



Protocol No.: Oi – K – SA – 182/18

Sarajevo, 07th August 2018

**Committee on the Protection of the Rights of
All Migrant Workers and Members of Their Families**

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**Submission of the Human Rights Ombudsman of Bosnia and Herzegovina on the
implementation of the International Convention on the Protection of the Rights of All
Migrant Workers and Members of Their Families**

I. INTRODUCTION

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina was established in 1996 pursuant to Annexes IV and VI of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) and the provisions of the Law on Human Rights Ombudsman of Bosnia and Herzegovina¹, as an independent institution entrusted with the protection of human rights and promotion of good administration and the rule of law. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina was granted accreditation status „A“ by the Global Alliance of National Human Rights Institutions – GANHRI in 2017.

The Ombudsman Institution is faced with many obstacles aggravating its functioning in particular due to the lack of material and financial resources necessary for fulfilling of all aspects of its mandate. This was recognized by the SCA GANHRI in its most recent decision on accreditation dated 24.11.2017 whereby „The SCA acknowledges the complex political situation in which

¹ Official Gazette of Bosnia and Herzegovina”, no. 19/02, 34/05 and 32/06

IHROBH operates. The SCA commends the efforts of the IHROBH in advocating for the adoption of amendments to its enabling law to address issues of concern noted previously by the SCA². There is no doubt that there is a need to adopt the proposed amendments to the Law on Ombudsman and take measures to strengthen the capacity of the Ombudsman Institution to be able to fulfill its mandate in accordance with the Paris Principles.

In the framework of its mandate, the Ombudsman monitors and fulfills the obligations under the International Convention on the Protection of the Rights of All Migrant Workers and their Family Members (hereinafter: the Convention) through visits and monitoring of immigration and asylum centers and other places where migrants are located and by processing the individual complaints lodged in addition to the cooperation with civil society engaged in migration issues. In the period from 2012 to 2018 a total of 42 complaints were received in the Institution related to this area.

II. POSITIVE ASPECTS

In the reporting period from 2012 to 2016 Bosnia and Herzegovina has made a progress in implementation of the Convention. In the mentioned period the following activities took place:

- *A new Law on Aliens²* governing the conditions and procedure conditions and procedures for entry of aliens, visa and non-visa regime, travel documents for aliens, stay and removal of aliens, admission of aliens and placement under surveillance, competency of authorities relevant for the implementation of this Law, breaches and other issues, was adopted.
- *A new Law on Asylum³* governing the issues related to conditions and procedure for granting a refugee status, the status of subsidiary protection, cessation and revocation of a refugee status and the status of subsidiary protection, temporary protection, identification documents, rights and obligations of asylum-seekers, refugees and aliens under subsidiary protection, as well as other issues related to asylum, was adopted.
- *A new Law on Free Legal Aid Provision⁴* aiming at securing to every physical person the efficient and equal access to justice in proceedings before the authorities and institutions of Bosnia and Herzegovina established to protect and realize their individual rights, obligations and interests.
- *Amendments to Law on Prohibition of Discrimination⁵*, which strengthened protection mechanisms and defines discrimination on grounds such as the age, disability and sexual orientation, gender identity and gender characteristics, were adopted.

² Official Gazette of BiH, no. 88/15

³ Official Gazette of BiH, no. 11/16 i 16/16

⁴ Official Gazette of BiH, no. 83/16

⁵ Official Gazette of BiH, no. 66/16

- *A Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2016-2020*⁶ were adopted. The underlying principles of the Strategy are the legality, safety of the state, international co-operation and integrations.
- *A Co-ordination Body for the Issues of Migrations in Bosnia and Herzegovina* (hereinafter referred to as: the Co-ordination body),⁷ as a permanent body entrusted with co-ordination of the activities between the responsible institutions dealing with the issues of migrations and asylum.
- Co-operation between the responsible institutions dealing with migrations and th NGOs was established in a way that the NGO “Vaša prava BiH”/”Your Rights BiH” provides the legal assistance to the persons under the international protection based on a Protocol signed with the Ministry of Security of Bosnia and Herzegovina. From the Ombudsman’s case-law it is obvious that all complaints lodged within the Institution in respect of migration and asylum were submitted by the NGO “Vaša prava BiH”.
- Women NGO Foundation BH Women’s Initiative provides psycho-social support to persons under international protection, while the NGO MFS-EMMAUS implements projects involving the direct assistance to victims of trafficking in persons and migrants, in addition to prevention and awareness-raising among the groups under risk and general population. This model of co-operation between the NGOs and the Ministry in charge of migration issues and the Ombudsman can serve as a good practice example.

III. CONCERNS

Situation on the field of migrations in BiH, in the period between two reports should be divided to a period before 31 December 2017 and the period from 1 January 2018 till the moment of drafting this Submission.

- 1) The first period was featured by sporadic, controlled entry and movement of migrants since Bosnia and Herzegovina was recognized as a transit country for migrants from other countries at the same time being the country of origin from which its own citizens migrate to other countries due to the economic and political situation prevailing in the country. Institutional capacities were sufficient in the first period to meet all the obligations established by the law.
- 2) The other period was featured by dramatic increase in number of migrants entering (on a daily basis) the territory of BiH and using it mostly for transit towards the European Union countries. Since the beginning of 2018 until the date of this submission drafted was 9,326 migrants and it is estimated that around 3,000 of them are currently located in Bosnia and

⁶ Strategy in the Area of Migrations and Asylum and the Action Plan for the period 2016- 2020

⁷ Decision of the Council of Ministers of Bosnia and Herzegovina on establishment of the Co-ordination Body for the Issues of Migrations in BiH, Official Gazette of BiH no.: 10/13 dated 11 February 2013

Herzegovina. It was found that around 25% are migrants from Syria, while the rest 75% economic migrants. Also, it should be highlighted that all registered migrants fall within the category of so-called irregular migrants⁸, that is, the aliens with non-regulated status (in percentages more than 98%). A number of migrant families with children were also present in the country.

In period April – June 2018 the Ombudsman conducted the monitoring of the situation in this area and concluded that Bosnia and Herzegovina is currently having mixed migrations. Motives of migrations are varying so in the country there are aliens seeking better life conditions/ economic migrants and aliens enjoying the international legal protection. Bosnia and Herzegovina is predominantly a country of transit for migrants from Pakistan, Iran, Iraq, Morocco, Algeria, Libya, Syria, Afghanistan..., and that responsible authorities do not have capacity to respond adequately to these challenges. Increased inflow of migrants and continuity of this process requires additional mobilization of material, financial and human resources not available to Bosnia and Herzegovina.

On the other hand, it needs to be pointed out that the complex economic, political and social situation in Bosnia and Herzegovina is a reason of ever growing number of citizens of BiH leaving the country.

Ombudspersons of BiH express their concern related to lack of efficiency in procedures applied by the relevant authorities of BiH, which is evident in all stages of procedure related to migrants including the following:

- frequent departure from legal obligation to provide information to the migrants of their rights in their language or a language they understand;
- poor communication related to issuance of a certificate of the expressed intention to seek asylum and the fact that this certificate is made only in languages of Bosnia and Herzegovina, and that the communication patterns used so far failed to enable the migrants to understand the meaning and the legal background of this certificate;
- in the initial stage of the second mentioned period, that is, in the beginning of this year observed was on the part of the authorities failure to ensure the adequate institutional practical guidance to the migrants who expressed the intent to seek asylum and the fact that the note present on the above mentioned Certificate

⁸ They are mostly migrants who entered into Bosnia and Herzegovina without any identification document in places not foreseen to serve as state border crossing points while moving from a country to another thus violating the legislation applicable in these countries, that is, against the will of the authorities of the countries onto which territory they enter. Most of migrants have expressed their intention to seek asylum although Bosnia and Herzegovina for them is a transit country mostly.

The officials use different terminology related to migrants in their public discourse: illegal migrants, migrants and refugees. The UNHCR Spokesman for SEE Neven Crvenković defined the migrants and refugees who entered the country in an irregular way, without necessary permissions or documents required according to the legislation governing the immigration issues **as irregular** rather than illegal migrants since the second term has certain, not accurate “criminal” connotation. The term irregular migrant is preferred by the agencies and bodies of the UN, the Council of Europe, and EU.

according to which the migrants are directed to the Asylum Center Delijaš are often purely formal, lacking the substance and that most of these persons ends up in the streets of Sarajevo and other BiH cities;

- failure to ensure the transportation of migrants, in particular the groups, or the families with children and the fact that this form of care-taking is implemented sporadically on a case-to-case basis, without clearly defined criteria, which creates a space for the action of various mediators, including smugglers in persons, who started to determine the routes of their movement within BiH and further;
- slowness of registration process of migrants who have expressed the intent to seek the asylum, which places them in a “legal limbo” since they do not possess decisions of the responsible authorities, which prevents them from seeking the court protection;⁹
- failure to provide the efficient care of children not escorted by their parents and the fact that on the territory of BiH a number of children was registered not having any appointed guardian as required according to the law, so it is not clear who represents the interests of these children in relevant proceedings¹⁰.

Evident are problems in keeping record of migrants, which aggravates the process of their registration, as well as decision-making on their status issues and their access to guaranteed rights. This also hampers the creation of systemic measures by the state in this area¹¹.

Definition

Article 2 of the Convention has a definition of the term migrant, as well as other terms related to migration process, while Article 5 sets out who should be considered as migrant workers and members of their families. Article 6 includes the definition of the terms such as the state of origin, transit and destination of a migrant-worker. Ombudspersons hold that Article 6 of the Law on Aliens defines the terms related to aliens, however, it does not include the definition of the term of migrant, neither the definitions of who should be considered to be a migrant worker and a member of their families, and other terms defined in Articles 2 - 6 of the Convention which indicates that the BiH Law on Aliens has not been harmonized with the Convention on the Protection of the Migrant Workers.

⁹ Ž-SA-05-765/18, Ž-SA-05-779/18, Ž-SA-05-592/18, Ž-SA-05-593/18, Ž-SA-05-594/18, Ž-SA-05-595/18, Ž-SA-05-596/18, Ž-SA-05-597/18, Ž-SA-05-598/18, Ž-SA-05-599/18

¹⁰ Ž-SA-01-689/18, Ž-SA-01-690/18, Ž-SA-01-691/18, Ž-SA-05-607/18, Ž-SA-05-608/18, Ž-SA-05-609/18, Ž-SA-05-610/18, Ž-SA-05-611/18, Ž-SA-01-556/18, Ž-SA-01-557/18, Ž-SA-01-558/18, Ž-SA-01-559/18, Ž-SA-01-560/18, Ž-SA-01-561/18, Ž-SA-05-562/18

¹¹ Ž-SA-04-415/18, Ž-SA-05-765/18, Ž-SA-05-779/18, Ž-SA-05-399/18, Ž-SA-05-432/18, Ž-SA-05-592/18; Ž-SA-05-593/18; Ž-SA-05-594/18; Ž-SA-05-595/18; Ž-SA-05-596/18; Ž-SA-05-597/18; Ž-SA-05-598/18; Ž-SA-05-599/18.

Access to the court

Authorities in Bosnia and Herzegovina have provided, in accordance with Article 18 of the Convention, access to court and judicial protection for migrant workers and members of their families. Judicial protection is ensured under equal conditions, both for citizens of Bosnia and Herzegovina, migrant workers and members of their families.

When it comes to access to court in legal proceedings, Ombudspersons point to the efficiency of the Court of BiH so far as it decides on the lawsuits of migrants in legal disputes in a very short period of time, with full respect for international human rights standards. Nevertheless, in light of the recent increase in influx of migrants who have expressed their intention to seek asylum in Bosnia and Herzegovina, and the fact that no decision has been made in the administrative proceedings in these cases, the Ombudsman indicates that these persons are in a *legal limbo*, that is, somewhere "between", since they cannot seek judicial protection without the decision of the administrative body. However, the fact is that this situation in most cases suits the migrants as well, should not be ignored, since the expressed intention of seeking asylum is only a way of legalizing their stay in Bosnia and Herzegovina, while most of them want to leave Bosnia and Herzegovina. Ombudspersons point to the importance of urgent treatment in these cases in order to fulfill legal obligations to determine the status of migrants and to secure their rights according to that status.

The Law on Aliens prescribes a period of maximum duration of supervision, i.e. detention in the Immigration Center¹². During the visit to the Immigration Center¹³ it was determined that the detention time at the Immigration Center depends on the length of the procedure for determination the beneficiary's identity. A large number of people who are accommodated in the Immigration Center do not possess identification documents, and generally give false identity statements, which further extend the length of their stay in the Immigration Center.

Free legal aid

¹² The Law on Aliens, Article 119 (Period of Determination and Extension of Control) (1) The alien remains under control until the moment of voluntary abandonment or forcible removal from BiH or for as long as is necessary for the purpose of exercising the purpose of supervision, or while the reasons that were the basis for placing an alien under supervision does not change significantly, but the longest by the deadline determined by the decision on placing under supervision, or the decision on the extension of supervision. (3) The decision shall determine the control by placement in the immigration center for a period not exceeding 90 days. (4) After the expiration of the deadline referred to in paragraph (3) of this Article, and if there are still reasons under Article 118 (Determination of supervision) of paragraph (3) of this Law from which the control is assigned to a foreigner, the supervision may be extended to the alien every time up to 90 days, so that the total duration of surveillance in the immigration center cannot last longer than 180 days. (5) Notwithstanding paragraph (4) of this Article, in the event of a lack of cooperation between a foreigner in the process of removal or delay in obtaining the necessary documents from the country in which the foreigner is being hired, the duration of supervision may be extended for a period longer than 180 days. (6) The total duration of the surveillance in the immigration center cannot be longer than 18 months in continuity.

¹³ Visit to the Immigration Center done on 05.04.2018

It was launched before the European Court of Human Rights

The provision of free legal aid in Bosnia and Herzegovina follows the state structure. The Law on Free Legal Assistance of Bosnia and Herzegovina stipulates that free legal aid is provided within the Ministry of Justice of Bosnia and Herzegovina through the Office for Free Legal Aid Provision, which is the internal organizational unit of the Ministry. Additional difficulties in obtaining legal aid are also the fact that the Office has not been sufficiently staffed.

Migrant workers from BiH

In the last two years, Bosnia and Herzegovina is becoming a country of origin in an increasing number of cases, and measures to prevent the causes of BiH citizens, especially young people, leaving to other countries are hardly in place. Recently there were intentions of imposing the additional taxes to financial remittances sent by BiH migrant workers to their relatives in the country. This is an example of abuse of migrant workers from Bosnia and Herzegovina, mentioned by Ombudspersons when discussing the issue of exploitation of Bosnian migrant workers. Ombudspersons are of the opinion that the authorities have not taken adequate measures in order to prevent the abuse of the rights of migrant workers¹⁴. In 2014 the Prosecutor's Office of Bosnia and Herzegovina issued an indictment against 13 persons with charges that they have sent more than 600 persons from Bosnia and Herzegovina and countries of the region to work in Azerbaijan, where they kept them under inhuman conditions. The judgment in the case has not reached yet.

The issue of employment the aliens is governed by the Entity laws and the Law on Employment of Aliens of the Brčko District. As a special condition for the establishment of employment according to the Law on Aliens, a work permit must be obtained before entering Bosnia and Herzegovina. Ombudspersons of Bosnia and Herzegovina express their concern about such legal regulation because an alien is obliged to have a regulated residence status in order to get employed, while on the other hand s/he is obligated to have employment in order to get residence. For the above mentioned reasons, it is necessary to harmonize the legislation governing the employment of aliens in Bosnia and Herzegovina.

Social rights

The enjoyment of social rights is not adequately ensured, which could be seen from individual complaints received at the Ombudsman Institution that indicate the violation of human rights of children under international legal protection, whether accompanied by parents/guardians and the

¹⁴The case was filed before the European Court of Human Rights in the case of Zoletić and Others v. Azerbaijan. This case entails the constitutionally prescribed obligation of BiH to ensure the protection of its citizens abroad. Therefore, the agent of BiH was ordered to appear before the European Court of Human Rights in Strasbourg to intervene as a party to the proceedings. A case against Azerbaijan was initiated by a group of 33 workers from BiH. They sued Azerbaijan because they were subjected to slavery and forced labor in that country.

children on the move with and/or without parents/guardians. The process of appointment of guardians to unaccompanied children lasts unreasonably long.¹⁵

In order to protect the best interests of the child, it is necessary to act urgently in the process of appointing a guardian who would take measures to protect a minor person without parental care and take measures to ensure the right to stay in Bosnia and Herzegovina. Un/accompanied children, as well as the families should have access to permanent psychosocial counseling.

The social protection segment, inter alia, includes the protection of particularly vulnerable categories. During the visit and monitoring of the situation in the Immigration and Asylum Center and other places, through cooperation with the civil sector, Ombudspersons noted that the protection of the rights of particularly vulnerable categories (such as pregnant women, persons deprived of legal capacity, elderly and frail, persons with disabilities, pregnant women, persons with mental disorders and victims of trafficking in human beings, victims of torture, rape or other psychological, physical and sexual violence) was provided through civil sector projects.

Health care

According to the Law on Asylum, aliens residing in Bosnia and Herzegovina have the right to access to primary health care. The issue of providing adequate health care is characterized by lack of coordination and difficulties in the process of exercising the right to access to secondary and tertiary health care¹⁶.

Trafficking in human beings

The Report by State Department¹⁷ points to the failures of Bosnia and Herzegovina in meeting fully the minimum standards for the elimination of trafficking in human beings. Ombudspersons of Bosnia and Herzegovina appreciate the importance of highlighting the recommendations of the State Department that require the definition of the persons establishing the first contact with victims of trafficking in human beings. In this regard, Ombudspersons conclude that it is necessary to establish mechanisms for implementation of these recommendations and train staff establishing the first contact with victims so that the focus of attention in investigations and processing is put on the victim. The provisions of the Criminal Code of the Entities and the Brčko District in the part relating to the criminal offense involving the trafficking in human beings are harmonized with the provisions of the Criminal Code of Bosnia and Herzegovina and with international standards in the field of human trafficking.

¹⁵ Ž-SA-01-689/18, Ž-SA-01-690/18, Ž-SA-01-691/18

¹⁶ Ž-SA-04-415/18

¹⁷ <https://www.state.gov/j/tip/rls/tiprpt/2018/>; <https://www.state.gov/documents/organization/282798.pdf>

IV. RECOMMENDATIONS

Bearing in mind all the concerns expressed about the implementation of the Convention on the Rights of Migrant Workers and Members of Their Families, Ombudspersons of Bosnia and Herzegovina consider that in order to improve the rights of the mentioned groups it is necessary to take the following measures:

1. Activate all the measures envisaged by the Migration and Asylum Strategy and Action Plan for the period 2016-2020, which include, inter alia: increasing the efficiency of surveillance and control of the state border of Bosnia and Herzegovina, significantly improving the system of controlling the entry and stay of aliens in Bosnia and Herzegovina thus raising the protection and security of citizens of Bosnia and Herzegovina to a higher level;
2. Increase the number of personnel, i.e. strengthen the capacities of institutional mechanisms dealing with migration issues, including the Asylum Sector, the Border Police of Bosnia and Herzegovina and the Service for Foreigners' Affairs;
3. Establish an operational body with a high degree of mobility and full involvement of members of this body in solving migration issues. This body should be operational 24 hours a day;
4. Establish reception center/s in which all migrants present in Bosnia and Herzegovina will be taken care of. Such reception centers should provide reception, accommodation, provision of food and health care to the migrants, as well as their exercise of other rights;
5. Establish clear operational procedures for all competent authorities with a clear definition of decision-makers in cases that could not be foreseen in procedures;
6. Define the role of international organizations, non-governmental organizations and volunteers in order to utilize their readiness to help in a systematic and adequate manner;
7. Raising public awareness of the Convention with target groups of government officials and citizens.

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