



The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

**UNIVERSAL PERIODIC REVIEW OF THE HUMAN RIGHTS SITUATION
IN BOSNIA AND HERZEGOVINA**

Cycle IV

March 2024

The report has been drafted on the basis of citizens' complaints filed with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina¹, as well as annual and special reports available on the IHROBiH official website².

INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

On 24 November 2017, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions reaccredited IHROBiH with status A for a period of five years. In September 2023, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBiH) submitted a request to SCA for periodic five-year reaccreditation, which will be considered at the SCA session in the period March-May 2024.

Bosnia and Herzegovina adopted the Law on Amendments to the Law on Human Rights Ombudsman of Bosnia and Herzegovina. Article 4a³ envisages the establishment of an independent preventive mechanism. The 2024 budget of the institutions of Bosnia and Herzegovina has not been adopted, the funds for the functioning of the preventive mechanism, although envisaged, are still not available. One of the recommendations from the previous accreditation process and the recommendations from the third cycle of UPR referred to the obligation to establish and ensure the functioning of a preventive mechanism.

The ombudspersons adopted the 2023-2028 IHROBiH Action Strategy⁴ in March 2023.

IHROBiH faces limitations in terms of capacity building, reflected in insufficient funds and spatial capacities.

¹ Hereinafter:

Bosnia and Herzegovina - BiH

Federation of Bosnia and Herzegovina - FBiH

Republika Srpska - RS

Brčko District of Bosnia and Herzegovina - BD BiH

Institution of Human Rights Ombudsman of Bosnia and Herzegovina – IHROBiH

² <https://www.ombudsmen.gov.ba/>

³ *The Official Gazette of Bosnia and Herzegovina*, no 61/23

⁴ https://www.ombudsmen.gov.ba/documents/ombudsmen_doc2023042613164557eng.pdf

EQUALITY AND ANTI-DISCRIMINATION

The legal framework for the protection against discrimination in BiH remains unchanged.

Bosnia and Herzegovina has not eliminated the constitutional obstacles to the establishment of an electoral system free of ethnic discrimination, to which it is obligated by judgments of the European Court of Human Rights in Strasbourg⁵. Judgment U-23/14 of the Constitutional Court of BiH has not been implemented.

The Rulebook of the Method for Collecting Data on Discrimination Cases in Bosnia and Herzegovina⁶, prescribing⁷ the necessity to ensure the exchange and submission of consolidated annual reports with statistical data on discrimination cases, in a machine-readable printout format, from the discrimination cases database, in written and electronic forms, between the Ministry and IHROBiH.

Bosnia and Herzegovina has made visible progress in the protection and support of the human rights of LGBTIQ persons over the past twenty years of LGBTIQ activism, which in turn has resulted in the continuous holding of the pride parade in Sarajevo⁸ without incidents, the queer culture and art festival, and the adoption of the 2021-2024 Action Plan for the Advancement of Human Rights and Fundamental Freedoms of the LGBT Persons in BiH⁹. In 2022, the first judged was passed¹⁰ in which the court confirmed discrimination against LGBTI persons. No law on same-sex partnerships has been adopted.

PARTICIPATION OF WOMEN IN POLITICAL LIFE

BiH has made significant efforts to regulate this area but women are still underrepresented in legislative and executive bodies. The BiH Election Act is harmonised with Gender Equality Act¹¹. Women make up 40% of political candidates in elections, but the percentage of elected women is much lower. In the 2022 General Elections, 16.66%, the percentage of elected women in the FBiH House of Representatives amounted to 26.53% and in the RS National Assembly it amounted to 18%. Representation of women in courts in 2022 was 64%.¹²

Political representation of women it is not satisfactory in either local self-governance units in Bosnia and Herzegovina or in sub-municipal bodies.

⁵ *Sejdić and Finci, Zornić, Pilav and Štaku.*

⁶ <http://www.sluzbenilist.ba/page/akt/tXBohz4nh78h77fNwWnJU=>

⁷ Article 10 of the Rulebook

⁸ Pride parades have been held in: 2019, 2020, 2021, 2022 and 2023

⁹ <https://arsbih.gov.ba/project/akcioni-plan-za-unapredjenje-ljudskih-prava-i-osnovnih-sloboda-lgbti-osoba-u-bosni-ihercegovini-za-period-2021-2024-godine/>

¹⁰ Judgment no 65 0 P 801 297 19 P dated April 2022

¹¹ BiH Election Act is based on the principle of equal opportunities.

¹² According to the data available in the Thematic Bulletin *Women and Men in BiH Sarajevo, 2023*

VIOLENCE AGAINST WOMEN

BiH has not harmonised gender-based violence-related laws and public policies with international standards. Family proceedings acts, acts on domestic violence and criminal codes at all levels of government in BiH are partially harmonised with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. In BDBiH, there is still double codification of domestic violence and minor offence penalisation is still envisaged for some forms of its forms¹³.

In legislation, women with disabilities are not recognised as a vulnerable category in the context of gender-based violence.

Policies/strategies aimed at preventing and combating gender-based violence exist at entity levels, but they do not envisage any specific measures for LGBTI population or Roma women.

RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON

Domestic violence

The FBiH Domestic Violence Protection Act was adopted in 2013¹⁴ and on 17 September 2019, the Act on Amendments to the RS Domestic Violence Protection Act¹⁵, which is in line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). It is particularly important to point out to the importance of the amendments referred to in Article 42, where the provision was deleted that stipulated penalising the perpetrator of domestic violence for a minor offence, thereby ensuring that the penalty for domestic violence in the RS is treated only as a criminal offence, pursuant to Article 190 of the RS Criminal Code and the BDBiH Domestic Violence Protection Act¹⁶.

Human trafficking

BiH has taken legislative and operational measures to strengthen its capacities to combat human trafficking. In order to comply with international standards, BiH has ratified UNCTOC and its protocols, including the Palermo Protocol. In 2008, Bosnia and Herzegovina ratified the Council of Europe Convention on Action against Trafficking in Human Beings and undertook to fully comply with the legal and other measures contained therein. According to the State Department report, BiH falls under the second out of the five categories, suggesting that major efforts are being made to eliminate human trafficking. BiH has also ratified the following ILO conventions: No. 29: prohibition of forced labour; No. 97: migration for employment (revised); No. 105: abolition of forced labour; and No. 142: migrant workers (Supplementary Provisions). International standards oblige BiH to fully comply, not only in terms of legislative compliance and implementation but also

¹³ The number of women victims of domestic violence, as well as the number of femicides, has since 2019 increased in BiH.

¹⁴ Domestic Violence Protection Act, *The Official Gazette of the Federation of Bosnia and Herzegovina*, no 20/13, 75/2021

¹⁵ *The Official Gazette of the Republika Srpska*, no 84/2019 which came into effect on 1 January 2020

¹⁶ BDBiH Domestic Violence Protection Act, *The Official Gazette of Brčko District of BiH*, no 7/2018

in terms of ensuring institutional and operational capacities for judicial prosecution and prevention of trafficking, including trafficking for the purpose of labour exploitation. These very measures must ensure the identification and protection of victims.

Migrants and asylum seekers

Acting within its competences and based on the BiH Foreign Nationals Act¹⁷, the Asylum Act¹⁸ and the Prohibition of Discrimination Act¹⁹, as well as international standards for the protection of human rights and fundamental freedoms applied in the legal system of BiH, IHROBiH draws attention to the fact that migration is a current issue in BiH. It is particularly important to point out to the responsibilities of the institutional mechanisms to carry out procedures following applications for asylum, and ensure status and other rights guaranteed by the legislation of BiH and ratified international standards. Foreign nationals in the territory of BiH request IHROBiH to act in order to provide a possibility to express intent to seek asylum, to act because of the failure to issue decisions concerning applications for asylum, appoint guardians to unaccompanied minors, because of illegal actions of competent services in procedures concerning applications for asylum/attestations of expressed intent to seek asylum in BiH²⁰.

IHROBiH continuously carries out activities in the field of migration, which include attending meetings with competent local and international institutions, organisations and associations and representatives of the Immigration Centre to determine the situation there.

Displaced persons

The Agreement on Refugees and Displaced Persons provides for the obligation of the state and its entities to create political, economic and social conditions for voluntary return. Returnees exercise their rights in accordance with entity and cantonal laws, which are often not harmonised with each other, which is why, although they have exercised the right to healthcare, social protection or other forms of protection, they must undergo the procedure for the reinstatement of the rights in the event they change the place of residence or return to their pre-war place of residence in the territory of the other entity. The Act on Displaced Persons and Returnees in the FBiH and Refugees from BiH²¹ applies for these purposes in the FBiH, and in the RS it is the RS Act on Displaced Persons, Returnees and Refugees in the RS²². There were nine cases received in 2023 that concerned the issue of war damage to the complainant's property due to the (im)possibility to restore damaged buildings and that concerned open call procedures, with two recommendations issued. According to the words of a returnee: *"I have filed the papers countless times, everything that was required, only to be told that something was missing, that it was out of date. When I provide additional papers or renew the papers they tell me that I meet all requirements but there is no more money and it goes on and on, year after year"*²³.

¹⁷ BiH Foreign Nationals Act, *The Official Gazette of Bosnia and Herzegovina*, no 88/15, 34/21

¹⁸ BiH Asylum Act, *The Official Gazette of Bosnia and Herzegovina*, no 11/16, Correction to Asylum Act, *The Official Gazette of BiH*, no 16/16

¹⁹ BiH Prohibition of Discrimination Act, *The Official Gazette of BiH*, no 59/05, 66/16)

²⁰ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf,

²¹ Act on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina, *The Official Gazette of the Federation of Bosnia and Herzegovina*, no 01-78/05

²² Act on Displaced Persons, Returnees and Refugees in the Republika Srpska, *The Official Gazette of the RS*, no 42/05

²³ Ž-SA-04-585/23, Ž-BL-05-119/23, Ž-BL-144/23

JUDICIARY AND THE RULE OF LAW

The right to a fair trial

When it comes to the field of justice, there is an increase in the number of cases falling under the category length of procedure and falling under the category execution of judgments. Also, there is a noticeable increase in the number of complaints falling under the category complaints against the work of judges and complaints against the work of the High Judicial and Prosecutorial Council of BiH (HJPC).

IHROBiH has so years been pointing out to the issue of the length of procedures in its reports. The backlog reduction plan provides a probability in terms of when a case will be considered by the court and that the order of receipt of the initial act will be complied with, but it does not essentially solve the issue of the length of the procedure or cases that require urgent action.

Also, IHROBiH has for years been pointing out to complaints referring to the impossibility or difficulty to execute final and binding judgements. The problem, *inter alia*, is reflected in situations when the executing authority is a municipality, canton or entity. In such cases, the execution is only possible over funds provided for this purpose in the budget of the relevant public body, in the amount envisaged for this purpose and for the specific year. Acting on citizens' complaints and *ex officio*, IHROBiH has been proactive in terms of public bodies, issuing recommendations to execute final and binding judgements when the executing authority is a municipality, canton or entity.

Complaints filed against actions of judges often arise as a result of parties' dissatisfaction with the final outcome of the proceedings and the adoption of a decision that is not in their favour.

IHROBiH notes that complaints filed against the work of HJPC mostly refer to the procedures for appointing court presidents and judges, complaints concerning the work of the disciplinary prosecutor, failure to comply with the party's requests, adoption of by-laws that are in conflict with legal provisions, etc.

Anti-corruption policy

One of key requirements in the process of combating corruption, establishing the rule of law and European integration is depolitisation of the public administration. In its reports, IHROBiH has for years been stressing that the quality of public services and the work of public administration bodies is, for the citizen, a concrete indicator of the functionality of a certain state.

IHROBiH drafted the Special Report on the Role of Inspection Bodies in the Protection of Human Rights in BiH, aimed to serve as a tool for policy and law makers when creating measures, improving the functioning of inspection as an element of the rule of law. In its reports, IHROBiH has been reminding the executive authorities and called on them to take all necessary measures within their respective competences and powers to eliminate weaknesses in the functioning of inspection bodies, to strengthen them and ensure their more efficient operation.

Also, in its reports, IHROBiH has stressed the requirements that all public appointments be made transparently, lawfully, in accordance with the applicable rules, regulations and laws, and that they be implemented according to the principle of quality-based selection. IHROBiH has been pointing out to the competent public companies /institutions that it is necessary to work on depoliticising the employment process. IHROBiH stresses that it is necessary to review the existing legal framework governing governmental, ministerial and other appointments and set clear criteria to be complied with in appointment and dismissal procedures, which will leave no space for any form of abuse. Also, IHROBiH has been pointing out to the importance of the public administration reform and training of civil servants.

Free legal aid

The free legal aid system in BiH is organised with free legal aid institutions established in nine cantons in the FBiH, while in the RS and BDBiH free legal aid is provided by the RS Free Legal Aid Centre and the Legal Aid Office, respectively.

The Free Legal Aid Act of BiH provides for equal access to justice and court before bodies and institutions at BiH level, to citizens of BiH, regardless of their financial status, and free legal aid is provided within the framework of the Ministry of Justice of BiH²⁴.

Complaints are filed with IHROBiH for violations of the right to legal aid because of the failure to set up the legal aid system, non-functionality of legal aid institutes, dissatisfaction with the work of officers and staff of the Legal Aid Centre.

FREEDOM OF EXPRESSION, ACCESS TO INFORMATION, POSITION OF JOURNALISTS

The right to access information within international conventions falls within freedom of expression, which is governed in BiH with the freedom of information acts at BiH and entity levels.

IHROBiH is registering a large number of complaints related to violations of this right, which is primarily the result of its activities in the previous period through work on promoting fundamental human rights.

Violations are most often reflected in the failure of public authorities to decide on FoI requests filed within statutory deadlines, denial of access to information, violation of the right to a two-instance

²⁴ The Justice Sector Reform Strategy, adopted in 2008 by the BiH Ministry of Justice, entity ministries of justice and BDBiH Judicial Commission, envisages the establishment of the free legal aid system in all procedures and at all levels of Bosnia and Herzegovina. The 2023-2027 Draft Justice Sector Reform Strategy of BiH (JSRS BiH) (still not adopted by Council of Ministers of BiH) in reform areas 3. International legal assistance and judicial cooperation and 4. Legal aid and court customer care, defines operative goals aimed at resolving the most important issues identified through the research and consultation conducted.

In that sense, one of the operative goals refers to the advancement of the legal aid system in BiH, i.e. to the adoption or amendments to legal aid acts in BiH, following a comprehensive analysis of the current situation in this field, and to the strengthening human and financial capacities in legal aid offices in BiH. It should also be assessed to which extent the current criteria and financial thresholds prevent access to justice for those whose funds exceed the identified thresholds but are unable to pay for a lawyer to defend or represent them, and the methods to ensure long-term financing of legal aid conducted by non-governmental organisations and how to in the best way to provide legal aid services in an economical way with different service providers.

decision-making process, silence of administration, improper determination of exceptions, and failure to perform the public interest test.

The freedom of information act at the level of the institutions of BiH was adopted in 2023. Entity acts have not undergone any amendments, which is also evident from the European Commission's 2023 Report on BiH, which notes that the adoption of the new act at BiH level entails the harmonisation of the independence of the appeals procedure with international and European standards, and that the Rules on the Protection of Data and Access to Information are still interpreted in a way that protects private rather than public interest at all government levels.

As for the protection of the rights of journalists, there are still no official records of the competent authorities on the number and type of threats and attacks made against journalists. In the field of print and online media, adequate legislation governing this field remains necessary.

RIGHTS OF MINORITIES

An increased risk of poverty is present amongst minority groups, such as members of the Roma population. The problems that are present are: lack of personal documents, low level of education and inclusion in the education system, poverty and poor economic and social living conditions. In order to improve the position of Roma, it is necessary to act systematically in the areas of employment, housing, healthcare, education and all forms of inclusion in the social, cultural and political processes of life.

BiH adopted the 2021-2025 Action Plan for the Social Inclusion of Roma and Roma Women in BiH, which includes the collection of data on situations of discrimination and anti-gypsyism, the preparation of special reports and/or section of the Annual Report on Roma discrimination, as well as the organisation of education and other activities for promotion Roma rights for the purpose of combating discrimination and statelessness.

Teaching in minority languages still takes place through extracurricular activities.

RIGHTS OF CHILDREN

The last Action Plan for Children was adopted for the period 2015-2018.

During 2023, in accordance with the RS Social Protection Act, the RS Government adopted the 2023-2029 RS Social Protection Strategy²⁵.

In the FBiH, the Act on Special Register of Persons Convicted by Final and Binding Judgements for Criminal Offences against Sexual Freedom and Morals Committed against Children and Minors²⁶ has not yet been adopted.

²⁵ *The Official Gazette of the Republika Srpska*, no 108/23

²⁶ At the time this report was drafted, the Bill received full support in the House of Representatives of the FBiH Parliament and should be confirmed in the House of Peoples of the FBiH Parliament.

In the RS, a new family proceedings act came into force, which defined the special protection of the child by stipulating the obligation for all to be guided and act in accordance with the best interests of the child in all matters concerning the child; the age limit for full adoption was increased from five for ten years, the establishment of the Single Personal Adoption Register is envisaged, which contains the records of future adoptive parents; and the regulation of the exercise of parental rights and the maintenance of personal relationships is granted to the court.

In late 2019, IHROBiH drafted the Special Report on the Prohibition of Corporal Punishment of Children in BiH²⁷. The issue of prohibiting corporal punishment of children is still outside the realm of legislation in the FBiH and BD BiH. Under the RS Family Proceedings Act, corporal punishment of children at home shall be prohibited²⁸.

IHROBiH has been advocating the establishment of alimony funds in BiH for years, but this problem has not been resolved.

Children still make up a significant percentage of human trafficking victims in BiH and are subjected to sexual exploitation, work exploitation, forced begging and child marriage. In 2023, IHROBiH drafted the Special Report on Juvenile Marriages.

In 2021, IHROBiH drafted the Special Report on the Situation in Institutions where Children in Conflict with the Law are accommodated. Most of the recommendations issued to the competent authorities have been implemented.

In 2021, the Special Report on the Situation of Exercising the Right to Child Allowance in Bosnia and Herzegovina was drafted with the intention of pointing out to the problem of poverty and inadequate living standards of children. In the FBiH, the Act on Financial Support to Families with Children²⁹ entered into force, while in the RS, the Act on Amendments to the Act on Child Protection, expanding the scope of the right to allowance for children and the first child in the family and increasing benefits for the second, third and fourth child, as well as for children from sensitive categories, entered into force.

In 2023, IHROBiH drafted the Special Report on the Care of Children without Parental Care with a special focus on institutions and issued recommendations to the competent authorities³⁰.

The major problem of registering children whose parents are foreign nationals in the registers persists in BiH.

²⁷ https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019120514261316eng.pdf

²⁸ Article 97 of the RS Family Proceedings Act, *The Official Gazette of the Republika Srpska*, no 54/02, 41/08 and 63/14;

²⁹ This Act ensures that children enjoy the right to child allowance across the territory of the FBiH in line with the established criteria

³⁰ Recommendations available at:

https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2023092914083723eng.pdf

RIGHTS OF PERSONS WITH DISABILITIES

In BiH, there is no single definition of persons with disabilities, and consistent application of the CRPD is not ensured.

In the FBiH, the adoption of the Act on the Uniform Principles and Framework of Financial Support for Persons with Disabilities is underway. It would systematically govern the issue of financial support for persons with disabilities; determine the definition of persons with disabilities and disability, fundamental rights and the procedure for their exercise³¹.

Persons with disabilities represent one of the most vulnerable groups of the population and face problems in the areas of education, healthcare, work, employment and accessibility.

In 2022, IHROBiH drafted a document entitled '*Guidelines for Improving Everyday Communication with Persons with Disabilities*'³².

The judgement in the Hadžimejlić and others v. BiH case³³ has not been implemented but amendments to the FBiH Family Proceedings and the FBiH Extra-Judicial Proceedings Act are underway, aimed at implementing the judgement.

In 2023, IHROBiH continued to monitor the situation of persons with intellectual and mental disabilities through complaints received, and the preparation of the Follow-Up Report on the Situation in Institutions where Persons with Intellectual and Mental Disabilities are Accommodated in BiH is underway.

In 2021, IHROBiH drafted the Special Report on the Efficiency of Legal Solutions for Professional Rehabilitation and Employment of Persons with Disabilities³⁴.

With the adoption of the FBiH Act on Social Protection Institutions³⁵, in the process of which IHROBiH also participated by referring comments to the Preliminary Draft of the Act, the relevant area was addressed systematically.

In 2024, the process of forming/appointing the Council for Persons with Disabilities of BiH was finalised.

³¹ The FBiH Government adopted the Decision to Draft the 2022-2027 Strategy for the Advancement of Rights and Position of Persons with Disabilities; Draft FBiH Act on the Protection of Mental Health was drafted and it is currently tabled in the parliament; the Board of Directors of the FBiH Institute for Forensic Medical Examinations adopted the Rulebook on the Uniform Criteria and Rules of Procedure for Forensic Medical Examinations (*The Official Gazette of the FBiH*, no 63/21) governing the uniform criteria and rules of procedure for forensic medical examinations; the FBiH Act on Parent Carers was adopted (*The Official Gazette of the FBiH*, no 75/21), which has implications on children with disabilities, as well; the Act on Financial Support to Families with Children was also adopted (*The Official Gazette of the FBiH*, no 52/22), making major progress in the context advancing the position of families with children; amendments to the FBiH Family Proceedings Act are also underway, as well as to the FBiH Act on Extra-Judicial Proceedings, carrying out activities on the implementation of judgments of the European Court for Human Rights in the case of Hadžimejlić and others v. Bosnia and Herzegovina.

³² Available at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2022120108585014bos.pdf;

³³ Judgment Hadžimejlić and others v. Bosnia and Herzegovina, available at http://www.mhrr.gov.ba/ured_zastupnika/odluke/PRESUDA%20HADZIMEJLIC%20I%20DRUGI%20protiv%20BIH.pdf

³⁴ https://www.ombudsmen.gov.ba/documents/obudsmen_doc2021072208592983bos.pdf

³⁵ *The Official Gazette of the FBiH*, no 64/22;