with provisions which ensure that costs of injuries of children up to 15 years of age, medical examination and treatment of mouth diseases are fully covered from the funds for obligatory insurance, that is that contribution is not paid for those interventions<sup>527</sup>; Book of Rules on Receiving Health Care Outside RS<sup>528</sup>; Decision on the Minimum Primary Health Care Package<sup>529</sup> etc.

**Law on Health Care of Brčko District BiH** defines, similarly as in the entities, the way of organizing and implementing health care in Brčko District BiH. Based on the Law no one is allowed to endanger a person's health.<sup>530</sup> Health care is organized as primary, specialist-consulting and hospital care<sup>531</sup> and it is carried out by the principles of comprehensiveness, continuity, accessibility and holistic approach to health care.<sup>532</sup>

Health care and improvement of health condition of pupils, students and youth in general, as well as an evaluation of their abilities to learn and work, is carried out within primary health care system.<sup>533</sup> Primary health care also includes taking measures of health care for children of preschool and school age, care for their medical condition, improvement of their health, enhancement of their psycho-physiological abilities, measures for promotion of adequate nutritious foods for infants and measures for health care for the persons with development disorder.

## Criminal legislation

**BiH Criminal Law** defines sanctions for criminal offences against humanity, which also include offences of physical injury and health damage,<sup>534</sup> and the **Criminal Law of FBiH, Criminal Law of RS and Criminal Law of Brčko District BiH** define sanctions for criminal offences against person's health condition.

## Opinion of the UN Committee on the Rights of the Child

The Committee on the Rights of the Child paid special attention in its Concluding observations to the health care issues. Thus, the Committee is concerned that the country's complex political structure and the lack of

<sup>526</sup> Article 1 and 4 Book of Rules on the Way of Realising Health Care, Official Gazette of RS, No 54/07, 63/08, 95/08.

<sup>527</sup> Article 16 Book of Rules on the Content and Scope of the Rights and Contributions to Health Care, Official Gazette of RS, Revised text 54/07.

<sup>528</sup> Book of Rules on Receiving Health Care Outside RS, Official Gazette of RS, No 39/06, 63/08.

<sup>529</sup> Decision on the Minimum Primary Health Care Package, Official Gazette of RS, No 21/01.

<sup>530</sup> Article 3 of the Law on Health Care of Brčko District BiH.

<sup>531</sup> *Ibid.*, Article 5.

<sup>532</sup> *Ibid.*, Article 8.

<sup>533</sup> *Ibid.*, Article 17 paragraph 1 item 3.

<sup>534</sup> Article 172 of the Criminal Law of BiH.

unified laws and policies make equitable access to health-care services for all children increasingly difficult. Furthermore, the Committee takes note, with concern, that one fifth of children are not fully vaccinated and that exclusive breastfeeding is limited to the first three months and only to a limited number of children. Finally, the Committee expresses serious concern that some 90 per cent of Roma have no health insurance, which results in their de facto exclusion from access to health care.<sup>535</sup> While the Committee notes that infant mortality and under-five mortality have officially decreased, it is concerned that this reduction may depend on underreporting within a poorly functioning data collection system, especially among the most vulnerable group of the population.

Given the situation, the Committee recommends that the State party undertake all necessary measures to ensure that all children enjoy the same access and quality of health services, with special attention to children belonging to vulnerable groups, especially Roma. Furthermore, the Committee recommends that the State party strengthen its efforts in improving the health situation of children in the State party, including through:

- Strengthening its efforts to ensure that all children have access to basic health-care services;
- Strengthening vaccination programmes;
- Improving the nutritional status of children;
- Promoting exclusive breastfeeding for six months after birth with the addition of appropriate infant diet thereafter;
- Seeking technical assistance from, among others, UNICEF and WHO in this regard.<sup>536</sup>

Regarding the adolescent health the Committee is concerned at the high consumption of tobacco and alcohol among adolescents and notes that in the State party there is insufficient health promotion, with little targeting of nutrition, smoking, alcohol, HIV/AIDS, sex education, fitness and personal hygiene practices. The Committee is also concerned at the insufficient information concerning adolescent health, in particular with regard to mental and reproductive health.<sup>537</sup>

The Committee recommends that the State party strengthen measures to address the issue of alcohol and tobacco consumption among children, to improve its health promotion programmes, and to provide for mental and reproductive health counseling and services for adolescents.

In regard to HIV/AIDS the Committee is concerned that high-risk behavior among young people - (i.e. injecting drug use and risky sexual behavior) - may expose the State party to serious HIV/AIDS problems in the future. The Committee also notes that this issue was recognized by the Government only in 2002 - with the creation of the National Advisory Board for the prevention of HIV/AIDS and the development of a "Strategy for Preventing and Combating HIV/AIDS in BiH"<sup>538</sup> - whereas it is still not perceived as a threat by most of the population.

Given all the above concerns The Committee recommends that the State party:

<sup>535</sup> CRC/C/15/Add. 260, Concluding observations of the Committee on the Rights of the Child, item 47.

<sup>536</sup> *Ibid.*, item 48.

<sup>537</sup> *Ibid.*, item 50 and 51.

<sup>538</sup> *Ibid.*, item 52.

- a) Increase its efforts to prevent the spread of HIV/AIDS, taking into account the Committee's General comment No. 3 (2003) on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37);
- b) Launch campaigns and programmes to raise awareness about HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups as well as the population at large, so as to reduce discrimination against children infected and affected by HIV/AIDS;
- c) Seek further technical assistance from, inter alia, the United Nations Joint Programme on HIV/AIDS and UNICEF.<sup>539</sup>

## **Conclusion**

There is a series of obstacles to realize the rights to access health care and the children are often required to go through various administrative procedures, such as submission of certificates on school attendance, health insurance of the parents etc. These procedures are contrary to the provisions of the Convention, which defines the issue of health care which then needs to be ensured for every child under 18 years of age. In BiH one can still encounter a situation where the child's right to health care is tied with the health care of one of the parents, which excludes a great number of children from the health care system. This situation is also very much affected by deadlines based on laws on health care, whereby the parents themselves often lose the right to health care if they miss the deadlines. Efforts have been made in the past two years to separate child health care from the parental health care, for the children up to 15 years for age. It is obvious that the legislator chose this age limit of the child by tying it with the primary school education, which is mandatory by the law. Such legal stipulation is still in violation of the Convention, which defines as a child every person under 18 years of age. Although a certain progress is noted in the legislation, the situation in practice is still problematic, also by pregnant women who often cannot leave the hospital after delivery with their newborns, unless they have health insurance or the hospital bill for pre-natal and post-natal treatment is paid. Consequently, women (especially Roma) are forced to various kinds of abuse such as to go to the hospital to deliver a child with the health-insurance card of another woman to prove that they are medically insured. This is reflected to problems of infants' entry in the citizens' registry books.

There is also certain progress in the area of prevention of HIV/AIDS-a regarding organized testing on HIV/AIDS and public campaigns which are mainly organized or supported by UNICEF and UNFPA. Unfortunately, there is still much to be done in the area of prevention of consumption of alcohol, tobacco and drugs among adolescents. In addition, there is a widespread rather unrestricted advertising of alcohol and drugs in the public. Separate systems of health care and insufficient coordination in the area of health by the Ministry of Civil Affairs BiH contribute to a great extent to the poor approach to the child health care in BiH.

## **Recommendation**

It is necessary to urgently take measures to ensure unconditional health care for all children in BiH. Responsible authorities in BiH need to organize a campaign about harmful consumption of alcohol and tobacco and to introduce efficient measures to ban the advertisement of such products. It is necessary to organize counseling for adolescents on all issues of health care.

<sup>539</sup> *Ibid.*, item 53

### 3.28. Standard of living of the child

#### Convention

The right of every child to a standard of living is prescribed by **Article 27 of the Convention** according to which:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### BiH legislation

Legislation which regulates the issue of the standard of living of the child explains in detail in chapter 3.17 – Common responsibility of the parents for upbringing and development of their child – and in Chapter 3.22 – Child support. Furthermore, the right to a periodical revision of the placement (Article 25 of the Convention) is defined by item 3.19 – Placement within the Chapter titled as Family environment. Rights and obligations stipulated in Articles 19, 32, 33, 34, 35 and 36, which define various forms of protection of the child from exploiting, are specified in the Chapters Family Environment and Alternative Care, item 3.18 and Special protection measures - items 3.33 and 3.35, while Article 39, which defines the right to rest and recovery, is specified in Chapter 3.23 – Reintegration of the child victim.



# EDUCATION, LEISURE AND CULTURAL ACTIVITIES

*Article 28 - Right to education*

*Article 29 - Right to development of child's personality, talents and mental  
and physical abilities*

*Article 31 - Right of the child to rest and leisure*



### 3.29. Education

#### Convention

The right of the child to education is defined by Articles 28 and 29 of the **Convention on the Right of the Child**.

Article 28 defines the right to education as follows:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - a) Make primary education compulsory and available free to all;
  - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - d) Make educational and vocational information and guidance available and accessible to all children;
  - e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention;
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29 of the Convention** defines that State Parties shall undertake to develop an educational system which shall be directed to the development of the child's personality. According to this Article:

1. States Parties agree that the education of the child shall be directed to:
  - a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

## BiH legislation

### *Legislation in the field of education*

**Framework Law on Preschool Upbringing and Education in BiH** defines preschool upbringing and education as a component of the upbringing and education system in BiH as the first, special and specific level of the upbringing and education system which deals with upbringing of children in preschool age and includes upbringing, education, care and protection of the child.<sup>540</sup> The Law stipulates that the authorities responsible for education in BiH ensure upbringing and education for all children under equal conditions on the basis of the Constitution.<sup>541</sup> The preschool upbringing and education is based on humanistic and democratic principles and on principles of professional autonomy and responsibility.<sup>542</sup> Humanistic approach presupposes adjustment and respect of development possibilities and needs of each single child, and democracy suggests an equal treatment and equal possibilities of participation in this form of upbringing and education, without any kind of discrimination. The right of the child to upbringing and education, and to care, has the priority over all other rights; also in the case of conflict of interest, the priority is given to the right which ensures protection of the child's interest. In the year before starting the school i.e. the preschool upbringing and education is obligatory for all children of that age. Programmes of obligatory preschool upbringing and education are free of charge.<sup>543</sup>

**Framework Law on Primary and Secondary Education in BiH** prescribes that the purpose of education is to contribute to the development of the society through optimal intellectual, physical, moral and social development of an individual, based on rule of law and respect of human rights, as well as to contribute to its economic development to ensure the best standard of living for all citizens.<sup>544</sup> General goals of education result from the generally accepted, universal values of a democratic society, and from the personal values of system based on specifics of national, historical, cultural and religious tradition of peoples and national minorities who live in BiH.<sup>545</sup>

Principles in education,<sup>546</sup> in accordance with the Framework Law on Primary and Secondary Education are:

- **right to education** assumes that each child has the same right to access and equal possibilities to learning, i.e. equal conditions and opportunities, in respective education without discrimination, whereby „respective“ refers to education which, in accordance with established standards, ensures that the child in the best possible way develops his or her innate and potential intellectual, physiological and moral abilities, at all levels of education;

540 Article 2 of the Framework Law on Preschool Upbringing and Education in BiH.

541 *Ibid.*, Article 3.

542 *Ibid.*, Article 4.

543 *Ibid.*, Articles 4, 6, 7, 16 and 41.

544 Article 2 of the Framework Law on Primary and Secondary Education in BiH.

545 Base on Article 3 these principles include, amongst others, the following: (a) provide access to knowledge as basis for understanding of self, others and the world we live in; (b) ensure optimal development for each person, including those with special needs, in accordance with their age, abilities and mental and physical possibilities; (c) promote and respect human rights and basic freedoms, and prepare each person for life in a society which respects democratic principles and rule of law; (d) raise awareness about belonging to the state Bosnia and Herzegovina, one's own cultural identity, language and tradition in the way suitable to civilisation inheritance and by getting to know and respect others and those who are different, by respecting variety and nourishing mutual understanding, tolerance and solidarity between all human beings, peoples and communities in Bosnia and Herzegovina and in the world; (e) ensure equal opportunities to education and a possibility to choose at all levels of education, regardless of gender, race, national identity, social and cultural origin and status, family status, religion, psycho-physiological and other personal traits; (f) provide quality education for citizens; (g) reach standards of knowledge which can be compared on international and European level, which ensure integration and continuation of education in the European education system; (h) achieve lifelong learning; (g) promote economic development; integration in process of European integrations.

546 Articles 4 to 6 of the Framework Law on Primary and Secondary Education in BiH.

- **importance of children's rights** means that children's rights, which refer to education, proper care for wellbeing of his physical and mental health and security, in schools and all places where the child receives education, have priority over all other rights and in case of conflict of rights, the priority is given to the right, explanation or activity which will be in the child's best interest;
- **promotion of respect of human rights** – school has a responsibility to, in its own environment in which it is active, contribute to creating such culture which respects human rights and basic freedoms of all citizens, as defined by the Constitution and other international documents in the field of human rights, which were signed by Bosnia and Herzegovina;
- **freedom of movement** means that in the process of establishment and organization of obligatory education system and process in Bosnia and Herzegovina the responsible education authorities obligated to ensure conditions for unhindered and free movement of parents, pupils and teachers in terms of respecting their rights to choice of residence and employment.

Primary school education is free and compulsory for all children. Secondary school education is accessible to all, in accordance with the achieved success in primary school, personal interest and abilities. Secondary school education in public institutions is free as prescribed by law.

During the period of compulsory education the responsible authorities take all necessary measures to ensure for the pupils conditions to free access and participation in education, especially in regard to ensuring access to free school books, manuals and other didactic material. Children and youth with special education needs acquire education in regular schools also according to programmes adjusted to their disability needs. Individual programme, adjusted to their possibilities and abilities, will be designed for each pupil, with compulsory specification of defectological and speech pathological status.

Children and youth with severe disorders and difficulties in development can be partially or fully educated in special upbringing and education institutions in cases when it is impossible to offer corresponding education in regular schools. Parents are obliged to ensure regular school attendance to their children during the period of compulsory school education. In case of negligence and irresponsible behavior toward this responsibility, parents are sanctioned in accordance with the Law, and they also have right and obligation to support further education of their children within their possibilities and the circumstances. Regular follow-up and evaluation of educational progress of pupils is carried out in schools, in order to ensure necessary education which corresponds their needs and abilities. School develops its role and duties in a surrounding which motivates children to acquire knowledge, which respects and supports individuality of each pupil and his or her cultural and national identity, language and religion, which is a safe surrounding without any kind of intimidation, abuse, physical punishment, insult, defiance or degradation or harm to health, including harm caused by smoking or consumption of narcotic and illicit substances.<sup>547</sup>

In the spirit of the process started by passing the Framework Law on Primary and Secondary Education in BiH, the following documents have been passed: Memorandum of Understanding on the Common Core Curriculum, Guidelines for Writing and Evaluation of Geography Textbooks for Primary and Secondary Schools in BiH and Guidelines for Writing and Evaluation of History Textbooks for Primary and Secondary Schools in BiH.<sup>548</sup>

<sup>547</sup> *Ibid.*, Articles: 16, 17, 18, 19, 27 and 34.

<sup>548</sup> Memorandum of Understanding on the Common Core Curriculum, Official Gazette of BiH, No 24/03; Guidelines for Writing and Evaluation of Geography Textbooks for Primary and Secondary Schools in BiH, Official Gazette of BiH, No 105/06; Guidelines for Writing and Evaluation of History Textbooks for Primary and Secondary Schools in BiH, Official Gazette of BiH, No 5/07.

With the aim to ensure the realization of duties to develop education system which is oriented towards development of the child's personality, the Framework Law on Primary and Secondary Education in BiH prescribes principles and standards which cannot be underrated.<sup>549</sup> Purpose of education is to ensure optimal intellectual, physical, moral and social development of an individual, based on his or her abilities and possibilities, so that he or she can contribute to create a society based on rule of law and respect of human rights, economic development which would provide the best standard of living for all citizens.<sup>550</sup>

Principle of the right of the child to respective education means education based on such standards which can ensure that the child develops his or her innate and potential intellectual, physical and moral abilities at all levels of education in the best way possible.<sup>551</sup> The school is obliged to organize education, to notice and enhance gifted and talented pupils and to train them according to the curriculum for gifted children, but also to organize tuition classes for children who lag behind.<sup>552</sup> The school is responsible to contribute in its own environment to create such culture in which human rights and basic freedoms of all citizens are respected, as it is anchored in the Constitution and international documents in the field of human rights, which the state BiH undersigned.<sup>553</sup>

**Framework Law on Secondary Professional Education and Training of BiH** defines secondary professional education and training as a component of the educational system in BiH which provides acquiring of skills and knowledge of certain professions with the aim to actively integrate the youth and adults in the working process or to continue further education.<sup>554</sup> Besides general goals of education defined in the Framework Law on Primary and Secondary Education in BiH, the aim is also to ensure the right, within the secondary professional education and training of students, under equal conditions, to secondary professional education and training in accordance with student's interests and abilities; to provide support by choosing the right profession and by integration in the social life; raise the awareness about the need for further education; ensure conditions to develop traditional crafts; harmonies needs with demands of the market; bring professional education and training to the level of education which the EU member states have.<sup>555</sup>

**Law on the Agency for Preschool Care, Primary and Secondary Education in BiH** regulates the responsibility of the Agency to establish standards of knowledge, to evaluate the existing results and develop common core curriculum in preschool care, primary and secondary education.<sup>556</sup> Supervision over the implementation of this Law is carried out by the Ministry of Civil Affairs.<sup>557</sup>

**Framework Law on Higher Education in BiH** establishes basic principles and standards to ensure higher education in BiH in accordance with relevant provisions of European Convention on Protection of Human Rights and Basic Freedoms and its protocols, Recommendation of the Ministers' Committee of the Council of Europe on recognition and evaluation of the quality of private universities, Recommendation on Access

<sup>549</sup> Article 1 paragraph 3 of the Law on Primary and Secondary Education in BiH.

<sup>550</sup> *Ibid.*, Article 2.

<sup>551</sup> *Ibid.*, Article 4 paragraph 3.

<sup>552</sup> *Ibid.*, Article 48 and 49.

<sup>553</sup> *Ibid.*, Article 6.

<sup>554</sup> Article 2 of the Framework Law on Secondary Professional Education and Training.

<sup>555</sup> *Ibid.*, Article 3.

<sup>556</sup> Article 4 of the Law on the Agency for Preschool Care, Primary and Secondary Education, Official Gazette of BiH, No 88/07

<sup>557</sup> *Ibid.*, Article 15.

to Higher Education and Recommendation on Research Task of a University and other internationally recognized legal documents which were signed also by BiH, including the Convention of the Council of Europe/UNESCO on Recognition of Qualifications in Higher Education in European Region.

Bosnia and Herzegovina accepts European strategic goals in the area of higher education noted in the Declaration of European ministers for higher education signed in Bologna (1999), as well as in the later revised versions of the same concept. Higher education is defined as an activity of special interest for BiH.<sup>558</sup> Ministry of Civil Affairs of BiH is responsible for implementation of this Law and the coordination and development of higher education in BiH, along with the consultations with other responsible ministries; promotion of integration of teaching and research work and enhancement of research programmes at universities; promotion of mobility of students and staff in the area of higher education in Europe and in the world; promotion of relations between universities in BiH and those in the region and in the world; promotion of equal possibilities of access to higher education, professional development and training, lifelong learning and all other aspects of higher education; support and enhancement of stronger ties between sectors of higher education, industry, economy and society.<sup>559</sup>

Law in RS and cantonal law on higher education should be harmonized with this Law in the period of six months after the date of its entering into force, and all issues from this area which are not regulated by the Framework Law will be regulated on the level of RS and the cantons in FBiH<sup>560</sup>.

#### **Memorandum of Understanding on Establishment of Ministerial Conference on Education in BiH**

is accepted and binding for the representative of the highest government authorities in BiH such as: Chair of the Council of Ministers, Prime Minister of FBiH, Prime Minister of RS and Mayor and Government representative of Brčko District BiH. The reason for signing such Memorandum lies in the fact that the „key role of education was recognized in its building and development of society based on knowledge“.<sup>561</sup> The established Conference is an independent and highest advisory body for coordination of educational sector in BiH, which does not impinge upon the constitutional and legislative responsibilities of the responsible authorities through its scope of work and responsibilities.<sup>562</sup> Main tasks of the Conference are: analysis, situation evaluation, progress and needs of the whole educational system in BiH; proposal of strategic priorities of education reform to responsible bodies; evaluation and recommendations to responsible bodies to harmonies educational policies and strategic plans of education development; follow-up of the process of drafting of framework laws in the area of education which are passed on the level of BiH; giving comments and suggestions in the process of drafting laws and the opinion on the text of the laws; giving recommendations to harmonies legislation on the lower levels including the provisions of framework laws and the analysis of their implementation; evaluation of the implementation stage of international conventions and declarations in the area of education, which are signed by BiH, and enhancement to adopt measures to improve the situation and ensure better cooperation with international organizations; giving advice and recommendations to the Ministry of Civil Affairs of BiH for coordination of educational sector

<sup>558</sup> Article 2 of the Framework Law on Higher Education in BiH, Official Gazette of BiH, No 59/07.

<sup>559</sup> *Ibid.*, Article 42.

<sup>560</sup> *Ibid.*, Article 63.

<sup>561</sup> Preamble of the Memorandum of Understanding on Establishment of Ministerial Conference on Education in BiH, Official Gazette of BiH, No 19/08.

<sup>562</sup> *Ibid.*, Article I.

in BiH, defining strategies and basic principles of coordination of activities on the international level: for coordination with European Union, cooperation on a wider international plan and for coordination in the region.<sup>563</sup>

**Memorandum of Understanding on Establishment of Ministerial Council for General Education in BiH** is signed for the purpose of establishing professional and independent advisory board for the decision makers regarding the politics in the area of preschool care, primary, and secondary school education. Memorandum of Understanding was signed by the Minister of Civil Affairs of BiH, entity ministers of education, cantonal ministers of education and the Head of Department for Education of Brčko District BiH.<sup>564</sup>

An analysis of legislation in the area of education in FBiH shows that cantons have all the responsibilities which are not explicitly entrusted to the federal Government,<sup>565</sup> and the educational policies, including adoption of regulations on education and provision of education, is one of such responsibilities.<sup>566</sup>

The Law on Preschool Care and Education in FBiH was drafted as a model by the Ministry of Education and Science of FBiH and it was put for adoption to the cantons. Only Sarajevo Canton and Posavina Canton have adopted the Law so far.<sup>567</sup>

**Law on Preschool Care and Education of RS** and **Law on Preschool Care and Education of Brčko District BiH** regulate preschool care and education as a part of unified system of care and education which makes the basis of lifelong learning and development of the child.<sup>568</sup> Such care and education ensures equal conditions and opportunities in realizing rights of children to care and education for the benefit of their physical and mental health and security, regardless of gender, abilities, social and economic status and standard of living of the family, cultural, ethnic, national and religious heritage, as well as provision of other programmes depending on needs and interests of children of that age.<sup>569</sup> The aim of this level of education is to enhance physical, intellectual, social, and economic development, communication, creativity and achievement of children, making new experiences and extend knowledge about self, others and the world by respecting and recognizing rights and abilities of children.<sup>570</sup> One of the tasks of preschool care and education is the preparation of children for the next level of education.<sup>571</sup>

**Law on Primary Education and Care of RS** aims to ensure: complete and harmonious development of individual potentials and abilities of the child, which are adjusted to individual needs, interests and abilities; development of creative and critical thinking; respect of different opinions and varieties; raise awareness about the need to acquire new knowledge; raise awareness about the need to care for health; develop

563 *Ibid.*, Article III.

564 Article I of the Memorandum of Understanding on Establishment of Ministerial Council for General Education in BiH, Official Gazette of BiH, No 22/09.

565 Constitution of FBiH, Article III.4. paragraph 1. Article b).

566 *Ibid.*, Article b) Article III 4.

567 Law on Preschool Care and Education of Canton Sarajevo, Official Gazette of, No 26/08 and Law on Preschool Care and Education of Posavina Canton, Official Gazette, No 8/08.

568 Article 1 of the Law on Preschool Care and Education of RS, Official Gazette of RS, No 119/08 and Article 2 of the Law on Preschool Care and Education of Brčko District BiH, Official Gazette of Brčko District BiH, No 13/07, 39/08.

569 Article 2 of the Law on Preschool Care and Education of RS.

570 *Ibid.*, Article 6.

571 *Ibid.*, Article 7 item e).

self-esteem, self-respect and sensibility for one's own and other people's emotions; raise awareness about positive belonging to one's own cultural identity, language and tradition; develop and nourish basic moral values, opinions and relationships, etc.<sup>572</sup> Each child has equal right to access and equal possibilities in primary school education and care without any kind of discrimination. Equal access and equal chances are to ensure equal conditions and opportunities for all children at their start and continuation of their primary school education and care, in compliance to educational standards.<sup>573</sup> A child with mild mental and physical development disorders can enroll in the mainstream curriculum.<sup>574</sup> The school is obliged to warn the parent if the child is not enrolled in the teaching program or if the child does not attend the school on a regular basis, and in case when the child does not enroll in the mainstream curriculum the school is obligated to start a legal procedure by the responsible bodies against the parent.<sup>575</sup> Pupil at 15 years of age is not obliged to continue his or her primary school education at that age. However, based on the decision of the school headmaster further education will be provided up to the age of 17. The pupil with psychological and physical development disorders can attend primary school education even after 18 years of age in special schools.<sup>576</sup> Persons above 17 years of age who do not attend regular school are considered adults and are granted the right to primary school education based on curriculum for adults.<sup>577</sup> Children with physical and mental development disorders are granted primary education and care in mainstream schools also in compliance with individually adjusted curriculum based on the Framework Law on Primary and Secondary School Education in BiH.<sup>578</sup>

According to the Law on Primary Education and Care in RS, related to education targeted at development of the child's personality, the school is responsible to contribute to creation of such culture in its own environment, by respecting human rights and basic freedoms of all citizens. The legislator especially notes a holistic and harmonious development of the child, adjusted to his or her individual needs, interests and abilities; development of the child's creative and critical thinking; development of communicational abilities and respect of diversity; development of responsibilities, raise awareness for new ideas, care for health, self-esteem, raise awareness about belonging to one's own identity according to civilization heritage, nourishing cultural inheritance and commodities, raise awareness about environment and need to protect nature and life community.<sup>579</sup>

**Law on secondary school education and care of RS** regulates secondary school education as a part of a unique educational system which is accessible to all children under equal conditions, but which is not mandatory.<sup>580</sup> The goal of this education is to ensure: education in accordance with interests and needs of the student; raise awareness about the need of a unique approach towards education; preparation for the continuation of higher education; creation of one's own standards of education harmonized with the education standards in the EU countries; respect the rights of children, human rights and citizens' rights

<sup>572</sup> *Ibid.*, Article 7.

<sup>573</sup> *Ibid.*, Article 8.

<sup>574</sup> *Ibid.*, from Article 55.

<sup>575</sup> *Ibid.*, from Article 56. regarding the Law on Offences of RS.

<sup>576</sup> *Ibid.*, from Article 59.

<sup>577</sup> *Ibid.*, from Article 60.

<sup>578</sup> *Ibid.*, from Article 83.

<sup>579</sup> *Ibid.*, Article 7.

<sup>580</sup> Article 2 of the Law on Secondary Education and Care.

and basic freedoms, and development of skills for independent life. Children with special educational needs have the right to secondary education, which is a component of the unique educational system.<sup>581</sup> A person older than 17 who does not attend a regular school can enroll into secondary education for adults based on special curriculum.<sup>582</sup>

**Law on Education in Primary and Secondary Schools in Brčko District BiH** regulates that the District ensures education of all pupils under equal conditions for optimal development of child's personality, adjusted to his or her age, the opportunities and mental and physical abilities.<sup>583</sup> The aim of the education is to raise awareness by pupils about the need for further education and training and this educational form is free for all children.<sup>584</sup> Pupil who is not able to attend classes due to illness or disability is provided lessons at home or in the institution where the pupil is placed.<sup>585</sup> Parents are obligated to ensure regular school attendance for their child during the primary education. If in breach of this obligation, the parents are responsible to answer to the court according to provisions of the Law on Offence of Brčko District BiH.<sup>586</sup> Pupil at 15 years of age is not obliged to continue his or her primary school education at that age. However, based on the decision of the school headmaster further education will be provided up to the age of 17. The pupil with psychological and physical development disorders can attend primary school education up to the age of 19.<sup>587</sup>

Secondary education is accessible to all students who completed primary school and is free in relations to enrolment fee and other taxes. Secondary education is adjusted to students with reduced mental and physical abilities.<sup>588</sup> Each person who finished a primary school can enroll into a secondary school with the exception that the student of the first class in a secondary school cannot be older than 18 i.e. 19 years of age in case of a student with special needs.<sup>589</sup>

Student with excellent marks during the secondary education can finish two school years of education within one school year, which is defined by the school regulations.<sup>590</sup>

### *Education in the legislation on gender equality*

**Law on Gender Equality in BiH** guarantees gender equality especially in the area of education, economy, employment,<sup>591</sup> it bans discrimination in educational institutions in regard to conditions for admission of new employees in an educational institution, way of granting services and benefits, exclusion from the educational process, evaluation of education results, etc.<sup>592</sup>

581 *Ibid.*, Article 48.

582 *Ibid.*, Article 71 paragraph 1.

583 Article 2 of the Law on Education in Primary and Secondary Schools of Brčko District BiH, Official Gazette of Brčko District BiH, No 10/08, revised text No 25/08.

584 *Ibid.*, Article 3 paragraph 3 item d and Article 8.

585 *Ibid.*, from Article 52.

586 *Ibid.*, Article 54 regarding the Law on Offences of Brčko District BiH.

587 *Ibid.*, Article 55.

588 *Ibid.*, Article 10.

589 *Ibid.*, Article 56.

590 *Ibid.*, Article 76.

591 Article 2 of the Law on Gender Equality of BiH.

592 *Ibid.*, Article 5.

The authorities, educational institutions and other legal entities are obliged to ensure the establishment of such educational system, based on curriculum and methodology, which will guarantee elimination of those curricula which are based on stereotype gender roles in the society which could cause discrimination.<sup>593</sup>

### **Opinion of the UN Committee on the Rights of the Child**

In its Concluding observations the Committee recognized certain encouraging developments in BiH in the field of education, especially through the adoption of legislative and other measures. Still, the Committee remains concerned at: (a) the high number of children who are not enrolled or who drop out of school; (b) the still inadequate number of professional teaching staff in the country; (c) the lack of adequate space and facilities for recreational and cultural activities; (d) the fact that, particularly in rural areas, children do not have access to preschool education.

Furthermore, the Committee is concerned that there exists extensive discrimination regarding access to education by ethnic and/or national minorities, especially Roma (only 33 per cent of whom attend primary school). Moreover, the Committee is concerned that other marginalized groups of children, including refugees and returnees and children with disabilities face difficulties of access to schooling.<sup>594</sup>

The Committee is especially concerned about the still existing phenomenon of the “two-schools-under-one-roof” system, whereby - in some Cantons - common premises are either divided or being used at different times by children of different ethnicity, who are taught a different curriculum depending on their national origin as well as about reports suggesting that violence in school is widespread, in particular among students.

Due to such situation in the field of education the Committee recommends that the State party:

- a. Strengthen its efforts to harmonize legislation on education and ensure its effective and uniform implementation throughout the country;
- b. Take all necessary measures to ensure that articles 28 and 29 of the Convention are fully implemented, in particular with regard to children belonging to the most vulnerable groups (i.e. minority groups, those living in poverty, refugee and returnee children, Roma children, children with disabilities, etc.);
- c. Improve the efficiency of the educational system, paying particular attention to the high drop-out rates;
- d. Provide access to preschool education throughout the country, including children living in rural areas;
- e. Increase the availability of vocational training programmes for young people, with the view of facilitating their access to the labor market;
- f. In the light of Article 29 on the aims of education, harmonize the educational system throughout the country, eliminate the so-called system of “two-schools-under-one-roof” and establish adequate programmes and activities with a view to create an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large;
- g. Ensure that adequate space and facilities are provided to children for their rest and leisure, as well as for recreational and cultural activities;
- h. Seek technical assistance from UNESCO and UNICEF.<sup>595</sup>

<sup>593</sup> *Ibid.*, Article 6.

<sup>594</sup> CRC/C/15/Add.260, 56 and 57.

<sup>595</sup> *Ibid.*, 58 and 59.

## **Conclusion**

Ombudsman institution of BiH implemented the Project „Ombudsmen at Your School“ in 2009 in cooperation with Save the Children Norway. As a part of this Project the Ombudsmen visited several primary and secondary schools and concluded that there was no progress in this area of work after the UN Committee on the Rights of the Child sent Recommendations to the BiH authorities and whose realization should have contributed to an improvement of the situation in the area of education. Material situation in schools is very bad and to a great extent dependent on the executive government which mainly decides about the members of school boards as management bodies. Consequently, there is a strong influence of politics in this very important field for the future life of the community. There is also a language barrier, which in some schools borders with intolerance towards other languages guaranteed by BiH Constitution. Equipment in schools is on a very low level and many schools had not allocated considerable funds for this purpose ever since the pre-war period, so that the teaching staff uses exclusively chalk and blackboard as teaching devices. The adopted legal framework on BiH level is not respected and there is no efficient mechanism to supervise the implementation of the legislation. Ministry of Civil Affairs of BiH is not engaged enough in the execution of all responsibilities defined by the law in the area of education and by the Law on Ministries... It is inevitable that children have high potential, which is unused due to their exclusion from many areas by building territorial and ethnic barriers. In the majority of primary and secondary schools the children are not provided with free textbooks and free transport to and from the school.

The Ombudsmen institution received a certain number of complaints from teachers on account of being mobbed in schools by the management board and the ministry of education, causes of which lie in the fact that education is very much influenced by politics, including the appointment of school management boards and headmasters, which then further affects the employment of staff according to „political correctness“.

## **Recommendation**

Given the situation in the field of education, education of children must be a subject of special interest of all institutions. Implementation of recommendations of the UN Committee should be the priority, including especially the harmonization of legislation in the area of education at all levels of government with framework laws on education in order to ensure the application of basic principles and adoption of by-laws on implementation. This activity is especially important, because it needs to ensure the realization of basic principles in education, which includes the principle of non-discrimination which is still present in practice through the existence of „two schools under one roof“ and through insufficient integration of marginalized groups in educational programme. It is necessary to analyze the causes for deserting primary school education by children, which was also noted as a problem by the Ombudsmen during their school visits, and to, based on these analyses, take efficient measures to eliminate assessed causes of negative influence. This is especially important from the aspect of a possible reason for deserting the schools being in the lack of transport to and from schools, large distances to schools, lack of textbooks for materially deprived pupils and the presence of religious symbols of the majority of population in schools. Curricula must ensure also education of children on basic human rights, especially rights of children. It is necessary to ensure implementation of framework laws on education by appointing school boards in order to ensure participation of parents, teachers and representatives of the founders.

### 3.30. Right of the child to rest and leisure

#### Convention

The right of the child to rest and leisure is defined by **Article 31 of the Convention**, according to which:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### BiH legislation

##### *Legislation on sports*

**Law on Sports of BiH** defines sports as sport activities and games organized with the aim to improve health and recreation (sport recreation, sports for all), as sport activities organized for disabled persons and as organized school and university sport.<sup>596</sup> The Law notes that sport belongs to public interest and that goals of BiH in the area of sports are: raising awareness in the public especially by the youth about sport and its values; contribution to upbringing, education and development of children and youth; enhancement and promotion of sport and its values as a part of culture and of the total of material and spiritual values of society; protection of health as the basic human activity, work production, creative expression and human living with one another.<sup>597</sup>

In **FBiH** sports are, similar like education, placed under the responsibility of cantons, since it is the responsibility which is not explicitly part of the competence of FBiH.<sup>598</sup> In this regard the Law on Sports in BiH defined decentralization of sport in BiH, so that sport activities are organized in the way prescribed by rules and responsibilities of BiH, entities, Brčko District BiH and other levels of administrative authority. Based on entity constitutions and other levels of the administration, laws on sports regulate issues which are not regulated by the state law.

Law on Sports in RS prescribes that school sport competitions are mass competitions of pupils and students within the school system and that the organization, conditions and rules of those competitions are defined by the responsible minister of sports, school sport unions and student sport unions.<sup>599</sup> In primary and secondary schools and at universities school i.e. student sports organizations can be formed, which can merge into sport unions.<sup>600</sup> Activities of school sport organizations as well as sport competitions are financed from the budget funds of RS, city and municipality, allocated for financing of primary, secondary and higher education.<sup>601</sup>

<sup>596</sup> Article 2 item b), c) d) of the Law on Sports of BiH.

<sup>597</sup> *Ibid.*, from Article 7.

<sup>598</sup> Constitution of FBiH, Article III 4 paragraph 1.

<sup>599</sup> Article 31 of the Law on Sports of RS.

<sup>600</sup> *Ibid.*, Article 33.

<sup>601</sup> *Ibid.*, Article 34.

Recreational, mass and traditional sport activities of citizens of all ages contribute the improvement and progress of their physical and mental development, promotion of human life values and nourishing of traditions and traits of RS citizens, which is realized through various sport and recreational activities.<sup>602</sup>

### *Legislation on education*

**The Law on Primary Education and Care in RS** also regulates provision of artistic education and upbringing.<sup>603</sup> The curriculum defines the mandatory and extracurricular activities.<sup>604</sup> Leisure activities of pupils are also organized in schools, which can also be organized by nongovernmental organizations with the permission of the Ministry of education and Culture.<sup>605</sup> The school adopts an annual plan of field trips, excursions and open air schools, cross-country races and sport days in school.<sup>606</sup> During a school year pupils have winter, spring and summer holidays.<sup>607</sup>

**Book of Rules on Trips, Excursions and Open Air Schools** prescribes preparation and realization of trips as well as planned and organized daily activities of pupils outside the school for the purpose of recreation and realization of the part of curriculum activities in natural surroundings, which is a part of the annual school programme; excursion as a form of extracurricular education and upbringing activity is implemented outside the school aiming to learn directly about natural phenomenon, cultural heritage and economic development, whereas the open air school is a special form of education and upbringing activity lasting several days which takes place in the nature and consists of out-door physical and mental recreational activities and a form of active learning.<sup>608</sup> The school organizes an extended programme for pupils within its capabilities, which, for an extended duration and morning tendance, includes leisure activities, voluntary classes, and open air school. Within the extended stay pupils are provided tendance and a possibility to also realize various sport and cultural and artistic activities.<sup>609</sup>

**Law on Secondary Education and Care of RS** provides establishment of students' co-operatives for the purpose of developing extracurricular activities and useful work for the society. Funds generated through this activity work can be used for field trips and excursions of pupils.<sup>610</sup> Extracurricular activities are also organized in schools in order to develop creative potentials of pupils, acquiring of knowledge, skills and abilities useful for everyday life. Extracurricular activities, which are recorded as a working day, are trips, excursions, pupils' organizations, association, groups, sport and other activities.<sup>611</sup> Nongovernmental organization can also realize certain programmes within the leisure activities of pupils, with the preliminary approval by the Ministry of Education and Culture.<sup>612</sup> Pupils have winter holidays in duration of three weeks, spring holiday for one week and summer holiday, which lasts from the end of one and until the beginning of the next school year<sup>613</sup>.

602 *Ibid.*, Article 39.

603 Article 3 paragraph 2 of the Law on Primary Education and Care.

604 *Ibid.*, Article 34.

605 *Ibid.*, Article 35.

606 *Ibid.*, from Article 41.

607 *Ibid.*, from Article 45.

608 Article 2 of the Book of Rules on Trips, Excursions and Open Air Schools, Official Gazette of RS, No 113/07.

609 *Ibid.*, Article 47.

610 Article 21 of the Law on Secondary Education and Care of RS.

611 *Ibid.*, Article 33.

612 *Ibid.*, Article 34.

613 *Ibid.*, from Article 35.

**Book of Rules on Financing Institutions of the Student's Standard of Living** regulates financing the work of institutions of the student's standard of living, whose founder is the RS Government, and which include also the institutions for cultural and entertainment, sport and recreational activities.<sup>614</sup> Programmes for their activities are approved by the Ministry of Education and Culture and they are financed from the RS budget.<sup>615</sup>

**Law on Education in Primary and Secondary Schools in Brčko District BiH** prescribes that pupils have winter holiday for the period of three weeks, spring holiday for one week and summer holiday, which lasts from the end of one and until the beginning of the next school year.<sup>616</sup> Teaching classes last five working days a week, with the exception of six working days, if the school works in two shifts or makes up the omitted classes.<sup>617</sup> Extracurricular activities also take place in schools in addition to regular classes for the purpose of development of creative abilities and skills of the pupils. Extracurricular activities are carried out within special groups, associations, clubs, student co-operatives and other forms of activities. Field trips, visits, excursions, camping, open air schools, useful for the public, school day and other forms of educational and upbringing activities are also organized by the school.<sup>618</sup>

### *Legislation on child care*

**Law on Child Care of RS** defines child care as rights of parents and children to organized work and activities which also ensure rest, recreation, cultural, sport and creative activities for children.<sup>619</sup> The Law on Child Care grants also the right to rest and recreation for children under 15 in children recreation centers and the right to reimbursement of costs for the placement of children in preschool institutions and for rest and recreation.<sup>620</sup> That means that children up to 15 years of age have the right to stay in a children recreation centers, they have the right to rest, recreation, health care, food, educational and upbringing work and sport and recreational activities in children recreation centers, according to conditions defined by the responsible municipal authority.<sup>621</sup> The Law regulated that the children, depending on the material status of their families, are granted funds for a placement in a preschool institution, rest and recreation.<sup>622</sup> Way of realizing these rights is specified by the provisions of the **Book of Rules on Realizing Child Care of RS**.<sup>623</sup>

## **Opinion of the UN Committee on the Rights of the Child**

The Committee did not give any recommendation in regard to the rights of children to rest and leisure.

<sup>614</sup> Article 2 of the Book of Rules on Financing of Student's Standard of Living Official Gazette of RS, No 40/07.

<sup>615</sup> *Ibid.*, Article 23 regarding Article 24.

<sup>616</sup> Article 37 of the Law on Education in Primary and Secondary Schools of Brčko District BiH.

<sup>617</sup> *Ibid.*, Article 40.

<sup>618</sup> *Ibid.*, Article 42.

<sup>619</sup> Article 2 of the Law on Child Care of RS.

<sup>620</sup> *Ibid.*, Article 10 items 9 and 10.

<sup>621</sup> *Ibid.*, Article 31.

<sup>622</sup> *Ibid.*, Article 32.

<sup>623</sup> Book of Rules on Realising Child Care of RS, Official Gazette of RS, No 80/05.

## **Conclusion**

In BiH there is no comprehensive analysis about the possibilities for the children to exercise their right to rest and recreation. It seems that a minimum of realizing this right is granted only through educational system, while the legislation on sports invests very little to introduce sports on a large scale among the population, especially through the support to sports clubs. It is important to note the lack of standard to promote talented athletes and the children are discriminated against in the procedure of choosing the competition candidates based on social origin of the child. This was stressed by the pupils to the Ombudsmen of BiH who noted this observation in their recommendations. There is also a problem of realizing rights to education according to special conditions for children active in sports, although the law regulated this possibility.

## **Recommendation**

It is necessary that nongovernmental organizations, in cooperation with authorities, make a comprehensive analysis about the possibility of children in BiH to realize the right to rest and recovery, in order for the competent authorities to take concrete measures, based on the results of the analysis, to improve the situation towards exercising this right which would indirectly improve the health condition of children.

## SPECIAL PROTECTION MEASURES

*Article 22 - Protection of the rights of refugees and of children in armed conflicts*

*Article 38 - Children in an emergency*

*Article 30 - Right of children belonging to ethnic minorities and indigenous groups*

*Article 32 - Protection from exploitation*

*Article 33 - Protection of children from the illicit use of narcotic drugs and psychotropic substances*

*Article 34 - Protection of children from sexual abuse*

*Article 35 - Protection of children from abduction and human trafficking*

*Article 36 - Protection from all forms of exploitation*

*Article 37 - Children who violated the law*

*Article 39 - Right of a child victim to physical and psychological recovery*

*Article 40 - Children in criminal law proceedings*



### 3.31. Protection of the rights of refugees and children in armed conflicts

#### Convention

Protection of the rights of refugees and children in armed conflict is granted by **Article 22 and 38 of the Convention**. According to **Article 22 of the Convention**:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

According to **Article 38 of the Convention** State Parties shall undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

1. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
2. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

#### BiH legislation

##### *Legislation on refugees and displaced persons*

**Law on Refugees from BiH and Displace Persons in BiH** defines the way a refugee and displaced person status is granted and the way it is terminated. Furthermore, it defines the way of realizing the rights of refugees and displaced persons and providing funds for their support to create conditions for return of a

refugee from BiH and the return of a displaced person and other issues.<sup>624</sup> A refugee from BiH, displaced person and a returnee are granted the same rights and freedoms which are guaranteed by international regulations and laws of BiH and the entities as other citizens and they will not be discriminated against and deprived of their rights in any way.<sup>625</sup> Refugees from BiH and displaced persons have the right to return freely to their former places of residence.<sup>626</sup> Persons who have the status of returnees have the right to: primary health care, primary education and social care.

**Law on Displaced Persons and Returnees to FBiH and Refugees from BiH** ensures temporary social insurance, social integration, psychological support, health care, education of children and youth to persons who have a recognized status of displaced persons and returnees.

**Law on Displaced Persons, Returnees and Refugees to RS** defines rights of displaced persons and returnees to health care, primary education and social care.<sup>627</sup>

### *Legislation on movement and residence of foreigners*

**According to the provisions of the Law on Movement and Residence of Foreigners and Asylum** responsible bodies in BiH are obliged to take special care and respect to minor children foreigners. A minor child foreigner who illegally entered BiH is granted accommodation, treatment, protection, return to the country of origin under conditions prescribed by the European Convention on Human Rights and Basic Freedoms.<sup>628</sup>

**Book of Rules on International Protection (Asylum) in BiH**<sup>629</sup> prescribes that the competent bodies in BiH will grant protection to a minor who seeks international protection to his best interest in accordance with the Convention on the Rights of the Child. Furthermore, children separated from their family member or children without tendance will be granted identification, special protection, placement and finding of family members.

**Book of Rules on the Way of Realizing Rights to Education for Persons Under International Protection** defines competent authorities, principles and special conditions in the procedure of realizing right to educational system in Bosnia and Herzegovina for persons who are granted international protection in Bosnia and Herzegovina and recognition of the level of education acquired in the country of origin or in the country of previous residence.<sup>630</sup>

### *Criminal legislation*

**Criminal Law of FBiH, Criminal Law of RS and Criminal Law of Brčko District of BiH** sanction the criminal offence of preventing the return of refugees or displaced persons.

<sup>624</sup> Article 1 of the Law on Refugees from BiH and Displaced Persons in BiH.

<sup>625</sup> *Ibid.*, Article 2.

<sup>626</sup> *Ibid.*, Article 9.

<sup>627</sup> Article 14 of the Law on Displaced Persons, Returnees and Refugees in RS.

<sup>628</sup> Article 139 of the Law on Movement and Residence of Foreigners and Asylum in BiH.

<sup>629</sup> Book of Rules on International Protection (Asylum) in BiH, Official Gazette of BiH, No 37/09.

<sup>630</sup> Article 1 of the Book of Rules on the Way of Realising Rights to Education for Persons Under International Protection, Official Gazette of BiH, No 67/08.

## Opinion of the UN Committee on the Rights of the Child

In its Concluding observations the Committee on the Rights of the Child expressed its concern about the information that violent incidents against returnees and displaced persons and their property, memorials or religious objects are frequent in the country.

The Committee is also concerned that refugee and displaced children are accommodated together with adults in “collective centers” and that collective centers often accommodate not only children but also chronically ill persons.

Given the above concerns the Committee recommends that the State Party:

- Continue its efforts aimed at the safe return of displaced and refugee children and their parents and prevent, as much as possible, violent attacks against returnees and displaced persons and/or their property;
- Address the special needs and rights of displaced and refugee children, and in particular to ensure proper accommodation arrangements for these children as well as social and professional reintegration of their parents;
- Harmonize legislation at the Entity level with the refugee legislation at the State level;
- Look into the issue of children whose parents are asylum-seekers, temporarily admitted persons or recognized refugees, when neither the parents, nor the child are in possession of adequate documentation, and ensure them access to the rights prescribed for these categories of persons;
- Continue to seek technical cooperation from UNHCR in this regard.

In regard to the issue of the right of children in armed conflicts the Committee is concerned at the information that between 1992 and August 2000 a total of 4,371 persons had been victims of landmines, including about 300 children. The Committee is also concerned at the information that there are still 1 million mines in approximately 30,000 minefields throughout the country, including around schools and in areas where children play and that, according to Red Cross sources, every month 50 children suffer from the consequences of this situation. Furthermore, the Committee is concerned at the situation of children who were victims of the armed conflict, in particular with regard to the consequences of the conflict on their physical and psychological status.

The Committee recommends the State party to continue carrying out mine-awareness campaigns, undertake as a matter of priority demining programmes and extend the psychological and social assistance to children who have been affected by the explosion of mines and other consequences of the armed conflict.<sup>631</sup>

## Conclusion

There are different information in BiH about the implementation of the return of refugees and displaced persons, whereby manipulations are specially noted in relation to the return of property. It is beyond doubt that the property return has been realized to a great extent, but the genuine return failed, very much due to the existing discrimination against returnees and obstacles for their genuine return, specially the administrative ones. Unfortunately, collective centers still exist in BiH, although the official data show that they are closed, and it is unclear who is responsible for the citizens accommodated in those centers and who does continue to place citizens in those institutions.

<sup>631</sup> CRC/C/15/Add.260, item 63 and 64.

## Recommendation

It is necessary to make an analysis about the changes of laws in BiH in the past decade from the aspect of their influence on return, because there is an impression that even the legislation is an obstacle to a genuine return. Census needs to be carried out in order to make new registration and establish the factual situation on return.

### 3.32. Right of children belonging to ethnic minorities and indigenous groups

#### Convention

The right of children belonging to ethnic minorities and indigenous groups is defined by **Article 30 of the Convention on the Right of the Child** according to which: „In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.“

#### BiH legislation

**Law on Protection of Members Belonging to National Minorities** prescribes the protection of national minorities, rights and freedoms as a component of international protection of human rights and freedoms. Framework Convention for the Protection of National Minorities of the Council of Europe is applied directly and it is a component of the legal system of BiH and the entities.<sup>632</sup>

**Law on Protection of National Minorities in FBiH** and **Law on Protection of National Minorities in RS**<sup>633</sup> grant protection of rights and freedoms of national minorities

#### *Opinion of the UN Committee on the Rights of the Child*

Within its Concluding observations about the BiH Report on the application of the Convention on the Rights of the Child the Committee on the Rights of the Child expressed its concern about the fact that continuing problems of ethnic discrimination and intolerance, including instances of violence and of daily discrimination, have a huge impact on the full enjoyment of the rights enshrined in the Convention by children belonging to ethnic minorities, especially Roma.

The Committee recommends that the State party take effective measures to protect the full enjoyment of the rights of children belonging to ethnic minority groups and undertake special measures to stimulate a process of reconciliation and confidence building, including wide-ranging educative and awareness-raising campaigns.<sup>634</sup>

<sup>632</sup> Article 2 of the Law on Protection of Rights of National Minorities.

<sup>633</sup> Law on Protection of Rights of Persons Belonging to National Minorities in FBiH and Law on Protection of Rights of Persons Belonging to National Minorities in RS.

<sup>634</sup> CRC/C/15/Add.260, item 75 and 76.

## Conclusion

The issue of minorities and indigenous groups is regulated by a series of laws but through the principle of non-discrimination, which is presented in this Analysis under section 3.2 – Non-discrimination. There is an ongoing discussion in BiH about the rights of minorities which is a part of the discussion about the explanation of the term „Others“ in relation to the definition of rights in BiH Constitution which need to be ensured to the constitutive peoples and to Others. It is obvious that today in BiH there is neither theoretical nor practical explanation for the relation between the identity of an individual and the collective, which is reflected also to the rights of minorities.

## Recommendation

It is necessary to take practical measures to ensure the rights of minorities in the same way as the rights are guaranteed to the members of constitutive peoples.

### 3.33. Protection from exploitation

#### Convention

The right of the child to be protected from economic exploitation is prescribed by **Article 32 of the Convention on the Right of the Child** in the way that:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### Legislation

See Chapter General principles 3.3 and 3.4 with Article 3 of the Convention (Protection of child's best interest) and Article 6 of the Convention (Right to life, survival and development).

## Opinion of the UN Committee on the Rights of the Child

Regarding economic exploitation and street children the Committee on the Rights of the Child is concerned at the information that a significant number of children, especially Roma, are living or working on the streets, that the majority of these children are under 14, that most of them do not attend schools and nearly half of them appear to be ill. Furthermore, the Committee notes with concern that the work performed by these children is often harmful and exploitative and that many of them are compelled or forced to work.

Given these concerns the Committee recommends that BiH:

- a. Undertake a comprehensive national survey of the number, composition and characteristics of working children and of children living and working in the streets in order to design and implement comprehensive strategies and policies to prevent and combat their economic exploitation;
- b. Ensure that street children are provided with adequate nutrition, clothing, housing, health-care and educational opportunities, including vocational and life-skills training, in order to support their full development;
- c. Ensure the implementation of legislation fully covering article 32 of the Convention, and ILO (International Labor Organization) Conventions No. 138 (1973) and No. 182 (1999);
- d. Seek assistance from the ILO International Programme on the Elimination of Child Labor (IPEC) and UNICEF, among others.<sup>635</sup>

### Conclusion

Although the Law strictly defined the conditions under which a child up to 15 years of age can work, there were found registered cases of violation of this Law. Practical examples given were the cases of children who worked in restaurants, bakeries and other facilities in which children worked at night. The usual practice is that such categories of employees are not registered by the retirement, disability, and health funds, which automatically represents a form of exploitation and enhances the existence of black market. Inspection take certain measures, but there is an insufficient number of inspectors and the sole structure of inspection services, especially in FBiH, makes a more efficient supervision in this area impossible.

It is especially important to note the issue of begging in the streets as a form of exploitation. Department for children's rights of the Ombudsmen Institution of BiH made a comprehensive research of this phenomena in BiH and send its recommendations to BiH authorities on how to deal with this problem. This research shows that begging is often a form of exploitation as a part of children trafficking and that the competent authorities do not have a systematic approach to eliminate this phenomenon.

### Recommendation

Strengthening of inspection bodies, more rigorous sanctions, which regulated the issue of exploitation of children, need to be the priority of the responsible bodies. In order to eliminate the phenomenon of children beggars, it is important to establish a system of measures based on a coordinated cooperation of

<sup>635</sup> CRC/C/15/Add.260, item 65 and 66.

all responsible institutions, especially social services, the police, prosecutor's office, health and education institutions. Furthermore, it is necessary to raise awareness in public about this issue and point out, especially to parents, that they are responsible for child raising and that they can be charged with criminal offence of child trafficking for the purpose of begging in the streets as well as for the offence of child neglect and abuse in accordance to the current legislation.

### 3.34. Protection of children from the illicit use of narcotic drugs and psychotropic substances

#### Convention

The issue of protection of children from the illicit use of narcotic drugs and psychotropic substances is **prescribed by Article 33 of the Convention on the Right of the Child** according to which: „States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.“

#### BiH legislation

##### *Legislation on narcotic drugs*

**Law on Prevention and Combating the Misuse of Narcotic Drugs of BiH** prescribes the establishment of special bodies for combating the misuse of narcotic drugs, as well as the supervision and framework measures for their prevention.<sup>636</sup> Furthermore the Law defines prevention and other measures through continuous implementation of organized education and upbringing programmes in the family, school, health institutions, association, religious communities, and public media.<sup>637</sup> Parents, adopting parents, foster parents and guardians, teachers, educators, health workers, workers in social protection, employers and employees in the area of sports have duties and responsibilities to take measures necessary to prevent and combat misuse of drugs by children and youth in accordance with the State Strategy to Supervise and Control the Use of Illicit Drugs and Prevention of Misuse of Narcotic Drugs in BiH.<sup>638</sup>

For the purpose of life protection, health care of people, prevention of misuse of narcotic drugs the **Law on Production and Sale of Narcotic Drugs in RS** defines, inter alia, the following: conditions for breeding of plants for the production of narcotic drugs, conditions for production, possession and sale of narcotic drugs and substances which can be used for the production of narcotic drugs; supervision and measures to combat the use of illicit narcotic drugs.<sup>639</sup> Parents, guardians, educations, teachers, employees in health

<sup>636</sup> Article 2 of the Law on Prevention and Combating the Misuse of Narcotic Drugs, Official Gazette of BiH, No 8/06.

<sup>637</sup> *Ibid.*, from Article 69.

<sup>638</sup> *Ibid.*, Article 70.

<sup>639</sup> Article 2 of the Law on Production and Sale of Narcotic Drugs, Official Gazette of RS, No 110/03 revised version -24/04.

and social institutions, employers and employees in the area of sports have duties and responsibilities as guardians and supporters of children and youth to take measures necessary to prevent and combat misuse of narcotic drugs by children and youth in accordance with general and special programmes

**Book of Rules on Record Keeping and Documentation about Drug Addicts and Occasional Consumers of Narcotic Drugs in RS** regulates the duty of health institutions, private and other persons who offer health service and of other institutions, organizations and associations to keep a special medical documentation and records and to submit collective and individual reports about drug addicts and occasional consumers of narcotic drugs.<sup>640</sup>

**Book of Rules on Manner and Place of Implementation of Protection Measures of Obligatory Treatment from Alcohol, Narcotic Drug and Other Psychotropic Substance Addiction by Family Abuse Offenders** prescribes that the purpose of protection measures is to prevent further violent behavior, take efficient measures of reforming and eliminating circumstances which enhance offensive actions of new violence in the family, initiate classroom activities of simulation of family violence to raise awareness of one's own abusive behavior, recognize the responsibility and reform towards non-violent behavior.<sup>641</sup>

### *Family legislation*

**Family Law of FBiH** defines first of all the duties and responsibilities of parents to care about their child and to fulfill the child's ordinary needs and protect him or her from all vices: drugs, alcohol, tramping, robbery, theft, prostitution, begging and all forms of minor delinquency, violence, injuries, economic exploitation, sexual abuse and all other asocial phenomena.<sup>642</sup> If the parent does not prevent the child to consume these vices, he or she commits a serious offence of neglect of parental duty, which could consequently lead to taking parental rights.<sup>643</sup>

**Family Law of RS** prescribes that the parent could be taken parental right and responsibility in case when the child is allowed to consume alcohol, drugs and other narcotic substances or in case the parent encourages the child to do it.<sup>644</sup>

**Family Law of Brčko District BiH** prescribes that the parental duty is to protect the child from all forms of vices and offences, including misuse of drugs and other narcotic substances. If the parent neglects this duty, he or she could be deprived of parental rights.<sup>645</sup>

### *Legislation on tobacco products*

**Law on Restricted Consumption of Tobacco Products** bans consumption of tobacco products in care and education institutions; institutions for placement and housing of children and students; medical institutions, social and other public institutions.<sup>646</sup> It is explicitly prohibited to sell tobacco products within

640 Article 1 of the Book of Rules on Record Keeping and Documentation about Drug Addicts and Occasional Consumers of Narcotic Drugs, Official Gazette of RS, No 27/05.

641 Article 2 Book of Rules on Manner and Place of Implementation of Protection Measures of Obligatory Treatment from Alcohol, Narcotic Drug and Other Psychotropic Substance Addiction by Family Abuse Offenders, Official Gazette of FBiH, No 23/08.

642 Article 134 of the Family Law of FBiH.

643 *Ibid.*, from Article 154.

644 Article 106 of the Family Law of RS.

645 Article 117 and Article 136 of the Family Law of Brčko District BiH.

646 Article 3 of the Law on Restricted Consumption of Tobacco Products, Official Gazette of FBiH, No 6/98, 35/98.

100 m from the school, as well as advertisement of tobacco products in the print media, radio and television, movie theatres, through movies, billboards, blackboards, stickers and other forms of advertisement in public places, on facilities and transport vehicles, via illuminated advertising, books, magazines, calendars and clothing items, including sponsorships for sports, cultural and other public events supported by companies who produce and sell tobacco products.<sup>647</sup>

For the purpose of implementing preventive measures to improve and protect the health by the youth under 18 from harmful effects of alcoholic drinks, the **Decree on ban on the sale and consumption of alcoholic drinks in public places to persons under 18 in RS** defines a ban on the sale, consumption and giving away alcoholic drinks to persons under 18 and from persons under 18 in public places, as well as prevention activities of educational institutions..<sup>648</sup> Educational institutions are obliged to put posters on visible places with texts, pictures and other visual effects which point out the ban and damage of consumption of alcohol for persons under 18.<sup>649</sup>

For the purpose of protection of non-smokers and risk groups – minors, pregnant women and similar the **Law on Ban on Smoking in Public Places in RS** prescribes the ban on smoking tobacco products in public places.<sup>650</sup>

For the purpose of prevention and improvement of health of persons under 18 from harmful effects of tobacco products the **Law on Ban on Sale of Tobacco Products to persons under 18 in RS** bans the consumption, sale and giving away of tobacco products to persons under 18.<sup>651</sup> Education and upbringing institutions must put posters on visible place containing information about harmful effects of tobacco products and about the ban on the sale and giving away of tobacco products to persons under 18.<sup>652</sup> Supervision is carried out by inspection and the violation of the Law is sanctioned by a fine.

**Law on Advertisement of Tobacco Products of RS** regulates the ban on advertisement for the purpose or reducing the consumption of these products and improvement of public health.<sup>653</sup> Ban on advertisement must be fully carried out by print and electronic media, in either cases marketing or sponsorship. A sign about the ban on advertisement must be visible on the packaging of tobacco products.

### *Criminal legislation*

**Criminal Law of BiH** sanctions a person who sells illicit narcotic drugs.<sup>654</sup>

**Criminal Law of FBiH, Criminal Law of RS** and **Criminal Law of Brčko District BiH** sanctions illegal production and sale of illicit narcotic drugs and the possession and access to consumption of narcotic drugs.

<sup>647</sup> *Ibid.*, Article 9 and 12.

<sup>648</sup> Article 1 Decree on ban on the sale and consumption of alcoholic drinks in public places to persons under 18, Official Gazette of RS, No 106/06.

<sup>649</sup> *Ibid.*, Article 6.

<sup>650</sup> Article 1 Law on Ban on Smoking of Tobacco Products in Public Places, Official Gazette of RS, No 46/04.

<sup>651</sup> Article 1 Law on Ban on the Sale of Tobacco Products to Persons Under 18, Official Gazette of RS, No 46/04.

<sup>652</sup> *Ibid.*, Article 12.

<sup>653</sup> Article 1 Law on Ban of the Advertisement of Tobacco Products, Official Gazette of RS, No 46/04.

<sup>654</sup> *Ibid.*, Article 195.

### *Opinion of the UN Committee on the Rights of the Child*

Regarding drug abuse the Committee expresses its concern in its Concluding observations about the increasing level of use of illicit drugs and substances among adolescents. Therefore, the Committee recommends that the State party undertake a study to carefully analyze the causes and consequences of this phenomenon and use the outcome of this study to increase its efforts in order to prevent the use of illicit drugs and substances.<sup>655</sup>

#### ***Conclusion***

The situation regarding the market of illicit drugs and consumption of drugs in BiH is complex, especially due to the fact that BiH is a transit country with very porous borders. Control mechanisms are not efficient enough due to the fact that the police reform has not been completed yet, and the medical institutions and those for social care are not strong enough to act in a preventive way. The similar situation is with alcohol and tobacco products. Although the law clearly bans advertising such products, the implementation of the law did not take place in practice and there is no rigorous control mechanism to supervise the law implementation. In addition, there is no awareness raising in the public that the sale of tobacco products and alcohol brings revenues to the state and that, as a consequence of their misuse, the budget is being reduced for the amount allocated to health care for the population.

#### ***Recommendation***

Measures to combat sale of drugs, and especially prevention of consumption of drugs, must be more efficient and based on strengthening capacities of institutions which are responsible to combat sale of drugs as a form of crime, but also of the institutions which should help drug addicts and act preventively towards potential drug consumers. Responsible bodies must ensure establishment of an efficient control mechanism for advertising and control of sale of tobacco products and alcohol.

#### ***Recommendation***

Measures aimed at preventing drug trafficking, in particular drug abuse, must be more efficient and based on capacity strengthening of the institutions mandated to prevent drug trafficking, and institutions mandated to help drug addicts and act preventively towards potential drug abusers. Competent authorities must ensure that an efficient mechanism is established to control the promotion and sale of tobacco and alcohol products.

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<sup>655</sup> CRC/C/15/Add.260, item 67 and 68.

### 3.35. Protection of a child from sexual abuse, human trafficking and all forms of exploitation

#### Convention

Protection of children from sexual abuse, human trafficking and all forms of exploitation is defined in Article 34 (protection from sexual exploitation), Article 35 (protection from abduction and trafficking in persons) and Article 36 (protection from all forms of exploitation).

According to **Article 34 of the Convention**:

*States Parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

According to **Article 35 of the Convention**:

„States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.“

**Article 36 of the Convention** stipulates that „States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.“

#### Legislation of BiH

##### *Criminal legislation*

**Criminal Code of BiH** sanctions criminal offenses of establishment of slavery and transport of slaves, trafficking in persons, international procuring in prostitution, smuggling of persons and taking of hostages.<sup>656</sup> One of the main characteristics of these crimes is that children and the young are most likely to be the victims.

**Criminal Codes of FBiH, RS and BDBiH** sanction crimes against sexual freedom and moral, including sexual intercourse with children, obscene actions, solicitation to prostitution, taking advantage of children or juveniles for pornography, showing pornography to children and incest.

**Criminal legislation in BiH defines criminal offences of abduction, taking away a child or a minor**, placing a child upon another, substituting it or in some other way changes the family status of a child.

<sup>656</sup> Articles 185, 186, 187, 189, 191 of the BiH Criminal Code.

### *Family legislation*

**Family law of FBiH** stipulates that parent shall have the right and duty to protect their children from all forms of vices, including sexual abuse.<sup>657</sup>

**Family law of RS** stipulates that parents and other members of the family shall not subject children to humiliating treatment,<sup>658</sup> including any form of sexual abuse. Parents who sexually exploit their children shall be deprived of the parental right.<sup>659</sup>

**Family law** explicitly stipulates that parents are obliged to take care of and protect their children from prostitution and sexual abuse.<sup>660</sup> Should they fail to do so, they will be deprived of the parental right.

### *Opinion of the UN Committee on the Rights of the Child*

The Committee on the Rights of the Child particularly considered the sexual abuse and human trafficking and in that regard it welcomed some positive developments in the prosecution of those responsible for serious crimes against women and girls in the context of trafficking and forced prostitution, as well as the adoption by the Council of Ministers of a national plan of action to combat trafficking in 2001, however it was concerned that a growing number of children under 18, especially adolescent girls, are still being trafficked for the purpose of sexual exploitation. The Committee was further concerned that the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography has not been adequately addressed within the criminal justice systems of the State Parties.

In the light of Article 34 and other related articles of the Convention, the Committee recommended that the State Party should further strengthen its efforts to fully implement and incorporate the above-mentioned Optional Protocol in the criminal justice systems as well as to identify, prevent and combat trafficking in children for sexual and other exploitative purposes, including by undertaking studies to assess the nature and magnitude of the problem and allocating sufficient resources to this field. Furthermore, the Committee should, inter alia:

- Provide adequate and systematic training to all professional groups concerned, in particular law enforcement officials;
- Launch awareness-raising and prevention campaigns targeting in particular children;
- Seek assistance from UNICEF, among other relevant organizations.<sup>661</sup>

The Committee was also concerned at reports that, at the local level, police officers are believed to be often acquiescent, if not actively involved, in trafficking-related activities. Therefore, the Committee recommended that thorough, independent and effective investigations be carried out regarding the allegations that police officers may be involved in trafficking-related activities and to impose on them - if found guilty - appropriate penal and/or other sanctions.<sup>662</sup>

<sup>657</sup> Article 134 of FBiH Family law.

<sup>658</sup> Article 97 of RS Family law, O.G. RS no. 54/02, 41/08.

<sup>659</sup> *Ibid.*, Article 106.

<sup>660</sup> Article 117 of Family law.

<sup>661</sup> CRC/C/15/Add.260, points 69 and 70.

<sup>662</sup> *Ibid.*, points 71 and 72.

## Conclusion

For many years international organizations and local authorities in BiH have been focused on protection of children from sexual exploitation, especially if it takes place as part of criminal offense of human trafficking. Unfortunately, a little has been done in terms of recognizing the other forms of exploitation that also lead to trafficking in persons such as begging. Due to failure to take more efficient measures against human traffickers, primarily due to non-application of the principle of the best interest of a child, exploitation of children in the streets is treated exclusively as begging and as a result of that children are often returned back to streets. Consequently, children often miss the classes or even leave the school, indulged into drifting. This and lack of care of parents is what makes this children socially marginalized. It is particularly important to note that in BiH society there is no awareness about the dimension of the problem of child pornography, and accordingly, no efficient measures were undertaken to prevent this socially harmful phenomenon.

## Recommendation

Competent authorities should undertake all necessary measures to remove the shortcomings in the system for preventing human trafficking – the problem detected in reports of different institutions. Appropriate measures should be undertaken to prevent begging. The begging should be treated as an element of criminal offense of human trafficking. Measures should be undertaken to define the responsibility for neglect and taking advantage of children. The best interest of a child should be a governing principle in this procedure, and that implies that children should be primarily removed from streets and sent back to schools, and provided with appropriate accommodation and care.

### 3.36. Children in conflict with Law

#### Convention

Position and the rights of children in conflict with Law have been regulated **by Articles 37 and 40 of the Convention**. According to Article 37:

„States Parties shall ensure that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through

correspondence and visits, save in exceptional circumstances;

- d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40 defines the following:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

1. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
    - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
    - (vii) To have his or her privacy fully respected at all stages of the proceedings;
2. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
  - c) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

- d) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
3. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

## Legislation of BiH

### *Criminal legislation*

**According to BiH Criminal Code** anticipated sanctions are punishments, suspended sentence, security measures and educational measures.<sup>663</sup> To juvenile perpetrators of criminal offences the following measures can be applied: educational recommendations for which a fine or a punishment of imprisonment for a term not exceeding three years is prescribed.<sup>664</sup> To a juvenile who at the time of perpetration of a criminal offence had attained 15 years of age but had not reached sixteen years of age (a junior juvenile) only educational measures may be imposed. To a juvenile who at the time of perpetration of a criminal offence had attained sixteen years of age but had not yet reached eighteen years of age (a senior juvenile) educational measures may be imposed, and exceptionally a punishment of juvenile imprisonment may be imposed. Security measures may be imposed on juveniles under the conditions laid down under this Code, while a suspended sentence may not be imposed on a juvenile.<sup>665</sup> The sentence of imprisonment or juvenile imprisonment shall be carried out in closed, semi-open or open institutions for the execution of punishments.<sup>666</sup> The sentence of juvenile imprisonment is served by senior juveniles in special institutions for juvenile offenders, where they are allowed to stay until they reach eighteen years of age. The choice of occupation for convicted juveniles shall be made in accordance with their abilities and inclinations towards some occupation, aiming to occupational training and in accordance with the possibilities available at the institution for juvenile offenders. Working hours of the convicted juveniles are set so to enable schooling and training, and to leave enough time for physical exercise and entertainment.<sup>667</sup>

**Criminal Code of the FBiH** in the same manner establishes the sanctions for juvenile offenders.<sup>668</sup>

**Criminal Code of RS** stipulates that educational recommendations may be pronounced to a juvenile offender who committed the crimes punishable by a fine or imprisonment for the period of up to three years.<sup>669</sup> To a juvenile who at the time of perpetration of a criminal offence had attained fourteen years of age but had not reached sixteen years of age (a junior juvenile) only educational measures may be imposed, and exceptionally a punishment of juvenile imprisonment may be imposed. Security measures may be imposed

<sup>663</sup> Article 5 of the BiH Criminal Code.

<sup>664</sup> *Ibid.*, Article 76.

<sup>665</sup> *Ibid.*, Article 80.

<sup>666</sup> *Ibid.*, from Article 106.

<sup>667</sup> *Ibid.*, Article 109.

<sup>668</sup> Articles 84, 85 and 110 of the FBiH Criminal Code.

<sup>669</sup> *Ibid.*, Article 65.

on juveniles under the conditions laid down under this Code, but court notification and suspended sentence may not be imposed on a juvenile.<sup>670</sup> Special purpose of educational measures and juvenile imprisonment is to ensure the education, rehabilitation and proper development of juveniles who have perpetrated criminal offences by extending protection, assistance and supervision to them, providing them with vocational training and developing their personal responsibility. In addition, the purpose of juvenile imprisonment is to exercise special influence on juvenile perpetrators in order to prevent them from perpetrating criminal offences in the future, as well as to deter other juveniles from perpetrating criminal offences.<sup>671</sup> Juvenile imprisonment may be pronounced for the period of one (1) to ten (10) years.<sup>672</sup> Criminal Code of BD BiH in identical manner prescribes the sanctions for juvenile offenders.<sup>673</sup>

### *Criminal Procedure Codes*

**BiH Code of Criminal Procedure** stipulates particularly circumspect treatment of the bodies participating in the criminal procedure involving a minor in order to prevent adverse effects on the minor's development.<sup>674</sup> A minor must have defense attorney from the outset of the preparatory proceeding, who, if not hired by legal guardian or relatives, shall be appointed to him/her *ex officio* by the Court. The minor is entitled to an interpreter, if he/she does not understand the language in which the criminal proceeding is being conducted.<sup>675</sup> On the occasion of the first examination he/she shall be informed of the crimes charged against him/her, and he/she given the opportunity to respond to the incriminating facts and proofs and informed of the facts and proofs that go into his/her favor. The minor shall not be bound to present his defense or to answer questions posed to him/her.<sup>676</sup> Criminal proceedings may only be initiated and conducted upon the request of the Prosecutor.<sup>677</sup> In exceptional circumstances, minor can be placed into custody but for no longer than a month. This period may be extended for two more months based on the reasons set forth in the Law. After completion of preparatory procedure, the detention may last for no longer than 6 months.<sup>678</sup> A minor shall be summoned through his parents or legal representatives.<sup>679</sup> Authorities participating in the proceeding against a minor and other agencies and institutions from whom information, reports or opinions are sought must proceed with the greatest urgency so that the proceeding is completed

<sup>670</sup> *Ibid.*, Article 69.

<sup>671</sup> *Ibid.*, Article 70.

<sup>672</sup> *Ibid.*, from Article 88.

<sup>673</sup> Articles 84, 85 and 100 of the BDBiH Criminal Code.

<sup>674</sup> Article 342 of the BiH Code of Criminal Procedure.

<sup>675</sup> *Ibid.*, 343.

<sup>676</sup> *Ibid.*, Article 6

<sup>677</sup> *Ibid.*, Article 16.

<sup>678</sup> According to Article 359 of the Code of Criminal Procedure reasons for placing a minor into custody are the following: if there are circumstances suggesting to a flight risk, if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices; if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a prison sentence of five (5) years may be pronounced or more, if the criminal offense is punishable by a sentence of imprisonment of ten (10) years or more, where the manner of commission or the consequence of the criminal offense requires that custody be ordered for the reason of public or property security. If the criminal offense concerned is the criminal offense of the terrorism, it shall be considered that there is assumption, which could be disputed, that the safety of public and property is threatened. In case of the crime of terrorism, there is an assumption that cannot be refuted – danger to security of citizens and property. Minor shall serve the sentence separately from adults.

<sup>679</sup> *Ibid.*, Article 348.

as soon as possible.<sup>680</sup> Principle of opportunity shall apply to minors, meaning that for criminal offenses carrying punishment of imprisonment up to three (3) years or a fine, the Prosecutor may decide not to file the indictment even though there is evidence that the minor committed the criminal offense if the Prosecutor feels that it would not be purposeful to conduct a criminal proceeding against the minor in view of the nature of the criminal offense and the circumstances under which it was committed, the minor's previous life and his personal characteristics.<sup>681</sup> The judge for juveniles is not bound by the recommendation of the Prosecutor in rendering its decision as to whether it shall pronounce a punishment or a developmental measure against the minor, but if the Prosecutor withdrew his recommendation, the judge for juveniles may not pronounce the punishment against the minor but only a developmental measure.<sup>682</sup>

**Laws on criminal procedure of FBiH, RS and BDBiH**<sup>683</sup> in similar manner regulate the procedure against minors.

### *Legislation on execution of criminal sanctions*

**BiH Law on execution of criminal sanctions, detention and other measures** stipulates that minor offenders shall serve their sanctions separately from adults.<sup>684</sup>

According to the **FBiH Law on execution of criminal sanctions** juvenile offenders shall serve their sentence in special institutions or juvenile departments, where they can stay until they reach the age of 23, i.e. the age of 25 if necessary to complete education.<sup>685</sup> Convicted juveniles shall not be restricted in terms of written correspondence with their parents and close relatives.<sup>686</sup>

**Law on execution of criminal and misdemeanor sanctions in RS** anticipates that minors shall, as a rule, serve the sentence of juvenile imprisonment separately from adults.<sup>687</sup> The juvenile may stay in the juvenile prison only until he/she reaches the age of 23, i.e. the age of 25, if necessary to complete education.<sup>688</sup>

**Law on execution of criminal and misdemeanor sanctions of BDBiH** in a similar manner regulates the issue of execution of criminal sanctions pronounced to juveniles as regulated by the Laws on execution of criminal sanctions in the Entities.

## **Opinion of the UN Committee on the Rights of the Child**

Considering the position and rights of children in conflict with Law (juvenile justice), the Committee on the Rights of the Child in its concluding observations noted that all courts have councils for persons under

<sup>680</sup> *Ibid.*, Article 350.

<sup>681</sup> *Ibid.*, Article 352.

<sup>682</sup> *Ibid.*, Article 368.

<sup>683</sup> Articles 363, 364, 369, 371, 373, 380, and 389 of the FBiH CCP, Articles 348, 350, 354, 356, 358, 264, 265 and 366 of the RS CCP, and Articles 345, 350, 352, 358, 359, 368 and 370 of BD BiH CCP.

<sup>684</sup> Article 11 of the Law on execution of criminal sanctions, detention and other measures.

<sup>685</sup> Article 102 of the FBiH Law on execution of criminal sanctions.

<sup>686</sup> *Ibid.*, Article 105.

<sup>687</sup> Article 14 of the RS Law on execution of criminal sanctions.

<sup>688</sup> *Ibid.*, Article 201.

18 and that first-instance courts also have judges for persons under 18, but that specific juvenile courts do not exist per se. The Committee, however, expressed its concern about the following matters:

- a. lack of sufficient data concerning the number of persons under 18 in conflict with the law;
- b. inadequate research, studies or evaluation mechanisms on prevention activities or on the adequacy of existing measures;
- c. stigmatization of children in conflict with the law;
- d. lack of alternative measures to detention and forms of rehabilitation for children in conflict with the law;
- e. lack of appropriate places for deprivation of liberty for persons under 18, who are often detained together with adults;
- f. poor material conditions of detention of persons under 18 deprived of their liberty;
- g. inadequate access to education for persons under 18 held in detention.

The Committee recommended that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238). In this regard, the Committee recommends the State party in particular to:

- a) Ensure systematic training for judges and councils for persons under 18;
- b) Take all necessary measures to ensure that persons under 18 are only deprived of liberty as a last resort and for the shortest appropriate period of time and that when in custody they are in any case separated from adults;
- c) Provide that persons under 18 placed in prisons - including remand prisons - are given a full programme of educational activities (including physical education);
- d) Take urgent steps to substantially improve the conditions of detention of persons under 18 deprived of their liberty in conformity with international standards;
- e) Set up more precise legal regulation on the process of diversion, as provided by article 40, paragraph 3, of the Convention;
- f) Define more clearly the conditions of supervision of juvenile detainees ordered by the juvenile judge;
- g) Consider amending the current prison sentences applicable to persons between 16 and 18 who have committed a crime, by eliminating the 1-year minimum term of imprisonment as well as by reducing the 10-year maximum term;
- h) Establish the right to a defense counsel from the beginning of the criminal proceedings in the Republika Srpska;
- i) Seek technical assistance from the UNICEF and OHCHR, among others.<sup>689</sup>

<sup>689</sup> CRC/C/15/Add.260, points 73 and 74.

## Conclusion

Unfortunately, despite the reform of penal and criminal procedure legislation and legislation on execution of criminal sanctions, no progress was achieved in this segment, as noted by the CoE Committee for prevention of torture and inhumane or humiliating treatment (CPT) in its reports. This problem was also recognized and pointed out by the BiH Ombudsmen in a Special report on situation in the institutions for execution of criminal sanctions in BiH published in September 2009.

## Recommendation

We recommend implementation of the recommendations of the BiH Ombudsmen and recommendations of the CoE Committee on prevention of torture and inhumane or humiliating treatment.

### 3.37. Right of a child victim to recovery

#### Convention

Right of a child victim to recovery has been regulated by **Article 38 of the Convention on the Right of the Child** according to which: *„States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts.“*

Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child in accordance with **Article 39 of the Convention**.

#### Legislation of BiH

Right of a child victim to recovery is defined not only in item 3.23 – Re-integration of child victim, but also in the chapters dedicated to protection of family environment and alternative care, and health and social protection.

### 3.38. Supporting measures and public information

#### Convention

State Parties are obliged to make the principles and provision of the Convention widely known, by appropriate and active means, to both adults and children.

## Legislation of BiH

Legislation does not regulate this field.

### Opinion of the Committee on the Rights of the Child

Among the measures proposed, the Committee recommended that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to provincial or State Governments and Parliament, when applicable, for appropriate consideration and further action. The Committee further recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available in both Entities, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.<sup>690</sup>

### Conclusion

Certain measures were undertaken in terms of promoting the Concluding observations and recommendations of the UN Committee, in particular by the Ministry for human rights and refugees, which had a significant support of the UNICEF, Save the Children Norway, and High Commission for Human Rights – particularly when it had its office in BiH, and Ombudsmen. However, more efficient measures that would ensure better implementation of the recommendations of the Committee are still lacking.

### Recommendation

In Bosnia and Herzegovina it is necessary to raise awareness about the importance of the implementation of internationally assumed obligations. This is relevant not only for building of the State dignity but also for ensuring the implementation of the rights set forth by the assumed international standards. Therefore, in the long-term, the institutions mandated to promote and protect human rights, such as BiH Ombudsmen, should be further strengthened.

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<sup>690</sup> CRC/C/15/Add.260, points 77 and 78.

## II. Strategic documents in BiH and the Entities in light of the Convention on the Rights of the Child

In the scope of this Analysis, we analyzed a series of strategic documents that regulate different social matters, and which are often focused on the rights of different social categories, including children. Due to a large number of strategic documents adopted in BiH on different levels of government, many of which were developed upon different methodologies, and due to lack of coordination among these documents we decided not to make individual analysis of each strategic document in terms of its approximation with the Convention on the Rights of the Child. Instead, we decided to make a general overview of these documents with special reference to some of the issues covered by the Convention on the Rights of the Child. List of strategic documents included in this analysis is presented in the Annex to this Analysis.

Basic conclusion one can draw after examining and analyzing the strategic documents is that those documents that were adopted in response to obligations deriving from the assumed international standards guaranteeing the rights of children mainly follow the rights from the Convention on the Rights of the Child. In other words, these documents are structured in a way to define the notion of a child, basic principles of protection of the rights of the child, focusing on the rights guaranteed by the Convention. The best example of this is the 2007-2010<sup>691</sup> National Strategy for Combating Violence against Children, which also offers an overview of legislation, which directly or indirectly, regulates the issue of domestic violence. This Strategy emphasizes that „the existing legislative framework for combating violence against children in BiH“ is not completely satisfactory. There is a need for harmonization of the Law against domestic violence and other laws dealing with this issue.“ The Strategy also explains that „sole harmonization of laws will not solve the problem, unless the application of the laws is standardized. Standardized application can be ensured through continuous and precisely defined cooperation among the representatives of police, court, prosecution and centers for social work who work on this issue and through exchange of good practice and strengthening of the work of the Child Council.“

Similar problem was identified when it comes to harmonization of strategic documents dealing with media with the Convention on the Rights of the Child, particularly Media Code of BiH,<sup>692</sup> Code of Ethics on research involving children<sup>693</sup>, etc. These strategic documents largely follow the obligations deriving from the Convention on the Rights of the Child, as it can be demonstrated on a few examples.

When it comes to definition of a child in the sense of Article 2 of the Convention, **the Strategy against juvenile delinquency**,<sup>694</sup> defines juvenile delinquency as a socially unacceptable behavior, pre-delinquent and delinquent behavior of the young persons under the age of 14, persons age of 14-16, and persons older

691 The Strategy was prepared by the Ministry for human rights and refugees in collaboration with organization «Save the Children Norway».

692 BiH Media Code stipulates that media shall avoid interfering into someone's private life, except when such interference is in the interest of public, adopted on April 29, 1999 by Association of BiH journalists, Association of journalists in BiH, Association of Croatian journalists in BiH and RS association of journalists.

693 Code of Ethics on research on children is based on respect for private and family life, home and correspondence, O.G. BiH no. 26/06.

694 Strategy against juvenile delinquency in BiH 2002-2010, O.G. BiH no. 14/08.

than 18. However, according to legislation, persons of the age 14-16 are defined as junior juveniles, while those of age 16-18 are defined as senior juveniles. Children under the age of 14 are not considered criminally responsible, while persons over the age of 18 but under the age of 21 are defined as junior adults and in certain situations provisions of the juvenile legislation apply to such persons.<sup>695</sup>

**Code on broadcasting radio and TV programs**<sup>696</sup> define children as persons under the age of 14, while juveniles include persons of the age 14-18, and junior adults include persons of the age 18-21.<sup>697</sup>

The issue of basic principles set forth in the Convention on the Rights of the Child<sup>698</sup> is also incorporated in some of the strategic documents examined. Accordingly, the principle of non-discrimination in **the National Strategy for resolution of the Roma issues**, under the chapter „Non-discrimination of Roma and raising awareness on the need for inclusion of Roma into all social processes in BiH“ highlights the values and imperative of non-discrimination as one of the basic human rights, which is also protected by the BiH Constitution.<sup>699</sup> In **the 2007-2010 National Strategy for combating violence against children**, measures aimed at preventing exclusion of children on any ground, including origin, sex, religion, property, health condition or any other affiliation are defined as a basis for enjoyment of all rights.<sup>700</sup> **Code on broadcasting of radio and TV programs** stipulates that radio and TV stations shall not broadcast any material, which by its content or tone, violates the guaranteed rights and freedoms or which provokes national, racial, religious or sexual intolerance or hatred, or which encourage discrimination and/or violence based on affiliation to ethnic group, gender or sexual orientation.<sup>701</sup> **Media Code of BiH** stipulates that newspapers and periodicals shall avoid prejudicial and offensive allusions addressed to someone's ethnic group, nationality, race, religion, sex, sexual orientation, physical disability or mental illness.<sup>702</sup>

Principle of the best interest of the child is incorporated in the general programming standards of **the Code on broadcasting radio and TV programs**, which stipulate that special attention, shall be paid to make sure that programs make no negative educational influence on children.<sup>703</sup> According to provisions of this document, children must be protected by appropriate broadcasting schedule, which will ensure that they see no programs that are unsuitable for them or programs that can seriously harm physical, psychological or moral development of a child or a juvenile.<sup>704</sup> Particular attention shall be paid to physical and emotional wellbeing and dignity of a juvenile who is somehow involved in the program, regardless of the consent of the child or parents for participating in the program.<sup>705</sup> **Media Code** in chapter „Protection of children and

695 *Ibid.*, provision 1.3 – children in conflict with law and characteristics of juvenile offenses

696 Code of broadcasting radio and TV programme, O.G. BiH no. 20/08.

697 *Ibid.*, Article 2.1 items 6, 7 and 8.

698 Article 2 – non-discrimination; Article 3 – the best interest of child; Article 6 – right to life, survival and development; Article 12 – right to participation (involvement).

699 Chapter 14 of the BiH Strategy on resolution of Roma issues, O.G. BiH no. 67/05.

700 Chapter I – basic principles - a) and b) National strategy against child abuse adopted at the Council of Ministers meeting on June 20, 2007.

701 Article 4, para 2 and 3 of the Code on broadcasting of radio and TV programmes, O.G. BiH no. 20/08.

702 Article 4 of the Media Code adopted by Media Council – Association of BiH journalists, Association of journalists in BiH, Association of Croatian journalists in BiH and RS association of journalists -www.vzs.ba; info@vzs.ba

703 Article 5.

704 *Ibid.*, Article 12, para 2 and 3.

705 *Ibid.*, Article 13.1

the young“ stipulates that journalists shall be extremely mindful in treating the children and respect the good old customs and the Convention on the Rights of the Child, having in mind the best interest of the child.<sup>706</sup>

When it comes to other rights set forth in the Convention on the Rights of the Child, **Code of Ethics on research involving children** stipulates that all surveys about children shall be conducted with full respect for provisions of the Convention on the Rights of Child, primarily Article 3 – best interest of the child, Article 8 – protection of identity, Article 17 – access to relevant information and Article 19 – prohibition of misuse and abuse and without taking advantage of the child.

**Code on broadcasting radio and TV programs**<sup>707</sup> in Article 14 clearly prescribes the procedure for reporting of crimes involving juveniles, which is an obligation deriving from Article 37 of the Convention on the Rights of the Child.

**Strategic directions of education development in BiH and implementation plan for the period 2008-2015**, whereby main course of education development in BiH is defined up until 2015, includes, to a great extent, the provisions of the Convention on the Rights of the Child concerning education – Articles 28, 29 and 31. This document stipulates that „inclusion of children with special educational needs in education can be improved only through provision of appropriate school infrastructure, programs and training for teachers. Accordingly, special institutions shall be established as resource and expertise centers at the State and lower levels for children and the young with difficulties in development and learning.“ Furthermore, this document in item 4.3. calls for equal access and justice in education, in line with obligation deriving from Article 2 of the Convention on the Rights of the Child – ensuring of the principle of non-discrimination and education tailored to the needs of the national minorities and children from BiH who live abroad.

**Plan of education development in BiH for the period until 2015**<sup>708</sup> calls for elimination of „two schools under the same roof“, removal of inappropriate names of educational institutions, coherent application of contents of the common core curriculum, removal of inappropriate contents from history, geography and mother language textbooks, implementation of adopted documents on educational needs of returnee children, Roma children and members of national minorities, cancellation of the third shift in educational institutions, increase in employment of teaching staff, etc.

As for protection of children with disability, it is important to refer to **the BiH Disability Policy**<sup>709</sup> which reiterates that the human rights are guaranteed by international standards, BiH Constitution and Standard Rules for equalization of possibilities for persons with disabilities adopted in 2003 by the Council of Ministers of BiH, but that many of these rights are still not accessible to persons with disabilities in BiH. This Policy highlights that „laws on sports and recreation activities“ are discriminatory towards persons with disabilities, for they prevent them from taking part in sports and recreation activities, especially women and children with disabilities. Sports and recreation courts provide no access for disabled persons (access ramps are not regulated), and sports in which disabled persons could be involved are not sufficiently developed“.

<sup>706</sup> Article 11 of the Media Code in BiH adopted by the BiH Media Council – Association of BiH journalists, Association of journalists in BiH, Association of Croatian journalists in BiH and RS association of journalists.

<sup>707</sup> Official Gazette of BiH no. 20/08.

<sup>708</sup> Pp. 20.

<sup>709</sup> Official Gazette of BiH no.76/08 dated September 22, 2008.

Furthermore, this document suggests that a majority of disabled persons depend on their parents or other members of family, particularly women with disabilities. There are no programs aimed at supporting independent living of mentally challenged persons. Assurance of human rights of persons with disabilities is something that exists only as a declarative statement, which has not been confirmed in reality.

Strategic documents are undoubtedly based, to a great extent, on international documents, including the Convention on the Rights of the Child, but the weaknesses presented at the beginning of this chapter are manifested in inefficient implementation of the assumed principles. Therefore, it would be important to consider the adoption of a comprehensive human rights strategy that could serve as a basis for all other strategic documents.

# OVERVIEW OF INTERNATIONAL DOCUMENTS, LAWS IN BIH AND OTHER DOCUMENTS USED IN THE ANALYSIS

## International instruments

1. **Convention on the Rights of the Child**<sup>710</sup>
2. **Optional protocol to the Convention on the rights of the child on the Sale of children, child prostitution and child pornography**<sup>711</sup>
3. **Optional protocol on the involvement of children in armed conflicts**<sup>712</sup>
4. **The International Covenant on Economic, Social and Cultural Rights**<sup>713</sup>
5. **The International Covenant on Civil and Political Rights and Optional protocol**<sup>714</sup>
6. **Convention on the elimination of all forms of racial discrimination**<sup>715</sup>
7. **European Convention on Human Rights and Fundamental Freedoms**<sup>716</sup> with pertaining protocols
8. **Convention on the civil aspects of international child abduction**<sup>717</sup> (The Hague Convention)
9. **Convention on the Recovery Abroad of Maintenance**<sup>718</sup>
10. **European Social Charter with pertaining protocols**<sup>719</sup>
11. **Charter of Fundamental Right of the European Union**<sup>720</sup>

710 It was open for signing, ratification and accession by the Resolution of the UN General Assembly on November 20, 1989, and it came into force on September 2, 1990, after being ratified by 20 States. Having signed the note on succession, BiH assumed the Convention on November 23, 1993. Note: SFRY, and BiH as a part of it, registered a reservation with regard to Article 9, which was removed in 2005.

711 BiH ratified the Protocol on September 4, 2002.

712 It came into force on February 12, 2002.

713 Republic of BiH by succession from September 1, 1993 assumed the Covenant, which is also mentioned in the Annex to the BiH Constitution.

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716 From April 22, 2002 BiH became the 44th member to the Council of Europe and assumed the obligation to fulfill the requirements from the Opinion of the CoE Parliamentary Assembly, including the signing and ratifying the European Convention on Human Rights and Fundamental Freedom, which BiH did on July 12, 2002.

717 SFRY ratified the Convention by adopting the Law on ratification and publishing it in the Official Gazette of SFRY – International agreements no. 7/91 dated 20.07.1991. In BiH this Convention is implemented by the BiH Ministry of Justice, as a central state body.

718 New York, 20.06.1956. published in the Official Gazette of FNRY – Appendix no 2/1960, it is binding to BiH and it is implemented by the BiH Ministry of Justice.

719 Council of Europe opened it for signing on October 18, 1961. It came into force in 1965 and it was revised in 1996. BiH ratified the revised Convention in October 2008. European Social Charter (revised) was published in the International Treaties no. 6/08.

720 After signing the SAA, BiH is obliged to adhere to this document, which was promulgated on December 7, 2002. These obligations refer to the right to education and respect for cultural and linguistic differences..

12. **The Hague Convention dedicated to the countries created from the former Yugoslavia**<sup>721</sup>
13. **UN Declaration on the rights of persons belonging to National or ethnic, religious and linguistic minorities**<sup>722</sup>
14. **Framework Convention on protection of National minorities**<sup>723</sup>
15. **European Charter for regional and minority languages**<sup>724</sup>
16. **Convention against discrimination in education**<sup>725</sup>
17. **Convention on the taking of evidence from abroad in civil and commercial matters**<sup>726</sup>
18. **Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment**<sup>727</sup>
19. **Convention no. 18 on compulsory medical examination of children and young persons employed at Sea from 1921**<sup>728</sup>
20. **Convention no. 90 on night work of young persons in industry (revised in 1948)**<sup>729</sup>
21. **Agreement between the BiH Council of Ministers and Government of Montenegro on cooperation in combat against terrorism, organized crime, illicit trafficking in drugs, psychotropic substances and their precursors, illegal migrations and other crimes**<sup>730</sup>

### **UN Standard Minimum Rules for Administration of Juvenile Justice – The Beijing Rules**

Adopted by the Resolution of the UN General Assembly on November 29, 1985. This document sets the framework, in the limits of which the national systems of juvenile justice should be established. It also gives the instructions on how the State Parties should treat juveniles in conflict with law. Although these rules are not binding, either formally or legally, some of their principles have been built in the Convention on the Rights on the Child.

<http://www.un.org/documents/ga/res/40/a40r033.htm>

### **UN Guidelines for the Prevention of Juvenile Delinquency – the Riyadh Guidelines**

Adopted by the Resolution of the UN General Assembly on December 14, 1990. These guidelines are not binding. However, they are comprehensive and promote a positive and active attitude towards prevention.

<sup>721</sup> Adopted at the Hague Conference on October 23, 1991. It is dedicated to the countries created from the former Yugoslavia as a protection of the rights of national minorities and ethnic groups.

<sup>722</sup> Declaration of the UN General Assembly is neither to be signed nor ratified. However, it is mentioned in the Preamble of the BiH Constitution.

<sup>723</sup> Listed in the Annex I to the BiH Constitution and it has the power of a constitutional provision.

<sup>724</sup> Council of Europe adopted this Convention, which can be acceded to by the states that are not members to the CoE. The Convention was mentioned in the Annex I to the BiH Constitution. BiH has not ratified it yet.

<sup>725</sup> UNESCO Convention against discrimination in education, ratified by SFRY on October 9, 1963.

<sup>726</sup> International treaty no. 11/08.

<sup>727</sup> International treaty no 6/08.

<sup>728</sup> Succession, Official Gazette of BiH no. 25/93.

<sup>729</sup> Succession, Official Gazette of BiH no. 25/93.

<sup>730</sup> International treaties no. 2/08.

The Riyadh guidelines focus on children and foster the respect for children's opinion. This document is complementary to the earlier adopted Beijing rules and promotes the improvement of children's rights in the field of juvenile justice. It serves as a means for interpretation and implementation of certain provisions of the Convention on the Rights of the Child.

<http://www.un.org/documents/ga/res/45/a45r112.htm>

### **UN Rules for the Protection of Juveniles Deprived of their liberty**

Adopted by the Resolution of the UN General Assembly on December 14, 1990. This document complements the earlier adopted Beijing rules and comprehensively regulates the procedure for juveniles deprived of liberty. It also serves as a means for interpretation and implementation of certain provisions of the Convention on the Rights of the Child. The only purpose of deprivation of liberty is re-socialization of juveniles deprived of their liberty. For that reason, juvenile convicts must be separated from adults and the regime of correctional institutions must contain appropriate correctional and educational programmes aimed at preparing them for the life outside of establishment.

<http://www.un.org/documents/ga/res/45/a45r113.htm>

### **UNESCO Convention against discrimination in education**

UNESCO is a specialized UN agency. Main goal of the activities carried out by this organization is preservation and improvement of peace and security in the world by promoting international collaboration through education, science and culture in order to further universal respect for justice, the rule of law, and the human rights and freedoms of all, regardless of race, sex, language and religion. Many conventions, recommendations and other documents were adopted under the auspice of UNESCO. The most important convention for the rights of the child is the Convention against discrimination in education, which was adopted in 1960, and came into force in 1962.

<http://www.unesco.org>

### **Conventions of the International Labor Organization**

The International Labor Organization (ILO) is a specialized agency of the United Nations created to formulate and protect the rights of workers. Several conventions adopted under the auspice of this organization are aimed at eliminating the child labor and improving the working conditions of working children, as well as ensuring an adequate education and professional training of children and the young.

<http://www.ilo.org>

### **Conventions of the Council of Europe**

Council of Europe, just as other regional organizations, concludes agreements on human rights and rights of the child, and develops its own systems of supervision over implementation of obligations by contracting

parties in the framework of specific needs of the country in which they operate. Europe started first: today, from the aspect of international law, this organization has the most developed system of protection of human rights.

<http://www.conventions.coe.int>

### **Conventions of the Hague Conference on Private International Law**

The Hague conference is an international governmental organization, under auspice of which numerous documents in the field of private international law were adopted.

<http://www.hcch.net/e/conventions/expl33e.html>

### **Constitution of Bosnia and Herzegovina**

It is an integral part of the General Framework Agreement for peace in Bosnia and Herzegovina known as Dayton Peace Agreement, which was initialed on November 11, 1995 in Dayton, USA and signed on December 14, 1995 in Paris. Text of the Constitution is in fact the Annex IV to the adopted Peace Agreement.

Apart from explicit provision which states that the rights and freedoms set forth by the European Convention on Human Rights and its protocols shall be directly applied in BiH and shall have precedence over national legislation, the Constitution also contains the Annex I – Additional agreements on human rights (15 instruments) that shall apply to BiH. The 1990 Convention on the Rights of the Child is among those instruments.

### **Constitution of the Federation of Bosnia and Herzegovina**

It was adopted by the Constituent Assembly of the Federation of Bosnia and Herzegovina in the session held on March 30, 1994. The Constitution of the Federation of Bosnia and Herzegovina came into force on March 30, 1994. The Constitution contains the Annex listing the instruments for protection of human rights (22 instruments), and these instruments have the power of constitutional provisions.

### **Constitution of Republika Srpska**

It was adopted on February 28, 1992. Between the day of its adoption and signing of the General Framework Peace Agreement in Paris on December 14, 1995, this Constitution was changed several times. There were XLIII amendments to this Constitution, and by accepting the Annex IV to the Constitution of BiH, two additional amendments – XLIV and XLI were adopted. The RS Constitution does not contain the list of international instruments for protection of human rights, but in Chapter II – Human Rights and Freedoms, it lists the rights that are protected by the Constitution.

### **Statute of Brčko District of BiH (Official Gazette of BDBiH no. 17/08 – revised text)**

In attempt to contribute to a permanent and just peace in Bosnia and Herzegovina, and respecting the national, religious and cultural identities of all peoples and right of the citizens to participate in execution

of public affairs, and based on the General Framework Agreement for Peace and the Final decision of the Arbitrage Tribunal on dispute over inter-entity boundary in Brčko and the Constitution of BiH, which was adopted by Annex on August 18, 1999, the Brčko District of Bosnia and Herzegovina was established. The District was officially declared on March 8, 2000. The supreme legislation of the Brčko District of BiH is **the Statute**. Version of the Statute adopted on May 6, 2008 is currently in force. The Statute stipulates that every person shall enjoy the rights and freedoms guaranteed by the Constitution of BiH and laws of BiH, in particular those guaranteed by the European Convention on human rights and fundamental freedoms, without discrimination on any ground.

## Cantonal constitutions

- 1 **Una-Sana Canton** – Published in the Official Gazette of Una-Sana Canton no. 1/95  
Article II 1 of the Constitution stipulates that the Canton shall undertake all measures necessary to protect the rights and freedoms set forth by the Constitution of FBiH and the instruments listed in the Annex to the Constitution.
- 2 **Posavina Canton** – Published in the Official Gazette of the Canton no. 1/96  
Article II 12 of the Constitution stipulates that the Canton shall undertake all measures necessary to protect the rights and freedoms set forth by the Constitution of FBiH and the instruments listed in the Annex to the Constitution
- 3 **Tuzla Canton** – Published in the Official Gazette of the Canton no.7/97  
In Article II 7 of the Constitution calls for protection of human rights and freedoms guaranteed by the Constitution of FBiH and its Annex.
- 4 **Zenica-Doboj Canton** – Published in the Official Gazette of the FBiH no. 7/96  
In Article II 10 of the Constitution calls for protection of human rights and freedoms guaranteed by the Constitution of FBiH and its Annex.
- 5 **Bosnia-Podrinje Canton** – Published in the Official Gazette of the Canton no. 3/97  
In Article II 9 of the Constitution calls for highest level of protection of the internationally recognized rights and freedoms set forth in the Constitutions of BiH and FBiH and instruments listed in the Annex to the Constitution.
- 6 **Middle Bosnia Canton** – Published in the Official Gazette of the Canton no. 1/97  
In Article II 9 of the Constitution calls for protection of human rights and freedoms guaranteed by the Constitution of FBiH and its Annex.
- 7 **Herzegovina-Neretva Canton** – Adopted by the Cantonal Assembly on December 23, 1997.  
In Article II 9 of the Constitution, as well as in the other constitutions mentioned above, calls for ensuring the guaranteed level of protection of human rights and freedoms from the FBiH Constitution and the Annex.
- 8 **West Herzegovina Canton** – Published in the Official Gazette of the Canton no. 1/97  
In Article II 12 of the Constitution calls for ensuring the guaranteed level of protection of human rights and freedoms from the FBiH Constitution and the Annex.

- 9 **Sarajevo Canton** – Published in the Official Gazette no. 1/96.  
In Article II 7 of the Constitution calls for ensuring the guaranteed level of protection of human rights and freedoms from the FBiH Constitution and the Annex.
- 10 **Canton 10** – Published in the Official Gazette no. 3/96.  
In Article II 12 of the Constitution calls for ensuring the guaranteed level of protection of human rights and freedoms from the FBiH Constitution and the Annex.

## Laws

1. **Law on ministries and other bodies of administration of BiH** (Official Gazette of BiH nos. 5/03,42/04, 45/06, 88/07, 35/09, 59/09)
2. **Law on Federation ministries and other bodies of federal administration** (Official Gazette of FBiH nos. 52/02, 19/03, 38/05, 2706, 8/06, 61/06)
3. **Law on organization and bodies of administration in the FBiH** (Official Gazette of FBiH no. 35/05)
4. **Law on ministries of RS** (Official Gazette of RS nos. 70/02, 33/04 and 118/05)
5. **Law on inspections in the Federation of BiH** (Official Gazette of FBiH no. 69/05)
6. **Law on inspections in RS** (Official Gazette of RS no. 113/05, 1/08)
7. **Law on inspection of BDBiH** (Official Gazette of BDBiH no. 24/08 corr. 25/08)
8. **Law on Court of BiH** (Official Gazette of BiH no. 52/00,43/02 – consolidated text in O.G. no. 49/09)
9. **Law on court in FBiH** (Official Gazette of FBiH no. 38/05 and 22/06)
10. **Law on courts in RS** (Official Gazette of RS, nos. 109/05,1/04,37/06,119/08,58/09)
11. **Law on courts in BDBiH** (Official Gazette of BDBiH no. 19/07)
12. **Law on Ombudsmen of BiH** (Official Gazette of BiH nos. 32/00,35/04, 32/06)
13. **Law against discrimination in BiH** (Official Gazette of BiH no. 59/09)
14. **Law on gender equality in BiH** (Official Gazette of BiH no. 16/03)
15. **Law on protection of the rights of national minorities in BiH** (Official Gazette of BiH no. 12/03, 93/08)
16. **Law on protection of the rights of national minorities in FBiH** (Official Gazette of FBiH no. 56/08)
17. **Law on protection of the rights of national minorities in RS** (Official Gazette of RS no. 2/05)
18. **Law on movements and the stay of aliens and asylum** (Official Gazette of BiH no. 36/08)
19. **Law on citizenship of BiH** (Official Gazette of BiH no. 4/97, 13/99, 41/02, 6/03, 14/03, 82/05)
20. **Law on citizenship of FBiH** (Official Gazette of FBiH no. 43/01,22/09)
21. **Law on citizenship of RS** (Official Gazette of RS no. 35/99, 17/00, 64/05 and 58/09)
22. **Law on choosing the Entity citizenship of persons who have residence in BDBiH** (Official Gazette of BDBiH, no. 3/04)
23. **Law on personal identification number** (Official Gazette of BiH no. 32/01, 63/08)

24. **Law on permanent and temporary residence of citizens of BiH** (Official Gazette of BiH no. 32/01, 56/08)
25. **Law on identity cards of citizens of BiH** (Official Gazette of BiH no. 32/01, 16/02, 32/07, 56/08)
26. **Law on travel documents** (Official Gazette of BiH nos. 4/97, 1/99,9/99, 27/00, 32/00, 19/01, 47/04, 53/07, 15/08, 33/08, 39/08)
27. **Law on registers in FBiH** (Official Gazette of RBiH no. 20/92, 13/04)<sup>731</sup>
28. **Law on registers in RS** (Official Gazette of RS no. 18/99)
29. **Law on registers in BDBiH** (Official Gazette of BDBiH no. 18/02, 29/05)
30. **Law on personal names in FBiH** (Official Gazette of RBiH no. 35/71, 38/86, 37/88, 33/90)<sup>732</sup>
31. **Law on personal names in RS** (Official Gazette of RS, no. 27/93, 15/00)
32. **Law on personal names in BDBiH** (Official Gazette of BDBiH no. 8/02, 29/05)
33. **Law on protection of personal data** (Official Gazette of BiH no. 49/06)
34. **Law on protection of confidential data** (Official Gazette of BiH no. 54/05)
35. **Law on administrative procedure in BiH** (Official Gazette of BiH no. 29/02, 12/04)
36. **Law on administrative procedure in FBiH** (Official Gazette of FBiH no. 2/98)
37. **Law on administrative procedure in RS** (Official Gazette of RS no. 13/02)
38. **Law on administrative procedure in BDBiH** (Official Gazette of BDBiH no. 3/00, 5/00, 9/02, 8/03, 8/04, 25/05, 8/07, 10/07, 19/07, 2/08)
39. **Law on administrative disputes in BiH** (Official Gazette of BiH no. 19/02, 88/07,83/08)
40. **FBiH Law on administrative disputes** (Official Gazette of FBiH no. 9/05)
41. **RS Law on administrative disputes** (Official Gazette of RS no. 109/05)
42. **BDBiH Law on administrative disputes** (Official Gazette of BDBiH no. 4/00, 1/07)
43. **BiH Criminal Code** (Official Gazette of BiH nos. 37/03,54/04,61/04, 30/05,55/06, 32/07)
44. **FBiH Criminal Code** (Official Gazette of FBiH no. 36/03 corr. 21/04, 69/04, 18/05)
45. **RS Criminal Code** (Official Gazette of RS no. 49/03, 108/04, 37/06, 70/06)
46. **Criminal Code of BDBiH** (Official Gazette of BDBiH, no. 10/03, 45/04, 6/05)
47. **Code of Criminal Procedure of FBiH** (Official Gazette of FBiH, no. 35/03, corr. 56/03, corr. 37/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09)
48. **Code of Criminal Procedure of RS** (Official Gazette of RS, no. 50/03, 111/04, 115/04, 29/07)
49. **Code of Criminal Procedure of BDBiH** (Official Gazette of BDBiH, no. 10/03, 48/04, 6/05, 14/07, 19/07, 21/07, 2/08,17/09)
50. **Code of Criminal Procedure of BiH** (Official Gazette of BiH, no. 36/03, 13/05, 48/05, 76/06, 32/07, 76/07, 58/08, 12/09, 16/09)
51. **Law on execution of criminal sanctions, detention and other measures in BiH** (Official Gazette of BiH, no. 13/05, 97/07, 37/09)

731 Assumed by a Decree.

732 Assumed.

52. **Law on execution of criminal sanctions in FBiH** (Official Gazette of FBiH, no.44/98, 42/99, 12/09)
53. **RS Law on execution of criminal and misdemeanor sanctions** (Official Gazette of RS, no. 64/01, 24/04)
54. **Law on execution of criminal and misdemeanor sanctions of BDBiH** (Official Gazette of BDBiH, no. 8/00 amendments 1/01, 19/07, 36/07 )
55. **FBiH Misdemeanor Law** (Official Gazette of FBiH, no. 31/06)
56. **RS Misdemeanor Law** (Official Gazette of RS, no. 34/06, 1/09)
57. **BDBiH Misdemeanor Law** (Official Gazette of BDBiH, no. 24/07)
58. **Civil Procedure Code of FBiH** (Official Gazette of FBiH, no. 53/03, 73/05, 19/06)
59. **Civil Procedure Code of RS** (Official Gazette of RS, no. 58/03, 85/03, 74/05)
60. **Civil Procedure Code of BDBiH** (Official Gazette of BDBiH, no. 8/09)
61. **FBiH Law on civil non-contentious procedure** (Official Gazette of FBiH, no. 2/98, 39/94, 73/05)
62. **RS Law on civil non-contentious procedure** (Official Gazette of RS, no. 10/89, 74/05)
63. **BDBiH Law on civil non-contentious procedure** (Official Gazette of BDBiH, no. 5/01)
64. **FBiH Law on inheritance** (assumed from SRBiH, consolidated text published in Official Gazette no. 7/80, correction in no. 15/80)
65. **RS Law on inheritance** (Official Gazette no. 1/09 and correction in no. 55/09)
66. **BDBiH Law on inheritance** (assumed from SRBiH, consolidated text published in Official Gazette no. 7/80, correction in no. 15/80)
67. **Law on obligations in FBiH** (Official Gazette of RBiH, no. 2/92, 13/93, 13/94 Law on assuming the Law on obligations of the former SFRY, changes)
68. **RS Law on obligations** (Official Gazette of RS, no. 17/93, 3/96, 39/03 74/04 and 19/05)
69. **BDBiH Law on obligations**<sup>733</sup>
70. **Law on enforcement procedure before the Court of BiH** (Official Gazette of BiH, no. 18/03)
71. **Law on enforcement procedure in FBiH** (Official Gazette of FBiH, no. 32/03, 33/06, corr. 39/06, 39/09)
72. **Law on enforcement procedure in RS** (Official Gazette of RS, no. 59/03,85/03,64/05,118/07)
73. **Law on enforcement procedure of BDBiH** (Official Gazette of BDBiH, no. 8/00, 1/01, 5/02, 8/03,2/08)
74. **Law on sports in BiH** (Official Gazette of BiH, no. 27/08)
75. **Law on sports in RS** (Official Gazette of RS, no. 4/02, 30/08, corr. 102/08)
76. **Law on freedom of religion and legal position of churches and religious communities in BiH** (Official Gazette of BiH, no. 5/04)
77. **Law on Red Cross of BiH** (Official Gazette of BiH, no. 49/04)
78. **Law on Red Cross of FBiH** (Official Gazette of FBiH, no. 28/06)

733 Taken over from the former SFRY.

79. **Law on Red Cross of RS** (Official Gazette of RS, no. 18/94, 110/03)
80. **Law on associations and foundations in BiH** (Official Gazette of BiH, no. 32/01, 42/03, 63/08)
81. **Law on associations and foundations in FBiH** (Official Gazette of FBiH, no. 45/02, 63/08)
82. **Law on associations and foundations in RS** (Official Gazette of RS, no. 52/01, 42/05)
83. **Law on associations and foundations in Brčko District BiH** (Official Gazette of BDBiH, no. 12/02)
84. **Freedom of Access to Information Act of BiH** (Official Gazette of BiH, no. 28/00, 45/06)
85. **Freedom of Access to Information Act of RS** (Official Gazette of SR no. 20/01)
86. **Freedom of Access to Information Act of FBiH** (Official Gazette of FBiH, no. 32/01)
87. **Law on media in Sarajevo Canton** (Official Gazette of Canton Sarajevo, no. 13/98, 10/02)
88. **Law on public information in Tuzla Canton** (Official Gazette of TC, no. 15/00, 9/04)
89. **Law on public information in Zenica-Doboj Canton** (Official Gazette no. 13/98)
90. **Law on media in Bosnia-Podrinje Canton** (Official Gazette no.17/01)
91. **Law on public information** (Official Gazette no. 8/97)
92. **Family Law of FBiH** (Official Gazette of FBiH no. 35/05, 41/05)
93. **Family Law of RS** (Official Gazette of RS no. 54702, 41/08)
94. **Family Law of BDBiH** (Official Gazette of BDBiH no. 23/97)
95. **RS Law on Child protection** (Official Gazette of RS no. 4/02, 17/08, 1/09)
96. **BDBiH Law on child protection** (Official Gazette of BDBiH no. 1/03, 4/04, 21/05, 19/07, 2/08)
97. **Law against domestic violence in FBiH** (Official Gazette of FBiH no. 22/05)
98. **RS Law against domestic violence** (Official Gazette of RS no. 118/05, 17/08)
99. **FBiH Law on health care** (Official Gazette of FBiH no. 29/97,7/02)
100. **RS Law on health care** (Official Gazette of RS no. 18/99, corr. 23/99, 58/01, 62/02)
101. **BDBiH Law on health care** (Official Gazette of BDBiH, no. 02/01, 19/07, 2/08)
102. **FBiH Law on health insurance** (Official Gazette of FBiH, no. 30/97, 7/02, 70/08)
103. **RS Law on health insurance** (Official Gazette of RS, no. 18/99, 70/01, 51/01,17/08, 1/09)
104. **BDBiH Law on health insurance** (Official Gazette of BDBiH, no. 1/02, 7/02, 19/07 , 2/08, 34/08)
105. **Law on preventing and combating drug trafficking** (Official Gazette of BiH no. 8/06)
106. **RS Law on production of and trade in illicit drugs** (Official Gazette of RS no. 110/03 correction in no. 24/04)
107. **Law prohibiting consumption of tobacco products in public places** (Official Gazette of RS no. 46/04)
108. **Law prohibiting the sale of tobacco products to persons under the age of 18** (Official Gazette of RS no. 46/04)
109. **Law prohibiting promotion of tobacco products** (Official Gazette of RS no.46/04)
110. **Law on limited consumption of tobacco products** (Official Gazette of FBiH no. 6/98, 35/98)
111. **FBiH Law on protection of population from infectious diseases** (Official Gazette of FBiH no. 29/05)

112. **FBiH Law on the rights of demobilized soldiers and members of their families** (Official Gazette of FBiH no.61/06, 70/07, 27/08)
113. **Law on refugees from BiH and displaced persons in BiH** (Official Gazette of BiH no. 23/99,21/03, 33/03)
114. **Law on displaced persons and returnees in FBiH and refugees from BiH** (Official Gazette of FBiH no. 15/05)
115. **RS Law on displaced persons, returnees and refugees** (Official Gazette of RS no. 42/05)
116. **FBIH Law on principles of social protection, protection of civil victims of war and families with** ( Official Gazette of FBiH no.36/99, 54/04, 39/06, 14/09)
117. **Una-Sana Canton - Law on social protection, protection of civil victims of war and families with children** (Official Gazette no. 5/00, 7/01)
118. **Posavina Canton - Law on social protection** (Official Gazette no. 5/04)
119. **Tuzla Canton - Law on social protection, protection of civil victims of war and families with children** ( Official Gazette no.12/00,1 5/02, 13/03, 8/06)
120. **Zenica-Doboj Canton - Law on displaced persons, refugees and returnees** (Official Gazette no.8/04, 10/08)
121. **Bosnia-Podrinje Canton - Law on social protection, protection of civil victims of war and families with children** ( Official Gazette no.7/08)
122. **Middle Bosnia Canton - Law on social protection, protection of civil victims of war and families with children** (Official Gazette no.10/05, 2/06)
123. **Herzegovina-Neretva Canton - Law on social protection** (O.G.HNK no. 3/05)
124. **West Herzegovina Canton - Law on social protection, protection of civil victims of war and families with children** (O.G. no.16/01, 11/02, 4/04, 9/05)
125. **Sarajevo Canton - Law on social protection, protection of civil victims of war and families with children** (Official Gazette of the Canton no.16/02, 8/03, 22/05, 2/06, 21/06)
126. **Canton 10 - Law on social welfare** (Official Gazette no. 5/98)
127. **RS Law on social welfare** (Official Gazette of RS no. 5/93, 15/96, 10/03, 110/03)
128. **Law on social welfare of BD BiH** (Official Gazette of BDBiH no. 1/03, 4/04, 19/07)
129. **FBiH Law on protection of mentally challenged persons** (Official Gazette of FBiH no. 37/01 and 40/02)
130. **RS Law on protection of mentally challenged persons** (Official Gazette of RS no. 46/04)
131. **Law on protection of mentally challenged persons of BDBiH** (Official Gazette of BDBiH no. 12/06)
132. **FBiH Law on games of chance** (Official Gazette of FBiH no. 1/02)
133. **RS Law on games of chance** (Official Gazette of RS no. 110/08)
134. **Law on games of chance and party games of BDBiH** (Official Gazette of BDBiH no. 37/04)
135. **Labor Law of the Federation of BiH** (Official Gazette of FBiH no. 43/99, 32/00, 29/03)
136. **RS Labor Law** (Official Gazette of RS no. 55/07 – refined text)

137. **Labor Law of BDBiH** (Official Gazette of BD BiH no.19/06 – consolidated text, changes and amendments no. 19/07 and 25/08)
138. **Framework Law on primary and secondary education in BiH** (Official Gazette of BiH no.18/03)
139. **Framework Law on pre-school education in BiH** (Official Gazette of BiH no. 88/07)
140. **Framework Law on secondary vocational education in BiH** (Official Gazette of BiH no. 63/08)
141. **Framework Law on higher education in BiH** (Official Gazette of BiH no.59/07)
142. **Law on the Agency for pre-school, primary and secondary education** (Official Gazette of BiH no. no. 88/07)
143. **Law on pre-school education** (Official Gazette of RS no. 119/08)
144. **Law on primary education in RS** (Official Gazette of RS no. 74/08)
145. **Law on secondary education in RS** (Official Gazette of RS no. 74/08)
146. **Law on higher education** (Official Gazette of RS no. 30/07)
147. **Una-Sana Canton:**  
**Law on primary and secondary education** (Official Gazette no., 5/04)  
**Law on primary and general secondary education** (Official Gazette no.5/04)
148. **Posavina Canton:**  
**Law on pre-school education** (Official Gazette no. 8/08)  
**Law on primary education** (Official Gazette no. 3/04, correction No. 10/08, 8/08)  
**Law on secondary education** (Official Gazette no. 3/04, 8/08)
149. **Tuzla Canton:**  
**Law on primary education** (Official Gazette no. 6/04, 7/05)  
**Law on secondary education** (Official Gazette no. 6/04, 7/05)  
**Law on higher education** (Official Gazette no. 8/08)
150. **Zenica-Doboj Canton:**  
**Law on primary education** (Official Gazette no. 5/04, 20/07)  
**Law on secondary education** (Official Gazette no. 5/04, 20/07)
151. **Bosnia-Podrinje Canton:**  
**Law on primary education** (Official Gazette no. 5/04)  
**Law on secondary education** (Official Gazette no. 5/04)
152. **Middle Bosnia Canton:**  
**Law on primary education** (Official Gazette no. 11/01, 11/04, 17/04)  
**Law on secondary education** (Official Gazette no. 11/01, 11/04, 17/04)
153. **Herzegovina-Neretva Canton:**  
**Law on primary education** (Official Gazette no. 5/00, 4/04)  
**Law on secondary education** (Official Gazette no. 8/00, 4/04, 8/06, 3/08)

154. **West Herzegovina Canton:**  
**Law on primary education** (Official Gazette no. 6/04, 8/04, 14/08)  
**Law on secondary education** (Official Gazette no. 6/04, 8/04, 8/08, 14/08)
155. **Sarajevo Canton:**  
**Law on pre-school education** (Official Gazette of Canton no. 26/08),  
**Law on primary education** (Official Gazette of Canton no. 10/04, 21/06, 26/08)  
**Law on secondary education** (Official Gazette no. 10/04, 34/07)  
**Law on higher education** (Official Gazette no. 43/08)
156. **Canton 10:**  
**Law on primary education** (Official Gazette no. 12/04)  
**Law on secondary education** (Official Gazette no. 12/04)
157. **Law on pre-school education in BD BiH** (Official Gazette of BD BiH no. 13/07, 39/08)
158. **Law on primary and secondary education in** (Official Gazette of BD BiH no. 10/08 correction no 25/08)
159. **Law on spatial planning and use of land in the Federation of BiH** (Official Gazette of FBiH no. 2/06)

## Strategic documents

### Bosnia and Herzegovina

1. **Action plan for children in BiH 2002-2010**<sup>734</sup>
2. **Code of Ethics on research concerning children** (Official Gazette of BiH no. 26/06)
3. **Code of Print in BiH**<sup>735</sup>
4. **TV and radio program Broadcasting Code** (Official Gazette of BiH no. 20/08)
5. **Resolution on accelerating the process of accession of BiH to EU membership** (Official Gazette of BiH no. 27/08)
6. **Decision on establishing organizational units for European integrations in the administration bodies** (Official Gazette of BiH no. 66/08)
7. **Roadmap and plan of activities for inclusion of BiH into EU programmes of life-long learning and the young in action by 2013** (Official Gazette of BiH no. 74/08)
8. **Strategy against juvenile crimes in BiH for the period 2006-2010** (Official Gazette of BiH no. 14/08)
9. **Resolution on combating domestic violence against women** (Official Gazette of BiH no. 15/08)
10. **BiH Strategy for resolution of the Roma issues** (Official Gazette of BiH no. 67/05)

<sup>734</sup> Draft was revised in June 2009.

<sup>735</sup> Adopted by the Print Council and Association of Journalists in BiH, adopted on April 29, 1999, supplemented on February 25, 2005 and August 24, 2006.

11. **Declaration on the Decade of Roma Inclusion 2005-2015.**<sup>736</sup>
12. **Plan of actions for resolution of problems of Roma population in the fields of employment, housing and health protection, Decision on establishing a Coordination Board for monitoring the implementation of the Action plan** (Official Gazette of BiH no. 73/08)
13. **Strategy on policy in community, Strategy for the period 2009-2011.**<sup>737</sup>
14. **Decision on position of the Company Red Cross BiH**<sup>738</sup>
15. **Resolution concerning the young in BiH** (Official Gazette of BiH no. 12/03)
16. **Analysis of the position of the young and youth sector in BiH (May 2008), Council of Ministers with GTZ and others**
17. **National Plan of Actions for preventing human trafficking in BiH for the period 2008-2012**
18. **Disability policy in BiH** (Ministry of civil affairs of BiH)<sup>739</sup>
19. **Standard rules for equal opportunities for persons with disabilities**<sup>740</sup>
20. **Resolution on health policy for all citizens of BiH** (Official Gazette of BiH no. 12/02)
21. **Strategic directions of education development in BiH and 2008-2015 Implementation plan** (Official Gazette of BiH no 63/08)
22. **Strategy for professional education and training in BiH for the period 2007-2013** (Official Gazette of BiH, no. 65/07)
23. **Strategy for pre-school education in BiH**<sup>741</sup>
24. **2207-2010 National Strategy against violence over children.**<sup>742</sup>
25. **National strategy for monitoring, preventing and combating drug abuse in BiH** (Official Gazette of BiH, no.31/09)
26. **Policy on protecting children without parents and risk exposed families in BiH for the period of 2006-2016.**
27. **Resolution on preventing juvenile delinquency and actions in case of violence among children and the young**
28. **Convention against discrimination in education**<sup>743</sup>
29. **Strategy for prevention and combat against domestic violence in Bosnia and Herzegovina for the period 2009-2011** (Official Gazette of BiH, no. 50/09)

<sup>736</sup> Council of Ministers signed the accession declaration on September 4, 2008.

<sup>737</sup> Strategy of the Council of Europe adopted in November 2008. An important strategic goal is inclusion of children into society, in particular children without parental care, children suffering illnesses and children exposed to risk of poverty and social exclusion.

<sup>738</sup> By decision of the Council of Ministers it was established for the entire territory of the country. Published in the Official Gazette of BiH no. 24/00. It is a voluntary organization that acts as an assisting body to the public services, helping them to improve social protection. This company is a part of the International movement of Red Cross and Red Crescent.

<sup>739</sup> Official Gazette of BiH no.76/08..

<sup>740</sup> Adopted in the UN General Assembly held on December 20, 1993 as a result of experience obtained in the 1983-1993 Decade of the Persons with Disabilities.

<sup>741</sup> Adopted by the BiH Council of Ministers in February 2005.

<sup>742</sup> BiH Ministry for Human Rights.

<sup>743</sup> UNESCO Convention, ratified by SFRY – Convention against discrimination in education, on October 9, 1963.

30. **Resolution on improvement of family protection in Bosnia and Herzegovina** (Official Gazette of BiH No. 50/09)

### **Federation of Bosnia and Herzegovina**

1. **Resolution on preventing juvenile delinquency and actions in cases of violence among children and the young** (Official Gazette of FBiH no.10/08)
2. **Strategic plan for prevention of domestic violence in the Federation of BiH for the period 2009-2010** (Official Gazette of FBiH, no. 75/08)
3. **Strategy for primary health care development, Policy on the young and health**<sup>744</sup>
4. **Strategic plan of the Health Care Institution in the Federation of BiH** (2003-2013)

### **Republika Srpska**

1. **RS Plan of Actions for Children 2001-2010** (Official Gazette of RS, no. 3/01)
2. **Programme of health policy and strategy in RS until 2010** (Official Gazette of RS, no. 56/02)
3. **Policy on quality and safety improvement of health protection in RS until 2010** (Official Gazette of RS, no. 22/07)
4. **Strategy on risk reduction in health protection system and availability of health protection to citizens** (Official Gazette of RS, no. 77/03)
5. **Strategy for re-orientation of health care and re-organization of health service** (Official Gazette of RS, no. 77/03)
6. **Strategy for increase of efficiency and quality of health institutions** (Official Gazette of RS, no. 77/03)
7. **Family Development Strategy for the period 2009-2014.**

### **Brčko District of BiH**

1. **Strategy of professional advancements and education** (Official Gazette of BDBiH, no. 11/07)

### **Other important documents of the State and other bodies**

1. **Rulebook on international protection (asylum) in BiH** (Official Gazette of BiH, no. 37/09)
2. **Rulebook on principles of social protection of persons under international protection in BiH** (Official Gazette of BiH, no. 3/09)
3. **Rulebook on personal status and entry of facts into relevant fact records: date of birth, marriage and death of refugees and persons under international protection in BiH** (Official Gazette of BiH, no. 51/07)
4. **Agreement on the joint core curriculum and teaching programme** (Official Gazette of BiH, no. 22/09)

<sup>744</sup> See <http://innovativo.info/>

5. **Agreement on establishing a General Education Council in BiH** (Official Gazette of BiH, no. 22/09)
6. **Guidelines for developing and evaluating the geography textbooks for primary and secondary schools in BiH** (Official Gazette of BiH, no.105/06)
7. **Guidelines for developing and evaluating the history textbooks for primary and secondary schools in BiH** (Official Gazette of BiH, no. 5/07)
8. **Memorandum of Understanding on establishing a ministerial conference on education in BiH** (Official Gazette of BiH, no. 19/08)
9. **Rulebook on enrollment of freshmen students to secondary schools in RS** (Official Gazette of RS, no. 37/09)
10. **Rulebook on amendments to the Rulebook on election and the work of school board** (Official Gazette of RS Nos. 37/09,46/09)
11. **Rulebook on choosing and announcing the best students of generation in primary schools** (Official Gazette of RS No. 41/09)
12. **Rulebook on secondary school funding** (Official Gazette of RS No.56/09)



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