



Date: 6th November 2018
Number: Oi-K-BL-594/18

**Committee on the Elimination of
Discrimination against Women (CEDAW)**
Palais Wilson – 52
CH – 1201 Geneva
Switzerland
E-mail: cedaw@ohchr.org

**OBSERVATIONS OF THE HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND
HERZEGOVINA ON THE IMPLEMENTATION OF THE UN CONVENTION ON THE
ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)
IN BOSNIA AND HERZEGOVINA**

I – INTRODUCTION

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter referred to as: the Ombudsman) was accredited by the International Coordinating Committee of National Human Rights Institutions (ICC) with „A“ status as a national human rights protection mechanism in Bosnia and Herzegovina (BiH). In the framework of its mandate the Ombudsman is following-up and providing protection or the rights of the citizens of BiH including the rights guaranteed by the UN Convention on the Elimination of Discrimination against Women (hereinafter: CEDAW) and regularly submit its observations thereon to the relevant UN bodies.

Pursuant to the provisions of **the Law on Prohibition of Discrimination in Bosnia and Herzegovina, the Ombudsman are is an Equality Body and the central institution for the issues involving the free access to information under the Freedom of Access to Information Act and to decide on governmental and ministerial appointments under the provisions of the law regulating this area.**

In their work Ombudspersons face many challenges aggravating the functioning of the Institution, in particular in respect of material and financial resources. This was recognized by the Sub-Committee for Accreditation (SCA) of the Global Alliance of Human Rights Institutions - GANHRI, which indicates in its Accreditation Letter that it “acknowledges the complex political situation in which 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 SCA“. There is no doubt that there is a need to adopt the proposed amendments to the Law on Ombudsman and to take measures to strengthen the capacity of the Ombudsman Institution to enable it to carry out its mandate in accordance with the Paris Principles.

Observations on the implementation of CEDAW in BiH (hereinafter: Observations) are primarily focused to the experience of the Ombudsman gained through the processing of individual and group complaints lodged to the Institution in addition to the cases of ex officio investigations made by the

Ombudsman which relate to the protection and promotion of human rights enshrined by the CEDAW. It includes maximum efforts to make a comprehensive analysis of the situation with emphasis to the prohibition of discrimination as an absolute right. Particular attention is dedicated to the analysis of the implementation of the Concluding comments of the on the Elimination of Discrimination against Women¹ with an overview of the legislative and institutional framework and procedures aimed at securing the implementation of the international standards in BiH in the field of the elimination of discrimination against women.

Ombudspersons of Bosnia and Herzegovina in these Observations want to point out to certain issues that are noticed through their work and link them to some more general issues and phenomena in our society.

II – GENERAL COMMENTS

As indicated in previous Observations, gender equality in BiH cannot be regarded as an issue isolated from other issues pertaining to human rights. Complaints received by the BiH Ombudsman Institution indicate to an increasingly complex situation related to human rights which includes, in addition to the factors recognized by the CEDAW Committee in reviewing of earlier periodic reports as causes of human rights violations. Trend of adopting more robust legislative solutions for the issues such as the social and health care of women is noted. However, full effects of these measures are still unknown. More should be done in the field of gender-related violence.

III – POSITIVE ASPECTS

On 25 July 2017 the Presidency of Bosnia and Herzegovina adopted a decision on cancellation of the Convention on Underground Work for Women, No. 45, which was published in the "Official Gazette of BiH – International Treaties", no. 9/17.

Ombudspersons of Bosnia and Herzegovina, following the adoption of the 2016 amendments to the Law on Prohibition of Discrimination, which was published in 2009, in particular in part relating to the situational testing and the fact that the Ombudsman's recommendation has to be reviewed in court proceedings, made efforts to raise the implementation of this Law.

Adopted Amendments to Law on Prohibition of Discrimination² set out the stronger protection mechanisms and added some new grounds of discrimination such as: age, disability and sexual orientation, as well as gender identity and gender characteristics. The role of the Ombudsman is strengthened in respect of situational testing, which will, in the opinion of Ombudspersons contribute a lot to proving the gender based discrimination.

Recommendations of the Ombudsman must be taken in consideration as an evidence in court proceedings. Labor laws that have entered into force in the Federation of BiH³ and Republika Srpska⁴ have additionally clarified areas of discrimination, mobbing, harassment and sexual harassment compared to the previous legal solutions.

An initiative was taken aiming at providing the child maintenance after the divorce of parents in an alternative manner through the establishment of the Alimony Trust. In the Federation of Bosnia and

¹ Bosnia and Herzegovina, adopted on 35th session held from 15 May to 2 June 2006 CEDAW/C/BIH/CO/3

² „Official Gazette of BiH“, no. 66/16

³ “Official Gazette of the Federation of BiH”, no. 26/16

⁴ “Official Gazette of the Republika Srpska ” no. 1/16 and 66/18

Herzegovina, Article 237 of the Family Law⁵ provides the following: "When a court finds that parents and other persons obliged to provide support are unable to meet the child's needs, it will inform the custodian body which is obliged to provide funds to support the child from the budget of the Federation". Unfortunately, this legal provision has never been implemented⁶. In the Republic of Srpska, an initiative was taken with a view of making the legal arrangements for the establishment of the Alimony Trust with the intent that by 2018 this mechanism should become operational.

In the Federation of Bosnia and Herzegovina, the Law on Treatment of Infertility in Biomedicine Impregnation⁷ came into force, while a similar legal regulation has been in force for a few years in Republika Srpska.

Recommendations and initiatives issued by the Ombudsman Institution in various areas comprise the gender aspect either explicitly or in part. For instance, several special reports starting from maternity protection, persons with disabilities, Roma, journalists (or female journalists) were generally well accepted, and some progress or initiatives related to their implementation were noticed, but they did not come about with concrete measures or results that would lead to significant changes. Through intensive contact with different levels of government, Ombudspersons of Bosnia and Herzegovina try to turn declarative support into more concrete measures.

Ombudspersons of Bosnia and Herzegovina have made significant efforts to develop a confidential and safe system for filing complaints relating to gender-based discrimination and sexual harassment and ensuring that victims have effective access to these justice-seeking means. Among other things, maximum measures are being taken to protect the identity of persons reporting sexual and sexual harassment as much as possible.

With support of the different international organizations, all staff members have the possibility to attend various trainings, seminars and on-line courses. For instance, all the lawyers have undergone one-day training from situational testing, in particular because the statutory provision stipulates that the situational testing must be reported to the Ombudsman Institution. Furthermore, three employees have passed a multi-day course on situational testing.

IV – MAJOR CONCERNS

Certain positive developments and the adoption of new regulations in certain sectors, as well as the modification of certain policies, cannot alleviate the fact that Bosnia and Herzegovina has not yet improved its legislative framework and that gender perspective is not adequately represented in its legislation.

If the current status is reviewed in light of earlier CEDAW recommendations, in particular the points relating to the area of employment, labor relations, social and health care, there are many fields where no adequate progress has taken place.

Women in post-conflict situations

War crimes prosecution is still unsatisfactory and the Revised Strategy for War Crimes Prosecution has not been adopted. For the Ombudsman it is encouraging that the BiH Council of Ministers

⁵ „Official Gazette of the Federation of BiH" no 35/05, 41/05 and 31/14

⁶ The Ombudsman issued its recommendation in the case Ž-BL-01-330/14

⁷ „Official Gazette of the Federation of BiH" no. 59/18

indicated to the necessity of implementation of the Committee's recommendations⁸ and Ombudspersons hope that the mentioned Strategy will be adopted soon;

Regarding the recommendations pointed out under Item 10, the Ombudsman cannot ascertain satisfactory progress. Women victims of torture face the fact that their status in a significant part of the territory of Bosnia and Herzegovina is not adequately regulated, as they face the numerous administrative obstacles in exercising their rights.

At its 128 session held on 04 January 2018 the Council of Ministers of Bosnia and Herzegovina, adopted the Final Report on the Implementation of the Action Plan for the Implementation of UN Resolution 1325 "Women, Peace and Security" in Bosnia and Herzegovina 2014 – 2017. In this regard, the BiH Council of Ministers has mandated all competent institutions to implement the recommendations set out in the Final Report. There is a continuous increase in the representation of women in the defense and security sector, but still not at the desired level in respect of their representation in the general population.

Constitutional and legal framework

Bosnia and Herzegovina has not started the process of amending the BiH Constitution, the present Constitution of BiH does not contain the definition of equality between women and men and the prohibition of direct and indirect discrimination of women in the public and private sphere in accordance with Articles 1 and 2 of the Convention.

Legal complaints mechanism

Regarding the recommendations pointed out under Item 10, the Ombudsman notes that training in the field of discrimination is present, but not sufficiently and that there has been no progress achieved in the sense of referring to the Convention by the prosecutors and the judges. The Law on Provision of Free Legal Aid ("Official Gazette of BiH" No. 83/16), which regulates the provision of free legal aid to the BiH authorities and institutions, was adopted. In the earlier period, this issue had been resolved in the Republika Srpska and Brčko District of Bosnia and Herzegovina, as well as the most cantons in the Federation of Bosnia and Herzegovina, currently only one canton (Central Bosnia) in the Federation of BiH does not have the provision of free legal aid regulated.

National Mechanism for the Improvement of the Women's Status

Gender Equality Agency and the entity level gender centers are continuously carrying out the activities in the framework of their mandates.

Stereotypes

Authorities have not taken measures to adopt a comprehensive strategy, with sustainable and active measures, overcoming stereotypical stance on the roles and the responsibilities of women and men. There are certain partial approaches to this issue, which is why the Ombudsman Institution participated in the project carried out by a non-governmental organization⁹ to document such contents, but such activities, although desirable, are not sufficient and cannot replace the necessary comprehensive approach.

⁸ <http://detektor.ba/izbori-koce-usvajanje-izmjena-strategije-za-ratne-zlocine/>

⁹ Fondation "CURE" Sarajevo.

Violence against women

In respect of the recommendations referred to in Item 22, starting from the effectiveness of the prescribed and undertaken measures, there is still not a satisfactory level of efficiency in the processing the violence against women.

There is a tendency to raise the level of prosecution, speed of work and cooperation of all actors in this process every year, and there are examples of very good cooperation between courts, prosecutors, police officers, social workers and non-governmental sectors. However, the impression is that it is more the consequence of the professional experience and personal efforts of certain individuals in these bodies rather than the result of plans and strategies.

Concerning the creation of databases containing information on violence against women, Ombudspersons hope that in the forthcoming period the authorities of Bosnia and Herzegovina, along with existing activities, and through the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, will create a more functional database.

Nationality

In respect of the recommendations referred to in Item 30, progress has been made in relation to the enrollment of Roma children into the birth registration books, and with further cooperation with the Roma community this issue inherited from the previous period could be solved in the near future.

Education

Regarding the recommendations under Item 32, it should be pointed out that there are certain programs (more informative) under which girls are encouraged to enter the non-traditional fields of study. It should be noted that current trends in the labor market and perspective in seeking of future employment are dominant factor in the choosing the future profession, e.g. the enormous interest in enrollment in health related studies, mostly in order to seek employment abroad.

There are programs for the integration of the monoethnic schools.

Regarding the policy of re-enrollment of Roma girls, there are no obstacles in the sense of imposing restrictions or any other action of the school authorities, but there is often lack of support from the wider community in terms of overcoming the problems faced by girls who have stopped schooling.

Employment

Regarding the recommendations under Item 34, the authorities are taking measures aimed at the reduction in size of "the grey economy" and its integration into the legal flows, and these measures, if implemented, will contribute to better integration of women into the formal labor market.

With regard to the strengthening of labor inspection, there is a need to strengthen it in every way from the staffing, additional training, and, where necessary, the change of the powers. Namely, most inspection supervision visits end up in checking the formal legality of the bylaws passed by the employer and not in checking the actual working conditions and their effects.

Some legal amendments bringing improvements in terms of greater regulation of the prohibition of all forms of discrimination against women have been passed, but of course full effects will be seen in the forthcoming period.

Discrimination reporting systems, in particular by the Ombudsman Institution, offer confidentiality and security.

With regard to the effective access to justice of victims of discrimination, if they do not have the support of the non-governmental sector or some of the free legal aid providers, they have to finance the cost of proceedings by themselves.

The authorities, except in some cases at the local level, have not taken comprehensive measures to provide the access the childcare facilities.

There are still many regimes in the field of maternity protection in Bosnia and Herzegovina, the current initiative, including the Special Report, which sets out the recommendations for greater unity in the BiH Federation, has not brought up to date.

Maternity care in Bosnia and Herzegovina is still governed in multiple ways and all initiatives, including the Special report of the Ombudsman of Bosnia and Herzegovina, aimed at unification and harmonization of legislative solutions in this field have not yield satisfactory results.

Health

Regarding the recommendations under Item 36, gender perspective is still not sufficiently represented in health care policies, and therefore women have insufficient access to secondary care as well as numerous specialistic care treatments. Media often report on the shortage of cystostatics or other medicines, and it often happens that the patients have to buy certain medicines themselves and then seek reimbursement from the health insurance provider. The beneficiaries think that the procurement of medicines, and some medical devices and aids (for examples the diapers for persons with disabilities) is extremely slow, complicated and often results in the procurement of devices of questionable quality.

With regard to family planning awareness raising, prevention of sexually transmitted diseases and the use of contraception there are programs targeting the different groups, and it is necessary to monitor its implementation, as well as all other health care programs.

Vulnerable groups of women

As for the recommendations under Item 38 the authorities take certain measures whether through special plans and strategies or locally aimed at improving the status of particularly vulnerable groups of women such as the Roma, internally displaced women, women with disabilities, women living in the rural areas.

If strategies aimed at solving the housing problem of internally displaced persons in the coming period give positive results, it can be expected this group to be less represented.

On the other hand, taking into account the problems faced by Roma and women with disabilities, it is necessary to intensify the current measures before any significant improvements can be made.

Marriage and family relations

In respect of recommendations under Item 40 related to the prevention of early marriages among the Roma population, the Ombudsman had a complaint about this issue¹⁰ and that the authorities in

¹⁰ A complaint registered under number Ž-SA-03-1201/14

this case showed an enviable level of co-ordination, trained police officers and co-operation with social welfare centers. Through cooperation with the non-governmental sector, the Ombudsman learnt that they had acted on several occasions to prevent this, and it is necessary to continue working with both, NGO sector and Roma community leaders.

V – RECOMMENDATIONS

The authorities in Bosnia and Herzegovina should continue with all activities devoted to the implementation of criminal and other legislation in cases of domestic violence and gender-based violence.

In addition to monitoring and analysis of implementation of the legislation at all levels, the authorities in Bosnia and Herzegovina should provide support for other aspects of law enforcement. It includes not only training and exchange of experiences between judges, prosecutors, authorized officials and social workers, but also the involvement and other forms of support for the injured parties (psychologists, security houses and others).

Ombudspersons of Bosnia and Herzegovina think that the activities carried out in order to implement the provisions of the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence, which give special emphasis to data collection and preventive measures, can be a significant framework and particular attention should be paid to ensuring that all activities are coordinated to the greatest extent, in order to achieve better effects.

In the sphere of protection against discrimination, it is necessary to continue with the highest level of education of judges, prosecutors and the staff of the institutions providing free legal aid, as well as the state and public officials at all levels.

Apart from this, in the area of the protection from discrimination, it is necessary to continue with the implementation of existing plans and strategies, if necessary revise them, and put effort to involve the non-governmental sector as much as possible.

With regard to social protection and health care, in addition to putting stronger efforts to implement the existing standards in addition to their review from the aspect of gender rights, it is necessary to plan the increase in the scope and the progressive implementation of certain rights.

Human Rights Ombudsmen of
Bosnia and Herzegovina:



Nives Jukić

PhD Ljubinko Mitrović

PhD. Jasminka Džumhur