

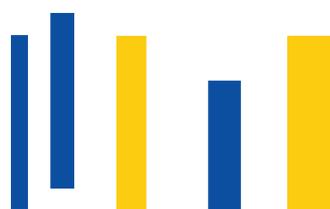
**INITIATIVE FOR THE
MONITORING OF
THE EUROPEAN UNION
INTEGRATION OF
BOSNIA AND HERZEGOVINA**
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2014 ALTERNATIVE PROGRESS REPORT: political criteria

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LIST OF ABBREVIATIONS

| | |
|---------|---|
| AP | Action Plan |
| BD | Brčko District |
| BHRT | BiH Radio Television |
| BiH | Bosnia and Herzegovina |
| CCI | Centres for Civil Initiatives |
| CEC | Central Election Commission |
| CRA | Communications Regulatory Agency |
| CoM | Council of Ministers |
| CSO | Civil Society Organizations |
| DEI | Directorate for European Integration |
| ECHO | European Commission Humanitarian Aid and Civil Protection Programme |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court on Human Rights |
| EU | European Union |
| FBiH | Federation of Bosnia and Herzegovina |
| HDZ | Croatian Democratic Union (political party) |
| HCPC | High Judicial Prosecutorial Council |
| JSRS | Justice Sector Reform Strategy |
| IDP | Internally Displaced Persons |
| IPA | Instrument for the pre-accession Assistance |
| MoJ | Ministry of Justice |
| MUP | Ministry of Interior |
| NGO | Non-Governmental Organization |
| OSI | Organizations of Persons with Disabilities |
| OSCE | Organization for Security and Co-operation in Europe |
| PA BiH | Parliamentary Assembly of Bosnia and Herzegovina |
| PRB | Procurement Review Body |
| RAK | BiH Communications Regulatory Agency |
| RS | Republika Srpska |
| RTRS | Radio Television of the Republika Srpska |
| RTVFBiH | Radio Television of the Federation of Bosnia and Herzegovina |
| SAA | Stabilization and Association Agreement |
| SDA | Party of Democratic Action (political party) |
| SDP | Social Democratic Party (political party) |
| SNSD | Alliance of Independent Social Democrats (political party) |
| SSPACEI | Strategic Planning, Aid Coordination and European Integration |
| TI BiH | Transparency International BiH |
| TS JSRS | Technical Secretariat of Justice Sector Reform Strategy |

EXECUTIVE SUMMARY

This is the second Alternative Progress Report on Bosnia and Herzegovina's path towards the EU membership. The report is a joint effort of dozens of individuals and organizations whose common goal was to show the current state of integration of Bosnia and Herzegovina from the perspective of civil society organizations. Having in mind that the official Progress Report on Bosnia and Herzegovina is a political report of the European Commission, we believe that the publication of the Alternative report can affect its content. Because of this, we are publishing this Alternative Progress Report nearly three months before the publication of the official one, hoping that it will have an impact on the formulation of the formal report.

The report completely relies on the so-called political criteria, focusing on the following questions:

- Democracy and the functionality of the State,
- Rule of law and corruption,
- Human rights, especially the rights of minorities and vulnerable groups, and
- Transitional Justice

During the 2013 and 2014, we have witnessed that no relevant progress has been achieved. The process of implementation of the Sejdić and Finci v. Bosnia and Herzegovina ruling is completely displaced from the Parliament. Performance of the democratic parliaments and governments on state, entity and cantonal levels is extremely low. The work of the institutions is characterized as unstable, inefficient and with notable lack of transparency. The decisions of the constitutional courts are still not implemented. No significant and systematic policies to combat human rights violations have been adopted.

Judicial reform has been stopped and Structured Dialogue on Justice between B&H and the EU does not show any progress. Not a single significant case of corruption has been processed. Minority and vulnerable groups still live in difficult conditions. Discrimination and violence are all-present, and the law on prohibition of discrimination did not show the expected results, having in mind that five years after the enactment of the law, only two final judgments were passed. Comprehensive anti-discrimination policies for social integration either do not exist, or are almost never applied. Floods additionally hit the most vulnerable groups in society. Furthermore, the most vulnerable groups in society have been affected by the recent floods. The prosecution of war crimes and dealing with the past, as prerequisites for creating a healthy environment and building a common state, represent an additional problem. Political support for war criminals by the leaders of political parties only further divide the already highly fragmented society.

We hope that the general elections in October of 2014 (although held by discriminatory rules) will bring more stable political structure, ready to face different problems. Initiative for the Monitoring of the European Integration of Bosnia and Herzegovina will certainly advocate change, in terms of adopting new laws and policies, and the implementation thereof. We also hope that the BiH authorities and the EU institutions will support a stronger representation of civil society within the various forums within the EU integration. Civil society must become the third actor in this process along with the State and EU institutions.

*Editors,
July 2014*

1. DEMOCRACY AND FUNCTIONALITY OF THE STATE¹

1.1 Constitutions

RECOMMENDATIONS

Adopt amendments to the BiH Constitution that are in line with the ECtHR ruling and that give equal political rights to all citizens in BiH without introducing different values of the vote or furthering ethnic discrimination;

Adopt constitutional amendments on all levels of government that would eradicate ethnic discrimination from the constitution(s) giving equal rights to the people not identifying as any of the three constituent ethnicities;

Adopt constitutional changes that would ensure easier decision making processes and more functional institutions at all levels of government, with the emphasis on the state level government, especially regarding legislation related to EU integrations (for instance introduce “EU clause” that would put out of effect “entity voting” provisions for all legislation related to EU integrations);

Change all provisions and practices that discriminate based on entity citizenship.

*Sejdić-Finci process*²

The primary focus of the constitutional reform in Bosnia and Herzegovina has been the implementation of the European Court of Human Rights (ECtHR) decision in *Sejdić and Finci v. Bosnia and Herzegovina* case. The BiH Constitution labels Bosniaks, Croats and Serbs as “constituent peoples”, meaning they are, solely, entitled to the right to run for the Presidency and be appointed to the House of Peoples of the Parliamentary Assembly of BiH. The “others,” or the people who do not identify with these three groups, do not have the right to run for either of these posts. The constitutional alienation of the “Others” was brought to the ECtHR by Dervo Sejdić and Jakob Finci, and the Court ruled in 2009 that BiH must amend its constitution in order to eliminate ethnic discrimination in both the presidency and the House of Peoples - making these changes a requirement in Article 2 of the Stabilization and Association Agreement (SAA). Although BiH had ratified the SAA in 2008, committing itself to addressing the European Partnership priorities, the ruling of *Sejdić and Finci v. Bosnia and Herzegovina* was not implemented. Although several deadlines for the implementation of the ECtHR decision have been set by the European Union, none have been met and BiH is still far from adjusting its Constitution to the human rights standards of European Convention on Human Rights. The process of negotiations has been placed outside of the legislative institutions and put in the hands of party leaders, facilitated by the European Commissioner for Enlargement and European Neighbourhood Policy, Stefan Füle.

At the same time, this process has stopped the on-going procedure in the BiH Parliament where there are 3 sets of amendments to the Constitution proposed by the parliamentarians from several parties, the first from HDZ and HDZ1990 parliamentarians, the second from SNSD and SDS parliamentarians, and the third from the SDA parliamentarian Asim Sarajlić.

The only insight into the content of the proposed solutions at the meetings facilitated by Mr. Füle, held outside of the public eye, has been given through the public statements of the participants, which often contradicted each other. However, judging by the participants’ statements, it can be concluded that the focus of the negotiations between the party leaders has been shifted entirely from the heart of the ECtHR decision - political and civic rights of non-constituent citizens - to the issue of electing the Croat member of the BiH Presidency. This shift came as a result of the political dynamics imposed primarily by the HDZ BiH leader Dragan Čović, who managed to force the “Croat question” as the primary topic in the party leaders’ negotiations on constitutional reform.

As a result of all these factors, the ECtHR decision, which was supposed to ensure the change of the BiH Constitution for the better, is being actively abused by the political parties to promote even more severe constitutional discrimination based on ethnicity, while at the same time trying to only formally implement the ruling. While the position of HDZ BiH on this issue has been very overt from the beginning, new voices also started appearing, taking the discriminatory rhetoric even further. Some politicians from SNSD have expressed their dissatisfaction with the fact that EU continues to pose the *Sejdić and Finci* case as a condition for the EU accession

¹ For a general introduction to the political system of Bosnia and Herzegovina and institutions, please do consult the following book Gavrić/Banović/Barreiro: The political system of Bosnia and Herzegovina. Institutions – Actors – Processes, available at: <http://soc.ba/en/the-political-system-of-bosnia-and-herzegovina-institutions-actors-processes-2/>

² In a process of writing this report, another ruling was issued by European Court for Human Rights – in the case *Azra Zornić v. BiH*, which is identical to the *Sejdić-Finci v. BiH* case. Discrimination of the “Others” has yet again been confirmed when it comes to the elections for the Presidency BiH and for the House of Peoples of PA BiH.

process, following this with remarks that the BiH Constitution is not, in fact, discriminatory, since Sejdić and Finci “could easily declare as Serbs, Croats or Bosniaks and run for presidency”. Similar remarks have been heard from members of SDS regarding another ECtHR case, the one of *Ilijaz Pilav vs. BiH*, where a court decision has not yet been reached. In this case, it was Aleksandra Pandurević who stated, in a similar manner, that Ilijaz Pilav could run for presidency if he moved out of Republika Srpska and into the Federation of BiH. Apart from the fact that there have been no results in the effort to implement the *Sejdić and Finci* decision, distorting its focus into issues of constitutive peoples’ positions and commenting on the ECtHR cases in this manner are very disturbing signs that the BiH political elites are not approaching the issue of constitutional discrimination seriously, nor are they making any effort to bring it to an end.

Lack of coordination

While ethnic exclusion has been a cause for the initiation of constitutional reform, the lack of cohesion between the different levels of government has also attracted the attention of the international community in regard to the approach of BiH to the reforms. The complicated and inefficient decision-making process has continued to make necessary structural reforms difficult to implement. There were a few unsuccessful attempts in the past to reform the BiH Constitution, such as the “*April package*” in 2006 and the “*Butmir process*” in 2009. As recently as 2013 another attempt was made by the US Embassy to lead an initiative to reform the constitution of the FBiH. The Embassy assembled a group of local experts tasked with outlining the constitutional reform in the Federation of BiH, which had become in the US Ambassador’s view, “too complicated and too expensive.” The final document proposed by the “expert group” included 188 recommendations of different kind. Several parliamentary sessions on the reform of the FBiH constitutions were held, the last one in April 2014 which ended without any conclusion. The debate will probably not be continued prior to the upcoming elections.

Ethnic discrimination on other levels of governance

While the ethnically based discrimination in the BiH Constitution has been recognized in the ECtHR’s decision in the *Sejdić and Finci* case similar provisions, which also exist in laws and constitutions on lower levels of governance, are not being tackled at all. It is very indicative that the BiH Constitutional Court still has not reached a decision in the case *no. U 14/12* of the applicant Mr. Željko Komšić, a Member of the BiH Presidency, who filed a request for the review of the constitutionality of provisions in the Constitution of Republika Srpska, Constitution of Federation of Bosnia and Herzegovina and the Election Law of Bosnia and Herzegovina, which regulate the *election of presidents and vice presidents of both entities*.

Problems with entity citizenship have also been recorded in Brčko District, where an organized campaign has been launched by the Brčko mayor, Ante Domić, against a public servant Mujo Hadžić who refused to register a citizenship of either entity in his personal identification document. The case of Mujo Hadžić has clearly shown that repressive mechanisms are being used to force Brčko’s citizens to choose an entity citizenship, even though the Constitution does not make it obligatory to do so. This way the citizens of Brčko have been put in a de facto discriminatory position compared to the citizens of Republika Srpska and Federation of BiH, where such pressures have not been documented. There have, however, been reports of Republika Srpska’s attempts to make entity citizenship mandatory for public service jobs through indirect means. One such example is the adoption of the Rulebook on procedure and criteria of employment in elementary schools in August 2013, which states that candidates for this job have to be citizens of Republika Srpska.

1.2 Parliaments and governments

RECOMMENDATIONS

Strengthen the position of the Parliament in political and constitutional reform processes;

Include an *European clause* into the BiH Constitution that would give the competence related to EU integrations to the BiH Parliament without the need to consult the lower levels of governance

Parliamentary Assembly of BiH

The work of the Parliamentary Assembly of BiH in the past year has been less than satisfactory. In 2013 the Center for Civil Initiatives (CCI) presented the results of a report that monitored the work of the Parliamentary Assembly of BiH. The report revealed a troubling ineffectiveness of the BiH Parliament in the small number of the adopted legislative acts and a disproportionately high number of the rejected ones. In the first six months of 2013, the BiH Parliamentary Assembly adopted 12 laws and only 8 legislative proposals have been adopted. This pace is not enough for the Parliament to realize even one-third of its planned legislative activities. The Parliament has failed to implement new legislation, strategies and other measures that are of priority and of state importance.

The PA BiH has also failed to assume its legitimate role in constitutional reform. The negotiations around the constitutional amendments to implement the Sejdić and Finci decision continued to be held outside of the Parliamentary Assembly. While the unsuccessful negotiations of the parties' leaders continued the three proposals of constitutional amendments, which were submitted to the BiH Parliamentary Assembly in August 2012, have only been put in the parliamentary procedure in January 2014. Even though the discussion on the proposals has been held on 21.1.2014 the Parliamentary Assembly still has not voted on them. The PA BiH continues to have no role in the process of constitutional reform which it should in fact be spearheading. The citizens' inclusion in the process has also remained non-existent.

Looking into the PA BiH's work during the past year, an alarming trend of disregard for the law can also be observed, with issues of the Law on the Unique Personal Identification Number and the dismissals of the two state level ministers as the most troubling examples.

Personal ID Numbers

In 2011, upon a request of 76 Representatives of the National Assembly of the Republika Srpska, the Constitutional Court of BiH ruled that the Law on the Unique Personal Identification Number is not consistent with Article I (2) of the Constitution of Bosnia and Herzegovina (decision U 3/11, see chapter 1.3 *Constitutional courts*). The decision specifically states that "Identification Number must use the official names of the municipalities as adopted in the Law on Territorial Organization of the Republika Srpska" and the Parliamentary Assembly was given a deadline of six months to change it, which it has failed to do. However, even though the Court's decision was explicitly only referring to changing the names of the municipalities, the Ministry of Civil Affairs proposed law, which was adopted by the Council of Ministers in March 2012, proposed an additional change of registration areas in a way that would "adjust them to the territorial organisation of BiH". The adjustment was, in fact, supposed to reflect the entity borders, as was suggested in the request of the 76 NSRS Representatives to the Constitutional Court - a part of the request which the court refused, as it has found that the registration areas were not in breach of the Constitution. The proposal was refused in the PA BiH, given that the changes went beyond the Constitutional Court's decisions. This was the beginning of the process in which a legal matter - an obligatory implementation of the Constitutional Court's decision - was conditioned by a political issue, as all the SNSD and SDS representatives in the PA BiH refused to support any changes of the law, unless the demand for introducing the new registration areas was met. This outright political blackmail led to the deadlock which resulted in another Constitutional Court decision in January 2013, by which it was established that the PA BiH failed to comply with the Court's decision and the disputed articles of the Law on the

Unique Personal Identification Number are no longer valid. As a result, starting from February 2013 the Personal ID Numbers were no longer being issued for the new-born children, effectively making them invisible in the eyes of the law, since they could not be issued personal documents without it. The situation jeopardized the lives of babies who could not receive urgent medical treatments abroad, as no passports could be issued for them. This has led to mass outbursts of civic unrests known as the “JMBG protests” in June 2013. The MPs from Republika Srpska have not, however, backed away from their request, since an interim law has been passed in RS, which made it possible for temporary ID numbers to be issued in this entity. When the changes of the Law were finally adopted at the end of 2013, it contained the changes of registration areas, as proposed by SNSD’s Minister of Civil Affairs, Sredoje Nović. The whole case made it clear that MPs from the aforementioned parties have conditioned the implementation of the Constitutional Court’s decisions with the fulfilment of their political requests. Even though the Court’s decisions are obligatory and the failure to comply with them is considered a criminal offence by the Criminal Law of BiH, there were no repercussions or sanctions for any of the members of the PA BiH for breaking the law.

Unlawful dismissals of state ministers

Apart from the “JMBG” case, the Council of Ministers and the PA BiH have on two occasions carried out unlawful dismissals of state ministers, namely, the Minister of Foreign Trade and Economic Relations, Mirko Sarović and two SDS’s deputy ministers in October 2013; and the Minister of Security, Fahrudin Radončić, in March 2014. In both cases, the dismissals were initiated by the Parliamentary Clubs in the House of Representatives - the club of SNSD’s MPs in the first, and SDA’s MPs in the second case. This was in breach of Article 10 of the Law on the Council of Ministers, which gives this prerogative only to the Chairman of CoM, who, according to the law, proposes the dismissal of individual ministers to the Parliamentary Assembly, which was not done in either of the cases mentioned above. Instead, the PA BiH used the procedure for the vote of no confidence set out in Article 143. of the Rulebook of the House of Representatives of the PA BiH as a legal basis for the vote on dismissals of Šarović and Radončić, even though this article does not regulate the dismissal of individual members of the CoM, but the reconstruction of the entire Council of Ministers. Despite the fact that there were no legal grounds for the procedure to be carried out, both proposals were put to vote in both houses of the PA BiH and the Council of Ministers acted upon the results of the vote.

1.3 Constitutional courts

Legal framework

The jurisdiction of the BiH Constitutional Court is prescribed exclusively in the BiH Constitution. All decisions of the Court are final and binding. The Court itself determines which subjects should implement the decision, the measures that need to be taken and the time limits within which the measures are to be implemented. The BiH Constitutional Court has 9 judges, where each constituent peoples are represented by two judges. Even though there is no direct discrimination of Others, in practice there were no judges that have not belonged to one of the three constituent peoples. The judges need to be distinguished jurists of high moral standing and can serve until the age of 70. Entities in Bosnia and Herzegovina (Federation of Bosnia and Herzegovina and Republika Srpska) have their own constitutional courts that face serious difficulties.

RECOMMENDATIONS

Adopt a law on the BiH Constitutional Court;

Formally determine the responsibility of the BiH Council of Ministers to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court;

Harmonize the Rules of Procedure of the RS Constitutional Court with the BiH Constitution.

Current situation

As a part of the research³ an unfavourable account of the implementation of the decisions of the BiH Constitutional Court by the state and entity legislative bodies and other public authorities has been found. According to the data provided by the Constitutional Court and available on their official web site, as of June 2014 86 decisions of the Court were either unimplemented or the implementation was late. Eight Rulings on failure to enforce [a decision of the court] were issued in 2013 alone and three from January to June 2014.

Seven of the 86 decisions were in the category of Constitutional Review where the Court decided that a law or a part thereof was incompatible with the BiH Constitution and ordered the relevant legislature to replace or amend it. The failure to enforce a decision of the BiH Constitutional Court is a significant issue because it means that the citizens of Bosnia and Herzegovina have been denied justice, but the failure of the legislature to replace or amend legal provisions found incompatible with the Constitution is particularly disconcerting because it affects all the citizens of the state or an entity.

The most prominent case, which had caused blockade in the process of issuing ID numbers to new-borns, is the Decision on the Unique Personal Identification Number. Official state authorities had not met the deadline set by the Constitutional Court by which they should have implemented the Decision. This caused major protests in the country in the spring of 2013 and the BiH Council of Ministers had to adopt a temporary measure which is in accordance with the Decision. BiH Parliamentary Assembly adopted amendments to the *Law on the Unique Personal Identification Number* in July 2013.

Other decisions that have not been implemented yet and which deeply affect the BiH political system and the powers of the state are: Decision on the State Property which sets out the principles for defining what is state and entity property and its implementation is a precondition on the path towards NATO membership and Decision on the Statute of the City of Mostar and the Election Law, which sets unique electoral principles for the City of Mostar in the same way as it is defined for the local municipalities in the entire state. The BiH Council of Ministers and the BiH Parliamentary Assembly have not made any concrete steps in implementing both decisions until today. When it comes to the city of Mostar the local elections cannot be held without the amendment in the Statute and the Election Law. All in all, we can conclude that there was no progress when it comes to the implementation of Court's decisions.

A member of the BiH Presidency, Željko Komšić has submitted an application before the BiH Constitutional Court regarding the compliance of the FBiH Constitution and the RS Constitution with the BiH Constitution relating to the full enjoyment of rights by all citizens in regard to the election of the entity presidents and vice-presidents. In November 2013 there a public hearing was held on whether the discriminatory provisions which limit the passive electoral rights at the entity level are in accordance with the State Constitution. The BiH Constitutional Court has not delivered a ruling on this matter yet, but it will be interesting to see what its decision will be. It is also clear that in this case we can speak about ethnic discrimination having in mind that Others can not run and cannot be elected for this mandate (see chapter 1.2 *Parliaments and governments*).

When the Constitutional Court decides that a law or a part thereof is unconstitutional the legal provision in question is automatically repealed within a period of time determined by the Court, no longer than 6 months. If the relevant legislature fails to implement the decision as instructed, the repeal results in a legal lacuna that leaves citizens exposed to violations of their rights and freedoms. Additionally, the legal vacuum can be abused to violate democratic

³ http://cps.ba/wp-content/uploads/2014/04/POLICY-REPORT_PRELOM_eng.pdf

principles. No legal mechanism can force the legislature to pass a law or an amendment; therefore the legislator should comply with the decisions of the Constitutional Court because of their political responsibility towards citizens.

Some human rights cases, like the case *Sarajevo Queer Festival 2008* which related to freedom of assembly of a minority group, are still at the BiH Constitutional Court. The Court informed the involved parties that this case is not a priority, saying indirectly that freedom of assembly, as one of the core freedoms is not a priority for them.

The Constitutional Court of the Federation of Bosnia and Herzegovina has not worked in full capacity since 2008. In March 2014 the FBiH Parliament appointed 2 judges to the Council for Protection of the Vital National Interests within the FBiH Constitutional Court. These appointments make it possible for the Constitutional Court of the Federation of Bosnia and Herzegovina to deliver decisions when there is a trial on the vital interest of the constituent peoples in the Federation of Bosnia and Herzegovina. This is of crucial importance having in mind that legislative decisions sometimes do depend on the Court's ruling on whether a decision is violating the vital interest of the constituent peoples or not.

The RS Constitutional Court still applies anti-constitutional Rules of procedure in processes regarding the protection of vital national interest in the entity Republika Srpska. The call from Bosniak MPs to amend the Rules of procedures has been ignored until today.

1.4 Institution of Human Rights Ombudsman

Legal Framework

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is the central institution for the protection against discrimination and the implementation of policies and strategies in order to protect the human rights guaranteed by international laws, the constitution and other national laws. Although the Law on the Institution of Ombudsman does not require an explicit representation of the three constituent peoples, the fact is that they still have three members coming from the three constituent peoples of BiH in that institution. The proposal of the Venice Commission that in the future the Institution of the Ombudsman has one ombudsman and two deputies was never implemented. We are witnessing the situation where this practice of three equal ombudsmen often results in failure to make decisions on certain politically sensitive issues.

Since the adoption of the Law on Prohibition of Discrimination in 2009 (see chapter 3.9 *Fight Against Discrimination*) until today, no progress was made in terms of the implementation of this Act and thereby protection of human rights, which prevents marginalized persons as well as vulnerable groups in society from having equal access to rights.

Although the Law assumes the existence of specific budget items for the work of the Department for Elimination of all Forms of Discrimination within the Institution of Ombudsman, the funds were never secured. Limiting the finances and staffing of the Department significantly restricts the exercise of jurisdiction established by law and in particular the implementation of research and proposals of legislative solutions that would lift human rights standards in the country to a higher level. In terms of independence, the concern is the fact that the budget of the Ombudsman is an integral part of the budget of BiH, and in the period from 2009 to 2014, the budget was undermined which prevented normal functioning.

In regard to the application of the Anti-Discrimination law, there is a very low level of jurisprudence, which significantly affects the efficiency of the application of laws and prevents the Institution of Ombudsman from fully carrying out its legally established responsibilities. Five years after the adoption of this law, two final court judgments incorporating discrimination were handed

RECOMMENDATIONS

Add amendments to the Law on Ombudsman for Human Rights in order to give the Institution of the Ombudsman a clearer and more efficient role as well as an improved internal structure, also strengthen financial stability and staffing of the Department to eliminate all forms of discrimination;

Institution of the Ombudsman should on the basis of their expertise initiate strategic cases to appear before the BiH courts and thus influence the creation of judicial practice;

Institution of the Ombudsman, together with the Ministry of Human Rights and Refugees in BiH, should initiate the process of developing the Strategy for Combating Discrimination or a similar document in order to undertake proactive measures for achieving equality in the society, especially for marginalized groups of citizens;

Institution of the Ombudsman should develop Structured and continuous dialogue with civil society, rather than act in an ad-hoc manner.

down - the Cantonal Court in Mostar and Municipal Court in Livno, while in terms of “*two schools under one roof*” the Municipal Court in Travnik dismissed the complaint, and the proceedings before the Cantonal Court in Mostar ended in the same way. Mostar case is currently before the Supreme Court of the Federation, which will establish a precedent for future cases. Insufficient proficiency of the judges in cases of discrimination is notable in practice. The education of judges and prosecutors is largely dependent on international organizations, particularly the OSCE Mission to BiH.

During the 2013 two trials that were initiated on a request from the Ombudsman for Criminal Proceedings regarding the violation of the Law on Prohibition of Discrimination were completed. The decisions did not find the defendants liable, despite the fact that the Institution of the Ombudsman which is the central authority on the matter found that there had been discrimination.

Article 16 of the Law on Prohibition of Discrimination provides for the possibility that the Institution of the Ombudsman participates as a third party on the side of the people who are victims of discrimination in court proceedings. Although it is still not clear whether this is to be done in the capacity of “interventor” or “friend of the court” (*amicus curiae*), the Institution of the Ombudsman has not taken the necessary steps for acting with NGOs in the field of strategic litigation and in accordance with the provisions of the Law on Prohibition of Discrimination.

Current Situation

Although the, complaints to the Department for the Elimination of All Forms of Discrimination (198) decreased by 23% during 2013, compared to the previous year, the situation does not indicate that discrimination in BiH society has been eradicated. The disturbing fact is that the decrease may indicate a reduction in confidence in this institution.

Over 20 civil society organizations during 2013 and 2014 addressed the Institution of the Ombudsman requesting the creation of a special report on the rights of LGBT people. The Institution of Ombudsman has refused the request. In the Annual Report of the Institution of the Ombudsman on discrimination in 2013 it was stated that in comparison with other vulnerable categories of citizens, members of the LGBT community very rarely decided to initiate proceedings before the Institution of the Ombudsman “which is probably the result of fear of the reaction to the disclosure of their sexual orientation”. This fact needs to be an incitement for a more proactive attitude of the Institution of Ombudsman (see chapter 3.10 *Lesbian, Gay, Bisexual and Trans* People*), and their role cannot be reduced to participating in the events of the civil society and to the media announcements.

The progress of the Institution of the Ombudsman is seen in terms of the number of resolved cases in the period from 2010 to 2013. In addition, progress has been made in terms of reporting of violations of the guaranteed rights in the sense that the Annual Report contains the data on the appointed authorities, the violation of rights and the implementation of recommendations which is extremely important in terms of better efficiency of the institution.

The presence of the Ombudsman in local communities is still not assured, as well as their fieldwork with citizens who live in small, isolated communities for improving the protection of their human rights.

Overall work of the Institution of the Ombudsman has raised a question about the effectiveness of the recommendations they issue which are not binding so victims of human rights violations could be further victimized as a result. Further changes to the legislative framework need to go in the direction of mediation between the infringer and the injured persons. The reason for this lies in the fact that victims of the violations of law are pushed back in the middle where they are exposed to repeated violations of their rights and the Institution of the Ombudsman, as a central institution, has a role to work with the consequences of these actions.

Because the six-year mandate of the Ombudsman will expire by the end of this year (2014), the fact that the re-election will overlap with the pre-election and post-election period, which is a very politically unstable period is of great concern. As we all probably remember, after the general elections in 2010 it took over a year to form an initial parliamentary majority. Selection of other independent bodies such as the Council of the Regulatory Commissions for Communications, took years.

1.5 Civil Society

RECOMMENDATIONS

Stop all legislative processes that would restrict or limit the work of civil society organizations;

Stop all public or secret investigations and surveillance of civil society organizations;

Establish the Office for Cooperation with Civil Society within the Council of Ministers;

Create and implement transparent and inclusive mechanisms of public consultations with the civil society organizations.

Regarding the relationship with the civil society, the executive branch in both entities has shown the intention to either formally restrict the work of civil society organizations, as was the case in the Federation of BiH; or to create a climate of intimidation and repression through informal means, as was the case in Republika Srpska.

In July 2013 the Federation of BiH Government sent a *Proposal Law on Associations and Foundations of FBiH* to the Parliament through urgent procedure (see chapter 3.4 *Freedom of Assembly and Association*). The law proposes that an organization can be banned if, among other reasons, its work is not in line with the constitutional order of BiH or FBiH, if it is aimed at destroying the constitutional order, or if it is pondering national, racial, religious or other kind of hate or discrimination forbidden by the Constitution and the Law. However, the law proposed that the ban of civil society organizations would no longer be in jurisdiction of the courts requiring a proper court procedure, but transferred instead to the Federal Ministry of Justice giving it the sole discretion for the decision. Given that the legal provisions, cited as the bases for the legal ban on CSOs are broad, vague, and open to different interpretations (a good example of which can be seen in the government officials' descriptions of the violent actions of Sarajevo protestors as "an attack on, and an attempt to violently change, the constitutional order") this provision would de facto give a discretionary right to the Ministry to decide on banning citizens' associations and foundations, without any kind of requirement for a legal process to prove that the banned organization is in fact in breach of constitutional and legal provisions. The Parliament did not accept the urgent procedure for the law and it was sent back to the Government in draft format for additional editing. However, even though the law was not passed, it shows a clear intent of the FBiH Government to impose restrictive measures upon the work of civil society organizations, aiming to overtake the role of the court in deciding on their legal status.

In Republika Srpska, no official attempt has been made to restrict the work of CSOs, however a continuing campaign of intimidation of CSOs by the ruling structures has been noticed. There were several statements of high positioned officials stating that they would introduce repressive laws on civil society organizations, continued by the intimidations, false statements and surveillance of social networks during the JMBG protests that even resulted in a public report to the National Assembly of RS on this surveillance. Continuing the process of public intimidation, the ruling party in Republika Srpska, SNSD, published a book named "Destruction of Republika Srpska - theory and technology of overturn" where the author has presented a "black list" of 10 NGOs that are responsible for potential instability of Republika Srpska .

Also, no efforts for formalizing the relationship with the civil society have been made. The office for cooperation with civil society has not been established and there are no indicators showing that anything would be done in the near future on that issue.

2. RULE OF LAW AND CORRUPTION

2.1 Judicial system

RECOMMENDATIONS

The Prosecutor's Office of Bosnia and Herzegovina should develop the capacity in terms of initiating investigations and indictments in the case of non-compliance with court judgments;

Strengthen staffing and financial preconditions for effective implementation of the Action Plan of the Judicial Sector Reform Strategy;

Judicial institutions at all levels should have an equal share of financing.

Reform of the Justice Sector

The general conclusion is that the *reforms in the justice sector* in 2013 are still almost exclusively conducted on operational and technical level, due to the lack of political support for the efforts to implement those programs and activities that are considered less “politically sensitive”, which is inevitably reflected in the extremely limited overall progress.

While complex issues of the sector and *lack of institutional capacity and the limitation of available resources* were considered the main cause of slow and limited progress in the past period, one of the main causes of this situation in addition to the aforementioned which is an apparent constant in capturing different and opposing views of, primarily, holders of political functions in Bosnia and Herzegovina on the status, organization, structure, responsibilities, existing legislative and legal framework and sustainability of individual justice sector institutions in BiH, particularly the judicial institutions at the state level in Bosnia and Herzegovina, as well as proposing certain changes related to the selection and appointment of certain judicial functions. Enumerated declarative political support somehow morphed into open political resistance, which put key reforms in the justice sector in BiH on “hold”, while all the attention was diverted to the launch of the initiatives and leadership, exhausting the debates on the *demands of the political representatives of the Republika Srpska for revision of previous reform achievements* returning to its previous state.

In 2013, “it was assumed that the consensus achieved in the development and adoption of the Justice Sector Reform Strategy in BiH represented a solid incentive to executive, legislative and judicial authorities in Bosnia and Herzegovina that coordinated and intensified efforts to accede to the implementation of the planned reforms and that the mechanisms for monitoring the implementation of the Action Plan of the Justice Sector Reform Strategy (JSRS AP) will motivate the justice sector institutions to make additional efforts to conduct a timely and consistent implementation, it can be concluded, with regrets, that this did not happen. Proactive engagement of all members of the Technical Secretariat to monitor the implementation of the TS JSRS is still lacking, and usually boils down to activities that are almost exclusively performed during the meetings themselves (ie, one in every three months), while the technicalities and the administrative activities are still, to the greatest extent possible, performed by the Sector for Strategic Planning, Aid Coordination and European Integration of BiH MoJ (SSPACEI). Keeping this in mind, it is quite certain that if SSPACEI MoJ were to discontinue their engagement in the process it could lead to the collapse of the entire system of monitoring the implementation of JSRS AP on sectoral level, which currently functions mostly due to the aforementioned sector MoJ”⁴.

Structured Dialogue

The Structured Dialogue on Judicial issues between the EU and Bosnia and Herzegovina is a unified platform for dialogue, which led local authorities to ensure that reforms correspond to the legal system of BiH and comply with the European perspectives of BiH. Although there was a certain degree of relaxation of political relations in the justice sector in 2013 after seven meetings, their outcomes give us the right to be mildly optimistic that a constructive discussion between all the key stakeholders will be generated in order to meet the conditions set for the judicial sector in the process of accession to the EU.

⁴ The report by “Vaša prava BiH” on implementation of the Action Plan for the Implementation of the Strategy for Justice Sector Reform (JSRS) in Bosnia and Herzegovina, 2013.

Although *civil society organizations* have not actively participated in previous meetings of the EU-BiH Structured Dialogue on Justice in 2013 they held consultative meetings and active discussions at the invitation of representatives of the EU Delegation in BiH, in the meantime, during which the representatives of the EU Delegation presented a set of recommendations and gave the opportunity to the CSOs to be partners in terms of their comments and suggestions. Also, representatives of the EU Delegation invited representatives from six partner CSOs⁵ to be involved in this process. The CSOs have committed themselves to transmit all the relevant information about the EU-BiH Structured Dialogue on Justice and promote and represent the views of other civil society organizations that are active in the justice sector of Bosnia and Herzegovina in connection to this process.

For the structured dialogue meeting in May of 2014 the CSOs were able to participate in the actual session of the Dialogue. The Structured Dialogue incorporated *issues of corruption and discrimination* in their work, but did not include hate crimes and gender equality, even though these issues were suggested by the CSOs.⁶ Bosnia and Herzegovina was invited to harmonize its Anti-Discrimination Law with European legal tradition (see chapter 3.9 *Fight against discrimination*).

The independence of judicial institutions

A particular problem in the justice system is the *failure to execute court decisions*. The Institution of Ombudsman for Human Rights has received a growing number of complaints filed by citizens due to the lack of enforcement of decisions where the executors were to be municipalities, cantons or entities. Non-execution of court decisions has legal foundation, because according to the provisions of the Law on Enforcement Proceedings, the execution of the ruling is only possible using the means set aside for this purpose. Because there are permanent restrictions on the use of budget funds, the funds for this purpose are constantly decreasing, which calls into question the legal security of citizens. A particular problem is the failure to execute the decision of the Constitutional Court (see chapter 1.3 *Constitutional Courts*). The Prosecutor's Office of Bosnia and Herzegovina should develop their capacity in terms of being able to initiate investigations and indictments, and invoke the criminal liability of the institutions of government and elected representatives who do not carry out the Court decisions.

Interfering with the operation of the judicial institutions by the executive and legislative branches as well as the political representatives, is a particular problem that the judiciary in BiH faces, particularly the judicial authorities at the state level. A series of such cases have been recorded. A particular problem is the political influence on the work of courts and the prosecutors' offices in prosecuting defendants who are current or former high-ranking political, state and entity officials. There are dozens of such cases in the courts and the prosecutors' offices and the defendants are charged for abuse of office, embezzlement, non-purpose use of funds and numerous other irregularities. Almost all the cases end in acquittal if they are prosecuted at all. The Prosecutor's Office of Bosnia and Herzegovina should develop the capacity in terms of initiating investigations and indictments, and invoke the criminal responsibility of institutional authorities and elected representatives who are interfering with the work of judicial institutions.

⁵ Memorandum on the establishment of mechanisms for monitoring and evaluating the implementation of the Action Plan of the Strategy for Justice Sector Reform in Bosnia and Herzegovina (JSRS a) signed in 2010 with the Chairman of the Conference of Ministers of Justice of BiH and the presidents of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and the Judicial Commission of Brčko District BiH has established accountability of six civil society organizations for the systematic assessment and monitoring of the implementation of reform measures and activities of the Action Plan of the Strategy for Justice Sector Reform in Bosnia and Herzegovina: the Association for Democratic Initiatives - ADI, the Helsinki Committee for Human Rights in Bosnia and Herzegovina, Association "Vaša prava BiH", Human Rights Office Tuzla, Center for Civic Initiative - CCI and afterwards an affiliated organization - PAR Excellence Sarajevo.

⁶ <http://soc.ba/en/civil-society-organisations-appeal-to-the-bh-institutions-and-european-union-to-make-structured-dialogue-on-justice-more-transparent-and-efficient/>

In Bosnia and Herzegovina there are *four legal systems and fourteen sources of financing of judicial institutions*, i.e. the judiciary in Bosnia and Herzegovina is financed by ten cantonal budgets, two entity budgets, the state budget and by the Brčko District. The relevant Ministries of Justice and governments responsible for approving the budget have the ability to modify the budget of the judicial institution with the prior obligation of notification and consultation with the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and the institution that approves the budget. Because the authorities are set up in this way, in practice it is very common that the executive power influences judiciary. Different levels of government have different priorities and funding, so some cantons set aside higher percentage of the total annual budget for funding of the judiciary, while the other cantons have different priorities (e.g. investments, higher education, law enforcement, health care, etc.). Judicial institutions at all levels should have equal funding in order to avoid creating differences in access to justice and efficiency that can put citizens at a disadvantage depending on the place where they are exercising their rights.

Independence of Judges and Prosecutors

The High Judicial and Prosecutorial Council of Bosnia and Herzegovina has shown some progress in the verification of complaints about inappropriate influence on the work of judges and prosecutors. However, although the number of complaints has increased significantly compared to previous years, the capacity of the Office of Disciplinary Prosecutor of HJPC regarding the efficient processing of the applications of the sanctions are still limited. In the previous year the average period to resolve a lodged complaint was 240 days. It is necessary to work on capacity building in HJPC in order to increase efficacy in terms of processing times and application of sanctions in regard to complaints on the work of judges and prosecutors. *Appointments of judges to the state and the entity constitutional courts are politically determined*. Many judges have not severed the political tie they had before their appointments to the judiciary and that has undermined the reputation of the courts as impartial institutions. Also, under the influence of politics, the RS Constitutional Court adopted the rules of procedure which are contrary to the constitutional provisions, and the FBiH Constitutional Court has been only partly functional for a couple of years due to the influence of politics on the selection of judges. Although there are no generally accepted standards for the composition of the bench and the election of judges to constitutional courts, Bosnia and Herzegovina should ensure the legitimacy of elected judges to the constitutional courts on the basis of professional competence and moral dignity (see chapter 1.3 *Constitutional Courts*).

The *process of appointment is not transparent* because the decisions on the appointment of judges and prosecutors are still not reasoned, but rather mechanical and there is no possibility of lodging an appeal against the decision on appointments. Consequently, HJPC should change decision format regarding the appointment of judges, prosecutors and legal officers in terms of giving a more detailed explanation and by introducing the right to appeal the decisions of the appointments and for this purpose form a second-instance commission to rule on appeals of first instance decisions.

2.2 Fight against Corruption

RECOMMENDATIONS

Identify large and complex cases of corruption (especially in the framework of public procurement, privatization and major infrastructure works) which should be a priority solved before judicial institutions, and in a similar way to that in the case of Serbia, where there were 24 cases of privatization identified. This approach would allow the judicial institutions and law enforcement agencies to prosecute cases without the risk of politicization of the process of selection of cases that are to be prosecuted, which is very common and widespread practice in BiH and ensure that an independent monitoring of prosecuting corruption by civil society organizations is continuously provided;

Conduct a comprehensive analysis of the situation in the judiciary and law enforcement agencies, which would serve as the basis for further dialogue and as a basis for measuring progress, strengthen mechanisms and independence of internal controls within the Office of Disciplinary Prosecutor of HJPC and within the law enforcement agencies, as well as strengthen human and material resources in the department for organized crime and corruption within the Prosecution;

Introduce the practice of filing assets declarations for all elected officials, the judiciary and the leaders among law enforcement agencies. Assets declarations are to be filed under the full penalty of perjury, and their veracity should be subject to verification.

Legal framework

In the period from November 2013 to May 2014, two sets of amendments to the *Law on Public Procurement* have been adopted by the Parliamentary Assembly of BiH. The amendments from November 2013 significantly raised taxes for bidders who complain to the Procurement Review Body, and also predicted the establishment of new branches of PRB in Banja Luka and in Mostar, however the new branches have not yet been established and thus could not review the complaints for more than 6 months. Regarding the amendments to the Law on Public Procurement in 2014, TI BiH sent its suggestions and comments and even though 89 amendments were received during the process, the suggestions and comments have not been taken into consideration. The adopted amendments slightly decreased the taxes for appeals, but the non-functioning offices of PRB in Banja Luka and Mostar remained in the new amendments. Additionally, the changes proscribed fines for responsible persons in the contracted authority that are lower than the fines provided by the previous Law on Public Procurement, which certainly will not raise the level of accountability.

In the first half of 2013 an initiative was started in order to adopt new amendments to the *Freedom of Access to Information Act*. Amendments were proposed by the BiH Ministry of Justice, upon the suggestion of the Agency for Personal Data Protection. TI BiH recognized potential space for misuse that new amendments would bring to the Law on Freedom of Access to Information, which is already faced with many problems in the implementation and practice. TI BiH started coordinated action with several other CSOs, which resulted in mobilization of the wider civil society in BiH and the outcome of the debate was extremely rewarding from the civil society perspective, since the Ministry decided not to put the proposed amendments to the law on Freedom of Access to Information into parliamentary procedure. By the end of the year the new amendments to the state level law on Freedom of Access to Information were adopted in Parliamentary assembly of BiH, not relating to aforementioned. These amendments introduced higher penalties for the violation of the Law and also, the role of inspectorate was explicitly stressed.

Fourteen years after the adoption of the *Law on Political Party Financing in BiH*, the transparency and accountability mechanisms, as well as the control over the political parties' transactions, are still inadequate. The existing legal framework and the amendments to the Law on Political Party Financing from 2012, show the lack of will of BiH legislators to establish control over the expenditures of political parties (the CEC does not have the clear authority of auditing the expenditures, but instead focuses mainly on income), whose main source of income are public subsidies from all levels of BiH, as well as to amend the sanctions for law violations that do not respond to the possible gain from violating the law. Additionally, according to the new Rules and Procedures for Submitting Financial Reports the parties will no longer be obliged to insert identification numbers of persons and companies donating them, therefore all legal obstacles for publishing the sources of income (i.e. protection of personal data) will be removed. However, it is yet to be seen whether the Central Election Commission will publish the reports in full.

The *Law on Whistleblowers in the Institutions of BiH* was adopted in BiH in December 2013. At the Federation level BiH, the law is still in procedure, while in RS there is no legislation on whistleblowers. TI BiH has been actively advocating for efficient protection of whistleblowers at the state and Federation level as the provisions adopted at state level are not satisfactory because they do not provide for effective protection of whistleblowers. TI BiH have also sent comments regarding the Draft Law on the Protection of Whistleblowers to the Parliament of the Federation

of BiH. Protections at the level of the Federation of BiH contain provisions which may have a deterrent effect on potential whistleblowers. The Law does not define clearly the authority for the protection of whistleblowers. This may cause additional confusion and may lead to the situation where more than one authority will be implementing the Law or where none will be exercising their duties, leaving the whistleblowers without adequate protection.

Current situation

BiH still continues to suffer from *endemic corruption*, mainly due to the lack of political will to effectively fight corruption and insufficient prosecution of corruption. The ruling elite have dominant control over public resources and institutions, which in turn lack adequate capacities for creating and implementing policies in the interests of citizens. Ethnically and politically divided, the country continues to suffer from serious constitutional and administrative deficiencies. Constant efforts are being made by the ruling elite to erode the existing anti-corruption legislation and institutions. The initiatives of the major political parties in BiH to amend the most important anti-corruption laws, such as the Law on Conflict of Interests, Law on Public Procurement, Law on High Judicial and Prosecutorial Council, Law on Civil Service, Law on Free Access to Information, have taken direction of establishing even greater political control over institutions, instead of improving the laws and harmonizing them with the legislation of developed democracies. More importantly, the attempt of amending very important laws by the agreement of leaders of political parties, under urgent amendment procedure and without any public debate, represents a dictatorial and undemocratic act of the ruling parties. Constant attempts at undermining the rule of law principles and putting institutions under direct political control are also visible in the latest scandalous request by the Council of Ministers BiH to sanction the highest judicial instances in the country - Court of BiH, the Prosecutor's Office of BiH and the High Judicial and Prosecutorial Council - for participating in the structural dialogue between the EU and BiH held in Brussels on 29th April 2014.

Bosnia and Herzegovina still needs to address high-level *political corruption, non-transparent management and misappropriation of public funds*, through dubious subventions and public procurement, and corruption in public sector.

The TI BiH report on monitoring of prosecutions of corruption in courts and prosecutors' offices in BiH for 2011 and 2012 shows that there has been *no improvement regarding the prosecution of corruption over the previous period*. The same conclusion can be drawn regarding a number of investigations by the Prosecutor's Office, which had increased the total number of investigations of corruption cases in 2012 in relation to the 2011 (1464 to 2012, compared to 829 in 2011.). However, these investigations have not yielded sufficient results due to the fact that there has been stagnation in terms of the number of indictments for crimes of corruption and that the number of indictments for corruption numbering 223 during the 2012 was disproportionately small compared to the number of investigations conducted relating to these crimes. Also, the share of 1.4 percent of confirmed indictments for corruption offenses in relation to all the other confirmed indictment is extremely low, and when the figure of 223 confirmed indictments for corruption offenses is considered in connection to the fact that there are 74 regular courts in BiH, it is clear this is indeed a very low number of confirmed indictments. During 2012, there was a total of seven prison sentences at all levels for bribe-taking, while a total of nine prison sentences at all levels have been handed down for the offence of the abuse of power, which is certainly not a very high number compared to the pervasive problem of corruption. Also, the convictions were mainly for cases of abuse at the lower levels. There has been a drastic reduction in the financial value of the confiscated properties. In the period 2009-2010 the confiscated assets amounted to about 30 million, while for the period 2011 to 2012 only about 5.6 million was impounded (a decline of about 80%).

The TI BiH *monitoring results of the Anticorruption Strategy 2009-2014*, published in January 2014 have shown that out of the total number of measures (81), only 8 measures (9,8 %) have been completely implemented, 57 measures (70,4%) have been partly implemented, while 16 measures (19,8 %) have not been implemented. The problems that the Agency encountered from the very beginning had a negative impact on the level of implementation of the Strategy. The lack of willingness of other institutions encompassed by the Strategy is reflected in their delay of the implementation of obligations prescribed by the Strategy, inconsistency of its application at different levels of government and a delay of almost two years in securing the resources for the Agency. This shows that since the adoption of the Strategy there has not been genuine political will among the members of the current Government to conduct its implementation. The period for implementation of the Anti-Corruption Strategy ends this year, and thereafter the development of the new one is planned. The technical assistance project has been tasked to assist the Anticorruption Agency to draft the new Anticorruption Strategy.

2.3 War crimes

RECOMMENDATIONS

Amend the BiH *Criminal Law* to delete words “coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him” from the definition of rape as a crime against humanity;

Adopt the Law on Torture at the state level;

Harmonize the laws on civilian victims of war throughout the country by amending the laws in Republika Srpska to introduce a specific category for persons who have suffered rape or other forms of sexual violence during the war without giving any time constraints for the application.

Legal framework

In January 2011 the United Nations Committee Against Torture (CAT) gave a set of recommendations to BiH, including the one to amend the BiH Criminal Law regarding rape and bring it in compliance with international standards.⁷ BiH was given one year to comply with these recommendations. Acting upon the CAT’s recommendations the necessary changes were incorporated in the proposed set of amendments to the BiH Criminal Law. However these amendments have not been adopted by the BiH Parliament to this date.

In 2012 the BiH Ministry of Human Rights and Refugees re-launched the initiative to draft a law on the rights of victims of torture and submitted this draft for comments to both Entities. In December 2013 both the Constitutional-Legal Commission of the House of Representatives of the BiH Parliamentary Assembly and the Constitutional-Legal Commission of the House of Peoples of the Parliamentary Assembly of BiH accepted the draft deeming it in compliance with the constitutional and legal system of BiH. However, the Joint Commission for Human Rights, the Rights of the Child, Young People, Immigration, Refugees, Asylum Seekers and Ethics of the BiH Parliamentary Assembly rejected the draft twice, giving it a negative opinion. During its 63rd session held on 25 February 2014, the House of Representatives did not accept the opinion of the aforementioned Commission and the law was not approved, nor was a proposal from a member of the Parliament to assign to the BiH Council of Ministers the task to prepare and send the new draft of the law to the parliamentary procedure within 90 days. It seems that this process has stalled.

The UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) issued its concluding observations on BiH⁸ in July 2013 and expressed its deep concern at the “long delays in adopting measures to address the needs of a large number of women victimized by the conflict” and “women’s inadequate and unequal access to compensation, support and rehabilitation measures ... as well as financial and social benefits, which are regulated differently in the Entities”. Accordingly, the CEDAW recommended that BiH expedite the adoption of the pending draft laws designed to ensure effective access to justice for all women victims of wartime sexual violence. BiH will have to report to the CEDAW on the measures undertaken by 26 July 2015.

⁷ UN Committee Against Torture (CAT), Concluding Observations of the Committee against Torture: Bosnia and Herzegovina, 20 January 2011, CAT/C/BIH/CO/2-5.

⁸ UN Committee on Elimination of All Forms of Discrimination Against Women (CEDAW): Concluding observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina, 25 July 2013, CEDAW/C/BIH/CO/4-5, [available at]: http://www.trial-ch.org/fileadmin/user_upload/documents/reports/BiH/INT_CEDAW_CO_C_BIH_14760_E.pdf

Current situation

Although the *definition of rape as a crime against humanity* is not in accordance with international standards, the Court of BiH in its case law relied on international standards recognizing that coercive circumstances surrounding the act may negate consent and accepting that resistance of a victim is not a requirement (see for example the first instance judgment in *Šimčić* case, no X-KRŽ-05/04).

Nevertheless, in order to comply with the international standards and to have a unified court practice across the country, it is necessary that BiH adopt the suggested amendments to the BiH Criminal Law.

Under the current legislation in both entities the category of victims facing particular troubles in obtaining the compensation for the harm suffered during the war is that of former camp-detainees, as they are not recognized as an autonomous category of victims of the conflict.

Also, under the current legislation in Republika Srpska there is a statutory limitation to apply for the recognition of civilian victim of war status. There is also a requirement of existence of bodily damage amounting to 60% while psychological damage is not taken into account when deciding about the victim's status. This makes it almost impossible for victims of rape and sexual violence to obtain this status and it brings the victims residing in Republika Srpska into unequal position with the victims from the Federation of BiH.

2.4 Access to justice

Access to justice in Bosnia and Herzegovina is very limited. Causes of poor access to justice are manifold: the complexity of the judicial and political systems; lack of harmonization of jurisprudence; complicated and time-consuming procedures; lack of information; costly court proceedings; poor use of alternative methods of dispute resolution; ignorance of the law and legal mechanisms for their protection; non-execution of court decisions; corruption, etc. Each of the mentioned problems point to an institutional and/or accompanying legislative problem that restricts access to justice and to the fact that BiH has to work on the institutional development of judicial institutions in order to facilitate the protection of human rights.

Lengthy court proceedings, which imply failing to take on cases as well as failing to schedule the hearings in courts of first instance, followed by a lengthy process of making a decision on the appeal to the second instance courts and the length of the proceedings before the entity supreme courts – are a serious problem in the judiciary. Failure to follow the rules of the trial within a reasonable time significantly restricts access to justice in BiH. The delays are only exacerbated in each new case. Although an electronic case management system has been introduced in almost all courts and prosecutor's offices, most cases are not resolved within reasonable or legal timeframes.

The Constitution of Bosnia and Herzegovina, Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accords), provides for *no judicial authority at state level*, so it does not anticipate the existence of a Supreme Court of BiH. In 2002 the Law on the Court of Bosnia and Herzegovina established the Court of Bosnia and Herzegovina. However, due to the closely identified competencies and non-hierarchical relationship to the Entity Courts, it does not compensate for the absence of the Supreme Court of Bosnia and Herzegovina. These organizational shortcomings in the judiciary of Bosnia and Herzegovina are bringing the Constitutional Court of Bosnia and Herzegovina, which is by its nature, not a standard judicial body in regard to jurisdiction, to exceed its prescribed appellate jurisdiction in certain cases. At the same time, there are uneven legal solutions at entity levels as well as at

RECOMMENDATIONS

Adopt the law on free legal aid at state level, and introduce a monitoring mechanism for implementation of the state, entity and cantonal laws;

Clearly define the role of civil society in the context of the provision of free legal aid.

Brčko District of Bosnia and Herzegovina level, which have a complete judicial system, but *ad interim* uneven application of the law and a practice of discordant interpretation of entity laws. The consequence of organizing judicial authorities in Bosnia and Herzegovina in this fashion is the inequality of citizens's access to justice, particularly in relation to the entity and/or canton in which the party is doing the proceeding and therefore which laws apply.

Exercising the right to free legal aid and access to justice without discrimination is still not entirely legally regulated throughout Bosnia and Herzegovina. In Republika Srpska and BD centres or offices for legal aid have been established, while the system is decentralized in the Federation of Bosnia and Herzegovina where the cantons have taken on the role of the legal aid providers. There is no state level legal framework for legal aid provision in civil cases, although the Ministry of Justice has submitted the *Draft Law on Free Legal Aid* for consideration to the BiH Parliamentary Assembly several times. The current system is complicated and reflects the current political structure of the state, which has been demonstrated as dysfunctional in almost all sectors. The criteria and procedures for obtaining free legal aid are also different depending on the jurisdiction in which an individual lives. Due to the absence of state law and the process of harmonization, the legislation in the area of free legal aid is discriminatory towards citizens. In addition, there is the issue of availability of legal aid to citizens who live outside of the cities in which the institutions for legal aid are established. In fact, all of the entity and Cantonal institutions are established in major cities of these jurisdictions. For citizens low financial standing even the travel expenses to major cities can be a significant financial burden, while, additionally, the distance of these institutions indicates a very possible lack of information in the rural communities of the existence of such assistance.

State and entity laws on criminal procedure state that the *person that is accused is entitled to counsel ex officio appointed by the court* if the accused can not cover the costs of the trial because of financial reasons, as well as when there is a possible prison sentence of more than three years, or when it is in the interest of justice. However, it remains unclear what criteria to apply when the court appoints an attorney as well as the criteria used to determine when the defendant cannot pay the costs of defense. There are reports of various abuses of the mechanism of assigning counsel *ex officio*. On the other hand, neither the Criminal Procedure Laws nor the Law on Free Legal Aid prescribe the right to free legal aid to victims or violated persons. As a consequence of these defects various negative phenomena occur in practice that has become particularly evident in cases of prosecution of war crimes and domestic violence. The legal solutions in BiH do not include a mechanism for providing free legal aid to victims and violated parties in criminal proceedings for damages, leaving only the possibility of launching additional litigation that would subsequently establish tangible and intangible damages. These processes are expensive and time consuming, and a large number of victims cannot afford them.

Recognition of the role of NGOs in providing free legal aid is also absent. Although these organizations can also provide free legal aid, the allocation of public funds for their work is minor, although non-governmental organizations are key providers of free legal aid in BiH. There was a disparity in terms of the legal procedural position and opportunities to participate in legal proceedings before the courts between CSOs and other civil society organizations in the protection against discrimination cases in Bosnia and Herzegovina.

3. HUMAN RIGHTS AND PROTECTION OF MINORITIES

3.1 International human rights instruments

RECOMMENDATIONS

Develop further state monitoring mechanisms for international human rights instruments;

Develop concrete policies and strategies for the implementation of international human rights instruments, based on the active involvement of BiH civil society.

Bosnia and Herzegovina has ratified all the major UN and international human rights conventions. The principles of the European Convention on Human Rights are entrenched in the BiH Constitution, which also guarantees the supremacy of this Convention over national legislation.

Bosnia and Herzegovina has no problem in ratifying new international documents, like the *Istanbul Convention* on preventing and combating violence against women and domestic violence; it was one of the first countries in Europe to join this mechanism (see chapter 3.5 *Women's rights and gender equality*), but major problems are detected when it comes to implementation of those international obligations.

There is still a very low level of cooperation between state institutions and the civil society when it comes to reporting to the international mechanisms. The Draft State Report (presented in July 2014) for the *Universal Periodical Review* of Bosnia and Herzegovina in October 2014 presents an unrealistic and distorted picture of the state of human rights in Bosnia and Herzegovina.

3.2 Prevention of torture and ill-treatment

RECOMMENDATIONS

Freedom of assembly has to be guaranteed in all situations;

Police brutality needs to be investigated.

The social unrests, which burst out in February throughout BiH, were a trigger for numerous cases of *police brutality, intimidation and restriction of freedom of assembly in several cities in BiH*. In the first days of the protests, on February 10th, a "preventive arrest" of a group of young people was reported in Livno, while several arrests, some of them violent, were reported in Mostar. Police intimidation and/or organized attacks by unidentified groups against the protesters and individuals related to the protests, have also been recorded in Sarajevo, Travnik, Brčko, Doboj, Mostar, Tuzla and other cities.

The highest level of repression was recorded in Mostar, where, on March the 3rd, the police has formed a cordon which stopped the protestors from moving between the east and the west side of the city, despite the fact that the protest walks were already going on for days without a single incident. The stand-off between the police and the protesters lasted for weeks, with occasional reports of police brutality against protesters. The situation escalated on March 25th, when Muharem Hindić, the face of Mostar protests was beaten, arrested and held in custody without access to his lawyer. The situation in Mostar, with the war-like police barricade and documented reports of police brutality was extensively covered by the few independent media sources, but was utterly ignored by both domestic and international mainstream media, and no reaction came from either the domestic or international officials on any level.

Repeated cases of police brutality have also been recorded in Sarajevo, especially after the buildings of State and Cantonal Institutions were demolished. Some of the arrested demonstrators were underage and mistreated by the police, while the Prosecutor's Office announced that they will be *charged with terrorism and „endangering the constitutional order“*.

In Republika Srpska, the officials have responded to the protests by a series of threats to dissatisfied citizens, making it clear that any attempts to organize demonstrations would be prevented by police force.

Political party officials, specifically those coming from SDP, SDA, HDZ and SNSD, have responded to the protests with an aggressive nationalist rhetoric, in a clear attempt to raise tensions between the national/ethnic groups and portray the protests not as social unrests they were, but as attacks on Bosniaks, Serbs or Croats - depending on the point of view of different parties.⁹

⁹ The success of the protests in BiH: Still "Serbian and Croatian and Bosniak", Istinomjer, 10. 02. 2014, URL: <http://istinomjer.ba/uspjeh-protesta-u-bih-ipak-je-srpska-hrvatska-bosnjacka/> (English translation available at: <http://>

RECOMMENDATIONS

Amend the Law on Freedom of Access to Information in the part of penal provisions for public servants that prevent free access to information;

Amend the Law on Public Service Media in the part relating to the selection and appointment of governing bodies, directors and program councils, to ensure greater participation of civil society and the media community in choice of managing and administrative structures in the public media services, and to enable responsible and transparent operation of public service in the public interest;

Greater representation of programs on different social groups and their needs within the public service;

Strengthen the requests of the media community and the civil society to preserve the independence of the Regulatory Agency for Communications and preventing all forms of political interference in their work, especially in the appointments of the Board and the Director of the Agency.

3.3 Freedom of expression

Background

Information market (including traditional media, online media and social networks) in BiH is fragmented and over-saturated. Nine daily newspapers and four political magazines (as well as dozens of other various periodicals) are printed for less than 4 million people in the country. There are six news agencies¹⁰ that operate, and same number (6) of professional associations of journalists exists. In BiH 46 television stations and 151 radio stations are operating¹¹. To these indicators we should also add the fact that 57% of the population uses the Internet¹², and that the news portals¹³ and social networks have grown into a free, strong and open platform for gathering and dissemination of information. BiH has the adequate legal framework.

Current situation

Freedom of expression, collection and dissemination of information to all journalists and media in Bosnia and Herzegovina should be viewed in the context of the legislative framework harmonized with international standards protecting the right to freedom of expression and the consumption of that right within the framework of shared constitutional, politically divided and media segmented BiH society.

During the ten years of implementation of the *Law on Defamation* in BiH¹⁴ a progressive body of case law was created due to the courts' endeavours to follow the standards and judgments of the European Court of Human Rights. The disturbing fact is that there is always a large number of lawsuits for defamation (the average annual of a hundred new cases) and that the processes last for years, which is contrary to the objectives of the legislation adopted in order to protect the freedom of expression.

The *Law on Freedom of Access to Information* in BiH, even today, after more than ten years since its adoption does not is not utilized to a significant extent by either citizens or journalists, which shows that the public is still not interested enough to get involved in the decision-making process and in the fight against corruption. Also, still a large number of public bodies do not fully carry out their legal obligations, in particular as regards to the obligation to appoint its officials for information (this does not apply to public bodies from RS who do not have this legal obligation). The attempt by the Ministry of Justice to make changes to the *Law on Freedom of Access to Information* under the guise of amending the *Law on Protection of Personal Data* is just an example of a particularly disturbing interference in the right to freedom of expression.¹⁵ In the proposed amendments, the right of access to information held by public authorities with a narrow list of exceptions, was to be replaced by a provision which prohibited access to information, save for a list of information that could be accessed freely. With prompt reactions of CSOs and the media, these changes were temporarily prevented but the case is still on-going, however the CSOs managed to advocate for the establishment of a specific Interministerial Working Group with representatives of the competent ministries and the Institution of the Ombudsman with the aim of producing a special analysis of the application and the proposed improvements to the *Law on Freedom of*

bhprotestfiles.wordpress.com/2014/02/11/the-success-of-the-protests-is-serb-croat-and-bosniak/).

10 Data taken from the Press Council, <http://www.vzs.ba>

11 Data taken from the Communications Regulatory Agency: <http://www.cra.ba/bih/index.php?uid=1273787399>

12 Data taken from the Views on Internet users and Internet operators in Bosnia and Herzegovina in 2012, published by the Communications Regulatory Agency, <http://www.cra.ba>

13 There is still no central register of online media and media portals neither at public institutions or media regulators in BiH

14 BH journalists did an analysis in 2013 on ten years of implementation of the Law on Protection Against Defamation. The author is Mehmed Halilović, a legal expert, analysis is available on: www.bhnovinari.ba

15 http://www.mpr.gov.ba/Default.aspx?template_id=83&pageIndex=1

Access to Information in a manner that protects the right of individuals to access information of importance to citizens which is held by public authorities.¹⁶

In BiH ownership media functions are given the same meaning. The media, especially private, “enslaved” by the interests of its owners, and their editorial policies reflect the preferred political option and not the key interests and needs of citizens presented through the work of public authorities and NGOs. In Bosnia and Herzegovina there are no laws to regulate the transparency of media ownership and to protect the journalistic profession from their impact, and to make media available to all actors on the social scene in the same way and without excluding or favoring any individual, authority or social group. The truth is that there is a Code of the Press and Codes for Broadcasters that require professional media reporting, but these documents do not comply consistently and effectively nor are they equally accepted by numerous media in BiH.

Particularly *worrying is the impact on the editorial policy in the media* (BHRT, RTRS RTVFBiH as well as other public broadcasters at the local level) who, on the basis of non-professional journalistic criteria and political preference conceptualize their relationship to the public and various socio-political groups, their activities and results in the area of improving the position of citizens and strengthening the democratic process in BiH.

The Communications Regulatory Agency is under a strong political influence. Although the Law on Communications prevents interference of various political and ethnic lobbies in the selection and appointment of members of the CRA Council and Director of the Agency, the events of 2013 in connection with amendments to the Code on advertising as a way of nomination, selection and appointment of new members of the Agency and the Director (when national preferences and political affiliation rather than competence and experience in the field of media and telecommunications were the key), indicated strong political influences on the choice of the key people of the Agency, and through them on decision-making that is of importance to the media community in BiH. It should be emphasized that the choice of the CRA Council violated the *Law on Gender Equality*, keeping in mind that the Council has not chosen a single woman.

3.4 Freedom of assembly and association

Legal framework

Different levels of government (state, entity, cantonal) have their own laws on associations and/or foundations. In Bosnia and Herzegovina there is no single register of associations and foundations.

The Ministry of Justice in the Federation sent into parliamentary procedure on an expedited basis the proposal of amendment to the *Law on Associations and Foundations* in July of 2013.

There are a few things that are concerning. *The Law on Associations and Foundations* was changed and the civil society organizations were not informed about it nor had they had the opportunity to send their comments and opinions on the text of the proposal. The fact that is particularly disconcerting is that the changes are proposed in the emergency procedure, which implies, if the Parliament approves it, an extremely short period of time for debate and the absence of public debate. The biggest concern are the changes that some of the organizations interpreted as a political message which restricts freedom of action and association and not, as stated in the explanation of the proposal, “the suppression of all the widespread occurrences of abuse in the work of associations and foundations in the area of tax avoidance, clearly defining the process of decision-making regarding the bans on the work of foundations and associations as well as the harmonization of the *Law on Administrative Disputes*”. The abolition of labour associations with this bill is left to the Minister of Justice of FBiH, instead of the court (see chapter 1.5 *Civil society*).

¹⁶ <http://www.mpr.gov.ba/aktuelnosti/vijesti/?id=3739>

RECOMMENDATIONS

If there is a need, then the laws on associations and foundations at all levels should be changed only with the consultation of civil society organizations;

Guarantee the right of assembly to minority groups.

Organizations warn that rigorous control of their financial and tax dealings were never debatable. All the associations and foundations are obligated to act according to domestic law, including mandatory annual financial reporting to government institutions, and are required to be fully available for inspection. Amendments to the *Law on Associations and Foundations* were adopted by both Houses of the Parliament of the Federation of Bosnia and Herzegovina, but in draft form, and they are currently located at the proposers of the Ministry of Justice of the Federation of Bosnia and Herzegovina. To this day, we do not know that any consultation with civil society organizations on this matter was organized.

Republika Srpska announced in the media that they are working on a legal amendment of legislation governing the work of the associations. Activities for the state-level were announced, but did not appear in public.

Current situation

The rights of associations and the freedom of assembly are still disrupted. Although we did witness that the Government of the Republika Srpska provided a permit and maintained the memorial march on the occasion of the International Day of White Armbands this year (31 May 2014), we still have examples of when these rights are violated. On February 1 2014 Canton Sarajevo Police failed, to secure peaceful conduct at the LGBT film festival in Sarajevo and participants were attacked by an organized group of hooligans despite the fact the assembly was duly announced. It is not known whether the judicial institutions have taken any action about the criminal prosecution of the perpetrators.

The fact that the ruling political party in Republika Srpska (SNSD) published a *book containing a list of associations that “undermine the constitutional order of the Republika Srpska”* on its official website in February of 2014 is particularly worrisome. Disclosure of such information threatens the safety of the defenders of human rights working in these associations and can potentially result in an attack.

We also know of one case of obstruction of the right to association. From December 2013 until July of 2014, the Ministry of Justice has obstructed the registration of Banja Luka Association of queer activists on multiple occasions, setting new technical requirements for registration purposes four different times. It is unacceptable that the process of registration of a single association takes more than seven months. There are also other known examples of delays in the registration of associations.

Protests

See Chapter 3.2 *Prevention of torture and ill-treatment.*

3.5 Women's rights and gender equality

RECOMMENDATIONS

Amend the rights on maternity issues, ensuring regular and adequate compensations and treating these fees as a part of social security and not as a measure of social protection, the way it is currently regulated;

Ensure adequate and continuous funding for shelters to accommodate victims of domestic violence through the budgets of the entities and cantons; establishing a harmonized system of monitoring cases of all forms of violence against women on the entire territory of Bosnia and Herzegovina with statistical data that will enable the identification of legal, institutional and practical obstacles in the implementation of relevant laws and policies;

Urgently implement legislative and other measures focused towards greater employment of women, in particular the measures to harmonize private and public activity of women (eg, parental rights, affordable care centers, extended stay for children of school age, etc.);

Keep in mind the women that are subject to multiple discriminations (women with disabilities, Roma women, older women, LBT women, etc.) in all adopted policies and proposed measures.

Legal framework

Bosnia and Herzegovina adopted a Gender Action Plan in September 2013 for the period 2013-2017. The electoral law was finally harmonized with the *Law on Gender Equality* and now has a quota of 40% of "minority gender" on the electoral lists (April 2013). New entity laws on protection against domestic violence were adopted (Republika Srpska in October 2012, Federation of Bosnia and Herzegovina in March 2013), strategies for preventing and combating domestic violence and violence against women are either in the preparation or have already been adopted. Bosnia and Herzegovina has approached to the implementation of the UN Security Council Resolution 1325 - Women, Peace and Security through the creation of a new, second, Action Plan for the implementation of this UN document for the period 2014 - 2017. Bosnia and Herzegovina has ratified all major international documents on human rights of women, including the (Istanbul) Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence* in 2013. These symbolic changes in legislation unfortunately are not accompanied by the progress of real-life women in Bosnia and Herzegovina.

Current situation

The *Electoral law* was finally harmonized with the *Law on Gender Equality*. For evaluation of these legislative changes we should wait for the results of the election in October of 2014. Nevertheless, one should point out the existing overwhelming statistics according to which women are not equal either in the legislative or the executive branch.¹⁷ Despite some positive steps in women's political participation, women continue to face exclusion from political activity. The latest example is the RS National Assembly session in June of 2014 which culminated with sexist attacks of some MPs against the Prime Minister of the RS Government. While all the female ministers of RS Government left the session in protest, suitable response of government institutions to such violations of women's human rights was lacking. There are also some positive examples. In March 2013 Club of Female Parliamentarians of the House of Representatives of the FBiH Parliament was formed, which brought together representatives of all the political parties. The Club has shown a willingness to run concrete activities for the protection of human rights of women and, in collaboration with the civil society organizations addressed the procedure of Amendments to the *Criminal Law* of FBiH. Unfortunately, Amendments of December 2013 are waiting for continuation of the procedure in the House of Peoples after being discussed in the House of Representatives (see chapter 3.13. *Hate crime and hate speech*).

Women in Bosnia and Herzegovina have been subjected to discrimination in access to *economic and social rights*, especially in the employment and management of public enterprises (see chapter 3.7 *Low income and socially vulnerable people*), *access to the right to maternity leave and benefits*. The issue of the right to maternity leave and equalizing benefits between the entities and cantons complicates the already difficult situation of women in the labor market. Fees cannot be considered adequate.¹⁸ The trend is to dismiss women due to pregnancy and maternity leave, particularly by

¹⁷ Of the 42 members of the House of Representatives of the Parliamentary Assembly 9 or 21.4% were women, while out of the 15 delegates in the House of Peoples 2 or 13.3% were women. Of the 17 ministerial chairs in the Federation of Bosnia and Herzegovina there is only one woman (5.8%). FBiH House of Representatives has 98 deputies, of which 22 (22.4%) are women, the House of Peoples has 14 (24.1%) women delegates out of 58 of them. Positive changes occurred in the re-composition of the Government of Republika Srpska in March 2013 in which a female Prime Minister was appointed and the Government has five or 31% female ministers. The National Assembly of Republika Srpska has 18 (21.7%) women out of 83 MPs. According to: Esther Garcia Fransioli (2013): *Godišnji izvještaj o stanju prava žena u Bosni i Hercegovini tokom 2013. godine*, Sarajevo Open Centre, Human Rights Paper, paper 2, download: <http://soc.ba/godisnji-izvjestaj-o-stanju-prava-zena-u-bosni-i-hercegovini-tokom-2013-godine/>

¹⁸ By: OSCE: *Pravo na socijalnu zaštitu u Bosni i Hercegovini* (<http://www.osce.org/bs/bih/107169>) - Questions of

private employers.¹⁹ Some cantons still do not pay maternity benefits (the Herzegovina-Neretva Canton), some are a few months late in payments (Zenica-Doboj). Sarajevo Canton has adopted the proposed amendments and maternity benefits were reduced by 100 KM for working mothers while slightly raising fees for unemployed mothers in June 2014. The political message of the Cantonal Government to working women that it is better to sit at home and have children and that working women should not give birth or have to leave the job is very concerning. The fact that the cantonal authorities explained this move by eliminating illegal accounting of reimbursements for mothers, which was conducted by cantonal institutions for years is also problematic. Access to parental rights is still extremely difficult.

An interesting example of discrimination is the issue of funding of women's sports. We found out that the Ministry of Culture and Sports of FBiH in 2012 has spent more than 95% of its assets in men's sports clubs, neglecting to encourage the women's sport. A similar situation is in Republika Srpska.

High percentage of *violence against women* is also concerning. The research of the Gender Equality Agency in 2013 indicates that 47.2% of women have experienced some form of violence during their lives after the age 15. At the same time, according to data from the same survey, only 5.5% of women who are victims of violence asked for help and support from the relevant institutions. It is necessary to point out the exceptionally mild penalty policy for acts of violence against women, especially domestic violence. Probations and fines were imposed frequently, whereas prison sentences were uncommon.²⁰ Harmonized methodology for the collection of detailed data on the cases of violence against women, especially in cases of femicide, domestic violence and other forms of violence is missing. Statistics on domestic violence in the District of Brčko are also missing. The lack of this data is a restricting factor in creating effective, targeted laws and policies to combat violence against women.

It is necessary to point out that the new entity laws that were passed for protection against domestic violence still set different legal consequences for perpetrators of violence. Criminal laws in both Entities provide a felony for the crime of domestic violence. Numerous regulations treat social, health and other rights of victims. Overly normed and discordant regulations discriminate against victims of domestic violence and contribute to legal uncertainty and inequality in protection of women against violence. Women that were victims of violence are exposed to additional victimization and violence resulting in the violation of other rights of women, such as: rights to work, child care, housing and access to justice. Violence against women is partly a cause and consequence of women's poverty and social exclusion.²¹

adequacy and equity in most cases of compensation during maternity leave are less than the income that women earn while working and range from 60% in the Sarajevo Canton to 90% of net earnings in Tuzla Canton. OSCE states that the compensation received by unemployed women during pregnancy and childbirth in some cantons is ranging from 10% to 20% of the average net salary and in some cantons one-time assistance is received, while in others such assistance is not paid.

19 A group of NGOs: Alternativni izvještaj o implementaciji CEDAW Konvencije i ženskim ljudskim pravima u Bosni i Hercegovini (2010, 2013), available at: http://www.rightsforall.ba/publikacije-bs/docs-bs/CEDAW_final_bos.pdf

20 "... Analysis of court cases of domestic violence showed that the perpetrators of this crime most imposing a suspended sentence, almost 77%, followed by fines 13.5% and almost negligible bit of imprisonment, and the amount of penalties is even below the legally stipulated minimum. Most prison sentences laid down a suspended sentence is fairly low. Data show that in most cases imposing a suspended sentence the court found imprisonment from one month to six months. It shows that, in most cases of domestic violence, prison sentence was not only low, but were imposed a suspended sentence - meaning that in practice, the perpetrators were not entered into the sentence. Although the qualified forms of domestic violence punishable by imprisonment of three months to long-term imprisonment, the analysis showed that most of those who have been convicted for qualified form of domestic violence, not really be punished by imprisonment, but they imposed suspended sentence". In: Krivična odgovornost i sankcioniranje počinitelaca nasilja u porodici – OSCE mission to BiH (December 2011.), cited in: ICVA i Zemlja djece Report: Da li su žene u BiH zaštićene od diskriminacije? (2014), [available at]: <http://icva-bh.org/bos/publications.wbsp>;

21 Idžaković/Čatović/Žigić R/Vlaho/Brajković/Petrić: Analiza politika socijalnog uključivanja žena žrtava nasilja u porodici," Udružene žene Banja Luka, 2012, [available at]: http://www.rightsforall.ba/publikacije-bs/docs-bs/Analiza_politika_socijalnog_ukljucivanja_zena_zrtava_nasilja_u_porodici.pdf

New laws for protection against domestic violence are specifying the *right of victims to be placed in safe houses* and refine the financing obligations of this accommodation. We point out that the funding for this accommodation is significantly hampered due to irregular and insufficient funding from public budgets. For instance, in the FBiH's budget for the 2014 about 140,000 KM was provided for financing accommodation which is not nearly even close enough for the functioning of six shelters in the FBiH that provide access to various rights such as legal aid, psychosocial support, economic empowerment, etc to victims. Women that were victims of other forms of violence still do not have effective protection and services, such as services for women who were rape survivors.

Women who were victims of domestic violence and other forms of violence and who belong to *multiple marginalized groups* are in a particularly difficult position. These women lack the knowledge, or have difficulties in obtaining information about their rights, so it is a lot harder for them to seek help and services and are a subject to bias. We point out that institutions must develop measures aimed at further protection and support of marginalized women who are at a higher risk of becoming or are victims of domestic violence. During the implementation of laws and enforcement measures prohibiting and suppressing violence against women, it is necessary to ensure that these provisions and activities apply equally to the protection of LGBT women, women with disabilities, Roma, socially disadvantaged women, without discrimination on any grounds.

3.6 Children's rights

Legal framework

Some progress has been made in the field of criminal law in RS with the amendments of the *Criminal Law* of 2013 in terms of alignment with the Optional Protocol on child trafficking, child prostitution and child pornography and the Palermo Protocol.²² The *Criminal Law* of the Federation has not yet criminalized human trafficking. The current provisions in this entity do not take into account the way in which the crime was committed in achieving the purpose of exploitation. Applicable provisions of the Federal criminal legislation leave children - persons under 18 years of age especially vulnerable because they continue to look for evidence that the perpetrators instigated, cited or compelled the child to participate in sexual exploitation, which is contrary to international standards that protect children from trafficking. In practice, this kind of imprecision creates problems, especially in regard to the proper qualification of the crime, but also in determination of jurisdiction between the courts and the prosecutor's offices and may cause a conflict thereof.

Six months after the national strategy to combat violence against children came into force, the RS Government in January 2014 declared it "invalid" in RS and refused to provide information to NGOs and the State Ministry for purposes of compiling the Alternative and the National Report. FBiH Parliament in late 2013 adopted the *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings*. In RS, the implementation of regulations in the juvenile justice system remains weak. The Revised Strategy in the field of juvenile delinquency at the state level has not yet been adopted.

Progress has been made in the area of social protection in RS by adoption of the new *Law on Social Protection* from 2012, which has only been fully implemented in 2013, in which children that were exposed to economic exploitation, trafficking and violence are treated as beneficiaries of social protection.

²² Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

RECOMMENDATIONS

Amend the Criminal Law of FBiH to be in alignment with the Palermo Protocol and the Lanzarote Convention;

The reform of legislation in the field of social protection in the Federation, particularly in the field of protection of families with children, so that the social assistance and protection is based on the needs of children and balanced in the whole entity.

Current situation

Institutions in BiH *have not established a database or statistical records about the children*. The laws in the field of protection of families with children have yet to be drafted in three cantons. Because of the fragmented system of social protection child support across the country is uneven and in Herzegovina-Neretva Canton, Posavina Canton, Una-Sana Canton, West Herzegovina Canton and Canton 10 the support is not paid at all.

Most of the rights of the Federal *Law on the Protection of Families with Children are not implemented in most cantons*. The authorities have not secured subsidized accommodation of children with provided food in preschool institutions, nor have they provided one meal per day in elementary schools, which the children are entitled to.

The Framework Law on Pre-school Education is still not implemented on the entire BiH territory regarding the *mandatory inclusion of children in pre-school education* in the year prior to their enrolment in primary school. Central Bosnian, Herzegovina-Neretva and the West Herzegovina Cantons have not yet passed a law on pre-school education, and in the Una-Sana Canton the cantonal *Law on Preschool Education* that was adopted in 2010 is not yet in effect, which denies the children pre-school education in the year prior to their enrolment in primary school. Only 13% of children in Neretva-Herzegovina Canton, Posavina Canton, Canton 10 and Central Bosnia Canton were covered by the obligatory pre-school education,²³ and in the whole of BiH only 16.3% of children.²⁴ Access to preschool for children from socially disadvantaged families is still hampered by the high cost of these services, and less than 2% of children of unemployed parents reside in day care.²⁵

The process of transition to a *nine-year elementary education is still not consistently implemented* in all Cantons, which can be concluded by the example of West Herzegovina Canton where for the second consecutive year schools conduct an abbreviated program for first graders of nine-year elementary school programs which lasts only one semester.

The Government of the Herzegovina-Neretva Canton has not acceded to the implementation of the Judgment of the Constitutional Court of the Federation from 2012 to harmonize the cantonal *Law on Primary Education* with the European Charter of Local Self-Government regarding the assumption of responsibility for *financing the transportation of students to and from school* by the cantonal authorities.²⁶ Due to the cancellation of free transport to schools in this canton, 180 elementary school students from the suburbs of Mostar, were forced to terminate their attendance temporarily in the 2013/2014 school year.²⁷

In Bosnia and Herzegovina the *two schools under one roof* phenomenon has not yet been abolished, and it is absolutely clear that a multi-ethnic education in schools is not being developed and neither is a uniform curriculum for the entire territory of BiH. From 2nd September 2013, 96 Bosniak students from Konjević Polje in RS have not been attending classes because the RS authorities did not allow them to attend school based on the national subject curriculum and because of unresolved issues of ethnic composition of the school board. After five months of protesting and staying in a tent settlement in Sarajevo, children from Konjević Polje are preparing to take their exams, based on the Federal curriculum in makeshift classrooms in Nova

23 Federal Ministry of Education and Science, "Informacija o upisu učenika u osnovne i srednje škole u FBiH u školskoj 2013/2014. godini", [available at]: <http://www.fmon.gov.ba/images/Informacij.pdf>

24 Federal Ministry of Education and Science, "Informacija o uključenosti djece predškolskog uzrasta u odgojno-obrazovni proces u godini pred polazak u školu u FBiH", May 2013.

25 Data from the Federation of Bosnia and Herzegovina; Report of the Federal Bureau of Statistics, 2013

26 FBiH Constitutional Court rulings no. U-2/12 of 17.04.2013, [available at]: http://www.ustavnisudfbih.ba/bs/open_page_nw.php?l=bs&pid=241

27 <http://www.otvoreno.ba/regije/mostar/48575-mostarske-se-skole-zatvaraju-roditelji-blokiraju-prometnice>

Kasaba (near Konjević Polje), with support of 15 teachers from Sarajevo. The First Instance Court in Srebrenica issued a provisional decision that ordered the elementary school “Petar Kočić” from Kravica to allow the study of national subjects for Bosniak children from Konjević Polje within three days, at the beginning of June, but the school has not yet complied. 137 Bosniak children from Vrbanjci school lost a school year because they were not allowed to study national subjects according to the Bosnian curriculum.

The degree of politicization in the field of education is very high, especially when it comes to selection of principals and school board members in educational institutions, and in some cantons initiatives have been made yet again to amend the *laws on education* that would abolish the direct election of school principals by parents.

The *Revised Action Plan on the Educational Needs of Roma Children* is not, for the most part implemented, and in 2013/14 school year free textbooks have again not been provided, causing a number of Roma children to drop out of elementary education. An increasing number of Roma families are seeking asylum in other countries, which is the reason why one third of Roma children remained ungraded in one primary school in Živinice.²⁸

The *number of child beggars in BiH is increasing*. The recent study by UNICEF showed that in BiH cities over 2,000 children are begging every day.²⁹ An additional problem is a bad legislative provision in the currently valid legislation of the Federation that categorizes these children as children with socially unacceptable behaviour, therefore excluding them from adequate institutional support. The Recommendations of the Institution of Ombudsman for Human Rights concerning the establishment of day care centers for children found begging is not being applied in a single local community, and there is no financial or material support in the programs run by NGOs. The number of forced child marriages which are not treated as forms of human trafficking by judicial institutions has increased.

BiH did not align legislation with the ratified *Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (Lanzarote Convention)*, there is no specific helpline for reporting violence against children, prosecutors and courtroom facilities are not adapted to work with child victims and witnesses of violence. There are no specialized institutions for care and rehabilitation of child victims of physical or sexual abuse or exploitation.³⁰ Prohibition of corporal punishment of children is not fully incorporated into all relevant legislation in BiH.³¹

There is no *unconditional access to health insurance to children* throughout BiH. The Law on Health Insurance in the Federation does not apply in five cantons,³² and the children are coerced into paying participation/annual premiums. The Recommendations of the Ombudsman for Human Rights to abolish the payment of annual health stamps for children is being ignored by five cantons.³³ Health insurance for children older than 15 years who do not continue their education is dependent on their registration at the employment offices in the Federation.

28 Institution of Ombudsman for Human Rights, Report on discrimination in BiH for the 2013, available at http://www.ombudsmen.gov.ba/documents/obudsmen_doc2014042313191351bos.pdf

29 UNICEF: Ispitivanje dječijeg prosjačenja i drugih uličnih poslova i procjena veličine populacije u BiH, istraživanje sprovedeno u četiri grada Tuzla, Sarajevo, Banja Luka i Mostar 2013/2014

30 “Zdravoda ste” Banja Luka, results of research on sexual abuse and exploitation of children in Bosnia and Herzegovina, 2013, [available at]: <http://www.zdravodaste.org/latn/?page=42&kat=4&svijest=384>

31 Institution of Human Rights Ombudsman BiH: „Univerzalni periodični pregled stanja ljudskih prava u BiH“, March 2014.

32 Herzegovina-Neretva Canton, Tuzla Canton, West Herzegovina Canton and the Una-Sana Canton

33 Institution of Human Rights Ombudsman BiH: Specijalni izvještaj o zdravstvenoj zaštiti djece u BiH, December 2013, [available at]: <http://www.ombudsmen.gov.ba/Dokumenti.aspx?id=28&tip=4&lang=BS>

RECOMMENDATIONS

Issue entity policies in the field of social protection and safety, including reform of the social protection system in both entities based on the need for social protection instead of the existing principle based on the status of the user;

Eliminate all forms of discrimination in the entity regulations in this field. Development of a single register of beneficiaries of social welfare benefits in order to avoid gaps and/or overlaps in the exercise of rights;

Implement measures of rehabilitation in flood-affected areas, in particular those relating to rehabilitation of residential buildings, infrastructure and programs to assist in maintaining jobs in the companies affected by floods.

3.7 Low income and socially vulnerable people

Legal framework

There are no significant legal developments relating to reduction or alleviation of poverty and social disadvantage of those at risk. Also, the announced and long-awaited reform of the social protection system is still lacking. Bosnia and Herzegovina, or precisely its entities, still do not have a policy of social protection (security), and a long-prepared *set of laws that would regulate issues of social protection, protection of families with children, including maternity benefits, and legislation that would regulate the situation of people with disabilities and civilian victims of war is seemingly not welcome to the agenda of the Parliament of FBiH* although they had been announced in the Government and the Parliament agenda (except for the preliminary draft of the Law on Universal Principles and Framework for the Material Support for Persons with Disabilities which faced resistance from the Parliament as well as from civil society organizations). At the same time the Ministry of Labour and Social Policy has worked on a public campaign promoting the need for social reform, and has drafted a public policy for development of a foster care system, which will be in the process of public consultations in June 2014.

*Current situation*³⁴

The UNDP's Report on progress in achieving the Millennium Development Goals in 2013 indicates that every sixth household in the country is poor, unemployment is growing, while inequality between the general population and vulnerable groups still persists. Bosnia and Herzegovina is still the poorest country in Europe, with a GDP per capita 28% of the average of the 27 countries of the European Union.³⁵ The high level of unemployment and the significant gap between the employed and those who work in the informal or "gray" market³⁶ is concerning. Unemployment is mostly long-term,³⁷ predominantly structural rather than sporadic, suggesting that many if not most of the unemployed are outside the labour market.³⁸

Participation of women in the unemployment is still extremely high, while the percentage of women who are helping members of the family is alarming at nearly 70%. Women spend more time doing housework and caring for other members of the family, about 4.5 hours per day compared to 2.3 hours per day for men.³⁹ Children living in households headed by women are much more at risk of poverty and disenfranchisement than children in households headed by men.⁴⁰ We should particularly point out the poverty and the exclusion of marginalized groups such as Roma and persons with disabilities (see chapters 3.8 *People with disabilities* and 3.12 *Ethnic minorities and Roma*).

34 Idžaković/Čatović/Vukmanić: Smjernice za razvoj zakonodavstva i politika jednakih mogućnosti sa fokusom na socijalna i zdravstvena prava (nacrt dokumenta), Prava za sve and ICVA, June 2014.

35 Expressed in effective purchasing power. See Eurostat press release of 19/06/2013.

36 According to data from the Labour Force Survey in 2013 unemployment rate (according to the ILO survey methodology) has reached 27.5% (26.5% for men and 29% for women). The percentage of registered unemployed persons at the same time reached 44.5% in December 2013

37 Half of all unemployed persons was jobless for the past five years, a quarter of them for ten years.

38 Ministry of Finance and Treasury/Office of the UN Resident Coordinator in Bosnia and Herzegovina: Napredak u realizaciji milenijumskih razvojnih ciljeva u Bosni i Hercegovini, 2013, [available at]: http://www.ba.undp.org/content/bosnia_and_herzegovina/bs/home/library/mdg/-napredak-u-realizaciji-milenijumskih-razvojnih-ciljeva-u-bih-20/

39 OECD based on data from the National Survey on 03.07.2014, [available at]: <http://www.oecd.org/gender/data/balancingpaidworkunpaidworkandleisure.htm>

40 Ministry of Finance and Treasury/Office of the UN Resident Coordinator in Bosnia and Herzegovina: Napredak u realizaciji milenijumskih razvojnih ciljeva u Bosni i Hercegovini, 2013, [available at]: http://www.ba.undp.org/content/bosnia_and_herzegovina/bs/home/library/mdg/-napredak-u-realizaciji-milenijumskih-razvojnih-ciljeva-u-bih-20/

The effect of existing social transfers on poverty is negligible. Specifically, with consumption of about 4% of GDP on social transfers (both civilian and military, excluding benefits on the basis of social insurance) BiH manages to cut only 1.9% points of poverty rates. The reason for this is inadequate targeting of social transfers that overflow to the non-poor. For comparison, the average EU level of social transfers reduces the risk of poverty by 38%. Furthermore, we must indicate unacceptable behavior of different levels of government in which the problem of the lack of budget resources is solved by reducing or abolishing social benefits to users. (See chapter 3.5. *Women's rights and gender equality*).

The effects of catastrophic floods that hit Bosnia and Herzegovina in May of 2014 should also be added to this. Although there is no definitive data, the Unit for Humanitarian Aid and Civil Protection of the European Commission (ECHO) points out in a recent report that the heavy rains have caused over 3,000 landslides that have caused damage to households, agriculture and the economy. Thousands of people are again faced with catastrophic damage to their households, daily job losses, and in some areas on-going lack of access to basic infrastructure. The floods affected 60 towns and villages, territory from 10.000 to 13.000 km² in different proportions.⁴¹ International organizations estimate that the amount required for damage repair is roughly four billion KM. People are being warned about the decline in GDP. From the previous 2.2% growth predicted by the IMF, it is estimated that there will be a -1.1% fall by the end of the year.

Due to a number of factors such as the catastrophic floods, economic crisis, high unemployment rate especially long-term unemployment and inequality, we can expect that the poverty rate and exclusion will continue to grow.

3.8 People with disabilities

Legal framework

Although the procedure, within the framework of social policy reform in FBiH, for amendments and adoption of new legislation in the area of social protection has been launched, it has not made any significant progress (see chapter 3.7 *Low income and socially vulnerable people*). The greatest obstacles in this process are still the discord between the Federal and Cantonal level governments regarding the commitment to fund implementation of the law and deficiencies in budgets. The preliminary draft of the Law on Universal Principles and Framework for the Material Support for Persons with Disabilities in FBiH was prepared, but on completion of public hearings and following the negative comments by organizations of persons with disabilities, it has been returned to the drafting procedure.

Current situation

People with disabilities are still experiencing multiple forms of discrimination and in particular on the grounds of the cause of their disability. Conditions for the exercise of rights by disabled war veterans and civilian war victims are significantly more favourable compared to disabled workers and people with disabilities of non-war origin. The issue of training and education that is necessary for continuation of independent living of the persons who have suffered a disability later in life, such as the use of the white cane, has not been adequately solved. These people cope by themselves or with help from other members of the association when it comes to adapting to a new way of life.⁴²

⁴¹ More at: <http://europa.ba/Download.aspx?id=1446&lang=BS>

⁴² According to: Idžaković/Čatović/Vukmanić: Smjernice za razvoj zakonodavstva i politika jednakih mogućnosti sa fokusom na socijalna i zdravstvena prava (framework of the document), Prava za sve and Inicijativa i civilna akcija (ICVA), June 2014, by: Idžaković/Čatović/Vukmanić: Izvještaj nevladinih organizacija o primjeni Konvencije o

RECOMMENDATIONS

Harmonize the existing legislation with the provisions of the Convention on the Rights of Persons with Disabilities (the Convention) in particular by abolishing the discriminatory provisions in the law that discriminate based on the cause of the disability;

Political and financial support from the state in the process of implementation of the equalization of opportunities for persons with disabilities and Local Action Plans in the field of disability (LAPI).

Involve Organizations of Persons with Disabilities (OSI) and the organizations that represent them in the process of defining, creating and implementing support programs for the OSI at all levels.

Systematic support for people with intellectual disabilities still does not comply with the Convention on the Rights of Persons with Disabilities because the conditions and systematic support for assisting these persons, especially when it comes to making informed decisions on all issues and rights that concern them are still unsatisfactory. Inadequacy of the system is the reason that the care of persons with disabilities is usually taken up by a family member who then often has to leave their job or is unable to actively look for one. Because of the small and inadequate social benefits the family budget is not sufficient to simultaneously meet the needs of persons with disabilities and their families. *Disability of one of the members often causes poverty in the whole family.*⁴³

Both entities have adopted laws on vocational rehabilitation, training and employment of persons with disabilities. Despite some positive effects in the employment of persons with disabilities, they are still *discriminated in their exercise of the right to work*. In FBiH out of the approximately 200,000 persons with disabilities only 8,000 are looking for a job. Moreover, out of the 8000 persons that are registered at the unemployment offices, many of them do so only so that they can have health insurance which raises the question of how many of them are actually actively looking for a job. At the same time in RS out of the estimated number of 70,000 persons with disabilities, only 2,450 were registered at the unemployment offices. There are no records or statistical analysis of data on persons with disabilities, or consolidated and unified information about the users of the reimbursements or employers who employ these persons, so there is a possibility that there are gaps as well as overlaps and duplication of the users.⁴⁴

The positive contribution of the Ministry of Labour and Social Policy in implementing the entity Strategy for Equalization of Opportunities for Persons with Disabilities through continued creation of a mechanism for its implementation in five cantons that were not covered by this process in 2012 should be appreciated.⁴⁵ A process of evaluation of the implementation of the adopted Strategy has been started and 79 relevant federal and cantonal institutions participated by delivering the information on the degree of implementation of the aspects of the Strategy that are under their jurisdiction which should also be appreciated. FBiH Government adopted a Decree on the Establishment of the *Federal Office for Disability Matters* as an institutional mechanism to support the implementation of the Strategy. At the same time proposals of legislative solutions that discriminate against persons with disabilities based on the cause of their disability still continue. The competent authorities are not ready to adopt and allocate resources for the implementation of local action plans in the field of disability at the level of cantons/municipalities. The degree of involvement of the organizations of persons with disabilities and their representative organizations in the process of drafting, adoption and application of documents dealing with disability should be assessed as insufficient.

pravima osoba sa invaliditetom u Bosni i Hercegovini, Prava za sve, ICVA and a group of NGOs (July 2013), [available at]: <http://rightsforall.ba/wp-content/uploads/2014/06/NGO-Report-on-Implementation-of-The-Convention-on-the-Rights-of-Persons-with-Disabilities-in-BiH.pdf>

43 Ibid.

44 Based on the information that was provided by the organization Fund for Social Integration of BiH

45 Sarajevo Canton, Tuzla Canton, Zenica-Doboj Canton, Herzegovina-Neretva Canton and Podrinje Canton.

RECOMMENDATIONS

Harmonize the legislation on abolishing discrimination with the European legal tradition, with the obligatory participation of civil society organizations which work with marginalized groups and on fighting against discrimination;

Establish a regular practice of reporting about the various forms of discrimination, which would include a proposal of measures to eliminate and prevent discrimination trends;

Develop a comprehensive policy to prevent and combat discrimination in cooperation with civil society organizations.¹

¹ A comprehensive policy on prevention and fight against discrimination should include, but not be limited to discrimination in education, employment and labor, social welfare and health care and to also address the specific forms of discrimination such as harassment, sexual harassment, and segregation. Comprehensive policy must also anticipate the measures in each of the areas for marginalized groups including, but not limited to LGBT people, people with disabilities, especially the Roma minority, elderly people, returnees, etc.

3.9 Fight against discrimination

Legal framework

With the pressure from the international community and with the goal of visa liberalization, Bosnia and Herzegovina adopted the Law on Prohibition of Discrimination in 2009. A large number of obligations arising from law that were supposed to happen a few months after the adoption of the law were never fulfilled. In the previous period, there was no legislative news on the fight against discrimination. Ministry for Human Rights and Refugees of Bosnia and Herzegovina has started preparations for the amendment of the Law on Prohibition of Discrimination and announced policy development to prevent discrimination in some areas (education and mobbing). Civil society organizations were not invited to participate in this process, but based on their persistence (May 2014) there is a strong possibility that they will be involved in this process. It is necessary to harmonize the law with the *acquis communautaire* of the European Union, as Bosnia was asked to do in Structured Dialogue on Justice for BiH in May 2014 (see chapter 2.1 *Judicial System*).

Current situation

Bosnia and Herzegovina has a large number of cases of discrimination despite the existence of the Law on Prohibition of Discrimination and policies in specific areas that should work towards eliminating systemic discrimination. Discrimination is recorded particularly in education (two schools under one roof), employment (on the basis of political affiliation, status of returnees) and work (mobbing and sexual harassment), social and health care (people with disabilities, Roma). Certain categories of people are exposed to multiple discrimination, and in a variety of areas such as persons with disabilities, Roma, LGBT, returnees, members of the constituent peoples when they are in the minority in a territory, etc.

There has been a *whole series of problems in the application of the law* (see chapter 1.4 *Institution of Human Rights Ombudsman*) such as short deadlines for instituting proceedings for protection against discrimination, ineffective protection against retaliation in a case of discrimination and testifying in cases of discrimination.

The Law on Prohibition of Discrimination *does not list some characteristics as potential basis for protection from discrimination*, such as age and disability, while the listed grounds such as sexual orientation or sexual expression have not been defined and do not reflect the true intention of the legislature to prohibit discrimination against LGBT people.

At the practical level institutions, especially the institutions in which everyday citizens demand their rights, lack institutional policies and *rules of procedure for handling cases of discrimination*. *Neither the institutions nor the courts have mandatory and regular education on the Law on Prohibition of Discrimination*. Therefore a new legal doctrine for Bosnia and Herzegovina, such as transfer of the burden of proof is arising in court processes. Problems are arising in jurisprudence because of ignorance and the failure to apply the test for discrimination as it has been established by the European Court of Human Rights. The Institution of Human Rights Ombudsman in Bosnia and Herzegovina, as a central institution for the protection against discrimination cited *lack of human and financial resources* necessary for implementation of the Law on Prohibition of Discrimination as a serious obstacle to the application of this decree. There are serious problems in equal access to free legal aid for victims of discrimination. *The Law on Prohibition of Discrimination* predicted that the obligation to harmonize domestic legislation with its provisions will be carried out only sporadically rather than systematically and methodically.

Citizens are not aware of the Law on Prohibition of Discrimination and the protection mechanisms. There are no major public campaigns for promoting the existence of these laws and the protection mechanisms. So far, the campaign has only been carried out by the civil society organizations that have further established independent mechanisms for collecting and documenting cases of discrimination, discrimination monitoring and reporting on discrimination. Civil society organizations provide help and assistance to citizens by providing free legal aid and information, especially in cases of strategic collective complaints such as a case of “two schools under one roof.”

Multiple discrimination of certain categories of the population such as Roma women, women with disabilities, women from rural areas should also be emphasized. A particularly problematic area is the approach to health care. For example, there are not enough tables for gynaecological examinations of women with disabilities, health workers are not trained to work with women with disabilities; Roma women face difficulties in accessing health care during pregnancy and with children who are up to one year old, although regulations provide free health care to all women, regardless of insurance status; rural women do not have equal access to obstetric care and other specialist care in relation to other women.

Although the law guarantees the *de-jure* prohibition of discrimination, some groups, such as Roma and LGBT people, do not use it due to limited access to institutions and due to homophobia in the institutions. BiH institutions did not make any attempts to thematize these issues, for example, through the adoption of a policy on combating discrimination, which would define the specific proactive measures to be carried out by institutions at all levels. These strategies are a common practice in many countries, neighbouring countries among them (Serbia, Croatia, Montenegro).

3.10 Lesbian, gay, bisexual and trans* people

Some institutions, like the Canton Sarajevo Police, have shown the will to work on LGBT rights. On the other hand central bodies, like the BiH Human Rights Ombudsman, are ignoring the need and call for a more intensive cooperation, i.a. they declined the request to work on a Special Report on LGBT rights in BiH. LGBT rights are a politically irrelevant topic, staying on the societal margin. Freedom of assembly is not guaranteed, which has been confirmed with the attack during the LGBT film festival Merlinka and on the Banja Luka Association of Queer Activists (B.U.K.A.) premises. The Banja Luka association has faced obstacles in exercising their freedom of assembly.

The Social and Political Situation

LGBT issues are being covered in electronic, print and online media. While media reporting has increased and improved drastically in quality and quantity (60%),⁴⁶ manifestations of homophobia through hate speech (i.e. death and violence threats) and sensationalist reporting are still present, especially in online media. A report⁴⁷ from March 2014 about a *kiss between two pilots* in the BiH Armed Forces has triggered strong verbal statements and the Armed Forces have announced that an investigation will take place. *Political leaders* are continuing to use discriminatory or derogative language. Samir Kaplan, the Minister of Culture and Sports of the Federation of BiH, stated in August 2013 in a magazine that pride parades “are the oppression of the majority by the minority.” Similar language is used by ministers, members of parliament and political party representatives on all levels of governance.

⁴⁶ See Sarajevo Open Centre Media analysis, [available at]: <http://soc.ba/en/programmes/lgbt/lgbt-and-media/>

⁴⁷ <http://soc.ba/en/reaction-a-kiss-is-not-a-scandal/>

RECOMMENDATIONS

Amend the BiH Law on Prohibition of Discrimination to include clear definitions of the terms gender identity and sexual orientation (as opposed to the existing grounds: sexual expression and/or orientation);

Adopt an anti-discrimination policy that defines concrete and realistic measures on how to move from de-jure prohibition of discrimination to de-facto societal tolerance and equality, including sexual orientation and gender identity as covered grounds;

Guarantee and protect freedom of expression and peaceful assembly of LGBT people.

Homosexuality and trans* issues are rarely addressed in books and still perceived as social deviations, creating risk groups for society.⁴⁸ A *public opinion survey* in late 2013⁴⁹ showed that 56.5% of the respondents still think “homosexuality must be cured,” which shows a lack of knowledge and entrenched stereotypes about homosexuality. A countrywide LGBT community research project⁵⁰ from 2013 showed that only *every seventh person is out to his parents and family*, confirming the low level of social and familial support available to LGBT persons.

LGBT activism is getting more and more visible, but is also facing obstacles. The registration of the Banja Luka Association of Queer Activists is taking more than 8 months and has experienced imposition of different obstacles from the BiH Ministry of Justice, which prolonged the process into endlessness. It is a serious concern that freedom of association is not guaranteed.

Anti-discrimination

The BiH Law on Prohibition of Discrimination from 2009 covers the prohibition of discrimination on the *grounds of “sex expression and/or orientation.”*⁵¹ The terms (grounds on which discrimination is prohibited) are not defined and are left to the interpretation of attorneys, prosecutors and judges (see chapter 3.9 *Fight against discrimination*). Gender identity (crucial for trans* persons) is not covered by the law, but can be covered under “sex expression” if attorneys, prosecutors and judges interpret the law broadly. Different laws on the state, entity and cantonal levels do cover sex/gender, sexual orientation and gender identity. BiH has not so far discussed or adopted any LGBT anti-discrimination policies that would define concrete measures on how to fight discrimination, prejudices and the promotion of tolerance and equality on the state, entity, cantonal and/or local levels.

The BiH Institution of Ombudsman on Human Rights works on complaints. The decisions of the Institution of Ombudsman are not binding. The very low number of registered cases regarding sexual orientation – 4 cases in 2013 – raises questions concerning the level of trust towards this human rights protection mechanism. The BiH Institution of Human Rights Ombudsman has not implemented any activities or actions related to LGBT rights independently and pro-actively.

The BiH Institution of Ombudsman was invited by 22 civil society organizations to issue a *Special Report on the state of the human rights of LGBT people* in order to analyze the existing legal and policy frameworks (see chapter 1.4 *Institution of Human Rights Ombudsman*) in September 2013. After almost 10 months of negotiations, talks and meetings the Institution declined the proposal.

There have not been any developments so far aiming to adopt *registered partnership* for same-sex couples law in any of the BiH federal units.

There is *no medical support for transsexual persons*. Surgeries have to be undertaken abroad, while the official health care and social security system does not cover any percentage of the costs. However, once the sex reassignment is done, transsexual persons can legally change their name, personal number (JMBG) and documents. Only the *BD Law on Birth Register Books* does not cover “sex reassignment” as a ground for legal change of personal data. Civil society organizations called the BD Government in 2013 to amend the law, which they refused to do.

48 Sarajevo Open Centre Report on Homo-/Bi-/Transphobia in BiH Schools, 2013, [available at]: <http://soc.ba/en/izvjestaj-o-homofobiji-bifobiji-i-transfobiji-u-skolama-u-bih-2/>

49 2013 Public Opinion Pool, [available at]: <http://soc.ba/en/56-5-of-bih-citizens-still-think-homosexuality-must-be-cured/>

50 2013 LGBT community research report, [available at]: <http://soc.ba/en/numbers-of-life-2/>

51 In local language, the terminology that is used is: “(s)polnog izražavanja i/ili orijentacije”, which literally means “sex expression and/or orientation”. Sex in this case refers to “(s)pol”, i.e. biological sex. Local translation for gender is “rod”, gender identity is “rodni/spolni identitet”, and sexual orientation is “seksualna/(s)polna orijentacija”.

Hate crime and hate speech

Since December 2012, the CSO Coalition to Combat Hate Crime and Hate Speech⁵² has been advocating for the need to adopt hate crime regulation in the Criminal Law of FBiH (see chapter 3.13 *Hate crime and hate speech*). A countrywide LGBT community research project⁵³ showed that every third LGBT person has experienced violence, but only every seventh case of violence has been reported to the police. This is a clear sign of mistrust towards law enforcement institutions. Since September 2013, Sarajevo Open Centre has documented 8 cases of hate crime on grounds of sexual orientation and/or gender identity, which is a troubling increase in comparison to the same period last year.

Freedom of Assembly

On February 1st 2014, there was an attack at the *LGBT film festival Merlinka in Sarajevo* by a group of hooligans. Even though the event was registered with the police 16 days in advance, the police were 50 minutes late to the festival location. During this attack two festival speakers were physically hurt and 25 other participants experienced fear and trauma. Even though the main human rights institutions and ministries were invited to condemn the attack, the BiH Institution of Human Rights Ombudsman was the only official body to do so. It took 14 days for the BiH Ministry of Human Rights and Refugees to issue a statement.

Taking into account the violent attacks against another LGBT festival in 2008, Sarajevo Queer Festival (see chapter 1.3 *Constitutional courts*), where 8 participants were injured and the perpetrators never prosecuted and observing that the same *modus operandi* leading to similar results was present during Merlinka Festival, concerns are being expressed about the ability of BiH to guarantee and protect the freedom of assembly of LGBT people.

3.11 Returnees and property rights

In terms of the rights of refugees, returnees and internally displaced persons, the developments around the *Law on Temporary and Permanent Residence* for citizens of Bosnia and Herzegovina have shown that the breach of rights of returnees in Republika Srpska has continued. This law was adopted and put in force in 2001, with minor changes in 2008. The law deals with issue of residence registration, but also covers rights of returnees and internally-displaced persons on matters of registration in their pre-war place of residence. The Law provides special treatment for these groups, providing faster and less-documented procedures for their registration, which is in accordance with Annex VII of Dayton Peace Accords.

During 2012 the Ministry of Internal Affairs of Republika Srpska *organized field-investigation on residence registration*, cancelling up to 400 residence registrations of pre-war residents of Srebrenica, Bratunac, Vukosavlje, Foča, Višegrad etc, affecting mostly Bosniak returnees or internally-displaced persons who lost their IDP status due to specific procedures and had to register in their pre-war place of address, despite poor conditions (mostly cases of houses not reconstructed). The fact that registration of IDPs and returnees affected results of 2012 Local Elections, bringing more representatives of Bosniak community into local assemblies, provoked a reaction of political parties, governing institutions and state-owned media in Republika Srpska, who launched a campaign on “fake registration” and urged for stricter rules to be applied on these specific groups.

Meanwhile, the RS Ministry of Internal Affairs (MUP RS) started conducting residency “verifications” of returnees. These raids resulted in numerous reports being filed by the RS police against the “unverified” citizens, mostly Bosniak returnees. These persons were subjected

52 <http://soc.ba/en/hate-crime-to-be-introduced-into-the-criminal-code-of-federation-of-bih/>

53 2013 LGBT community research report, [available at]: <http://soc.ba/en/numbers-of-life-2/>

RECOMMENDATIONS

Take effective measures to protect the returnees, refugees and internally-displaced persons in terms of registration of residence in their pre-war places of residence;

Stop the issuance of regulations and decisions which are not in conformity with the national legal framework that addresses the issue of residence registration, and prevent entities from imposing decisions that breach into the competence of the state;

Bearing in mind the failed proposals for amendments to the Law on Temporary and Permanent Residence, it is necessary to work on a proposal for new changes that will provide a better elaborated and a stronger position on specific and easier procedures for registration of returnees.

to illegal check-ups of their residencies by the police, some of which resulted in their residencies being annulled in the official register. However, where the cases have been brought to trial, the courts have decided that the police did act outside of their competences and the MUP RS has thus far not been able to prove that any of the accused citizens had conducted any illegal offences. In 17 of these cases the MUP RS itself has stopped the court procedure, for the presumed lack of evidence, or rather, the unlawfulness of the residency check-ups as such. Overall, at least 90 cases against the alleged 'fake-registered residents' were dismissed by the Municipal Court of Srebrenica and the District Court of Bijeljina.

However, after the court practice established that it is illegal to conduct such raids, strong attempts have been made by SNSD to change the Law on Temporary and Permanent Residence in order to make these very procedures legal and legitimate. These attempts failed, due to strong pressure of victims' veterans' and returnees' associations on Bosniak delegates in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina. After the attempt to change this law on state level fell through, the RS Minister of internal affairs, Radislav Jovičić, proposed that it be adopted on entity level. The RS Government adopted a proposal of the entity Law on Temporary and Permanent Residence, which would make it obligatory to submit "evidence" in order to sign up residency in RS. The law proposal has been sent into the Entity Parliament in urgent procedure, but it was accepted as a draft law and consequently returned into the regular procedure. After that, The RS Government adopted the Decision on verification of the accuracy and veracity of data for residence registration (Odluka o vršenju provjera tačnosti i istinitosti podataka prilikom prijave prebivališta) and put it into force on April 25th 2014.

The Decision was disseminated to regional police centres in Banja Luka, Prijedor, Doboj, Bijeljina, Istočno Sarajevo and Trebinje and further put to attention of commanding officers in local police stations throughout the entity. New cases of residency checks, in accordance with the new restrictions imposed by the decision have already been documented in Prijedor, Banja Luka, Rogatica and Bratunac, with witnesses and verification by local human rights activists.

The new rules in RS make residence registration more expensive - demanding verification of properties in ownership or proof of other legal connection between the resident and the address. It does not offer special treatment to returnees; moreover, it makes the procedures more difficult and legally burdensome, or even unenforceable for some. For example, registering residence in a house which legally still belongs to a person's deceased parent is not possible if inheritance issues, rights and obligations have not yet been discussed in front of the court, and there is no legal basis for a person to be registered at this address.

Overall, this Decision is in clear violation of state/entity distribution of powers, and in violation of special treatment of returnees, IDPs and refugees, as stipulated by Annex VII of Dayton Peace Accords. The number of official complaints on the issue remains low, due to citizens complying with the new rules and obtaining additional documents, choosing faster resolution of individual cases over the potential problems and stalling if they were to submit an official complaint. Also, the citizens who were subjected to such practices could not obtain written verifications that their residency has been refused, since the employees of police precincts claim that it is against regulations to issue written statements on the matters concerning residence and ID regulation.

The Decision, however, has been challenged as unconstitutional in front of the Constitutional Court of Bosnia and Herzegovina on July 4th 2014. RS officials announced the adoption of a new Decision, with the similar or same consequences.

A similar scenario took place with the *Law on Cadastre and Law on Property Taxes*, where entity legislation did not take into consideration the status of citizens who did not return to their places of residence, creating problems in terms of rights and obligations on private property of refugees.

Clearly, the legislator produced new rules with bad intentions, in order to generate legal obstacles for returnees and benefit from potential penalties that citizens abroad would have to pay in order to legalize the status of their properties, once they returned to their pre-war place of residence.

3.12 Ethnic minorities and Roma

*Roma*⁵⁴

Bosnia and Herzegovina has adopted a Revised Action Plans for Roma in the areas of employment, health care and adoption for 2013 - 2016 (December 2013) and the Revised Action Plan of BiH on the Educational Needs of Roma (2010); the Council of Ministers has formed a Committee for Roma BiH. A lot has been achieved at the level of legislation and policy during the Decade of Roma.

At the same time, the Special report on the situation of Roma in BiH issued by the Institution of Human Rights Ombudsman in Bosnia and Herzegovina emphasizes the stance of Roma non-governmental organizations that *in practice little has changed*. Organizations found that the budgets for implementation of the Strategy and Action Plans are insufficient, the procedures are complicated and lengthy; the lack of building land, migration of Roma families, unresolved property relations, the legalization of existing facilities, the resistance of the local population and similar issues are causes of poor implementation of strategic documents. Most Roma are not aware of their rights and the possibilities provided by the strategic documents. *A high percentage of Roma still has no identity documents* and therefore can not realize their rights. Little has been done to inform and provide legal support to Roma communities as well as to abolish the widespread stereotypes of Roma.

Roma are often among the poorest residents in BiH. Low employment rate is still concerning. Various reports indicate that only 1-3% of Roma are employed in institutions. Organizations indicate lack of competitiveness in the labour market due to the lack of vocational or higher vocational education, insufficient persistence of Roma, illiteracy/lack of education, lack of trust of employers, prejudice, stereotypes, etc.

Still insufficient, but slightly greater improvements are noticeable in education. From 2010, when the Revised Action Plan for education was adopted, there was a notable growth of children enrolled in elementary schools, but it should be noted that leaving school in the upper grades of elementary school is still present, but a significant increase in the enrolment of Roma children in secondary schools and colleges has not been noticed. According to the statement of Ombudsman Jasminka Džumhur, the fact that in 2013 *one third of Roma children left schools in Tuzla Canton*,⁵⁵ due to migration of parents, is concerning.

Ministry for Human Rights⁵⁶ says the key barriers that limit the opportunities and access to quality education for Roma are “extreme poverty, changes of residence, failure to grasp the importance of education for their children, and the insufficiency of funds at the state level to implement all the measures planned in the Action Plan for Education of Roma.” Therefore, no wonder the Ministry estimates that as many as 31% of children of members of the Roma in the Federation do not attend primary school. Also, it is vary concerning that the Government continues to blame Roma families for not actively seeking education and that they blame Roma

54 According to: Idžaković/Čatović/Vukmanić: Smjernice za razvoj zakonodavstva i politika jednakih mogućnosti sa fokusom na socijalna i zdravstvena prava (nacrt dokumenta), Prava za sve and Inicijativa i civilna akcija (ICVA), June 2014.

55 <http://radiosarajevo.ba/novost/134402/izvjestaj-o-polozaju-roma-u-bih-trecina-romske-djece-u-tk-ove-godine-napustila-skolu>

56 Izvještaj o implementaciji Decenije uključivanja Roma u BiH (20.08.2013), Ministry for Human Rights and Refugees BiH (cited in: Specijalni izvještaj o položaju Roma u Bosni i Hercegovini, Human Rights Ombudsman, available at: http://www.radiosarajevo.ba/infografike/ljudskaprava/index_romskadjeca.html)

RECOMMENDATIONS

Provide funding for implementation of the Strategies and Action Plans for health, housing, employment and education of Roma;

Define measures to intensify the integration of Roma children in the educational system;

Define measures to combat multiple discrimination against Roma women and Roma girls.

traditions for multiple discriminations that Roma women are facing. The current structure of the education system, in which education is left to the cantonal ministries of education with limited resources, is hardly able to bring about significant change.

Other national minorities

The dominant position of the three ethnic groups limits the access to public life for national minorities and those that do not declare themselves as belonging to any of the ethnic groups. Even though there are national minority councils on state and entity level their inclusion is more of symbolic significance. There are no guaranteed seats for national minorities in cantonal, entity or state parliaments (there are seats in some parliaments for “Others”, which does not mean that national minorities will be elected). Some ethnic minority groups are not even recognized by the state law as national minorities. The Jewish community has a special position in the BiH society and is very well integrated in the BiH public life.

3.13 Hate crime and hate speech

Legal framework

The BiH state level Security Ministry and the Organization for Security and Co-operation in Europe (OSCE) called (2009) on BiH administrative units (FBiH, RS and BD) to *adopt amendments to their criminal laws* and to include hate crime regulation. The *RS and BD did so in 2010*, including i.a. the grounds of ethnicity, nationality, religious belief, race, skin colour, gender identity and sexual orientation in the hate crime definition. FBiH did not adopt amendments to its criminal legislation.

Since December 2012, the CSO Coalition to Combat Hate Crime and Hate Speech⁵⁷ has been advocating for adoption of hate crime provisions in the FBiH *Criminal Law*. Amendments were adopted in July 2013 in the FBiH House of Representatives but not confirmed through adoption in the second chamber – the FBiH House of Peoples. Building on the momentum created by the CSO Coalition, the Club of Female Parliamentarians of the FBiH House of Representatives has put forward another proposal to amend the criminal law and include hate crime. Since then, the *amendments have been blocked in the FBiH Parliament* (see chapter 1.2 *Parliaments and governments*) so that there no significant progress on this topic has been achieved since December 2012.

A *hate speech provision* covering, for example, ethnicity, nationality, religious belief, race, skin colour, gender identity and sexual orientation, is not included in the Criminal Laws of FBiH, RS or BD. There has been no attempt to amend the criminal laws to include hate speech provisions. A positive development is the fact that the RS Government appointed a Committee to Fight Hate Speech on the Internet that will develop an Action plan. Unfortunately it is not clear why this process was not developed with a countrywide approach.

Current situation

Information about hate crime acts is *not systematically collected* or tracked. Nevertheless, the police have been investigating some specific cases and some of them are in the prosecution phase.

A countrywide LGBT community research project⁵⁸ showed that *every third LGBT person has experienced violence*, but only every seventh case of violence has been reported to the police (see chapter 3.10 *Lesbian, gay, bisexual and trans* people*). Since September 2013, Sarajevo Open Centre has documented *8 cases of hate crime on grounds of sexual orientation and/or gender identity*, which means a significant increase in comparison with the same period last

⁵⁷ <http://soc.ba/en/hate-crime-to-be-introduced-into-the-criminal-code-of-federation-of-bih/>

⁵⁸ 2013 LGBT community research report, [available at]: <http://soc.ba/en/numbers-of-life-2/>

RECOMMENDATIONS

Amend the FBiH Criminal Law to include hate crime and hate speech provisions, including, for example, on the grounds of ethnicity, nationality, religious belief, race, skin colour, gender identity and sexual orientation;

Amend the RS and BD Criminal Law to include hate speech provisions.

year. The police of the Sarajevo Canton have been cooperating with civil society organizations that are working on LGBT rights since 2012. Educational and informative actions took place and the police are committed to continue working on LGBT rights issues in 2014 by including LGBT and hate crime topics in the *permanent education programme* for the police. Other police agencies did not show particular interest in working on these issues. The Sarajevo Canton police also appointed contact persons for protection of LGBT rights.

Two more groups that are targets of hate crime and hate speech acts are *returnees and Roma*. Graffiti and attacks on religious buildings, cemeteries and monuments are frequent occurrences. Attacks that happen around religious holidays bring instability and mistrust into local communities. The last attack on the imam in Trebinje on the first day of Ramadan (end of June 2014) just confirms this on-going practice.

Besides focusing on prosecution, the law enforcement agencies need to start investing in trust-building, especially towards minority groups (i.e. returnees, LGBT people, Roma).

Judges and prosecutors have no or limited training related to hate crimes legislation (See chapter 2.1 *Judicial system*).

4 TRANSITIONAL JUSTICE

RECOMMENDATIONS

Make prosecutions and punishments for perpetrators of war crimes efficient and make the court proceedings that available to the public and ensure that the purpose of the punitive system is satisfied;

Provide support to members of the associations of surviving victims and individuals in the exercise of their rights;

It is necessary to adopt a legal framework for the establishment of a new institutional mechanism for extra judicial fact finding and truth-telling with adequate public support

Although BiH clearly expressed its commitment to find a more systematic and efficient approach to *prosecution of war crimes* in order to fulfil their constitutional, legal and international obligations and ensure the basic prerequisites for starting the process of facing the past and EU integration, *this process is also facing serious challenges*. This process touches on the multiple dimensions of human rights and justice: how to satisfy justice and create high-quality services and services for survivors and families of victims and ensure the enjoyment of social and economic rights; how to clearly define the status of victims, adopt the implementation of legislation for the protection and support of witnesses and how to, 19 years after the conflict, reconnect a war-shattered society and restore trust. In Bosnia and Herzegovina different interpretations of the same truth about the events of 1992 -1995, inadequate formal education system, the manipulation of the number of victims and their politicization and a lack of a comprehensive program of reparations and memorials are some of the issues that still persist.

Criminal Justice

Criminal justice involves the establishment of the Court and the Prosecutor's Office of BiH and the Special Department for War Crimes of the BiH Court and the Prosecutor's Office of Bosnia and Herzegovina (2003), as well as lower level courts. However, given the lack of resources in BiH judicial system, it is *necessary to ensure a sufficient number of judges and prosecutors*, in order to resolve cases of war crimes faster and more efficiently. In order to ensure a high level of sensitivity to victims and witnesses, it is necessary to provide adequate educational activities for holders of judicial functions. In terms of attitude of the judicial functionaries towards victims it is *necessary to establish an ethics code or a protocol for conduct towards victims and witnesses*.

In December 2008 a national *Strategy for working on war crimes cases* was adopted, with the aim of finding a more efficient approach to dealing with war crimes. In particular, the implementation of strategies for working on war crimes cases has stalled in several of its segments, which significantly reduced the chances of achieving the goals of this strategy, which are that all cases of war crimes are processed within a period of 15 years, and the most complex cases in the period of seven years from the adoption of the Strategy for the Work on War Crimes Cases. There has been some progress in the area of recording these crimes and

creating databases. However, efforts should be made to implement the Strategy section relating to protection and assistance to witnesses. *Support and protection of witnesses in criminal cases is absent.* Although the Court and the Prosecution have a Witness Support Unit within their organizational structure, it deals primarily with psychological support for witnesses in criminal cases, therefore leaving the victims of violations of international humanitarian law, in particular victims of sexual violence stigmatized and further traumatized during and after criminal proceedings. The responses of the judicial institutions in terms of investigating the threats that victims of crimes were exposed after testifying have been unsatisfactory. Courts and prosecutors have proven extremely insensitive to the needs of witnesses and most of them felt exploited upon the completion of the process. As part of the reform of the judicial system, which was conducted after the war, the Law on Protection of Witnesses under Threat and Vulnerable Witnesses was passed, as well as the Law on Witness Protection Program in Bosnia and Herzegovina, but the financial resources for the adequate implementation of these laws are lacking, which led to a series of problems, among other incidents it is not unusual for the names of protected witnesses to be mentioned in documents available to the public.

Within the criminal justice system it is necessary to *ensure the provision of free legal aid to vulnerable groups*, and it should begin immediately. An analysis to whom, where and what kind of help is necessary should be conducted. It is essential to adopt a law on free legal aid at the state level and to ensure that victims of war are covered by it.

The need for transparency and constant communication between the State Court of BiH, the Prosecution of BiH and the public has been recognized since the inception of these institutions, therefore it is *necessary to build communication between judicial authorities and citizens*. Well thought-out and successfully implemented outreach programs can be of great importance in terms of achieving the purposes of the punitive system. The *general principle of the public*, as a constitutional, political, international and legal principle applies in criminal proceedings, which can *per se* affect the quality of the trial and reasonable decision-making, it can have future preventive effects, can develop the morale and have a positive effect on public knowledge of the legislative framework. In contrast, during 2013, a trend of *anonymous court decisions and prosecution decrees* began - concealing the identity of individual participants in criminal proceedings. Such actions represent a violation of the principle of transparency and openness of justice, a violation of the right to free access to information, introduction of censorship in media coverage, and even an act of concealment of historical facts. It was created after the Agency for the Protection of Personal Data sent the "Opinion - Processing of personal data on the official website of the Court," to the Court in which it posited that publication of indictments and convictions that contain personal information on the Internet has no legal basis and in which they asked the Court to "*bring or initiate the adoption of regulations that would establish rules of anonymization of personal data in the indictments and convictions that are published on the official website.*" Continuing the trend that was mentioned, the Court of Bosnia and Herzegovina in March 2012 issued Regulations on Gaining Access to Information under the Control of the Court and on Cooperation with the Community, which assume anonymity of all court decisions before they are published on the website of the Court or distributed to the media and the general public in any other way. This Ordinance contains an important contradiction, because the principles of criminal procedure give courts the authority to decide whether the judgment finding the accused guilty should be announced in the media.

It is the public nature of investigations, trials, and in particular of issuing clear, accurate and unbiased verdicts in war crimes cases that are the essential steps in ensuring individual responsibility for serious violations of human rights that occurred during the war and the

establishment of judicial truth. The individualization of guilt involves public revelation of the names of the perpetrators of a particular crime and is considered an essential element of international criminal law. The current practice of the Court is best illustrated by inconsistencies, but also counterproductive practices and ignorance in the context of establishing the facts about war crimes. The Court currently anonymizes names and basic personal details of persons convicted of war crimes or crimes against humanity, but, paradoxically, reveals their ethnicity, which makes the ruling seem incomprehensible and unclear. In BiH public *dissatisfaction with the way war crimes are processed and prosecuted is noticeable*. This dissatisfaction is based on the one hand, on insufficient knowledge of the functioning and objectives of judicial institutions and lack of knowledge of legal and procedural rules, while, on the other hand, the dissatisfaction is influenced by certain substantial and real problems.

One of these procedural problems is when the Constitutional Court overturned ten verdicts for genocide and war crimes against civilians (the defendants were originally convicted as accomplices that participated in the shooting of more than 1,000 Bosniaks in the village of Kravica in 1995, for involvement in the shooting of a group of Bosniak civilians in the municipality of Jajce in 1992, and torture and involvement in tortures and murders committed during the 1993 in Gabela camp in Herzegovina). By the ruling of the Constitutional Court *the appellants have been harmed by retroactive application of the Criminal Law of the 2003*, because at the time of the commission of the crime a more lenient law was at force.

Truth-seeking

Truth-seeking assumes limitations of previous results of the truth-seeking and fact-finding initiatives. Although three initiatives were formed in order to establish the Commission for Truth and Reconciliation (in 1997 and in 2005), the Commission for Investigation of Events in and around Srebrenica from 10 - 19 July 1995 (2003), the State Commission for Testing Truth about the suffering of Serbs, Croats, Bosniaks, Jews and others in Sarajevo from 1992 to 1995 (2006), the Commission for Truth and Reconciliation Commission of the Municipality of Bijeljina (2008), due to the lack of a common goal of these initiatives, the absence of their mutual coordination and cooperation, as well as the lack of involvement of the general public in the design, implementation and monitoring of these initiatives, none of these mechanisms had access to comprehensive and up to date information about all the victims, which are to this day inaccessible. It is necessary *to improve and strengthen the institutional and non-judicial mechanisms for civil society initiatives for fact-finding and truth-telling* in order to ensure their efficient and high-quality contribution to this process, in a way that is complementary to the existing judicial and non-judicial mechanisms.

It is necessary to adopt a legal framework for the establishment of a new institutional mechanism for extra-judicial fact-finding and truth-telling with adequate public support, while ensuring gender-sensitive approaches and empowering members of the vulnerable groups who often failed to report violations of international humanitarian law and human rights, which they experienced out fear of being further stigmatized and victimized.

Although the *Strategy for the Implementation of Annex VII of the Dayton Peace Accords* was adopted in 2002 (and revised in 2010), to this day the objectives of the Strategy have only been achieved partially. Given the fact that the entities have competence in this field, each entity has regulated the status, and the amount of compensation, independently of each other, so that the victims in this domain are treated differently in the two entities.

Support to victims

In Bosnia and Herzegovina the benefits that go towards the victims of violations of international humanitarian law and human rights are placed in the context of *social benefits* (after victims gain the status), which is not in accordance with international standards on reparations. Although the Code of Criminal Procedure in Art. 19 allows the *launch of property claims during the proceedings before the court*, in practice the survivors are referred to civil courts. This approach of judges and prosecutors in war crimes cases leads to failure to provide adequate compensation to victims. In most cases, victims are unaware of their right to apply for compensation from the perpetrators and are not duly informed of the existence of procedures for the realization of rights. In addition, it is questionable how survivors who were protected witnesses during criminal proceedings are to claim their rights, when they lose their identity protection in civil suits. Further references to civil litigation involves costs of a new attorney that most victims can not afford. With this approach, victims are basically deprived of their right for compensation. Civil suits imply inefficiency and length of duration, all the while failing to guarantee realization of their rights to the victims, on the basis of the judgment rendered, because until now, very few of these judgments were in fact executed. Also, the *Law on Obligations* prescribes a general period of limitation of five years, although, according to international standards, the *basis for damages incurred during the war should not have a time limit*.

Victims who have suffered torture in places of custody during the war are entitled to compensation only if in addition to having suffered torture they have some degree of disability, on basis of which they receive compensation as a category of civilian victims of war or war veterans. All other citizens who have survived torture and do not have a minimal degree of disability are unable to achieve any compensation, i.e., compensation for their suffering.

BiH does not have a single reliable database on women who are rape survivors or survivors of other forms of violence committed during the 1992 - 1995 war.

Achieving the status of civilian victims of war differs in the Federation of BiH and in Republika Srpska, and the victims of rape in the Federation have a status of civilian victims of war. Achieving this status has been hampered by complicated procedures that require a financial expenditure. In RS women survivors of rape and other forms of sexual violence are not recognized as a category of civilian victims of war. In Brčko District, legislation that prescribes the manner of exercising the status of civilian victims of war for women, without arbitrary deadlines and taking into account the psychological suffering and damage was passed in August 2012. In any case, the processing and the dynamics relating to criminal offenses with elements of sexual violence are slow.

Bosnia and Herzegovina has not aligned regulations in the field of criminal law. There is no separate database for the prosecution of rapes, and these crimes are covered by the statistics on war crimes.

The Government has not yet adopted a program to improve the position of women survivors of war rape, sexual abuse and torture although it has been drafted. Development of a Strategy on Transitional Justice which aims to approach this topic comprehensively was initiated; however it has not yet been adopted by the Council of Ministers.

It is necessary to ensure full protection of the right to compensation for all victims of violations of international human rights law and an International humanitarian law in a way that would improve the current system by ensuring the right to compensation for all victims of war in Bosnia and Herzegovina and establishing a coherent system of all users of these rights.

Memorials

In Bosnia and Herzegovina, memorials are most commonly dedicated to military and civilian victims of a specific ethnic group, and the military forces and policies that are dominant in the local community. However, in BiH there is no appropriate legislation that would adequately regulate the process of memorialisation, there are no appropriate standards and criteria for raising memorials, nor is there an adequate understanding of the processes of memorialisation in the context of transitional justice. It is necessary to build and preserve the collective memory by raising memorials and to start a dialogue about the past, in order to prevent repetition of the crimes, and to establish standards and criteria for raising and maintaining the memorial commemoration activities, initiate a dialogue about the past through appropriate processes of memorialisation and commemoration, with the aim of building a culture of remembrance.

ADDENDUM

Census in BiH 2013

The Census Law was adopted at the beginning of 2012 and the census was scheduled for April 2013, but due to the lack of preparedness of the Agency for Statistics of BiH which was in charge of the process of implementation of the census together with the entity institutes for statistics, and due to technical shortcomings, the census was postponed for six months i.e. from 1 to 15 October 2013 as was recommended by the International Monitoring Organization (IMO).

Significant issues were registered during and after the census that directly violated human rights. The first and the most important one is related to personal data protection, which has been regulated rather vaguely in the *Census Law*. Article 15 of the Law states that: “ (2) The protection of personal data shall be performed in accordance with the Law on Protection of Personal Data and the Law on Statistics of Bosnia and Herzegovina.”

However, none of these laws refer to specificities of census-related data, thus offering no clear provisions on numerous situations and issues which arise from the census taking process, the most important one being the destruction of personal data collected through the census. The imprecise provisions on data protection continue further in the law, including Article 16 which states that “Data collected by the Census shall be used for statistics purposes only”, without setting out any provisions on the destruction of data which is not needed for statistical purposes. Article 20 prescribes that the Agency shall “Take care of storing, safekeeping and destroying the Census material”, while Article 22 gives ownership over common database which “includes all collected and processed data” to all three statistical institutions. Article 28 prescribes that “The director of the Agency shall issue a book of rules on destroying the Census material. The Census forms, organisational and methodological instructions for conducting the Census, and the book of rules on destroying the Census material shall be published in the Official Gazette of BiH and Official Gazettes of the entities and the Brčko District.”

The Law failed to prescribe legal deadlines for issuing this book of rules and no sanctions are provided for failing to complete this task.

When this fact is taken into account, the provision given in Article 36 of the census law also raises some concerns: “All the institutions of Bosnia and Herzegovina, the entities and the Brčko District are obliged to allow the Agency to use the databases and records under their competencies (the databases of births, deaths, displaced persons, registers of residence, administrative records of persons sentenced to prison and so on) to carry out control of statistical accuracy and quality of the data collected in the field.”

If the matters of destruction of personal data had been precisely defined by the law and/or following legal acts, there would be nothing disputable in this article. However, since this matter was not resolved, it leaves room for questions on possible personal data abuse, given that it can also be related to other databases.

Furthermore, Article 4 states, “Citizens of Bosnia and Herzegovina with place of usual residence in Bosnia and Herzegovina, regardless of whether, at the time of the Census, they are present in Bosnia and Herzegovina, or absent from Bosnia and Herzegovina”, while Article 7 states that “persons usually resident in the place of enumeration but absent, or expected to be absent, at the date of the census for less than one year shall be considered as temporarily absent persons and thus included in the total population of the enumeration area.”

However, neither the law, nor the census methodology give any input on the situation where an entire household is absent at the time of the census for a period shorter than one year. No forms or other means of enumeration have been provided for this category of persons. This has also proven to be a problem during the census implementation, one for which no statistical institution had an adequate answer. The result was that families, or single-person households who fall into this category, were not included at all.

The questions 24, 25 and 26 on ethnicity/nationality, language and religion, which were the most discussed and the most controversial, were also very poorly regulated within the law itself. Article 12 only states that it is not mandatory to declare one’s ethnicity/nationality and religion, while the form of the sensitive questions is left entirely to the statistical institution’s decision. The fact that the law did not introduce any additional provisions on this issue has surely influenced the process of formulating this question. If the law provided that the questions cannot be asked in a suggestive manner, or that they need to be formulated as open questions, most of the political issues which arose from the structure of the census form would probably be much less prominent and would have less influence on the public discourse around the census. Furthermore, it is fair to assume that the process of formulating these questions, which took a very long time and considerably polarized the society, giving way to several census-related advocacy campaigns of dubious legality, would be much less critical if the issue was better regulated within the law itself.

As for the implementation of the legal framework, several issues have been recorded, which both the IMO mission and the local institutions in charge of the Census overlooked, or even misrepresented.

The first and most critical breach of the law was the practice, established on the first day of Census, that census forms were not to be taken to secure storage spaces for safekeeping of census material. Instead of being stored in secure locations, provided specifically for this purpose with access allowed only to limited personnel as required by the law, the census forms were „stored“ in private homes of the enumerators, where they were taking both the blank and the filled-out forms after their daily work was done. This is in direct breach of both the Law on Census and the Law on Personal Data Protection, since the forms, containing various personal data of BiH citizens, were kept with no oversight whatsoever and could have been accessed by tens of thousands of unauthorized persons. Adding to that the fact that most of the enumerators did not even sign the statements of confidentiality (let alone employment contracts) before they started working on 2013 census, a conclusion arises that, for the large part of the census-taking process, even the enumerators themselves were not contractually obliged to keep the citizens’ personal data confidential.

Additionally, the central location for storage of census material, where all the census forms should have been stored at the end of the whole process, was not provided on time. The storage space was rented on October 9th, only six days prior to the Census closing date. On October 15th (census’ closing date) Mirsada Adembegović, spokeswoman for the state statistical agency,

announced that the census material will not be moved to the central storage until next week, adding that the Agency still has not employed the necessary personnel for the central storage unit to become fully functional. She also added that census forms will be transferred to the central storage „from the municipal census commissions“– although the forms were not stored in their premises, but in enumerators’ homes. This adds to the statement she gave on the second day of census when, confronted with the public outrage on the fact that census material was being taken to enumerators’ homes, she falsely claimed that this practice is only endorsed in cases when enumerators are working in distant areas, and that census forms are only kept at enumerators’ homes at night, but brought to the commissions’ premises the very next day. This claim was proven to be false on the same day when the statement was given.

The legal provisions regarding personal data protection were not the only ones broken by the institutions in charge of the census process, nor were the Census Law and the Law on Personal Data Protection the only ones being breached. None of the enumerators who were conducting the census were offered to sign a legal contract before the census started, and many have not signed it until the census was almost done. Prior to census’ ending, the Census Monitor recorded a sharp increase in number of reports filed by the enumerators themselves, mostly on the subject of their (illegal) work-status, some of them even reporting that, at a time when all of their work was already completed, they were offered to “give up on the job” because of these issues. This shows that the state institutions had illegally employed app. 20.000 people for census-related jobs. The fact that all the enumerators have not been put through appropriate training is also in breach of census legislature.

Results

According to preliminary results, the number of persons enumerated in whole of Bosnia and Herzegovina is 3.791.622; out of which 2.371.603 are enumerated in the Federation of BiH; 1.326.991 in Republika Srpska, and 93.028 in Brčko District. These results show significant deviations in number of enumerated persons compared to the statistical institutions’ estimates of population numbers. Although the Census methodology does state that preliminary results show only the number of enumerated persons (and not the number of population), the comparison will show that divergence of census results and statistical data is of such a nature and scope, that it cannot be explained or justified with the aforementioned disclaimer. These differences raise serious concerns that the official Census results are not in accordance with the actual situation, that they are severely compromised and it is highly questionable if they can be treated as relevant and usable statistical data.

ABOUT THE INITIATIVE

The Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina is an informal coalition of civil society organizations, which contributes to monitoring of the reforms and overviews the application of EU policies, laws and standards.

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ACIPS, Sarajevo
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 Centre for Political Studies, Sarajevo
 Cure Foundation, Sarajevo
 Helsinki Citizens Parliament, Banja Luka
 Human Rights Center of the University of Sarajevo
 Rights for all, Sarajevo
 Sarajevo Open Centre
 Why not, Sarajevo
 Youth Initiative for Human Rights BiH, Sarajevo

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Supporting organisations:

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