



**ANNUAL REPORT ON OCCURRENCES
OF DISCRIMINATION IN BOSNIA AND
HERZEGOVINA FOR 2012**

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I INTRODUCTION

Every citizen of Bosnia and Herzegovina has the right to enjoy in legally and constitutionally guaranteed rights without discrimination of any kind. Condition for ensuring access to mentioned protection is that state, as a democratic creation, establishes an effective mechanism of protection for every victim of discrimination and to ensure that the citizens' complaints shall be treated in a serious and confidential manner with a great deal of respect for the dignity of citizens.

Bosnia and Herzegovina is one of the countries that through its internal law prohibits discrimination on all grounds and in all areas of life, and determined the mechanism of protection. However, in practice, the exercise of rights in Bosnia and Herzegovina is not achieved on an equal basis and to the same extent for each individual.

Annual Report on Occurrences of Discrimination constitutes review of Ombudsman Institution's activities in 2012 and points at trends of occurrences of various forms of discrimination encountered by citizens.

In accordance with the Law on Prohibition of Discrimination in BiH, Article 7, paragraph(2), unit f. Ombudsman Institution submits present Report to the Parliamentary Assembly of BiH, the People's Assembly of Republika Srpska, the Parliament of the Federation of Bosnia and Herzegovina and the Assembly of the District of Brčko of Bosnia and Herzegovina.

All public bodies at the levels of the State, entities, cantons and the District of Brčko of Bosnia and Herzegovina, municipal institutions and bodies, legal entities with public competences including all legal entities and natural persons in all areas of life, are obliged to ensure application of measures contained in present Report, and omission of carrying out these measures shall made them responsible for human rights violation.

Banjaluka,
March, 2013

BiH Ombudsmen

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II THE OMBUDSMAN INSTITUTION AND DEPARTMENT FOR ELIMINATION OF ALL FORMS OF DISCRIMINATION

The Institution of Human Rights Ombudsman of BiH is an independent institution established to promote good governance and the rule of law, protection of rights and liberties of natural and legal persons that are guaranteed by BiH Constitution and international treaties appended thereto. Ombudsman institution provides legal and natural persons with notices of their rights and obligations, the possibility of judicial and other protection, acting on individual and group complaints, proposes the institution of mediation proceedings, issues recommendations when it finds a violation of law, and monitor their implementation.

Base for work and functioning of BiH Ombudsmen is contained in Annexes IV and VI of the General Framework Agreement on Peace of 14 December 1995, the Law on Prohibition of all Forms of Discrimination, Freedom of Access to Information Act and the Law on BiH Council of Ministers Appointments and Other Appointments in Bosnia and Herzegovina¹ including entity laws on ministerial, governmental appointments.

Governmental organs and institutions are obliged to cooperate with the Ombudsmen and in this sense are obliged to provide adequate assistance in investigations and monitoring, to enable access to files or documents, do personal interviews and consideration of necessary files or documents for examination of allegations contained in complaints.²

Within the Institution there is separate Department for Protection of all Forms of Discrimination, purpose of which is through recommendations and other decisions to draw attention of responsible institutions and services to factors that disable equal legal treatment of all citizens of Bosnia and propose appropriate measures for effective legal intervention aimed at protection of the citizens.

Procedure for protection from discrimination on the institutions of the Ombudsman initiated by filing a complaint at one of the addresses listed on the official website of the institution.³ Any natural or legal person claiming a legitimate interest may complain to the Institution without any restriction. Nationality, citizenship, residence, gender, minority, ethnicity, religion, legal incapacity, imprisonment of any kind, and, in general terms, a special relationship with, or dependence on, a government body may not restrict the right to lodge a complaint with the Institution. Any complaint must be signed and submitted by the person concerned in a document stating his or her grounds, written on plain paper. A complaint presented in a less formal manner may be accepted where an Ombudsman finds that circumstances so require. All the work of the Institution is free of charge to the person concerned and does not require the assistance of counsel or a solicitor.

Complaining to the Institution or the latter's intervention shall not entail for the complainant any criminal, disciplinary or other sanction or any disadvantage or discrimination.⁴

An Ombudsman may refuse to pursue complaints lodged with the Institution more than 12 months after the facts, events or decisions complained of, and deadline for submitting the lawsuit in accordance with the Law on Prohibition of Discrimination is 3 months after finding about violation of a right and latest one year as of the day a violation was committed.

¹ Articles 16 and 17 of mentioned Law

² Article 25 of the Law on Human Rights Ombudsman of BiH

³ www.ombudsmen.gov.ba

⁴ Article 18 of the Law on Human Rights Ombudsman of BiH

III BINDING STRENGTH OF PROHIBITION OF DISCRIMINATION IN BOSNIA AND HERZEGOVINA

3.1. International standards

Prohibition of discrimination is contained in international treaties that are directly applicable in domestic judicial system, contained in European instruments that are directly applicable or acquire legal force in process of accession of Bosnia and Herzegovina to EU, contained in the Law on Prohibition of Discrimination in BiH, in the Constitution of BiH and other domestic regulations that are in conformity with above mentioned Law.

International treaties containing prohibition of discrimination:

- Universal Declaration on Human Rights (UDHR)⁵
- International Covenant on Civil and Political Rights (ICCPR)⁶
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁷
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁸
- Discrimination (Employment and Occupation) Convention, 1958, (ILO-C-111),
- Convention on Protection of Migrant Workers and Members of their Families,
- Convention on the Rights of the Child (CRC)
- Convention on Rights of Persons with Disabilities
- UNESCO Convention Against Discrimination in the Area of Education

3.2. Regional instruments

European Convention on Human Rights and Fundamental Freedoms (ECHR) offer protection of the rights to all citizens of state-parties to the Convention. One of the strongest international mechanisms for protection, due to its strict mechanisms of application, ECHR guaranties broad spectrum mainly of civil and political rights, including:

- Right to life (Article 2), life without violence (Article 3), life without slavery (Article 4)
- Freedom of opinion (Article 9), expression (Article 10) and right to freedom of assembly (Article 11)
- Freedom of movement (Protocol 4, Article 2)

All persons living in the Council of Europe's state-parties enjoy right from the Convention regardless of sex, race, color, language religion, political or other opinion, national or social origin, and association to national minority, property or some other status. At the time of war or other public threats to the nation, state-parties may reduce their obligation to such measure which is strictly necessary, however, excluding right to life and right to life without torture or slavery. General Secretariat of the Council of Europe must be informed on any step back from obligations. Following becoming member of the Council of Europe in April of 2002, BiH ratified

⁵Articles 1 and 2

⁶Article 2 repeats formulation from Universal Declaration, while Articles 14 and 19 guaranty equality to all persons in court procedures, that is, right to participation in public life. Article 26 of the Covenant stipulates that „All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status».

⁷ Article 2

⁸ Article 2

ECHR, and took over obligations at regional level, in conformity with Article 1 of ECHR, to ensure rights and freedoms guaranteed by this Document to all persons in its territory. Following becoming member of the Council of Europe in April of 2002, BiH ratified ECHR, and took over obligations at regional level, in conformity with Article 1 of ECHR, to ensure rights and freedoms guaranteed by this Document to all persons in its territory.

Article 14 of ECHR “guaranties enjoyment of the rights and freedoms envisaged by the Convention and prohibits discrimination based on sex, race, color, language, religion, political or other opinion, national or social origin, associating with a national minority, property, birth or other status”.

Protocol 12 to the Convention ratified by BiH on 29.07.2003, which entered into force on 1 April 2005, broaden prohibition of discrimination to rights and freedoms contained in the Convention to „enjoyment of all rights envisaged by legislation...“. The first court decision that applied Protocol 12 is Court decision in the case *Sejdić and Finci vs Bosnia Herzegovina*.

In certain areas prohibition of discrimination is regulated by EU Directives. Directives constitute EU legislative act by which the state-parties are required certain results without guidelines in which way such results are to be achieved:

- “Directive on racial equality“ – Directive by EU Council 2000/43/EC of 29 June 2000., which applies principle of equal treatment to all persons regardless of racial or ethnic origin“
- “Directive on employment“ – Directive by EU Council 2000/78/EC of 27 November 2000., which establishes general framework for equal treatment regarding employment and profession.
- “Directive on equal salary“ – Directive by EU Council 75/117/EC of 10 February 1975 on harmonization of legislation of member states regarding application of principle of equal salaries for males and females.
- “Directive on gender equality“ – Directive by EU Council 2000/113/EC of 13 December 2004 which applies principle of equal treatment of males and females in accession and getting of goods and services
- “Directive on burden of proof“ – Directive by EU Council 97/80/EC of 15 December 1997 on burden of proof in the cases of gender based discrimination.
- “Directive on racial equality“ – Directive by EU Council 2000/43/EC of 29 June 2000., which“
- „Directive on equal treatment in employment“ – (revised) – Directive 2006/54/EC of European Parliament and EU Council of 5 July 2006 on application of equal opportunities of males and females regarding employment and profession. This Directive constitutes BiH obligation on its way to accession to EU.

3.3. Domestic regulations

BiH Constitution prescribes that „Bosnia and Herzegovina and both of its entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms...“⁹, and that „rights and freedoms envisaged by European Convention on Human Rights and Fundamental Freedoms and its Protocols shall be directly applicable in Bosnia and Herzegovina“ These acts have priority over all other laws“¹⁰.

⁹ Articles II 1 and 2 of BiH Constitution – Human rights and international standards

¹⁰ Articles II 1 and 2 of BiH Constitution – Human rights and international standards

Further, BiH Constitution determines that „enjoyment of rights and freedoms envisaged in above mentioned article or international treaties listed in Annex I of the Constitution ensures to all persons in BiH without any discrimination based on any ground such as sex, race, color, language, religion political or other opinion, national or social origin, association with national minority, property, birth or other status“.

The Law on Prohibition of Discrimination, which entered into force on 5 August 2009, creates comprehensive framework for civil and administrative regulations for protection against discrimination. Apart from prohibition of unequal treatment based on any ground, the Law makes distinction between direct and indirect discrimination, so the following is determined as special forms of discrimination: „harassment, sexual harassment, mobbing, segregation, issuing orders to the others to commit discrimination, assistance to committers on the occasion of discrimination and victimization. The Law also defined the area of its application, and central institution for protection of discrimination defined by the Law is Institution of Human Rights Ombudsman of Bosnia and Herzegovina. Additionally, the Law determines administrative and court procedures for protection against discrimination including petty offence penal provisions for treatment contrary to the Law and non-compliance with recommendations issued by Ombudsmen Institution.

Unfortunately, in application of the Law on Prohibition of Discrimination there is repeated practice that legislation is adopted easily, while there lacks effective measures targeted to their application. Although Article 7, paragraph 5, of the Law on Prohibition of Discrimination prescribes that in the budget of Institution of Human Rights Ombudsman of BiH shall be incorporated a special budgetary item necessary for functioning of special department/special departments for combat discrimination, it was not included in the budgets for 2010 and 2011 due to financial restrictions imposed on Ombudsmen Institution through temporary financing. These restrictions are particularly reflected in promotion of the Law, monitoring of court procedures related to discrimination, investigations of discrimination and harmonization of legislation.

Such approach to an newly established mechanism, for which globally there is a low level of legal practice, significantly impacts to effective application of the Law and decrease possibility of Ombudsmen Institution fully to carry out its legally determined obligation. As the result of such situation, although the Law was adopted for more than two years ago, just one final court decision has been taken in relation to discrimination, and this decision was taken by Cantonal Court in Mostar,¹¹ including one first instance decision taken by Municipal Court in Livno.¹²

Apart from all endeavors that Ombudsman Institution invested in promotion of the Law on Prohibition of Discrimination, which could be seen through constantly increased number of complaints registered by Ombudsman Institution, there is still present a need for rising of awareness about this legal instrument, particularly in its part which would ensure effective application of legal provisions relating to court protection.

¹¹ No: P 58 0 P 056658 09 P

¹² No: 68 0 P 017561 11 P

IV ACTIVITIES UNDERTAKEN ON PROMOTION OF THE LAW AND COOPERATION WITH THE INSTITUTIONS

As the ombudsman noted the lack of information provided to citizens about the Law on Prohibition of Discrimination in 2012, the activities on promotion and information campaigns directed to the relevant institutions and the public continued. Unfortunately, limited resources and capacities of the Ombudsman Institution reduced the ability of the Institution to do promotion, so this action in 2012 was performed as in previous years and mainly in the activities that were organized by other organizations and institutions.

During March 15 and 16, and then on 9 October 2012 representatives of the Office participated in the workshop organized by the Ministry of Human Rights and Refugees and the OSCE with the aim of reporting on the state of human rights in Bosnia and Herzegovina, in accordance with Article 8, paragraph 3, of the Law on Prohibition of Discrimination in BiH. The workshop was divided into four thematic modules, and as a result of the information exchanged and adopted proposals for improving the situation of human rights in Bosnia and Herzegovina (intensifying consultation process with NGOs, compliance with the recommendations of the Ombudsman, efficient execution of court decisions and legislation harmonization with the Law on Prohibition of Discrimination).

The European police and structures of the RS Interior Ministry, on 21 and 22 March 2012, organized a two-day seminar on "Crimes motivated by hatred" for education of prosecutors and police investigators at all levels in BiH. Emphasis is placed on the determination of hatred as a phenomenon and its manifestation in committing of criminal offenses, and practical actions of the police in preventing and recognizing this kind of knowledge about motivation in committing criminal acts in countries from which presenters come, specifically the United Kingdom, Spain, Austria and Poland.

On 27 March 2012, in Vitez was held conference on "Gender Issues in Security Sector Reform", organized by the Alumni Association of the George Marshall Center in Bosnia and Herzegovina in cooperation with the George C. Marshall Center, with the support of NATO Headquarters in Sarajevo, Center for Security Studies in Sarajevo and other non-governmental organizations. The conference, among other things, concluded that awareness of gender issues in security is very important for the stability and peace in the society, especially in post-conflict societies and reconciliation processes.

At the University of Bihac, on 05.04.2012, was organized the roundtable titled "Controversy of the new law on court fees Una-Sana Canton, a possible violation of the basic human right of access to court." The new law on court fees in the Una-Sana Canton provides for multiple expensive fees unlike other cantons, and the representatives of the Ombudsman raised their voice against such decision depriving the poor of ability to seek justice in court. Upon completion of the Round Table a statement was provided to TV and TV USC 037, in the sense that the right of the state to ensure the collection of court costs due to the launch of the judicial mechanism upon the party, but that it must not be through violation of basic human rights, and should use other mechanisms at its disposal.

In the period 15-16 May 2012, in Sarajevo was held a series of training sessions with the participation of lawyers employed in the Ombudsman Institution, that were committed to international standards of discrimination and case-law of European Court of Human Rights, the study of individual cases and presentation of experiences the bodies for protection of equality of Slovenia, mobbing and court practice in addressing cases of discrimination.

Representatives of the Department for the Elimination of All Forms of Discrimination participated in the celebration of the Day against Homophobia (16.17. May 2012.), organized by Sarajevo Open Centre. During the discussions and meetings with representatives of the diplomatic corps in Sarajevo and the participants of the conference from home and abroad, the authorities pointed to the phenomenon of discrimination often faced by LGBT population, which is related to homophobic statements and media coverage, condemnation and rejection of the general public, the lack of direct support by the Government and non-enforcement of the Law on Prohibition of Discrimination in its entirety.

In organization by the OSCE Mission, 6 June 2012 Department representatives took part in RTV of Una-Sana Canton broadcasting "On the common frequency," which was dedicated to the concept and the fight against discrimination. After one-hour presentations of all participants (OSCE, Association of Persons with Disabilities the Canton) questions from the audience were received, and answered in accordance with the mandate of the Institution.

During five-day stay in Czech Republic (10-14.12.2012, Prague and Brno), representatives of the Institution had the opportunity to get acquainted with the work of the Czech Ombudsman and special attention was paid to the issue of combating discrimination through strategic litigation. The same issue has been the subject of round tables organized in Sarajevo (20-21. June 2012.) And Banja Luka (October 31 to November 1, 2012.) By the Czech NGO "Poradna pro občanstvi, občanská a lidska" with the support of the Ministry of Foreign Affairs of the Czech Republic in cooperation with NGOs "Your Rights" from BiH.

During a meeting with representatives of the OSCE (24.10.2012, Sarajevo), it was discussed about individual cases that had media attention, in which the Ombudsman found a violation of right and issued recommendations, and representatives of the OSCE Mission offered help in monitoring the execution through its channels of communication.

During a meeting with representatives of the independent, non-political and non-profit organizations, "Open Centre" - SOC (November 9, 2012, Sarajevo), it was pointed to lack of terminology in the Law on Prohibition of Discrimination in BiH, which prohibits discrimination on the basis of "sexual expression or orientation," instead of "sexual orientation and gender identity." At the meeting it was pointed out that discrimination against LGBT people in our society is more present than it shows the number of complaints received in relevant institutions, and it was concluded that the Ombudsman Institution earlier established good cooperation with SOC through participation in a training on hate crimes and the Law on Prohibition of Discrimination for LGBT activists in organization by the SOC and the OSCE, and participation in the first school of LGBT rights for students organized by the SOC with the support of ILGA-Europe, and also by working on the introduction of a new questionnaire by the Institute of Transfusion Medicine of the Federation of Bosnia and Herzegovina, and that certainly it would remain open to various forms of cooperation.

During the presentation of the report "The fight against offenses committed out of hatred - Analysis of incidents motivated by prejudice in Bosnia and Herzegovina, with recommendations," issued by the OSCE Mission in Bosnia and Herzegovina (13 November 2012) in hotel "Sarajevo", it was identified that these offenses are usually directed against the following categories of people and objects: the returnee communities, religious and sacred sites; sexual minorities, Roma.

On 20.03.2012 Ombudsman Institution organized and hosted a meeting with representatives of non-governmental organizations dealing with human rights and fight against discrimination, which was held at the Seat of the Institution of Banja Luka. The aim of the meeting was to make civil society organizations familiar with reports on discrimination in 2011, and to create a space to share experiences and challenges faced by civil society and the Ombudsman for Human Rights faced during the implementation of the Law on Prohibition of Discrimination in BiH. It was concluded that there is a good legal framework, but that position and importance of civil society should be strengthened, to strengthen relations between the government and NGOs, to liberate the victims of discrimination of payment of court costs when they initiate court proceedings, but also to increase activism of vulnerable categories.

Promotion of the work of the Institutions in combat discrimination was carried through announcements for radio and television shows, appearances in shows and giving statements, submitting information through a variety of scientific and research centers in the country and abroad, submitting suggestions to the Office of the High Commissioner for Human Rights of the United Nations in the consultation process entitled "Connecting and synergies on issues of violence against women and girls: cross-national process" before the Human Rights Council in Geneva (15 November 2012), filling the questionnaires related to implementation of Recommendation CM / Rec (2010) 5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation and gender identity (30 November 2012), submitting comments on the Draft Recommendations no. 14 Council of Europe related to the fight against racism and racial discrimination in employment (20 April 2012).

V HANDLING OF COMPLAINTS AND STATISTICS

Processing of citizens' individual complaints constitutes the most important form of human rights protection.

5.1. Analysis of complaints received

In 2011 Ombudsman Institution received 191 complaints, while in 2012 Ombudsman Institution registered 257 complaints. Thus, there is an evident increase of the number of complaints relating discrimination (33%), as a result of continued intensive promotional campaigns undertaken by both the Ombudsman Institution and other organizations from the field of human rights and fight against discrimination. For comparison, in 2010 the Office received 135 complaints and in 2009 it received 156 complaints concerning discrimination.

Offices	Complaints received	Pending cases	Resolved cases
Banja Luka	105	42	63
Brčko	18	12	6
Mostar	7	6	1
Sarajevo	123	69	54
Livno	4	2	2
Total	257	131	126

Table 1: Review of complaints received by the Department for Elimination of All Forms of Discrimination

The structure of the complaints received, by far the largest number of complaints was related to violations of labor relations, specifically on mobbing – 81. Accordingly, in relation to 2011, the number of cases in the field of mobbing has increased by 99%, or 40 cases.

Then, by the number of complaints registered by the Department may be mentioned complaints of discrimination on the basis of national or social origin - 30, on the basis of ethnicity - 26, based on education - 19, harassment - 9, on the basis of social status and sex - 13, on political or other beliefs - 14, on the basis of union membership or other associations and in connection with the national minority - 3 complaints.

Out of 257 complaints received 126 were resolved, while in processing of complaints received in 2012 still remains 131 complaints to be resolved, while 147 complaints are transferred from 2010 and 2011. Mentioned complaints were processed in 2012 and 69 cases has been archived. In present Report, in the Department for the Elimination of All Forms of Discrimination of the Ombudsman Institution remained 78 unresolved cases.

Accordingly, in 2012 the Department processed 404 complaints and 195 cases were resolved, while 209 cases are still to be resolved.

Of the 35 recommendations issued within the scope of the Department, 9 recommendations were related to mobbing, 4 to discrimination on the basis of social class and gender, 3 x 3 recommendations related to harassment, discrimination on the basis of ethnicity, discrimination based on national and social origin, 2 recommendation to discrimination on the

basis of political or other opinion, and 1 recommendation for discrimination on the basis of connections with a national minority, and on the basis of education.

FORMS OF DISCRIMINATION / OFFICES	SARAJEVO	BANJA LUKA	BRČKO	MOSTAR	LIVNO	TOTAL
Harassment	4	5	0	0	0	9
Sexual harassment	0	0	0	0	0	0
Mobbing	46	25	6	3	1	81
Segregation	0	1	0	0		1
Issuing orders and helping others in discrimination	0	2	0	0	0	2
Incitement to discrimination	1	1	0	0	0	2
Based on race	0	0	0	0	0	0
Based on color	2	0	0	0	0	2
Based on language	1	0	0	0	0	1
Based on religion	1	1	0	0	0	2
Based on ethnicity	12	14	0	0	0	26
Based on national or social origin	16	10	3	1	0	30
Based on connection with national minority	1	1	0	1	0	3
Based on political or other opinion	4	8	1	1	0	14
Based on property status	0	1	0	0	0	1
Based on trade union or other association membership	1	1	0	0	1	3
Based on education	6	10	2	0	1	19
Based on social class and gender	1	9	2	0	1	13
Based on sexual expression or orientation	3	1	0	0	0	4
Other	24	5	3	1	0	33

Table 2: Review of complaints received on office-to-office basis and forms of discrimination

VI OMBUDSMAN'S OBSERVATIONS CONCERNING CERTAIN FORMS OF DISCRIMINATION

6.1. Mobbing

The Department to elimination of all forms of discrimination in 2012 received 81 complaints relating to mobbing.

Compared to the 2011 when it received 41 complaints, in 2012 Department received 81 complaints, which is a significant increase of complaints of this category of the rights (99%).

Although the number of citizens' complaints of mobbing filed with the Institution has increased significantly, the number is still not a true indicator of the situation in BiH. Ombudsman Institution came to this conclusion based on the testimony of the parties and the media labels, where most horrific consequences of mobbing are exposed to daylight.

The fact is that there are many people today who are exposed to mobbing, but do not address the Institutions or seek court protection from fear that in this case, they could lose their jobs. Comparing statistics from previous years showed that mobbing is on the rise which is contributed by difficult economic situation, high unemployment, poor regulated labor market and the lack of capacity of the competent inspection.

Mobbing victims are also exposed to stress, since mobbing has influence on their health. They often attach expert opinion of a psychologist, psychiatrist or other relevant experts, as well as the depositions of witnesses to their complaints lodged before the Institution. Extenuating circumstance for mobbing victims is in fact that burden of proof lays on alleged perpetrator. In practice, perpetrator is a person in a position of power and they do everything to deny presence of mobbing invoking their rights guaranteed by internal and general legislative documents.

During conduct of the soundness of complaints, the Ombudsman has successfully cooperated with employers in the public and private sectors who timely submitted required information on the status of the case, and competent labor inspection in each case acted on Ombudsmen letters, and carried necessary investigations.

Similar to 2011, the citizens addressed Ombudsman Institution due to hostile environment in the workplace, insult and humiliation by superiors, preventing promotion, selective and incomplete implementation of labor rights in respect of annual leave, the right to vocational training and remuneration.

Commonly reported mobbing is so-called vertical mobbing that occurs when a supervisor abuses a particular employee, while a much smaller number of complaints is related to horizontal mobbing, i.e. mobbing between workers in the same position in the hierarchy.

In any case, the target of mobbing is to force employees to leave the workplace and also economically more degraded.

Marked responsible authorities in their submissions provided to the Ombudsman stated that the allegations of the complainants are false, that jobs are sometimes performed in the changed conditions due to the nature of work, that they strictly comply with the provisions of Labor Legislation and collective contracts, and that complainants themselves have contributed to a hostile atmosphere and environment in the workplace through their behavior.

In a significant number of cases, the Ombudsman has addressed the relevant inspections of work, to reach the largest possible certainty of facts and made an appropriate decision because from direct expressions of the two opposing sides they could not reach a reliable conclusion about the existence of liability.

What is common to all victims of mobbing are multiple consequences. Problems and unhealthy atmosphere at work result in permanent sick leaves and return to work is questionable, which can lead to a voluntary cancellation due to exhaustion or getting fired.

After losing their jobs, new problems arise in connection with finding a new job because of bullying leads to loss of self-respect and loss of social role, which is reflected in the business and to family life.

If the victim of mobbing decides to launch civil proceedings against their abusers, already impoverished house budget due to absence from work, sick leave, termination of employment or further specialist examinations is additionally reduced by lawyer's fees and court costs, resulting in a more severe condition of the victim.

In 2012 Ombudsman Institution was involved in two earlier launched infringement proceedings against employers, when the victims were subjected to additional punishments and consequences, due to the fact that legal procedures were used for protection against discrimination. In both cases public organs were responsible parties, where employees suffered harassment at workplace, which degraded their employment status by their immediate superiors.

This possibility is explicitly provided for by the Law on Prohibition of Discrimination in Bosnia and Herzegovina, and the Ombudsman Institution uses such measures as a last resort in the cases of the most serious forms of victimization, i.e., when a person is faced with the threat of dismissal or resignation due to the fact that he/she cares about the protection of their rights.

As a result of reports by the Ombudsmen, the competent courts of first instance made the decisions that penalize responsible natural or legal persons with severe fines. In the appeals, the appellate courts have overturned the first instance judgment and restore procedure for reconsideration, but for procedural and substantive shortcomings. Insufficient sensitivity of judges to hear a case of discrimination, especially mobbing, may discourage belief in the effectiveness of the remedies available to victims.

6.2. Nationality (ethnicity) based discrimination

In 2012 the Department for elimination of all forms of discrimination has registered 30 complaints against discrimination based on nationality or social origin.

Compared to 2011 when it registered 43 complaints, in 2012 a decrease in number of complaints related to this field of law for around 30% can be noted.

The most of complaints in 2012 is about discrimination on nationality grounds in employment (hiring) procedures and open competitions for vacant positions, appointment to managing positions, housing related rights and carrying out commercial activities and provision of public services.

Basis for the registration of a complaint within the Ombudsman is the complainants' allegation as presented in their complaints. Practice, however, often proves it to be unsubstantiated. This is particularly important when we speak of nationality-based discrimination and difficulties in establishing of its existence. It is difficult to find if somebody is treated differently in pursuance of any of their rights only on the basis of their national/ethnic origin. In finding evidence of such form of discrimination an important factor are statistics, which are, unfortunately, limitedly available in BiH for the fact that the last census was held in 1991. The fact is that the Law on Prohibition of Discrimination provides that burden of proof lays on the alleged perpetrator/violator of the rights, but lack of public awareness of the importance and strength of this provision diminishes its practical implementation, so that the Ombudsman Institution often receives general or partial answers to its inquiries and communication with respondent

parties, which slows down the procedure. It often happens that a complaint is registered within the Department for elimination of all forms of discrimination, but further investigation proves the existence of some complainant's right violation, which cannot be regarded as discrimination, or the existence of discrimination which cannot be proved.

Another problem is participation of constituent peoples' members in the public authorities. This principle is based on parity of dominant ethnic groups in Bosnia and Herzegovina according to the 1991 census, but the practical implementation of this principle brings problems. Citizens have the right to refuse to express their national (ethnic) affiliation for purposes of hiring to a position. This leads to incomplete or confusing statistics to serve as a basis and indicator of whether a certain ethnic group is put in less favorable position compared to another group. Neither can anyone be prevented from changing their ethnic affiliation, which can also be misused in public competition to high-tier public positions when opportunism is leading principle instead of equal representation of less advantageous ethnic groups. Based on the analysis of situation on the ground and the received complaints it could be concluded that returnees and internally displaced persons are often exposed to social exclusion or unequal access to social services since measures are not in place to ensure sustainable return, in particular when it comes to employment.

Ombudspersons also note that in some cases administration proceedings last much longer when they include returnees seeking to achieve some of their rights of entitlements. Although discriminatory motivation can hardly be established, primarily for the fact that judicial and administrative bodies have heavy backlogs, yet in such cases the Ombudsman start from the assumption that discriminatory motif cannot be excluded thus recommending reaching decisions on merits in these cases.

6.3. Education based discrimination

In 2012 the Department for elimination of all forms of discrimination has registered 19 complaints against discrimination based on education.

Compared to 2011 when it registered 11 complaints, in 2012 an increase in number of complaints related to this field of law for around 72% can be noted.

Ombudspersons think that so significant increase in number of complaints in this area is linked to the doubts and problems about the implementation of Bologna process in higher education area, which some candidates faced during the application for certain published vacant positions.

Through processing of individual complaints the Ombudsman has found that national authorities have not adopted new by-laws and rulebooks on internal organization harmonized with The Law on Higher Education and in line with prohibition of discrimination of citizens based on the fact that some of them have gained their diplomas according to the „old system“ and some others according to „Bologna system.“

Ombudspersons think that the fact that by-laws of the state authorities are not harmonized with the Law and Constitution does not mean that these rights and responsibilities does not exist and that the Law should not be implemented since the objective of all the authorities is the implementation of the applicable legislation, not failure to do it.

Ombudspersons also underline that by-laws should never reduce the level of the rights enshrined by the law since that would lead to arbitrariness of the individual officials and would create legal uncertainty among citizens and mistrust in functioning of legality and rule of law.

Exclusion and denial of possibility to participate in public competitions for employment to positions of public servants for the persons who obtained their education according to Bologna process rules represents discrimination of those who have obtained higher education diplomas

under Bologna program and it prevents them from being hired under the same conditions as their peers. This deprives many young and talented people the possibility of finding employment thus putting them in an unequal position for circumstances beyond their influence. Such practice is in violation of the Constitution of BiH and Law on Prohibition of Discrimination.

For instance there was a case of a group of students holding diploma of higher medicine and laboratory technician who filed complaint for denial of access to examination for obtaining the license for work in medical profession or professional training in medical facilities and institutions since the rulebooks of these institutions classify their profession as technical instead of medical. The Ombudsman issued recommendations to the relevant ministries (of education and health) to coordinate and co-operate with representatives of the interested students to amend the mentioned rulebooks and other by-laws preventing these young people from access to market in professions they are qualified for.

6.4. Roma discrimination

In 2012 the Department for elimination of all forms of discrimination has registered 3 complaints against discrimination based on affiliation with national minority.

Compared to 2011 when it registered 9 complaints, in 2012, a decrease in number of complaints related to this field of law for around 67% can be noted.

Complaints falling within this category are related to discrimination of Roma as the largest minority. The fact that number of complaints of Roma people to the Ombudsman has decreased does not mean that their situation had improved in any aspect.

Roma people are still in most unfavorable position in economic and social sense since most of them cannot provide for their families without social welfare subsistence. They do not possess health insurance in most cases, very few of them has some job or the permanent source of income and a large number of their children do not attend school. Roma are also the most discriminated national minority, and they experience unequal treatment in the area of employment, education, public services provision and access to public gathering places. Number of complaints lodged within the Institution does not nearly reflect real number of discrimination cases involving Roma members as they live on social margins, which implies their lack of access to legal remedies and mechanisms for the protection of their rights.

Discrimination of Roma origins from deeply rooted prejudices and stereotypes of Roma being perceived as „beggars“, „criminals“, „uneducated“ ... which additionally contribute to their marginalization.

It is necessary for the state authorities to take institutional efforts, primarily in the field of Roma education as it is the crucial point for release of their potential and their obtaining of necessary qualification to be competitive at labor market and go out of the vicious circle of discrimination, social exclusion and poverty.

Ombudspersons commend media for timely reactions to the examples of Roma discrimination and incidents involving Roma, which is an important step toward the better awareness among the society and acceptance of this minority group as equal to others.

6.5. Other forms of discrimination

In the reporting period the Ombudsman Institution also had examples of gender-based discrimination. Some local communities organized a futsal league where children were entitled to participate based on their place of residence. Now, a boy wanted to participate since his mother had residence in one of the municipalities covered by this competition, but he was

refused with an explanation that the place of residence is determined by the father, not mother. Such denial of participation based on the residence of the mother is a form of discrimination pursuant to Article 3 Item 1 of Law on Prohibition of Discrimination and a direct form of discrimination under Article 4 Item 1 of the Law on Gender Equality in Bosnia and Herzegovina. The Ombudsman issued recommendations to the Association of municipalities that organized this league (Liga Hercegovine) recommending to adjust the rules and pre-conditions for participation in this sports competition with the above laws. They took the obligation to harmonize their rules for the next season and made first steps in coordination of necessary activities to this end.

Although sexual intercourse between the same sex members are de-criminalized and all the forms of discrimination on grounds of sexual orientation explicitly forbidden by law, LGBT persons are facing stereotypes and prejudices on a daily basis and the enjoyment of their rights depend to a high degree on readiness of the society to tolerate diversity and on political will of the state institutions and officials. Compared to the other vulnerable groups, members of LGBT population very rarely complaint to the Institution of the Ombudsman or any other similar institution which the most probably comes as a consequence of judgmental attitude of the society, traditional intolerance toward this category of citizens and a strong influence of religious organizations. According to the information available to the Ombudsman there was no any case before court related to discrimination on this ground, while the Ombudsman in the reporting period had 13 complaints of discrimination based on social status, gender and sexual orientation, 2 of these cases being initiated *ex officio*.

One of characteristic examples of discrimination on other grounds that were not explicitly mentioned in the law is linked to methods of application to public competitions falling within the mandate of entity agencies for public service. A complainant in such a case thought that the entity agencies should simplify application procedure for the positions in public service by allowing the applicants to submit their applications by email since the agencies also use Internet to inform candidates on issued related to competition process. Ombudspersons think that citizens are entitled to ask the authorities of Bosnia and Herzegovina to take measures enabling them to apply for job through the Internet. This would be an example of good administration and facilitate the citizens' access to employment under equal conditions. In reply to this recommendation entity agencies expressed their readiness to improve their informatics aspect in their public competition procedures, which is considered as good co-operation and compliance with given recommendation.

Using its mandate under Law on Prohibition of Discrimination the Ombudsman Institution initiated amendments to the Criminal Code of Bosnia and Herzegovina in order to include hate crimes. These amendments would include definition of crime in the general part of the Criminal Code, provide qualifications for forms of various crimes punishable with harder sanctions committed out of "prejudices" and inclusion of the motivation based on prejudices as aggravating circumstance in deliberating on concrete cases involving such crimes and deciding on punishment for it. Such amendments have already been adopted in criminal codes of the Republic of Srpska in 2010. In January 2013 the Ombudsman was invited by the Parliament of the Federation of Bosnia and Herzegovina to participate in work of the task force entrusted with preparation of amendments to the Criminal Code of the Federation of BiH.

6.6. Illustrative examples

Case Ž-SA-06-264/12

The Ombudsman initiated an *ex officio* investigation for human rights violation and discrimination based on affiliation with national minority. Namely, three Roma persons were kicked out from a café in Sarajevo and waiters told them they cannot be served for being Roma. A waitress told them specifically that the owner strictly told her not to serve Roma people. The Ombudsman issued its recommendation to the owner of that café recommending him to bring his business activities in line with the provisions of the Law on Prohibition of Discrimination. This recommendation was complied with.

Case Ž-SA-06-225/12

A group of employees of Elektroprijenos Bosne i Hercegovine a.d. Banja Luka (Electric energy distribution company) approached the Ombudsman with their complaint against the Company management which failed to pay them the difference of their salaries and allowances for the period from 01.06.2006 to 31.12.2009 granted to them pursuant to the relevant court decision. In this case 1333 employees have already received their entitlements, out of which: 770 was paid based on a final court decision or out-of-court settlement, and 563 employees based on a Decision adopted by the Company on payment of the difference in salaries and allowances¹³, while 76 employees, including the complainants, were still pending payment. The Ombudsman issued a recommendation to the Company management asking them to co-operate with the Ombudsman and take appropriate measures to treat all the employees equally thus putting them in an equal legal position. This recommendation was complied with.

Case Ž-SA-06-319/12

Respondent party in this case was the Civil Service Agency of the Federation of Bosnia and Herzegovina. The complaint was about the exclusion from participation at a public competition for civil servant positions in the administration of the FBiH of a candidate (the complainant) who had gained his higher education diploma according to Bologna process. The Ombudsman issued recommendation recommending the Agency to seize the practice of publishing of public announcements for public competitions at which equal treatment of higher education certificates obtained according to Bologna program and traditional higher education system according university degrees cannot be secured. This recommendation was complied with.

Case Ž-SA-05-509/11

In this case allegations were made against the educational inspector of the Cantonal Inspection of Sarajevo Canton. The case is about the Faculty of Philosophy of the Sarajevo University threatening the complainant by firing from work for his addressing the Ombudsman thus putting the complainant in unfavorable position for using a legal remedy, which is explicitly forbidden under Articles 18, 19 and 21 of the Law on Prohibition of Discrimination. Since the Faculty responded to the Ombudsman's recommendation negatively announcing no intention to comply, the Ombudsman used another measure at its disposal pursuant to the Law on Prohibition of Discrimination, which included initiation of misdemeanor proceedings against the

¹³ No. 01-1958/11

Faculty of Philosophy and its Dean as a responsible person. The court found respondents guilty and asked the respondent parties to comply with the recommendations of the Ombudsman and make their “Final warning prior dismissal” null and void and they appealed from this decision. The second-instance court returned this case to the first-instance for retrial.

Case Ž-SA-06-446/12

This complaint was about some discriminatory provisions of a form used by the Transfusion Medicine Institute of the FBiH. Case was closed following the issuance of a recommendation to the Institute whereby the Institute was recommended to introduce a new form, that is, a new Blood Donor Consent harmonized with the Rulebook on special technical requirements related to blood and blood components adopted in 2011. Following that the Institute informed the Ombudsman that the recommendation was complied with.

Case Ž-SA-06-405/12

This complaint was lodged about the Decision on salaries and allowances in the administration of Donji Vakuf Municipality adopted at the session dated 30.03.2012. The complainant claimed that Articles 6 and 16 of this Decision were not harmonized with the Law on Salaries and Allowances in the Authority Bodies of the Federation of Bosnia and Herzegovina and the Law on Prohibition of Discrimination in BiH.¹⁴ Following the investigation the Ombudsman recommended the Municipal Council to re-examine its Decision on salaries and allowances in the administration of Donji Vakuf Municipality in part related to coefficients for a Mayor and a Deputy Mayor in order to harmonize it with the principle “same salary for the same position” in order to remove discrimination against the Mayor and the Deputy Mayor of the Municipality of Donji Vakuf, compared to other equivalent positions within the Central Bosnia Canton. The recommendation was complied with since the Municipal Council adopted new amendments to the Decision on salaries and allowances in the administration of Donji Vakuf Municipality.

Case Ž-SA-06-971/11,

The complainant asked protection of his right to freedom of ethnic affiliation/determination and prohibition of discrimination.¹⁵ The Ombudsman recommended the Ministry of Defense of Bosnia and Herzegovina to take measures and activities to abandon discriminatory practice based on affiliation to entity armies before their integration into the Armed Forces of BiH, and to put all their members in the same position regardless to what entity army they originate from, to secure the right to free expression of ethnic affiliation to all its members and to improve the existing registration methods to prevent discrimination and remove possibility of

¹⁴ The complaint claims that Amendment 2 adopted by the Municipal Council modified Article 6 in a way that the position of a Mayor, payment class I was given coefficient 7,80 instead of 9, with reasoning that a Mayor is not entitled to a salary equal to that of a Minister in the FBiH Government, but that s/he, in capacity of an elected person, is entitled to a salary equal to that of a member of the Parliament of the FBiH, which means the coefficient 7,80. Amendment 3 in Article 16 foresees for the position of a Deputy Mayor to be classified in payment class II, with a coefficient 4,60 instead of 5,70 with reasoning that a Deputy Mayor is entitled to a salary of public servants. The complainant claims that all the municipalities of Central Bosnia Canton have adopted the Decisions on Salaries and Allowances in the Administration (Travnik, Gornji Vakuf-Uskoplje, Novi Travnik i Fojnica) including coefficients as proposed by the qualified proponent, with coefficient 9 for a Mayor and 5,70 for Deputy Mayor save for the Municipality of Donji Vakuf which is a discrimination against them.

¹⁵ During the investigation, on 21.11.2011 the recommendation P-175/11 was issued to the Ministry of Defense of Bosnia and Herzegovina, and the Joint Staff of Armed Forces of Bosnia and Herzegovina to establish co-operation with the Ombudsman at once and to plea as to the allegations mentioned in the complaint within 7 (seven) days maximum and to submit all the relevant documentation listed in the Ombudsman’s letters dated 16.09.2011 and 21.10.2011.

human rights violations. This particularly relates to the status of the army members and in this sense the Armed Forces are recommended to ensure smooth advancement unimpeded by the method of evidence-keeping. It is also recommended that the Armed Forces should calculate degree of risk involved in potential status change requests from those members who belonged to the entity military components and their ethnic origin is different from the one that could be assumed from their past affiliation with that entity component. Finally, the Ministry was called to inform the Ombudsman on taken measures. The recommendation was complied with and the Ministry informed the Ombudsman that it sent letters to all the organizational units, and the Joint staff to accept and comply the recommendations of the Ombudsman.

Case Ž-SA-06-940/11

The Ombudsman initiated an *ex-officio* investigation in accordance with Articles 2 and 23 of Law on Human Rights Ombudsman of Bosnia and Herzegovina¹⁶ with regard to the public announcement on a public competition for the election and appointment of the State Appeals Board members published by the Public Service Agency of Bosnia and Herzegovina. The Council of Ministers at their 156th session held on 28.07.2011 has adopted the text of the mentioned public announcement drafted by the General Secretary. Among general conditions for application was a condition described as follows: The candidates must prove that legal consequences of a final and binding sentence pronounced by the court for domestic violence have expired, pursuant to Article 22 of the Law on Public Service in the Institutions of Bosnia and Herzegovina¹⁷, Item f)¹⁸. Such wording of Article 22, paragraph 1, Item f) of the Law on Public Service in the Institutions of Bosnia and Herzegovina, not only created legal uncertainty, because all the candidates who did not commit domestic violence and were not sentenced for such a felony could not prove their meeting the eligibility criteria, which is absolutely contrary to the provisions of the Law on Criminal Procedure and Criminal Code applicable in Bosnia and Herzegovina. Such a provision also raises the issue of possible gender-based discrimination since statistics show that victims of domestic violence are predominantly women and children, while men mostly come as perpetrators.¹⁹ Following the investigation the Ombudsman issued a recommendation to the Ministry of Justice of Bosnia and Herzegovina to urgently initiate adoption of amendments to the mentioned Law and repeal the said provision. On 01.06.2012 the Ministry of Justice informed the Ombudsman that procedure related to the recommendation P-176/11 had ended on 18.11.2011 and the challenged Item f) of Article 22, paragraph 1 of the Law on Public Service in the Institutions of Bosnia and Herzegovina had been deleted and the new wording of the said Law published in the "Official Gazette of BiH" no. 40/12 dated 28.05.2012.

Case Ž-BL-06-292/12

The complainant in this case was a woman victim of domestic violence perpetrated by her husband against whom she initiated misdemeanor proceedings before the Basic Court of Banja Luka. The Ombudsman contacted the Court which replied that cases are heard chronologically by the date of filing and that priority is given to older cases. In this concrete case the Ombudsman assessed the relationship between the general and individual interest, the later

¹⁶ "Official Gazette of BiH" no. 32/00, 19/02, 35/04 and 32/06

¹⁷ "Official Gazette of BiH" no. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07 and 43/09

¹⁸ "f) that legal consequences of a court decision for domestic violence toward the candidate have expired pursuant to the criminal legislation;"

¹⁹ „Statistic data on domestic violence”, made by the Gender Center of the Federation of Bosnia and Herzegovina that could be retrieved from the web site of the Gender Center FBIH

being reflected in a very difficult family situation of the complainant that threatened to escalate. Since the individual interest in this case prevailed in the interest of well-being of the complainant and her minor children, 30. 07. 2012 the Ombudsman sent its recommendation to the Court recommending it to give priority to this case. The Court informed the Ombudsman afterwards that it scheduled hearing in this case by which the case was solved in a positive way.

Case Ž-BL-06-435/10

The complainant addressed the Institution asking it to make monitoring over the court proceedings before the Basic Court of Banja Luka. It was a dispute between her and her employer for mobbing at work. The case in question is still pending. Having in mind the time of commencement of the proceedings it is obvious that there is a violation of Article 6 paragraph 1 of the ECHR (the right to trial in a reasonable time period). However, from the aspect of the specific circumstances involved (change of the judge assigned to the case, a large number of witnesses, huge backlog of the Court) it must be stated that the Court in the concrete case did schedule hearings and hear witnesses, and examine evidence. In the reporting period, representatives of the Ombudsman did not face any obstruction in carrying out of their mandate from any party whatsoever.

Case Ž-SA-06-402/12

The complainant in this case was prevented from starting with work in the Company „Krivaju“ d.o.o. Zavidovići – under bankruptcy in accordance with his Work Agreement for being a member of the Independent Forestry, Wood Processing and Paper Production Trade Union of Bosnia and Herzegovina. According to the allegations of the complainant, although the Director of DC „Energetika i održavanje“ and Acting Director of the Company „Krivaja“ have expressed the need to engage the complainant, he has never commenced with work because of the pressure exerted by the newly formed trade union organization of the Company „Krivaja“. To substantiate his claims, the complainant submitted a copy of a decision adopted by the Trade Union of the Company „Krivaja“, Trade Union of Graphic, Publishing and Media Workers number 05/12 dated 13.01.2012 sent to the Management of the Company „Krivaje“ whereby they ask the management not to employ the complainant before all the employees of the Company „Krivaja“ have been engaged. On 02.11.2012 the Ombudsman issued the following recommendations: to the Bankruptcy Manager of the Company recommendation no. P-191/12 recommending him to take activities that will result in putting the complainant in the equal legal position with the other employees who have signed their work agreements, to the Acting Manager, recommendation no. P-192/12 to establish co-operation with the Ombudsman, to the Trade union of the Company „Krivaja“, Trade Union of Graphic, Publishing and Media Workers, recommendation no. P-193/12 to repel their decision no. 05/12 dated 13.01.2012 by which they forbid the management of the Company „Krivaje“ to engage the complainant. On 06.12.2012 the Ombudsman received a letter from the Bankruptcy Manager in reply to the Ombudsman's recommendation no. P-191/12 in which letter he informs the Ombudsman that the complainant initiated court proceedings against the Company „Krivaja“ doo Zavidovići – under bankruptcy and that he would comply with the court decision once it has been reached. On 19.12.2012 the Municipal Court in Zenica under number 43 0 Rs 067453 12 Rs reached a decision by which they order the Company to enable the complainant to start working pursuant to his Work Agreement. In the reasoning of such a decision the Court held that membership in a trade union should not be the reason for putting the complainant in unfavorable position compared to other employees. Trade Union cannot ask any employer for

such a thing, in particular since trade union is supposed to protect the rights of employees, not to deprive employees from their rights, such as the right to work. The court decision had not final and binding yet.

Case Ž-BL-06-402/12

Ombudspersons had the opportunity to cause adoption of amendments to a general by-law, that is the Rulebook on schedule of taxi vehicles on taxi stops, priority determination criteria on priority lists in its allocation at taxi stops. The challenged Rulebook foresaw that taxi drivers' children got priority over the other candidates if they applied for the same position although they were equal with them in meeting general criteria. Following the Ombudsman's investigation it was established that a class of citizens is put in favorable position compared to another, which is qualified as giving priority based on prohibited grounds under Article 2 of Law on Prohibition of Discrimination in BiH, so that Ombudsman issued a recommendation to amend the challenged Rulebook in sense that the only criterion for filling in vacant taxi post be meeting criteria provided for, that is, chronological order of submitting the applications. This recommendation was complied with, which was substantiated by a copy of amended Rulebook.

Case Ž-BL-06-763/12

In pursuance of its mandate the Ombudsman Institution co-operates with the NGOs dealing with human rights protection. The applicant represented by her proxy, the NGO „Vaša prava BiH” addressed the Ombudsman on 26. 10. 2012 claiming that she was a disabled person and was supposed to get granted a national sports award since she won silver medal in the European Athletic Championship as a member of national selection of blind and semi-blind persons back in 1984. During the investigation it was established that she had met criteria for this award, so the relevant ministry will be recommended by the Ombudsman to grant the applicant this award since it was established that she would get that award had she not been a disabled person.

VII MEASURES INTENDED TO STRENGTHEN THE OMBUDSMAN'S CAPACITY TO COMBAT DISCRIMINATION

The Law on Prohibition of Discrimination adopted in 2009 foresees the existence of a separate budget line for functioning of Department for elimination of all forms of discrimination, it did not happen to date, although 4 years had elapsed since the adoption of the Law. Financial and staff restraints, however, does not have undermine the Ombudsman's ability to handle complaints, but it does prevent it from carrying out some other mandates entrusted under that Law in order to bring level of protection from discrimination in line with developed European countries.

In attempt to achieve social equality, the authorities can take certain measures that would not be regarded as discrimination if they are intended to rectify some existing injustice. Such measures are regarded as positive or affirmative. Measures of positive discrimination are particularly directed toward the vulnerable groups such as disabled persons, national minorities, women, pregnant women, youth, elderly, victims of war etc. Through its work on individual cases, the Ombudsman had an opportunity to identify and recommend some positive discrimination measures. In the next period it would be necessary to review different legislation and by-laws to achieve *de facto* equality of the different vulnerable groups that were historically unequal. This is our obligation according to international treaties and standards.

In the next period if necessary prerequisites are met in sense of capacity strengthening, the Ombudsman will focus to statistical data gathering, monitoring and participation in court proceedings as *amicus curiae* in order to collect input data for surveys and research on occurrences of discrimination since this obligation is foreseen in Law on Prohibition of Discrimination. In this process it is also necessary to have insight in comparative experiences and establish co-operation with other institutions and legal entities in BiH, primarily judiciary, NGOs, relevant ministries and free legal aid centers.

Analysis of legal solutions and suggestion of amendments to the existing ones or new legislation is particularly sensitive activity because of possible political implications or budgetary expenses necessary for implementation. The aim of such activities would be to assist the legislative authorities in Bosnia and Herzegovina to harmonize applicable legislation at all authority levels with EU legislation and standards in respective areas of law.

Article 8 of the Law on Prohibition of Discrimination defines responsibility of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina in the implementation of the Law on Prohibition of Discrimination. Ombudspersons state that this Ministry has not established a central database to comprise cases of discrimination, nor it issued a rulebook on methods of collection of cases involving discrimination within the legal deadline of 90 days. It is expected that a rulebook on methods of data collection in cases involving discrimination be adopted in March 2013 after which training sessions will be organized for all the levels of administration in BiH with regard to their obligation to provide and submit data on discrimination to the relevant the Ministry of Human Rights and Refugees of BiH where the Ombudsman will have an active role.

Finally, Ombudspersons state that concerned institutions provide information to the Ombudsman and reply to its inquiries so that co-operation with the Institution at all levels of the authorities is satisfactory, while degree of compliance with recommendations of the Ombudsman could be higher. The Ombudsman Institution is a preventive mechanism for human rights protection and compliance with its recommendations is primarily in the interest of public authorities since it would prevent lengthily and expensive court proceedings and indemnification of the victims following decisions of the Human Rights Court in Strasbourg. In order to have higher degree of recommendations complied with, it is necessary to investigate possibility and necessity of the establishment of parliamentary oversight over the compliance with recommendations of the Ombudsman either through the establishment of a special body/committee or organization of thematic meetings dedicated to this issue.