

BiH ALTERNATIVE REPORT 2016: POLITICAL CRITERIA

THE INITIATIVE FOR
MONITORING THE EUROPEAN INTEGRATION
OF BOSNIA AND HERZEGOVINA

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Content

LIST OF ABBREVIATIONS	2
SUMMARY	4
1. DEMOCRACY AND FUNCTIONALITY OF THE STATE	6
1.1 Constitutions	6
1.2 Parliaments	7
1.3 Governance	8
1.4 Constitutional courts	11
1.5 Elections	13
1.6 Institution of Human Rights Ombudsman of BiH	14
1.7 Civil society	15
1.8 Public administration reform	16
2. RULE OF LAW AND CORRUPTION	19
2.1 Judicial system	19
2.2 Fight against corruption	21
3. HUMAN RIGHTS AND PROTECTION OF MINORITIES	23
3.1 International human rights instruments	23
3.2 Freedom of assembly and association	23
3.3 Women's rights and gender equality	25
3.4. Youth and children's rights	27
3.5 People with disabilities	31
3.6 Fight against discrimination	32
3.7 Hate crime and hate speech	34
3.8 Lesbians, gays, bisexual, trans* and intersex persons	35
3.9 Returnees and property rights; ethnic minorities and Roma	36
4. MEDIA AND FREEDOM OF EXPRESSION	40
5. TRANSITIONAL JUSTICE	43
5.1 Regional issues, international obligations and transitional justice	43
5.2 War crimes	44
6. SELECTED TOPICS: ECONOMIC AND SOCIAL ISSUES	46
6.1 Labour, health care and social protection	46
6.1.1 Labour rights	46
6.1.2 Social protection	47
6.1.3 Health care	48
6.1.4 Flood relief	49
6.2 Census	50
ABOUT THE INITIATIVE	52

LIST OF ABBREVIATIONS

AP	Action Plan
BD	Brčko District
BiH	Bosnia and Herzegovina
BHRT	BiH Radio Television
BHT	Television of Bosnia and Herzegovina
BPC	Bosnia-Podrinje Canton
CEC	Central Election Commission BiH
CEDAW	Committee on the Elimination of Discrimination against Women (UN)
DF	Democratic Front (political party)
ECHR	European Court of Human Rights
EU	European Union
EP	European Parliament
FBiH	Federation of Bosnia and Herzegovina
GAP	Gender Action Plan
GRECO	Group of States against Corruption
HDZ	Croatian Democratic Union (political party)
HNC	Herzegovina-Neretva Canton
ICMP	International Commission on Missing Persons
LGBTI	Lesbian, gay, bisexual, transgender, and intersex People
ICTY	International Criminal Tribunal for the former Yugoslavia
MIA	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organization
NARS	National Assembly of Republika Srpska
CSO	Civil Society Organizations
OSCE	Organization for Security and Co-operation in Europe
OPD	Organizations of Persons with Disabilities
HR PABiH	House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina
PFBiH	Parliament of the Federation of Bosnia and Herzegovina
PA BiH	Parliamentary Assembly of Bosnia and Herzegovina
CRA	Communications Regulatory Agency BiH
REKOM	Regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia
RS	Republika Srpska
RTRS	Radio Television of Republika Srpska
RTV	Radio Television
RTVFBiH	Radio Television of the Federation of Bosnia and Herzegovina
PIO	Pension and Disability Insurance
USA	United States of America
SBB	Union for a Better Future (political party)
CBC	Central Bosnia Canton
SDA	Party for Democratic Action (political party)

SDP	Social Democratic Party of BiH (political party)
SDS	Serb Democratic Party (political party)
SIPA	State Investigation and Protection Agency
SNSD	Party of Independent Social Democrats (political party)
SAA	Stabilization and Association Agreement
TC	Tuzla Canton
ODP	Office of Disciplinary Prosecutor
USC	Una-Sana Canton
CoE	Council of Europe
CoM	Council of Ministers
HJPC	High Judicial and Prosecutorial Council
WHC	West Herzegovina Canton
ZoSPI	Freedom of Access to Information Act

SUMMARY

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

The complete focus on the report is on the so-called political criteria, with particular emphasis on the following issues:

- 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.

In the period between the summer of 2015 and the summer of 2016, the time span covered by this report, Bosnia and Herzegovina has made a formal progress in the EU integration process, which was not accompanied by fundamental reforms or actual progress in fulfilling the conditions for a credible application set by the Council of the EU in 2011.

In February 2016, Bosnia and Herzegovina submitted the application for membership in the European Union, although two key conditions have not been fulfilled. The ruling of the European Court of Human Rights in the case „Sejdić and Finci“ has not been implemented yet, although in the meantime the Court rendered the judgement in almost identical case „Zornić“. The coordination mechanism for the EU integration was never agreed upon, whereby the Council of Ministers of BiH formally adopted a decision on the coordination mechanism at a secret session and without the knowledge of partners in the negotiation process, which has drastically undermined the credibility of the very process. Months after the submission of the application, negotiations on the coordination mechanism are still ongoing and are once again conditioned by political demands of the party leaders, who continue to generate political crises in the country. Democratic performance of parliaments and governments at the state, entity and cantonal levels are extremely poor, with an alarming continuity of decline in quality of democratic processes. The work of the institutions is still characterized by instability, lack of transparency and inefficiency. It is a devastating fact that the constitutionality of the three legislative acts adopted in the Federation of BiH have been contested in the first year of the mandate. The decisions of the constitutional courts are not implemented, and contestation of jurisdiction

and position of the Constitutional Court of BiH escalated through the announcement of a referendum on the implementation of the decision of the Constitutional Court of BiH in Republika Srpska.

The Structured Dialogue on Justice between BiH and the EU once again is taking place behind closed doors, wherein particularly concerning is the complete lack of transparency of the process of drafting the new Law on Courts. Not a single significant case of the fight against corruption has been prosecuted, while open pressures on the Prosecutor's Office of BiH are being made due to the arrests of high-ranking party officials. No significant and systematic policies to combat human rights violations have been adopted. The activities of the Council of Ministers of BiH on the improvement of the Law on Prohibition of Discrimination and the Law on Ombudsman, which are in parliamentary procedure, are commendable, however, the obstructions of certain political parties in the Parliamentary Assembly of BiH, due to which the proposed amendments still have not been adopted, are concerning. Minority and vulnerable groups continue to live in difficult conditions. In terms of anti-discrimination legislation, positive development is the introduction of prohibition of hate crime through amendments to the Criminal Code of FBiH. On the other hand, a regression in the legal framework for the protection of the rights of Roma as one of the most vulnerable groups was registered, because all the state policies in this field expired as of last year. Discrimination and violence are pervasive, and there is still no progress in the implementation of the Law on Prohibition of Discrimination in judicial practice. Prosecution of war crimes and dealing with the past, as pre-conditions for creating a healthy environment and building a common state, pose an additional problem. The Initiative for Monitoring the European Integration of BiH will continue to advocate for changes in the field of adoption of new laws and policies, but also their implementation. The role of civil society in the EU integration process of BiH is further weakened by the practice of adopting the key documents, such as the Reform Agenda and laws arising from it, in a completely non-transparent manner, without any insight or participation of the public. Civil society must become the third protagonist in this process (in addition to State and EU institutions) in order to return the process into the framework of democratic practice.

Editors

June 20, 2016

1. DEMOCRACY AND FUNCTIONALITY OF THE STATE

1.1 Constitutions

Recommendations

- Adopt amendments to the BiH Constitution and other constitutions in BiH that eliminate ethnic discrimination and provide equal political rights to all citizens;
- Incorporate a definition of equality between men and women and the prohibition of direct and indirect discrimination against women in public and private spheres into the BiH Constitution;
- Lead a dialogue on constitutional reforms exclusively within the institutional framework, transparently and with the participation of the interested public, expert community and civil society.

„Sejdić and Finci“ decision

In the past year nothing has been done on the implementation of the decision of the European Court of Human Rights in the case „Sejdić and Finci“. The entire process was stopped after the implementation of the ECHR decision ceased being a condition for the entry into force of the Stabilisation and Association Agreement, although in 2014 the ECHR rendered a judgement in almost identical „Zornić“ case. In the meantime, the European Court of Human Rights ruled in the „Pilav“ case, which confirmed the existence of ethnic discrimination in the BiH Constitution for the third consecutive time. In September 2015, the BiH Council of Ministers reported that it had adopted the Action Plan for the execution of the ECHR rulings in cases „Zornić“ and „Sejdić and Finci“, and tasked the BiH Ministry of Justice to prepare a draft decision on the formation of a working group for drafting constitutional amendments and harmonization of the BiH Election Law. The Council of Ministers has not addressed this issue since then. The Action Plan has never been published, the decision on the formation of the working group has not yet been adopted, nor have the provided amendments been made to the BiH Constitution.

Other forms of ethnic and gender discrimination

There has not been any progress concerning the implementation of the decision of the BiH Constitutional Court¹ on the election of entity presidents and vice-presidents, where the existence of discrimination on ethnic grounds was also confirmed. In April 2016, amendments to the BiH Election Law were adopted (see: 1.5 Elections), but that opportunity has not been used to implement the decision of the Constitutional Court.

Neither has any progress been made concerning the implementation of the CEDAW Committee (2013) recommendation² to explicitly incorporate a definition of gender equality and the prohibition of direct and indirect discrimination against women in public and private spheres into the BiH Constitution. Although there are two initiatives³ that advocate for amendment of the BiH Constitution from the gender perspective, there is no political will for their actual implementation in BiH.

1 http://www.ustavnisud.ba/dokumenti/_hr/U-14-12-734865.pdf

2 Recommendation no.14 of the CEDAW Committee - Concluding observations on the combined fourth and fifth periodic reports of Bosnia and Herzegovina: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=3&DocTypeID=5

3 These initiatives are „Women Citizens for Constitutional Reforms“ and Agency for Gender Equality of BiH. By 2016, the proposal of gender sensitive amendments to the BiH Constitution, which the initiative „Women Citizens for Constitutional Reform“ proposed, was not on the agenda of sessions of the BiH Parliamentary Assembly.

1.2 Parliaments

Recommendations

- Stop the practice of adopting laws in urgent procedure, especially system laws, as well as those that have a significant influence on the lives of citizens in BiH;
- Stop the practice of violating legal procedures in parliamentary processes.

Current situation

Concerning trends of disrespecting democratic procedures and adoption of key laws in urgent procedure and without a public debate continued in the previous period, particularly in the Parliament of FBiH, where out of 40 laws adopted by April 2016, only 14 were adopted in regular procedure, 7 in shortened procedure, and 19 in urgent procedure. At the state level, in the same period 19 laws were adopted, out of which 6 in urgent procedure and 13 in regular procedure. In the National Assembly of RS, out of a total of 57 adopted laws, 29 were adopted in regular procedure and 18 in urgent procedure. Although the percentage of laws adopted in urgent procedure in the NARS is smaller than in the FBiH, their structure is concerning since these are system laws, such as the package of laws that fundamentally modified the pension system (see: 6.1.2 *Social protection*), The RS Budget was also adopted in urgent procedure. The Law on Police and Internal Affairs of RS was also sent into urgent procedure, but was adopted with the amendment of the Bosniak Caucus on the harmonization of the national structure of police officials with the 1991 census results. However, the President of RS refused to sign the law after the adoption of the amendment, thus directly interfering in the work of parliament and with the issue that has potentially deeper consequences for the returnee community in the RS, and also elsewhere (see: 3.9 *Returnees and property rights*).

Labour laws as examples of disruption of the democratic process

Among laws adopted in urgent procedure, *Labour laws in both entities stand out the as the most radical examples of disruption of the democratic process*. In the Federation of BiH, sessions of the both Houses of the Parliament of BiH were scheduled only three days after the FBiH Government had referred the Labour Law in urgent procedure (July 27, 2015), whereby delegates of the House of Peoples were not allowed to propose amendments to the submitted proposal, due to which 17 of them (from SDP, Democratic Front and Our Party) filed a request to review the constitutionality of the adoption procedure. In February 2016, the FBiH Constitutional Court determined that the procedure of adopting the FBiH Labour Law was unconstitutional and that it violated the Rules of Procedure of the FBiH Parliament, thereby seriously compromising the legislative process in this entity. Thereafter, the Law was adopted again in March 2016, in the same text. Such fiddling with legislative procedures resulted in the fact that in practice the old Labour Law was applied in the period from promulgation of the law invalid/null and void to the re-adoption in the legal procedure, and the contracts that were concluded in accordance with the new law had to be renewed in accordance with the old law, and then once again renewed when the new law was adopted in the regular procedure. The General Collective Agreement, concluded just a few weeks before the decision of the Constitutional Court, also became null and void and will have to be renewed in accordance with the law adopted in March.

The RS Labour Law was also adopted in urgent procedure, on the night between 28th and 29th December, 2015, whereby its adoption in the National Assembly of RS was marked by an unprecedented act of violence against the President of the Federation of Trade Unions of RS, whom the Assembly security literally dragged away from the hall before the adoption of the law. Majority of the public saw this as an autocratic act and an act of suspension of democracy, since there was no public debate, and except the Government and employers' associations, nobody could have influenced the content of the law. Both laws, although of key importance for citizens, were adopted in a completely non-transparent manner and with protests of trade unions in both entities, who had addressed the International Labour Organization (ILO) regarding this issue.

The case of „buying deputies“ in the NARS, referred to in the last year's report, remained unresolved and nobody has been held accountable for it. The House of Peoples of the FBiH Parliament continued operating in incomplete composition, that is, without the prescribed number of delegates in the Serb Caucus.

1.3 Governance

The formation and functioning of governments

In Federation of BiH, the Constitutional Court in January 2016 found that the Regulation on execution of powers in companies with state equity stake from the jurisdiction of the Federation of BiH, is not in accordance with the Constitution of FBiH.⁴ The request for review of the constitutionality of the Regulation, because of which the ruling coalition collapsed, was submitted by the Vice-President of the FBiH Milan Dunović (DF), together with the request for temporary suspension of its contested provisions, which the Constitutional Court dismissed. The new parliamentary majority in the FBiH was formed in late October, when DF representatives in the FBiH Government were replaced with SBB representatives. DF representatives were replaced in other four cantons in which this party was part of the ruling coalition. In the Tuzla Canton, DF ministers were dismissed in such a way that the cantonal government was formally overthrown with Prime Minister Bego Gutić resigning, who was on the same day elected to the same office and formed the new government without DF ministers.

At the state level, representatives of DF in the Council of Ministers were dismissed in December 2015, but the new composition of the Council of Ministers was not formed until May 2016, as the candidate of SBB for the Minister of Transport and Communications was arrested in January due to exerting pressure on witnesses in the case „Keljmendi“. For months SBB had refused to propose another candidate, while the leader of SDA publicly stated that he does not see anything disputable in the appointment of the arrested

⁴ Detailed analysis of the Regulation and actions taken by the FBiH Government in this case is available on the website of the Foundation Centre for Public Law, at: <http://www.fcjp.ba/index.php/15-news/290-uredba-o-vrsenju-ovlastenja-u-privrednim-drustvima-sa-ucescem-drzavnog-kapitala-iz-nadleznosti-federacije-bih>

Recommendations

- Processes of importance for the public to be conducted transparently and with the participation of the interested public at all levels of government in BiH, with respect to social dialogue and democratic practices.

Bakir Dautbašić to the ministry position. Dautbašić finally dropped candidacy in April 2016, and Ismir Jusko was appointed Minister of Transport, who at that time served as Minister of Internal Affairs of the Sarajevo Canton. Shortly after the arrest of Dautbašić, within the same investigation the leader of SBB, Fahrudin Radončić, was arrested, which led to a short-term blockade of the work of the FBiH Parliament in March 2016.

Situation in Republika Srpska

In Republika Srpska, the Government and President of the RS have *intensified aggressive rhetoric towards state institutions*, and special sessions of the Government, dedicated exclusively to challenging decisions taken at the state level were taking place, and discrediting the work of the parties from the RS in the Council of Ministers. The RS President on multiple occasions announced a boycott of state institutions, particularly in relation to the actions of the State Investigation and Protection Agency of BiH (SIPA), whose activities the RS authorities constantly present as attacks on Republika Srpska. Among the most striking examples is the case of the liquidation of “RS Bank”, the second bank that was terminated within only one year, which Milorad Dodik tried to attribute to the “pressures of SIPA” – specifically, the arrest of the Director of the RS Banking Agency in the case of “Bobar Bank”. Attacks on state judicial institutions also continued. In addition to the campaign for a referendum on the BiH Court and Prosecutors’s Office, the announcements were made for a referendum on the decision of the BiH Constitutional Court on the Day of Republika Srpska (see: *1.4 Constitutional courts*). The RS President on multiple occasions has proposed that the referendum should take place on the same day as local elections.

Transparency of government

In the previous period, the executive government in BiH has demonstrated concerning tendencies to *conduct the key processes, particularly those related to EU integration, in a completely non-transparent manner, even contrary to legal and constitutional regulations*. The creation and adoption of the *Reform Agenda* took place behind closed doors, without the participation of the interested public, and even the legislative bodies. Not only that the content of the adopted Reform Agenda was not discussed with civil society and social partners, but it was hidden from the public until the adoption. Particularly problematic was the adoption of the key laws from the Reform Agenda, the *Labour Law*. The governments of both entities demonstrated a complete disregard for basic democratic principles and derogation of social dialogue while adopting these laws. In the Federation of BiH, the Labour Law was adopted at the moment when the ruling coalition had already collapsed, and the Federation of Trade Unions announced that the FBiH Government had withdrawn the bill which was previously negotiated by the Economic and Social Council and proposed a text on which there was no consent of the social partners. The trade unions withdrew from the negotiations and announced protests, but the Government has nevertheless continued with the

procedure of adopting the law, which was subsequently established to be unconstitutional (see: 1.2 *Parliaments*). The FBiH Government on multiple occasions has expressed its intention to completely *discontinue the dialogue with the social partners*, starting with the manner on the adoption of the Labour Law, through arbitrary abolition of the representativeness of the Association of Employers of FBiH in January 2015, without any legal grounds; to the proposal of amendments to the Labour Law in January 2016, which minimize the role of social partners in social dialogue. The abolition of the representativeness of the Association of Employers of FBiH and the announcement of amendments to the law in urgent procedure followed the agreement of employers and unions on the new General Collective Agreement for the Federation of BiH in December 2015. The FBiH Government tried to contest this agreement with announcements that it would request review of its constitutionality. The General Collective Agreement was finally adopted in February 2016 with the consent of the FBiH Government, but will have to be re-adopted because the then applicable law was declared unconstitutional. In Republika Srpska, consultations of the Government with the social partners were unsuccessful too, and were interrupted when the Federation of Trade Unions announced withdrawal from the negotiations due to disagreement on the final bill of the Government and announced protests if the bill is sent into the procedure. The RS Government nevertheless on December 25, 2015 referred the bill into the RS National Assembly in urgent procedure, whereby Prime Minister of RS Željka Cvijanović and the relevant minister already then made announcements that it will soon be amended due to „identified deficiencies“. The union announced launching of review of the constitutionality of the new law, and the Ministry of Labour and Veterans Protection of RS revision of trade union representativeness. Federations of Trade Unions from both entities addressed the International Labour Organization (ILO) on the occasion of all the events during the adoption of entity labour laws.

The decision on the coordination system of EU integration process in BiH was adopted, although negotiations on the coordination mechanism had not been completed, at a secret session of the Council of Ministers on January 26, 2016, of which there was not any official trace at the time of its holding. The public did not know that the decision was adopted until February 9, 2016, when it was published in the Official Gazette, and even then the information did not come from the BiH Council of Ministers, but was released in the media. The Chairman of the Council of Ministers *withheld the adoption of the Decision from MPs in the state parliament*, who asked him about the course of negotiations on the coordination mechanism at the session held on February 3, 2016. One of the state ministers quite openly „explained“ that the adoption of this decision was a „hoax“ in order to submit the application for EU membership in February, although the mechanism was not agreed upon. The process of negotiations on the coordination mechanism has not been completed yet and the question is when the actual mechanism will be adopted, which would truly enable Bosnia and Herzegovina to „speak with

one voice“ with the European Union.

Alarming are the reactions of the EU to apparent regression of democratic processes in the aforesaid, but also other cases. EU representatives on multiple occasions have commended these „reform steps“, completely *ignoring the fact the same have been undertaken by the degradation of the parliaments and social partners, completely non-transparent, and even by deceiving the public.*

1.4 Constitutional courts

Recommendations

- Strengthen the independence of the BiH Constitutional Court through the adoption of the Law;
- Harmonize the Rules of Procedure of the RS Constitutional Court with the BiH Constitution;
- Appoint judges of constitutional courts within prescribed deadlines, in a transparent and legally valid manner, without political blockades;
- Formally establish the responsibility of the BiH Council of Ministers to monitor and implement decisions within the appellate jurisdiction of the Constitutional Court.

Legal framework

Jurisdiction of the BiH Constitutional Court is exclusively prescribed by the BiH Constitution. All decisions of the Court are final and binding. The Court by itself determines which entities implement decisions of the Court, measures that need to be taken and deadlines within which the measures will be implemented. The BiH Constitutional Court consists of nine judges, where each of the constituent peoples is represented by two judges. There is no direct discrimination of „Others“, but in practice there have never been judges who are not members of the three constituent peoples. The entities in Bosnia and Herzegovina (Federation of Bosnia and Herzegovina and Republika Srpska) have entity constitutional courts that are continuously facing difficulties in their work.

Current situation

The decisions of the BiH Constitutional Court are still not being fully implemented by legislative and other state and entity authorities. According to the data of the Constitutional Court from April 2016, the *number of unimplemented decisions has increased to 92*. The decision on the state property has not yet been implemented, as well as the decision on amendments to the Statute of the City of Mostar and the BiH Election Law (see: *1.5 Elections*).

The decision of the BiH Constitutional Court on the unconstitutionality of Article 3 of the Law on Holidays of Republika Srpska (marking of January 9th as the Day of Republika Srpska) was adopted on November 26, 2015⁵ and also has not been implemented within the statutory deadline. The decision was taken on the appeal of the BiH Presidency member Bakir Izetbegović, in which it was stated that the marking of this date as the RS holiday is discriminatory towards Croats and Bosniaks.

The Constitutional Court ordered the National Assembly of Republika Srpska to harmonize the unconstitutional article of the Law with the BiH Constitution within the six months period, which has not been done. Furthermore, the National Assembly of RS already in May adopted a Declaration announcing that the decision of the BiH Constitutional Court in this case will not be respected, while in November a Joint Statement of the President of Republika Srpska, the Speaker of the National Assembly of Republika Srpska and the Prime Minister of Republika Srpska was adopted

⁵ Official Gazette of Bosnia and Herzegovina 100/15 (<http://sllist.ba/glasnik/2015/broj100/Broj100pdf>)

on the occasion of the announced plenary session of the BiH Constitutional Court contesting the right of the Constitutional Court to decide in this case. Representatives of executive authorities and all political parties in the RS characterized the decision as political and taken under the influence of foreign judges, while the Constitutional Court was called a „political instrument of Bosniak parties and the High Representative.“ MPs from Republika Srpska in the BiH Parliamentary Assembly proposed a new Law on Constitutional Court of BiH, which would, among other things, abolish the election of foreign judges in the BiH Constitutional Court and introduce the principle of entity decision-making. The Bill was referred into the legislative procedure in April 2016 and it failed to receive the support of MPs. Thereafter, it was announced a referendum in the RS, with the question „Do you support January 9th as the Day of Republika Srpska?“ would take place. Due to normative incompleteness of the BiH Constitution in the part relating to the regulation of operation of the BiH Constitutional Court, a large number of issues is regulated through the Rules of Procedure of the Constitutional Court. *Therefore, it is necessary to adopt a new Law on Constitutional Court of BiH, which is why the politization of this issue is particularly controversial.* Furthermore, efforts to change the composition of the Constitutional Court through the amendments to the Law on the Constitutional Court of BiH are controversial because the appointment of foreign judges, who are appointed by the President of the European Court of Human Rights, is stipulated by Article IV of the BiH Constitution, thus such legislative amendments would be contrary to constitutional provisions.

The FBiH Constitutional Court is also facing political pressures. Deciding on the constitutionality of the adoption of the FBiH Labour Law, the Constitutional Court of the Federation of BiH was accused by MPs in the FBiH Parliament of ruling „political decisions“. Civil society organizations have warned that *solely commenting on the decisions of the highest constitutional and legal instances by government officials in Bosnia and Herzegovina does not contribute to the establishment and maintenance of the rule of law in Bosnia and Herzegovina, since constitutional courts have to be able to operate without pressures and political interference.*

The RS Constitutional Court still *applies the Rules of Procedure which is unconstitutional* in proceedings of the protection of vital national interest in Republika Srpska. The call of Bosniak MPs to modify the Rules of Procedure is still being ignored. The initiative to review the constitutionality of the new Law on Public Order and Peace of Republika Srpska has been before the RS Constitutional Court since May 2015. The RS Constitutional Court has not yet declared itself regarding this issue.

Recommendation

- In a transparent and democratic procedure adopt amendments to the BiH Election Law which will provide for the implementation of local elections in the City of Mostar.

1.5 Elections**Legal framework**

The Central Election Commission on May 4, 2016 announced local elections for October 2, 2016 for all municipalities and cities, except for the City of Mostar. Verification of registration of political parties and independent candidates for participating in Local Elections in BiH was completed on June 9, 2016. 107 political parties, 309 independent candidates and 58 representatives of national minorities registered for Local Elections. *A significant increase in the number of political entities* is evident compared to the 2012 Local Elections, when 85 political parties, 280 independent candidates and 53 independent candidates representatives of national minorities verified their participation.

Current situation

The decision of the BiH Constitutional Court on the City of Mostar, which is crucial in order to hold local elections in this city, has not been implemented yet. In May 2015, the BiH Parliamentary Assembly appointed an Inter-ministerial working group for amending the BiH Election Law, while the Council of Ministers appointed its representatives in September. According to statements made by members of the Inter-ministerial working group, the working group has not at all dealt with the issue of Mostar, because it is „a matter of agreement between the SDA and HDZ“. These messages indicate that the practice of neglecting legislative institutions in addressing the key legal issues continues, which are treated as a matter of „private“ agreements of political parties. The SDA and HDZ, on their part, have been sending to the public contradictory messages on the success of their internal negotiations for months only to have the Mostar SDA Committee in early July 2016 urging the OHR to issue a decision which would impose the holding of local elections in Mostar in accordance with old, unconstitutional provisions.

At the session of the House of Representatives of the BiH Parliamentary Assembly, held on April 27, 2016, there were five proposed amendments to the BiH Election Law up for voting, which were proposed by the SDP/DF, HDZ, SDA/SBB, Commission for Gender Equality and the inter-ministerial working group for amendments to the Election Law. The first three proposals referred to the elections in Mostar and none of them were adopted. The proposal of the Inter-ministerial working group, which was the only proposal adopted by the BiH Parliamentary Assembly, did not contain provisions relating to the City of Mostar. Holding of local elections in Mostar, which were last held in 2008, remains highly questionable.

1.6 Institution of Human Rights Ombudsman of Bosnia and Herzegovina

Recommendations

- Eliminate overlapping in the performance of tasks between ombudsmen and introduce a structured division of tasks within the Institution in order to improve the efficiency of the Institution;
- Strictly adhere to the recommendations of the International Coordinating Committee and Venice Commission when adopting the new Law on Ombudsman of Human Rights of BiH.

Legal framework

The BiH Council of Ministers *determined a Bill on Ombudsman of Human Rights of BiH in March 2016*, which should have been made by the end of 2015. Failure to adopt the Law in 2015 jeopardized accreditation of the Institution of Ombudsman at the International Coordinating Committee (ICC) for accreditation of national institutions for the protection of human rights, which also should have been completed in 2015. The House of Representatives of the BiH Parliamentary Assembly considered the bill on April 5, 2016 and returned it for modification due to negative opinion of the Constitutional-Legal Commission. The Initiative for Monitoring the European Integration of BiH *commended the new improved solutions*⁶ contained in the bill, including better defined competencies of the Institution of Ombudsman, transfer of the ombudsman appointment procedure from *ad-hoc* commission to permanent parliamentary human rights commission, division of authorities and tasks between ombudsmen and the establishment of a permanent civil society advisory body in the Institution of Ombudsman.

Nevertheless, concern needs to be emphasized due to the fact that the *bill does not fully comply with the recommendations of the UN International Coordinating Committee and the Venice Commission*. Remarks refer to the discriminatory structure of appointing the three ombudsmen only from the constituent peoples; insufficiently clear division of powers between individual ombudsmen and three ombudsmen as a collective; and the retention of the current inefficient decision-making system. Announcements of certain MPs from the Croat people that they will not allow the division of tasks and decision-making process, even at the cost of dismissing the Bill as a whole, are alarming.

Current situation

The decision of the BiH Parliamentary Assembly *in November 2015 appointed three ombudsmen* for a period of six years, of which only one was newly appointed. In early 2016, the Institution of Ombudsman made certain *internal changes*, which led to the adoption of a new operation strategy of the Institution. In the previous period, some positive developments have been registered, such as carrying out consultations with civil society in Sarajevo and Banja Luka, and making of two special reports.⁷ In May 2016, the Institution submitted the annual report on the work to the BiH Parliamentary Assembly. The intensification of activities in the field through office days is commendable (since 2016 the Institution of Ombudsman is present in Bijeljina too). Unfortunately, a year after receiving the request from the BIH Parliamentary

6 Comment on the new law published by the Initiative for Monitoring the European Integration is available at the following link: http://soc.ba/site/wp-content/uploads/2016/03/HRP-20_ombudsmani-komentaR_02.pdf

7 Special report on the accessibility of the working areas of legislative bodies in Bosnia and Herzegovina for persons with disabilities and Special report on (not) respecting human rights and labor rights in the company "Boksit" Milići

Assembly, the Institution of Ombudsman has not prepared a Special report on the human rights of LGBTI persons. Finalization of this report is announced for summer 2016.

The decision-making process is still extremely inefficient and slow, and at times hinders the making of certain decisions. Three ombudsmen must make unanimous decisions on all matters, including the approval of annual holidays of employees.

Since the adoption of the Law on Prohibition of Discrimination in 2009, there has not been progress in the implementation of this Law to date (see: 3.6 *Fight against Discrimination*). Although the Law stipulates a separate budgetary point for financing the Department for the Elimination All Forms of Discrimination within the Institution of Ombudsman, these funds were never provided. In regards to the internal structure and capacities, the Institution failed to fill in vacancies. Regional offices have not been opened yet (in Bihać, Doboj, Foča, Bijeljina, Zenica, etc.), although the same have been provided for by internal systematization.

Limitation of financial and personnel capacities of the Department significantly restricts the exercise of competencies established by law, in particular the conduct of research and proposing legal solutions that would raise human rights in the country to a higher level.

Recommendations

- Work on consistent application of the existing Agreement on Cooperation of CSOs and institutions at the state level and establishment of similar mechanisms at the entity level;
- Implement transparent and inclusive mechanisms for public consultations with civil society organizations at all levels of government;
- Adopt a Strategy for Development of Civil Society at state and entity levels, with concrete measures that will include systematic financing through adequate funds and engagement of civil society in the process of drafting and adoption of public policies and laws.



1.7 Civil society

Legal framework

In the previous period there were no changes in the legal framework for the operation of civil society organizations in BiH. Different levels of government have their own laws on associations and/or foundations. The Ministry of Justice of BiH at the end of 2015 referred into the parliamentary procedure the *Bill on amendments to the Law on Associations and Foundations of BiH*⁸ which revokes the ban on political and administrative units establishing and registering associations at the state level, thereby further weakening the credibility of non-governmental organizations as a corrective factor and impeding their work. The Ministry had withdrawn, and then returned the Bill into the parliamentary procedure.

Current situation

Actual cooperation between the state and civil society organizations is still non-existent. While at the state level there is a non-functional mechanism, at the entity level there are neither any institutional mechanisms for cooperation between the governmental and non-governmental sector, nor will for their establishment. Support of the state for the work of civil society organizations is not transparent, while the mechanisms and criteria for allocation of funds are arbitrary and depend on institutions that allocate the funds.

In February 2016, the Chairman of the BiH Council of Ministers announced

⁸ https://www.parlament.ba/sadrzaj/zakonodavstvo/u_proceduri/default.aspx?id=59432&langTag=bs-BA&pril=b

Recommendations

- Establish a new strategic framework to continue the reform process in accordance with the best practices of participatory processes, including consultations with civil society organizations, expert and academic community;
- Involve the public and interested parties in all legislative initiatives in the field of public administration, with adequate consultations, public debates and analyses of impact assessments, and in timely manner and adequately inform the public about these processes.



concrete activities on the revision of the text of the 2007 Agreement on Cooperation between the BiH CoM and non-governmental sector in BiH, which was never implemented. The Council of Ministers formed a commission for the revision of the Agreement already in 2014, but progress has not been made yet in this field. In order to accelerate this process, a petition has been launched for the „Initiative for the urgent establishment of an institutional mechanism for dialogue and cooperation between the Council of Ministers of BiH and civil society“, which the Center for Promotion of Civil Society handed over to the Cabinet of the Chairman of the BiH Council of Ministers on June 10.⁹

The rules for consultations with civil society while drafting legislation have existed for years, but are generally not implemented. The Ministry of Justice of BiH made a new *Rulebook for consultations in drafting legislation in BiH*, on which it held consultations with civil society representatives at the end of April 2016. The novelty is the establishment of an official online platform for consultations of state institutions with the interested public and civil society organizations in drafting legislation.¹⁰ The Rulebook still has not been officially adopted, while the platform was put into operation, although it is still not fully functional.

There is still no single register of associations and foundations in BiH. At a meeting of the Ministerial Conference in March 2016, an agreement on technical cooperation for the establishment of a website of associations and foundations registered at all levels of BiH was established. The agreement was signed by representatives of the FBiH Ministry and some cantonal ministries of justice, while other ministries were given an option to sign the agreement subsequently, which indicates that there is still political will to establish a single register of CSOs at the state level. Activities that jeopardize the work of the existing CSOs have been recorded, in particular the work of safe houses in the Federation of BiH (see: 3.4. *Women's Rights and Gender Equality*).

1.8 Public administration reform

Legal framework

Public administration reform is becoming, if it has not already become, one of the longest reform processes in Bosnia and Herzegovina. Launched in 2003, with pertinent decisions of the BiH Council of Ministers and entity governments, under the pressure of international community, followed by ample financial support of the same community, in 2006 it was intensified with the adoption of the Public Administration Reform Strategy and the Action Plan for its implementation for the period 2006-2010. After 2010, taking into consideration the fact that the Action Plan to a considerable extent has not been implemented, the revised Action Plan for the period 2011-2014 was adopted. Despite the intention to prepare and adopt after this period the Action Plan

⁹ http://www.cpcd.ba/bs/vijesti/uru_en_spisak_potpisnika_peticije_za_uspostavu_dijaloga_i_saradnje_vije_a_ministara_bih_sa_civilnim_drustvom.html#

¹⁰ eKonsultacije Platform (<https://ekonsultacije.gov.ba/>)

2, which is provided for by the very Public Administration Reform Strategy, this Action Plan has not been adopted to date, thus the public administration reform in Bosnia and Herzegovina is a process that is developing at an extremely slow pace.

Current situation

With the aim to overcome the current deadlock in the public administration reform, the Council of Ministers tasked the Office of the Coordinator for Public Administration Reform already in 2015 to initiate activities on the development of a new medium-term Strategic Framework for Public Administration Reform by 2020. In this regard, the Office of the Coordinator offered an Operational Plan for the preparation of a new strategic framework, which the Office believes is offering a comprehensive approach in the creation of a new strategy and action plan for public administration reform through inter-governmental and consultative structures of four administrative levels which will develop, harmonize and determine the final proposal of the Public Administration Reform Strategy Framework. The proposed structure of the Strategy Framework encompasses five fields: policy development and coordination, public service and human resources management, liability, service provision and public finances management. It also provides for harmonization of the Strategy Framework with the priorities of the Reform Agenda for BiH for the period 2015-2018. The Government of FBiH has supported this concept of work continuation on the public administration reform, and tasked representatives of the FBiH to make full contribution in the upcoming activities.

Considering a decade long experience in the implementation of the public administration reform, it remains utterly questionable whether the proposed structure, while retaining the current position of the Office of the Coordinator in the Cabinet of the Chairman of the Council of Minister, which is highly inadequate compared to the seriousness of its mandate, will be successful in accomplishing a high level of cooperation, consultations and coordination of numerous bodies of all levels of public administration in BiH.

Meanwhile, problems and shortcomings burdening the public administration in BiH remain almost unchanged. In some fields the situation is going for the worse. The problem of employment in public administration remains a process that is under an extremely strong political influence. The adoption of amendments to the 2015 Law on Civil Service of FBiH abolished the category of „senior civil servants“, thereby secretaries of administrative bodies, assistant head of administrative bodies and chief inspectors cease to be civil servants. These work positions remain in the administration system, but will be filled, as stipulated by amendments, by „persons who are not civil servants“, whose mandate will last as long as the mandate of their appointed seniors. Direct consequences of these amendments are the increase in number of employees in public administration and strengthening of direct political influence on public administration. The existence of indications that similar legislative interventions will be operating at the level of BiH and the RS

is concerning. Vice President of FBiH Milan Dunović filed a request to review the constitutionality of the adopted amendments to the law, and for the temporary suspension of the application of the contested articles. The FBiH Constitutional Court issued a decision in late June 2016 on the temporary suspension of the application of Article 11 a. and 75b. until a final decision on the constitutionality by this appeal.

The right of access to information remains the field that shows no significant progress compared to what has been achieved with the very adoption of the Law on Free Access to Information, which is appointment of civil servants who are responsible for handling requests for access to information in a number of institutions, followed by the fact that majority of cases is handled without going into quality assessment of issued decisions on access to information. This field is dominated by a reactive model of transparency (access to information is enabled upon request, rather than proactively) which is unjustified considering that the public institutions in most cases have positively responded to requests for access to information.

The problem of transparency is particularly present in the field of public finances and budgets. In Bosnia and Herzegovina one cannot speak about the established practice of publishing information and budget reports or a systematic effort to include citizens in budget decision-making process. Ministries of finances on all levels of government in Bosnia and Herzegovina generally do not respond to the activities of civil society organizations, which are trying to make a step forward in the process of monitoring public finances and budgets.

2. RULE OF LAW AND CORRUPTION

2.1 Judicial system

Recommendations

- Urgently adopt an Action Plan for the Justice Sector Reform Strategy of BiH, accelerate the work of the institutions to fulfill obligations which have resulted from previous delays, as well as define the responsibility of institutions for failure to fulfill obligations assumed by this document;
- Update the current Rulebook on conflict of interest of members of the High Judicial and Prosecutorial Council of BiH (introduction of rules on control and verification of asset cards of members of the HJPC BiH as well as other judges and prosecutors) and create Guidelines on conflict of interest for the entire judiciary.

Reform of the Justice Sector

With a delay of almost two years, in December 2015, the Justice Sector Reform Strategy for the period 2014-2018 was adopted, but not the Action Plan, which the Ministry of Justice referred to the BiH Council of Ministers. First Ministerial Conference was held on March 8, 2016, but was closed for civil society organizations, which up until then had been included in monitoring the previous and drafting a new strategy. Expert and technical assistance for preparing and holding ministerial conferences, as well as monitoring and reporting on progress will further be provided by the Technical Secretariat, which will include representatives of the state and entity ministries of justice, the High Judicial and Prosecutorial Council of BiH and the Judicial Commission of the Brčko District. Fundamental issues such as delays in the implementation of measures and activities stipulated by the Strategy were hardly discussed and fulfillment of activities planned for 2016 is questionable.

The last session of the *Structured Dialogue on Justice between the EU and BiH* was held in February 2016. The draft of the Law on Courts is not harmonized, because representatives from the RS do not agree on the extension of the jurisdiction of the Court of BiH onto criminal offenses covered by entity laws, and condition the establishment of the Higher Court of BiH by abolishing the extended jurisdiction of the Court of BiH. These meetings have shown that the BiH judiciary is still very susceptible to political influence and that the authorities in BiH still do not fully comprehend the scope and significance of reforms which need to be implemented in order to meet requirements from Chapter 23 and harmonize BiH legislation with the *acquis communautaire*.

Independence and transparency of judiciary

Judicial institutions are still exposed to political pressure and interference of the executive and legislative authorities into their work. RS President Milorad Dodik continues to *use threats of a referendum* as direct influence on the priorities and manner of implementing the measures from the Judicial Reform Strategy. *Open pressures on the work of the Court and Prosecutor's Office of BiH* have been recorded after the arrest of leader of the SBB BiH, Fahrudin Radončić, at a time when a coalition partnership was being negotiated between his party and SDA/HDZ. Representatives of these parties, including current BiH Presidency member Bakir Izetbegović, openly suggested that Radončić should be released from custody pending trial for the purpose of maintaining the stability of the ruling coalition. The Prosecutor's Office of BiH has spoken several times regarding the pressure to which it was exposed in this case, and particularly the continuous campaign that is being conducted against it by „Dnevni avaz“, a newspaper owned by Fahrudin

Radončić. Public confidence in the work of the judicial sector is at a very low level. In the opinion of citizens, the biggest problems of the judiciary are corruption and political influence on judges and prosecutors, for which they hold authorities to be most accountable for, but also the poor organization of the judicial system, for which they blame the courts, prosecutor's offices and the High Judicial and Prosecutorial Council.¹¹ Compared to the previous period, the public is increasingly denied access to information about processes within the judiciary. A part of institutions quite regularly, but briefly, reports on the results of their work.

Efficiency of the judiciary

The positive trend of increasing the efficiency of the courts and prosecutor's offices in the reduction of the age structure of cases (over 180.000 oldest cases have been settled), reduction of the duration of bankruptcy cases (4%), reduction of unsettled cases (29% compared to the previous year), and settling of cases of small value (40.07%) continued in the previous period. The application of the Guidelines for the preparation of plans to settle cases, which the HJPC drafted in January 2015, has begun. The positive fact is that the courts in BiH in 2015 realized 84% of the cases planned for that year.

On March 9, 2016 the Standing Committee on the efficiency of the courts of the HJPC adopted a proposal that all first and second instance courts in BiH conduct „Court Settlement Weeks“ , when hearings would be scheduled for as many cases as possible in which there is a possibility of concluding a court settlement and settling disputes by peaceful means. In April 2016, a Protocol on the establishment of the Forum for Cooperation between the district prosecutor's offices and the Ministry of Internal Affairs of RS was signed with the aim of improving cooperation between police and prosecutors in all segments of criminal investigation.

The construction of a modern, maximum security state prison for perpetrators of most severe criminal offenses has not been completed yet.

Accountability of the judiciary

The HJCP BiH adopted an Action Plan for 2015 and 2016 with the aim of improving the management, accountability and integrity of the judiciary, as well as strengthening of public confidence. The Action Plan measures seek to improve methods and selection, composition and election of members of the HJPC BiH. In order to increase their integrity and legitimacy it is necessary to update the existing Rulebook on conflict of interest of members of the HJPC BiH (introduction of rules on control and verification of asset cards of members of the HJPC BiH) as soon as possible, as well as other judges and prosecutors, and prepare Guidelines on conflict of interest for the entire judiciary. Although the Office of Disciplinary Prosecutor reported that in the last year the highest number of disciplinary proceedings was initiated since the establishment of the Office, there is a need to conduct an independent assessment of regularity of the current policy of disciplinary sanction,

¹¹ „Diagnostic analysis of the integrity of the judicial sector and the possible risk of corruption or unethical behavior in the judiciary,” USAID, February 2016.

institutional position and efficiency of the Office of Disciplinary Prosecutor, and consider the need to carry out normative elaboration of disciplinary measures. According to the report of the Office of Disciplinary Prosecutor, 26 proceedings have been initiated against 31 holders of judicial office, including two presidents of the court, one judge of the Supreme Court of FBiH, and three prosecutors of the Prosecutor's Office of BiH; 6 motions for temporary suspension of duty against 6 holders of judicial office. 27 disciplinary proceedings have been completed. Four respondent judges and prosecutors no longer hold the office, one measure of deprivation of office has been pronounced and filed three resignations during the disciplinary proceedings.

2.2 Fight against corruption

Recommendations

- Urgently strengthen the provisions of the Law on Conflict of Interests and introduce an independent body to supervise its implementation (expanding the commission by including civil society representatives, or by including an equal number of representatives of position and opposition parties);
- Increase the level of verification and impose fines for incorrect registration of asset cards of appointed officials in the Central Election Commission of BiH.

Legal framework

The application of amendments to the 2013 Law on Conflict of Interest of BiH transferred the jurisdiction for implementation of the Law from the independent body to the Parliamentary Committee (six members of the Parliament of BiH and three directors of the Agency for the Prevention and Coordination of the Fight against Corruption in BiH). Amendments to the Law disintegrated its framework by transferring decision-making onto representatives of parliamentary parties, transferring specific responsibilities to different administrative levels, and by reducing the provisions on determining conflict of interest and stipulated sanctions for the same. After having prevented adverse amendments to the 2013 Law on Free Access to Information in BiH, there were no activities in this field in the reporting period. Nevertheless, the implementation of the *Freedom of Access to Information Act* (ZoSPI) further on reveals deficiencies, particularly through rejecting access to information due to protecting third parties, usually in cases related to tender documentation and similar documents, as well as information on salaries and compensations of officials and employees in public administration. Asset cards of appointed officials were subject of the 4th regular evaluation of GRECO Commission, held in summer of 2015. There is still no verification of information listed in asset cards, and the same issues are still observed (candidates do not report all the property in their possession, in particular the property owned by close relatives, financial information is incomplete, etc.).

Current situation

In May 2016, amendments to the Law on Financing of Political Parties were adopted, which addressed 5 of 9 GRECO recommendations, but none of them entirely. With the amendments, the Interdepartmental working group failed to resolve the most important issues for the establishment of efficient control over the financing of parties – precise definition of competencies of the CEC in regards to the revision of costs of the parties, as well as promotion of using single bank accounts for transactions of political parties. The adopted regulations have significant deficiencies – the introduction of obligations for the parties to disclose information about the costs and incomes

on their websites was proposed, but the form and publication deadlines are not prescribed; the obligation of reporting on the obtained benefits from related persons is prescribed, but „related persons“ are not defined and the implementation of the provision is not specified; sanctions for violations of legal provisions are not sufficiently increased, and is therefore more profitable to pay the fine rather than to comply with the legal provisions.

The general assessment is that once again an opportunity to essentially improve the legal framework has been wasted, and still five years after the publication of the first GRECO report from the third evaluation round, BiH has not fulfilled the recommendations relating to the financing of political parties with the view to improving transparency and accountability of political parties.

3. HUMAN RIGHTS AND PROTECTION OF MINORITIES

3.1 International human rights instruments

Recommendations

- Urgently reach a political agreement between the BiH Council of Ministers and the entities in order to start preparing, and then implementing the Strategy for human rights and fundamental freedoms of BiH.

Bosnia and Herzegovina has ratified all the major UN and other international conventions for the protection of human rights. The principles of the European Convention on Human Rights are embedded into the BiH Constitution, which guarantees the supremacy of this Convention over national legislation. BiH has also ratified new international documents, but the assumed obligations are not implemented in practice. An indicative example is the Istanbul Convention (see: 3.3 *Women's Rights and Gender Equality*), which BiH ratified in 2013. In July 2015, the Framework Strategy for the Implementation of the Istanbul Convention was adopted, but Republika Srpska refused to support it, thus making it impossible from the beginning to implement the Convention throughout BiH in a synchronized manner.

An extremely low level of cooperation between competent ministries and civil society is evident when it comes to reporting on the implementation of international mechanisms for the protection of human rights. The BiH Council of Ministers still rarely or never conducts consultations with civil society while preparing reports stipulated by international documents.

The Ministry of Human Rights and Refugees of BiH has planned to develop a Strategy for Human Rights in BiH in 2016. The adoption of this Strategy would create a general framework for the protection and promotion of human rights, and implementation of the recommendations of international bodies (Council of Europe, UN, EU) in this field. According to the Ministry's plan, the Strategy should be finalized in the fourth quarter of 2016, but the working group for developing the Strategy has not been appointed yet considering that Republika Srpska refuses to appoint a representative in the working group. It is a matter of urgency to reach a political agreement between the BiH Council of Ministers and the entities in order to start developing this Strategy.

3.2 Freedom of assembly and association

Legal framework

In Republika Srpska assembly in front of public institutions has been prohibited since 2008. Similar restrictive measures have been adopted in the Tuzla Canton through the Law on amendments to the Law on Public Assembly in the Tuzla Canton¹², which entered into force in October 2015. Amendments to the Law granted the police the right to arbitrarily assess the safe distance of a public assembly from the „facilities that are specifically guarded“, i.e. buildings of institutions, in each individual case, and determine the allowed/



¹² http://www.skupstinat.kim.ba/Dokumenti/sl_novine/2015/Sluzbene%20novine%20TK%20br.%2011%20-%202015.pdf

prohibited proximity from the facilities of public institutions when organizing public assemblies. Until this decision, the disenfranchised workers in the Tuzla Canton each Wednesday were peacefully protesting in front of the judicial institutions in the Tuzla Canton.

Current situation

The authorities in Republika Srpska still lead the way when it comes to pressures and restrictions in the work of CSOs, and authoritarian behaviour towards political opponents. On May 14, 2016, a protest of the opposition parties was held in Republika Srpska was, accompanied by extremely anti-democratic reactions of the Government. Statements by officials of the Government and the RS President on the occasion of the announced protests overflowed with nationalist and inflammatory rhetoric, which was an extension of the months-long campaign of accusations of the Alliance for Change for “anti-RS” activity at the state level. The opposition parties were thus accused of attempting to „destabilize Republika Srpska“, „atrocious intentions towards the Serb people“ and cooperation with „hostile external and internal factors“ (among whom were mentioned the „British and the Turks“ and Bosniak politicians). Political instrumentalization of the media in the RS for the Government’s lynching campaign against the opposition is particularly disheartening, in which even forged certificates on financing of the opposition parties by the Open Society Fund of BiH were published. Media pressure on protests culminated in allegations that the protests in Banja Luka are part of the EU and USA’s plan to start a „new war in the Balkans“ (Nezavisne novine). On the other hand, representatives of the opposition parties claimed to have received reports from different sides that employees in public institutions were forced, under the threat of dismissal, to register on the lists to support a counter protest which the RS Government organized on the main city square, under the motto „With love for the RS – Stop betrayal!“.

In addition to the media campaign, SNSD has rented the space of the main city square in the duration of one month in order to prevent issuance of a permit for other people to use this public space, although all that time nothing has been organized in that space except the counter protest on May 14. Although the opposition protest was organized in a timely manner and in accordance with law reported to the competent authorities, the organizers were issued a prohibition on holding protests on the move after the announcement of a counter protest of the Government. In addition to this, other prohibitions were issued, such as prohibition of work of all facilities in wider city center and selling of alcohol in stores. On the day of the protests, all vehicles entering Banja Luka were inspected, and several buses were prevented from entering the city. Media propaganda and strict police security measures have led to the fact that the majority of citizens of Banja Luka on that day never left their houses or they left the city, thus the protest and the counter protest were mostly attended by members of political parties. What marked both assemblies was the presence of the daughter of war criminal Radovan Karadžić, Sonja Karadžić, at the opposition protest, and the son

Recommendations

- Adequately address the issue of founding, operation and financing of safe houses in the FBiH and improve the institutional framework for the fight against domestic violence at all levels;
- Introduce a gender quota of 50% of women and men on candidate lists, and undertake additional measures referring to the participation of under-represented gender (for example, through assignment of mandates from compensation lists);
- Through the Gender Action Plan and annual operative plans in accordance with GAP implement measures for the inclusion of gender equality in educational contents;
- Harmonize the right to maternity benefits through a special law and fund at the level of the Federation of BiH.



of General Ratko Mladić, at the counter protest, which indicates that both political options in the RS continue to rely on nationalism as a means of collecting political points.

Handling of the RS authorities in this case is a continuation of the policy of intimidation and discrediting of any attempt to criticize the government. Civil society organizations in the RS for years have been exposed to such pressures, from the constant „treason“ accusations, „blacklisting“ after giving support to workers in Tuzla in 2014,¹³ to the de-facto prohibitions of assembly that the organization „Oštra Nula“ from Banja Luka faced on numerous occasions. Refusal to grant permission for the use of public spaces by rule is verbally announced and explained by „internal decisions of employees in the Municipality“, thereby preventing the initiation of the appeal proceedings, because there is not any written record of the prohibition.

3.3 Women's rights and gender equality

Legal framework

In July 2015, the BiH Council of Ministers adopted the *Framework Strategy for the Implementation of the Istanbul Convention Preventing and Combating Violence against Women and Domestic Violence in Bosnia and Herzegovina for the period 2015 – 2018*¹⁴, but its implementation is not taking place. Specific problem is weak implementation at the lower levels of government. The Government of Republika Srpska did not give its consent to the Strategy, holding that the document deals with issues within the competence of the entities.

Current situation

Women remain under-represented in governments at all levels. Currently, only 23 (14.8%) out of 152 ministerial positions in BiH belong to women, and representation of women in parliaments is less than 20%. The percentage of women in the governing bodies of political parties is between 10% and 20%. In the past period, the ruling parties have shown an alarming tendency to propose legislation that would only further aggravate this situation. The proposal of the Interministerial working group to amend the BiH Election Law provided for the deletion of the regulation on even arrangement of candidates on electoral lists (at least one woman among the first three candidates, two in the first five, three in the first eight, etc.). The proposal of the Interministerial working group was assessed as retrograde by the Commission for Gender Equality,¹⁵ and was ultimately adopted without the controversial provision, which was amended *ad hoc* at the very session.¹⁶ As

¹³ <http://www.slobodnaevropa.org/a/protest-vlasti-i-opozicije-u-republici-srpskoj-partokratija-i-autokratija/27717625.html>

¹⁴ http://arsbih.gov.ba/wp-content/uploads/2015/10/CAHVIO_Strategija.pdf

¹⁵ Opinion of the Commission for Gender Equality, available at: https://www.parlament.ba/sadrzaj/plenarne_sjednice/Default.aspx?wsid=88229

¹⁶ Announcement from the 28th session of the of the House of Representatives of PA BiH, available at: https://www.parlament.ba/sadrzaj/plenarne_sjednice/Default.aspx?wsid=88893

a response to the proposal of the Interdepartmental working group, Sarajevo Open Center made a proposal which introduces the 50% electoral quota and obligation of alternating arrangement of male and female candidates on the electoral lists. The Commission for Gender Equality of the House of Representatives of the PA BiH referred this proposal into the parliamentary procedure, but it was not adopted. The Commission for Gender Equality of the House of Representatives of the BiH Parliamentary Assembly, at the initiative of Sarajevo Open Centre and the Gender Equality Agency of BiH, proposed a Law on Amendments to the Law on the Council of Ministers of BiH, which provides for the introduction of a 40% quota of the less represented gender in the composition of the Council of Ministers and the obligation of its fulfillment in order for the House of Representatives of PA BiH to confirm the appointment of the Council of Ministers. House of Representatives of PSBiH adopted the proposal in the first reading, but rejected it in the second reading (May 2016).

The rights of mothers in BiH are not regulated by a single regulation, but rather by legal regulations at the level of entities, cantons and the Brčko District. In Republika Srpska maternity benefits are proportional and are relatively regularly paid, while in the FBiH these rights differ in regards to the place of residence and the labour sector (state or real sector).¹⁷ The Association „Women to Women“, in cooperation with partner organizations from the entire BiH, has launched a campaign (*Non*)*Discrimination against Mothers in FBiH*¹⁸, aimed toward the institutions with the aim of resolving this issue. In March 2016, the House of Representatives of the FBiH Parliament adopted an Initiative for equalization of maternity benefits in the FBiH, which was initiated by the Women’s parliamentary caucus at the proposal of the Association „Women to Women“. The Ministry of Labour and Social Policy of FBiH prepared two proposals for the provision of benefits for unemployed new mothers, within the framework of the interdepartmental group in whose work member organizations of Womennet participated. In April 2016, the FBiH Government formed a Working group for drafting solutions for employed new mothers, consisting of representatives of the FBiH and cantonal ministries, which is expected to submit its proposals to the Government by the end of June.

There were no developments in the field of women’s participation in the labour market. Women are still less paid and less employed than men and continually make about 41% of the total number of registered employees, and about 52% of registered unemployed persons in BiH. It is still common practice to ask women during job interviews questions about pregnancy planning, as well as dismissal from work in case of pregnancy. The majority of women do not report such cases because they can not finance court costs. In Republika Srpska, the new Labor Law no longer contains precise provisions on the payment of salary and contributions during the maternity

¹⁷ Discrimination against mothers was also confirmed in the Special Report of the Institution of Ombudsman for Human Rights of BiH, which is available at: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2015102111102085bos.pdf

¹⁸ <http://porodiljskenaknade.com/>

leave. The new provisions only stipulate that all paid leaves due to child birth and benefits in the event of children with special needs are charged to the Public Fund for Child Protection of the RS. Thus formulated provisions imply that employers are relieved of earlier obligations which, in theory, would decrease discrimination of women on the basis of pregnancy and maternity. Nevertheless, in practice, there is a risk that benefits will be irregular because the Fund is in financial difficulties. In addition to that, competent services still do not have clear instructions for acting in accordance with the new law, thus the application of the old law practice continues.

Education is one of the key factors which affects the relations on the labour market and career choice. Competent ministries of education in BiH are not doing anything to secure curricula and methodologies that guarantee the elimination of stereotypical contents, which give rise to discrimination and inequality between genders.

The Federation of BiH still does not comply with its obligation of financing safe houses in the ratio of 70:30% with cantons, stipulated by the Law on Protection against Domestic Violence. The recommendations of the CEDAW Committee relating to securing adequate support, protection and rehabilitation of women victims of violence have not been respected, as well as financing of organizations that provide legal and psychosocial assistance to victims of violence. Since 2008, financial support to safe houses from the FBiH Budget has never exceeded the amount of 200.000 BAM per year, which covers only about 10-15% of costs. Two safe houses in the area of Mostar have been closed due to lack of funding. In addition to failing to meet its obligations, the FBiH Government has proposed amendments to the Law that stipulate that safe houses must be registered in accordance with the Law on Institutions of FBiH, thereby facing additional financial and administrative burden. *The adoption of legislation that would further threaten the survival of safe houses is in direct contradiction with the Istanbul Convention.* The Draft Law was adopted in both Houses of the FBiH Parliament, and since February 2016, there were no further activities on the adoption of the law in the final text.

Recommendations

- Adopt a national Action Plan for the protection of children and prevention of violence against children through information and communications technologies;
- Harmonize criminal legislation in accordance with the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse;
- Adopt laws on foster care in both entities and the Brčko District;
- Provide unconditional access to health care for children;
- Harmonize and provide regular payment of social benefits and compensations for families with children.

3.4. Youth and children's rights

Legal framework

Amendments to the 2015 Criminal Code of BiH placed human trafficking as less dangerous criminal activity and transferred into the jurisdiction of the cantons or entity prosecutor's offices and police services, compared to the previous period when human trafficking investigations were the priority of the Prosecutor's Office of BiH and the State Investigation and Protection Agency (SIPA). The State Prosecution only remained responsible for international forms of human trafficking, while human trafficking in BiH is within the competence of lower levels of prosecution. In the process of amending this Law was not harmonized with international standards of protection of children against sexual exploitation and abuse (Lanzarote Convention).

In March 2016, *amendments to the FBiH Criminal Code* were adopted, whose

provisions are harmonized with the Council of Europe Convention on Action against Trafficking in Human Beings. This ended a legal gap of several months that existed in this entity, which resulted in that in the previous period some of the perpetrators of human trafficking had been criminally prosecuted for offense „incitement to prostitution“.

The Action Plan for Children for the period 2015-2018 continues to be implemented. Meetings of the Council for Children are held regularly, whereas initiatives for the implementation of individual measures from the Action Plan have been referred to the competent governments and bodies.

National Strategy to Combat Juvenile Delinquency has not been adopted yet. There has been developments in the part related to the collection of data on juvenile offenders. The Ministry of Human Rights and Refugees on June 6, 2016 adopted *Guidelines for data collection in the field of juvenile delinquency in BiH* which defines a single methodology of collecting and creating a single database on juvenile criminal offenders, which also includes data and indicators relating to the types of criminal offenses, relapse offenders, gender structure, review of imposed criminal penalties, etc.¹⁹

In December 2015, the BiH Council of Ministers, in cooperation with the institutions, judiciary and civil society of both entities and the Brčko District, adopted the *2016-2019 Action Plan for Fighting Human Trafficking in Bosnia and Herzegovina*.²⁰ The Action Plan is directed to more efficient prosecution of criminal offenders of human trafficking and related crimes, prevention of human trafficking, protection and assistance to the victims of human trafficking, as well as strengthening of cooperation between parties involved in the fight against human trafficking.

The Action Plan for Child Protection and Prevention of Violence against Children through Information and Communications Technologies expired at the end of 2015, however, the preparation of a new Action Plan have not begun yet.

The Ministry of Labour and Social Policy of FBiH prepared, and the FBiH Government adopted in October 2015 the *Policy on Developing Foster Care in FBiH*. The Paliament of FBiH adopted the draft *Law on Foster Care in FBiH*, and the same was referred into public debate, where the majority of cantons gave a negative opinion due to defined obligations of the cantons in financing compensations for foster parents, therefore, its further adoption is questionable.

In September 2015, the RS Government adopted the *2015-2020 Strategy for Improving Social Protection of Children without Parental Care* which is oriented towards improving the position of children growing up outside their biological families.

Current situation

Only 14.4 % of children in BiH are included into early childhood education, which is the lowest percentage in Europe. The least involved are children who live in rural areas, children belonging to minority groups, children without



¹⁹ Available at: http://www.mhrr.gov.ba/ljudska_prava/djeca_bih/Smjernice%20za%20prikupljanje%20podataka%20u%20oblasti%20maloljetnickog%20prestupnistva%20BiH.pdf

²⁰ The Council of Ministers of BiH: Action Plan for Combating Human Trafficking 2016-2019; Available at: http://msb.gov.ba/PDF/AKCIONI_PLAN_2016-2019_30_12_2015.pdf

parental care and children with disabilities. In some cantons (WHC, CBC, HNC), the law on preschool upbringing and education was not adopted, and there is still no legal obligation which includes children in preschool upbringing and education programs in the year before starting primary school. Positive developments have been made in some cantons (TC, ZDC, BPC and Canton 10) that achieved 100% coverage of children by this program.²¹

Discrimination of Bosniak children in the education system of the RS continues. An instruction was issued which stipulates the use of the term „Bosniak language“ in external graduation diplomas, final diplomas and report cards, which caused further dissatisfaction of parents of Bosniak children and spreading of boycott of classes in multiple returnee places in the RS. The continuation of secondary education of these students in the FBiH is questionable because of the name of the language. Parents from Srebrenica have announced filing of criminal charges against the responsible ministry of education and director of the local school due to changing of data in teacher's record books.

In some parts of BiH there has been a regression of children's rights to health. *In the Tuzla Canton amendments to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children were adopted*, whereby children from 6 to 15 years, who are not included in the education process, are deprived of the right to health insurance, causing 46 children to lose this right at the beginning of 2016. After public pressures and the announcement of the Association „Land of Children“ that it will file criminal charges against those responsible for the adoption of amendments, the Assembly of the Tuzla Canton amended a *Decision on establishing the bases, rates and method of calculation and payment of contributions for compulsory health insurance*, and the right to health insurance was restored to children that were excluded from it by amendments to the law. However, the Law has remained in the same form, therefore this can not be considered a permanent solution.

These are children that live in extreme poverty, chronically ill children, victims of exploitation and negligence. Some cantons (TC, HNC, WHC, USC) have not yet acted upon the Recommendation of the Institution of Ombudsman for Human Rights in BiH from 2012 on the exemption of children from payment of fees while using health care services. For most families in the state of social need, in particular Roma families, this is a limiting factor which excludes their children from exercising this right.

Children placed in institutions outside the territory of their place of residence still can not access the right to health care in the place of resettlement due to administrative obstacles. Bosnia and Herzegovina still remains the starting, destination and transit country for women and children victims of human trafficking for sexual exploitation and forced labour. Of a total number of 35 potential/identified victims of human trafficking in 2015, 17 were

²¹ The FBiH Ministry of Education and Science: Information on enrollment of students in primary and secondary schools in the school year 2015/2016 in the Federation of BiH, November 2015; Available at: http://fmon.gov.ba/Upload%5CDokumenti%5Cfb67b2fd-3e55-4faf-80d1-4ea288d72fc2_Informacija%20o%20upisu%20u%20C4%8Denika%20u%20osnovne%20i%20srednje%20%20C5%A1kole%20u%20FBiH%20u%20C5%A1kolskoj%202015-2016.%20godini.pdf

minors, of which 13 cases where persons were sold for begging, and 4 cases for forced marriage.²² It is alarming that a large number of girls from marginalized groups, in particular Roma girls, through child marriages are taken to Western Europe countries for begging and sexual exploitation on everyday basis. In a coordinated police operation of BiH and France, in a private house in Zenica 14 children were discovered in the state of low hygiene, education and health negligence, whose identity could not be determined. These were the children of women victims of human trafficking, whom an organized criminal group used as a means of blackmailing women, who were solicited through the entry into extramarital relationships, and then through psychological and physical abuse forced to carry out thefts in France and deliver the money. In some cases the victims were children.

The support of state institutions for the operation of the only SOS line (Hotline) for reporting cases of abuse and exploitation of children in BiH is still absent, whose operation in 2015 was made possible exclusively through the funds of the organization MFS-Emmaus, within which it still operates.

Peer violence against children is on the rise. The case of suicide of a fourteen year old boy from Sarajevo has shown that the institutional mechanisms established by the Guidelines for handling cases of violence against children were never established. Neither are records on the number of incidents and types of peer violence kept, nor have there been developed programs for assistance to victims and perpetrators of violence.

In BiH 80% of children without parental care are still placed in institutional care, whereby the number of children in social protection institutions has *doubled in the period 2009-2015*.²³ The entity and cantonal budgets have not provided adequate funds for the implementation of the *Strategy for deinstitutionalization and transformation of social protection institutions in FBiH (2014-2020)*. The lack of a database at all levels of government, which would show the number of children in the status of adoption and/or foster care, creates space for the possibility of manipulation and children trafficking.

Discrimination of adoptive parents and adopted children according to the place of residence is still present due to non-compliance of family legislation in terms of prescribed conditions for the adoption of children of various ages. While full adoption is allowed for children under the age of five in the RS, in the FBiH and BD full adoption is allowed for children up to the age of ten. The practice of foster care is insufficiently promoted, and there has been registered a decline of interest for foster care. Compensations for accommodation in foster families are still unequal (150-500 BAM),²⁴ whereas in some cantons payments are late up to eight months.

Social benefits for families with children are still unequal and do not meet the basic needs of children. Mothers with children protested in the Tuzla Canton because of the ten month delay in payment of children's allowance.

²² http://msb.gov.ba/PDF/IZVJESTAJ_TRGOVINA_2015_Vijece_minsitara05042016godine.pdf

²³ <http://www.vecernji.ba/u-ustanovama-fbih-udvostrucio-se-broj-djece-bez-roditeljske-skrbi-1068589>

²⁴ Data from the document "Public policy on the development of foster care in the Federation of BiH"

3.5 People with disabilities

Recommendations

- Adopt and implement new strategies for equal opportunities and advancement of persons with disabilities, taking into account the need to allocate necessary funds for their implementation, as well as strengthen the system of accountability of those responsible for the implementation;
- Provide necessary conditions for full and active participation of persons with disabilities in all aspects of social activities, including the process of EU integration, in order to ensure the implementation of the rights guaranteed by the Convention on the Rights of Persons with Disabilities;
- Harmonize legal regulations with the provisions of the Convention in regards to providing support in decision-making for persons with intellectual and mental disabilities.

Legal framework

The laws that regulate the rights of persons with disabilities at all levels still discriminate persons whose disability is not caused by war.

The Bill on Amendments to the Law on Prohibition of Discrimination of BiH (see: 3.6 *Fight against discrimination*) stipulates the introduction of disability as a basis for prohibiting discrimination, thereby making a positive step in protecting the rights of persons with disabilities. Regulations for building accessibility and adapting the existing infrastructure for persons with disabilities exist, but there are no lower implementation documents and consistent application on the field. A positive example is the adoption of a new rulebook on the marking of vehicles of persons with disabilities at the level of Bosnia and Herzegovina in December 2015, whose implementation will at least slightly improve the accessibility for persons with disabilities.

There is no legal obligation to revise decisions on withdrawal of legal capacity for persons with intellectual and mental disabilities (which entails the abolition of other rights such as the right to own and inherit property, money management, etc.), nor have been provided conditions for conducting regular revisions, which virtually excludes the possibility of restoring the legal capacity and harshly violates the rights of persons with intellectual and mental disabilities, of whom a large number is placed in closed-type institutions. The state should ensure legal solutions that will provide various forms of support in decision-making to persons with intellectual and mental disabilities. The state does not have a plan for the harmonization of the existing legislation with the Convention on the Rights of Persons with Disabilities, and the implementation of the rights defined in the Convention remains quite far away.

Current situation

No progress has been registered in the work of the authorities in creating equal opportunities for persons with disabilities. Inaccessibility of physical surrounding, along with inadequate or unavailable orphedec and other aids, the lack of public transportation for persons with disabilities, as well as lack of information adapted for the blind and deaf and persons with intellectual disabilities, affect the exclusion of persons with disabilities from all social activities. In both entities, the strategies of equal opportunities and advancement of persons with disabilities have expired in 2015 and for the most part have not been implemented. In the Federation of BiH, the implementation index is 0.6 on the scale from 0 to 3, and only the field of employment has received positive assessment, which is most likely due to the fact that very few people with disabilities in general were employed prior to the adoption of the Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities (2010).

Nevertheless, women with disabilities (especially with a higher degree of disability) have more difficulties in finding employment than men regardless of qualifications, because employers give priority to the category of disabled war veterans. Of the total number of persons with disabilities employed in

2015 in the Federation of BiH, women make 26.6% (66 of 248), while in the RS only 6.2% (34 of 547) for the period 2013-2016.²⁵ Women with disabilities are also underrepresented in political life. Of a total number of 10 representatives of organizations of persons with disabilities in the Council for Persons with Disabilities of BiH, only 2 are women. They are also absent from the state and entity parliaments, electoral lists, and even at the head of public institutions.

Adequate and accessible health care for persons with disabilities has not been provided yet. Unequal access to health care remains a particular problem in the Federation of BiH, where health care is within the competence of the cantons. In both entities, procurement of orthopedic aids is solely based on medical assessment of disability, while the individual needs of persons with disabilities are not taken into consideration. Written information for patients is not available in alternative formats (Braille alphabet, audio tapes, large print). Access to health care is particularly hindered for women with disabilities, who are not provided with adequate equipment (mammographs for breast examinations, obstetrics and gynecological examinations tables). In the entire BiH there are only four tables adjusted for women in wheelchair, but the medical staff is not adequately trained for their use. Therefore, women with disabilities use health care services only in case of major difficulties and almost never carry out preventive examinations.

Quality inclusive education for children with disabilities is not provided in the regular education system or budgetary support for its establishment at any level of government.

The state does not also provide regular and adequate financial support for the efficient work of associations of persons with disabilities, and engagement of persons with disabilities mostly depends on the education programs of other non-governmental organizations, their personal capacities and capacities of their organizations.

3.6 Fight against discrimination

Legal framework

Following the pressure of the international community and with the aim of visa liberation, BiH adopted the Law on Prohibition of Discrimination in 2009. A great number of obligations arising from the Law and which should have been implemented several months after the adoption of the Law, were never fulfilled. The BiH Council of Ministers made a *Bill on Amendments to the Law on Prohibition of Discrimination of BiH*, which improves the legal framework for the protection against discrimination, and for the most part is harmonized with the EU anti-discrimination directives.²⁶ Amendments to the Law also stipulate a clear indication of *age, disability, sexual orientation, gender identity and sexual characteristics, and affiliation with a vulnerable*

²⁵ Data of the Fund for Professional Rehabilitation and Employment of Disabled Persons of RS

²⁶ https://www.parlament.ba/sadrzaj/zakonodavstvo/u_proceduri/default.aspx?id=65342&langTag=bs-BA&pril=b

Recommendations

- Adopt a Bill on Amendments to the Law on Prohibition of Discrimination of BiH;
- Establish a practice of annual reporting on various forms of discrimination with a proposal of measures to eliminate and prevent discrimination trends;
- Develop and adopt a Strategy for Preventing and Combating Discrimination in BiH.



group, as grounds on which discrimination is prohibited. Definitions of harassment and sexual harassment have been improved. Incitement to discrimination is no longer confined to the question of religious, national and racial hatred, but is prohibited on all grounds. The bill was adopted in both Houses of the Parliamentary Assembly of BiH in the first reading, and on June 16, 2016 was adopted in the second reading in the House of Representatives. The House of Peoples of the Parliamentary Assembly of BiH is yet to declare on the Bill in the second reading.

Current situation

Bosnia and Herzegovina continues to record a widespread incidence of discrimination, especially in the field of labor (mobbing). The Ministry of Human Rights and Refugees of BiH, in its work program for 2016, has planned to develop a *Strategy for the Fight against Discrimination of BiH*. The alarming fact is that the working group for the development of the Strategy still has not been appointed in May 2016. The willingness of the RS institutions to cooperate in this process is quite questionable.

The Law on Prohibition of Discrimination and Ordinance on the method of collecting data on cases of discrimination in BiH stipulate that the competent institutions are required to regularly keep records of all reported cases of discrimination and submit data to the Ministry of Human Rights of BiH, which would on that basis draw up a *report on various forms of discrimination*. In April 2016, the BiH Council of Ministers, for the first time since 2009, made such a report and adopted a one-year *Action Plan for Preventing Discrimination in BiH*.

Large-scale public information campaigns about the existence of the Law on Prohibition of Discrimination and protection mechanisms neither have been carried out in 2015 and 2016, while providing information to citizens and legal assistance and support still largely depends on civil society organizations, particularly in cases of strategic collective lawsuits. Certain vulnerable groups such as the Roma and LGBTI persons, still do not use the legal framework for the protection against discrimination either due to inaccessibility of the legal system and/or homophobia in institutions.

In early 2016, the High Judicial and Prosecutorial Council of BiH issued a decision prohibiting employees in judicial institutions to wear religious symbols. The Gender Equality Agency of BiH, deciding on the request of Sarajevo Open Center for examining violations of the Law on Gender Equality, established that the aforesaid decision is not in accordance with this Law, that is contrary to the European Convention on Human Rights in the part relating to the freedom of religion, and that it disproportionately affects muslim women wearing a headscarf, given that this religious symbol is distinctly and directly visible, unlike other religious symbols.²⁷

²⁷ <http://arsbih.gov.ba/reakcija-na-postupanje-vstv-bih/>

3.7 Hate crime and hate speech

Recommendations

- Amend the Criminal Codes of FBiH, RS and the Brčko District so as to expand the grounds on which it is prohibited to provoke hatred, hostility and discord, in accordance with the grounds recognized through the regulation of hate crimes;
- Include compulsory education on hate crimes into the curricula of police academies of Republika Srpska and the Federation of BiH, as well as regular and specialized training programs of police officers, prosecutors and judges;
- Create a protocol which will clearly stipulate cooperation between police and judicial bodies in prosecuting hate crime cases for the purpose of their fast and efficient solving.

Legal framework

In April 2016, the Parliament of FBiH adopted a Bill on Amendments to the Criminal Code of the Federation of BiH, submitted by the Ministry of Justice of FBiH. At the time of writing of this report, the Law has not been published yet in the Official Gazette of the Federation of BiH, due to carrying out technical corrections of the adopted text. Now all three criminal codes (RS, FBiH, BD) are regulating hate crimes. The *provisions sanctioning incitement to hatred, hate speech and violence* in the criminal codes of both entities and the Brčko District are exclusively restricted to national, ethnic and religious grounds and do not provide a framework for sanctioning hate speech towards other groups such as LGBTI persons, which is prevalent on web portals and social networks.

Current situation

The police and judiciary still do not collect systematically information on hate crimes and hate speech. Indictments against responsible individuals for the attack that occurred at the Festival „Merlinka“ in February 2014 have not been filed yet. After the attack at the Art Cinema „Kriterion“, on March 4, 2016 was organized a gathering to express support which was attended by several representatives of state institutions, including the Minister of Justice and Administration of the Sarajevo Canton, who on that occasion emphasized that this attack must be adequately qualified and sanctioned and that he will personally supervise the prosecution of this case.

Training of police officers, judges and prosecutors still mostly depends on the civil sector and international organizations. In the Federation of BiH, Sarajevo Open Centre in cooperation with the OSCE Mission to BiH is working on trainings for the police and court and prosecutor's office trainees. During 2015, 151 police officials from all cantons were trained on how to adequately respond to hate crimes. In Republika Srpska, the Ministry of Internal Affairs, in accordance with the recommendation of the Institution of Ombudsman for Human Rights of BiH, in 2015 started a training program for police officials on the rights of LGBTI persons. The training was held in three public security centers within the Ministry, and in 2016 it is planned to hold the training in three more centers.

Groups that are also the target of hate crimes and hate speech are returnees and Roma people. Writing of hate graffiti on religious facilities, cemeteries and memorials, as well as attacks on them, are an everyday occurrence. The attacks that occur during religious holidays bring instability and mistrust into local communities. *Hate monitor* of the OSCE Mission to BiH records that the majority of attacks is motivated by ethnic or religious affiliation of the victim.

3.8 Lesbians, gays, bisexual, trans* and intersex persons

Recommendations

- Prepare, adopt and implement a multi-annual Action Plan for Equality of LGBTI Persons, with the aim to combat prejudice, discrimination and violence on the grounds of sexual orientation, gender identity and sexual characteristics;
- Adopt and implement the laws of Republika Srpska, the Federation of BiH and the Brčko District that would legally recognize same-sex unions;
- Adopt and implement the laws of Republika Srpska, the Federation of BiH and the Brčko District that would legally regulate all legal and medical aspects of gender reassignment.

Legal framework

During 2015 and in early 2016, *public policies that provide for measures for the equality of LGBTI persons were adopted for the first time*. In December 2015 and March 2016, the Governments of both entities adopted annual operative plans in accordance with the Gender Action Plan for 2016. In April 2016, the BiH Council of Ministers adopted an annual Action Plan to combat discrimination. All three public policies include a series of activities aimed at improving the rights of LGBTI persons.

Since March 2016 the amendments to the Law on Prohibition of Discrimination are in the parliamentary procedure, which introduce sexual orientation, gender identity and sexual characteristics as the grounds on which discrimination is prohibited. The Law has not been adopted yet (see: 3.6 *Fight against discrimination*). The Law on Amendments to the Criminal Code of the Federation of BiH, which, among other things, regulates hate crimes based on sexual orientation and gender identity, was adopted in April 2016 and its entry into force is pending. The Institution of Ombudsman has finally began preparing a Special Report on the State of Human Rights of LGBTI Persons.

Current situation²⁸

Discrimination of LGBTI persons in BiH is still very much present and proactive measures for its elimination are not being undertaken. There have not been any initiatives to facilitate procedures for changing the gender designation on personal identification documents of trans* persons in BiH which would enable the change of these documents without requiring full medical gender reassignment. Also, there have not been any activities relating to the legal regulation of union for same-sex couples at any level of government in BiH. Hate crimes against LGBTI persons, although common, generally remain unreported to the police and judicial institutions. Prosecution of reported cases of these criminal offenses takes too long and these cases most frequently are not properly classified. In 2015, Sarajevo Open Center documented 103 cases of hate speech and incitement of violence, as well as 20 incidents and criminal offenses motivated by prejudice based on sexual orientation and/or gender identity. From January to March 2016, there have been documented 23 cases of hate speech and 2 cases of criminal offenses on the same grounds. A total of 13 cases of hate crimes, 4 cases of hate speech and 4 cases of discrimination have been reported to the competent institutions or organizations, but none of these cases so far have been successfully resolved. Not even two years after the attack at the Festival „Merlinka“, in February 2014, have those responsible been indicted. Inadequate judicial treatment of homophobic attacks (Sarajevo Queer Festival in 2008, Merlinka in 2014) and



²⁸ More information on human rights of LGBTI people in BiH can be found in the 2016 Pink Report: <http://soc.ba/tozi-izvjestaj-godisnji-izvjestaj-o-stanju-ljudskih-prava-lgbt-osoba-u-bosni-i-hercegovini/>

Recommendations

- Ensure a legal framework at the state level which regulates the issue of names and the use of official languages;
- Harmonize the Agreement on the special needs of returnee children in access to education with the regulations at the state and entity level;
- Conduct a revision of instructions to the competent police authorities in relation to the application of the Law on Permanent and Temporary Residence, with the aim of adequate application of regulations towards displaced persons and returnees;
- Ensure standards of minimal representation of citizens from the constituent peoples and Others in employment in public services.



incitement to violence and hatred towards LGBTI persons sends a message that homophobic and transphobic attacks in BiH are tolerated, culminating in yet another homophobic attack on the staff and guests of the Art Cinema Kriterion on March 4, 2016. Another example of inadequate reaction of institutions to incitement of discrimination and hate speech based on sexual orientation was recorded the same month, when the president of the Student Parliament of the University of Sarajevo, Haris Zahiragić, publically called for „medical treatment“ and „labeling“ of LGBTI persons, thereby violating the Statute of the Student Parliament of the University of Sarajevo, Code of Ethics of the University of Sarajevo, as well as the Law on Prohibition of Discrimination. Although discriminatory viewpoints, disclosed publically by a person holding a public function, have been reported to the competent authorities by Sarajevo Open Center and students themselves, there was no reaction of the competent institutions.

3.9 Returnees and property rights; ethnic minorities and Roma**Legal framework**

The issue of recognition of the 2013 Census results will have direct implications on returnees when applying legal provisions that stipulate representation „in accordance with the last census“. Although the quotas based on the results of the 1991 census have not been consistently applied, where prescribed by law, the introduction of these provisions indicate a tendency of complete neglect of earlier mechanisms of affirmative action based on the principle of employment in proportion to the ethnic structure of the population. Such one case is the adoption of the Law on Police and Internal Affairs of RS (see: *1.2 Parliaments*), which could become a precedent for other legislation in which the obligation of proportional representation of citizens from different ethnic groups will not be taken into consideration when preparing provisions.

The implementation of the new provisions of the Law on Permanent and Temporary Residence of Citizens of BiH, where on registering return to pre-war residence, displaced persons/returnees are treated by the same procedure as other citizens, and the old and still valid Article 20 of this Law which facilitates the registration procedure is ignored in practice. Displaced persons due to administrative issues change temporary into permanent identity cards in the place of post-war residence, thereby losing the status of displaced persons. Thus the number of displaced persons is formally being reduced, which is not the case in practice.

Refugees are still dealing with the problem of the implementation of the Law on Survey and Cadastre of Republika Srpska, where lack of participation of refugees in public presentations jeopardizes the protection of property in terms of establishing a new survey, particularly in case of usurpation of property by third parties. The Law on Property Tax of RS also contains provisions that are problematic for refugees, because tax invoice has the power of executive document, allowing the Tax Administration to initiate forced collection of taxes or put property under a mortgage in the event of failing

to pay taxes. Refugees are exposed to the risk of not being timely informed about the undertaken measures by the competent authorities, which may jeopardize the ownership of property in BiH.

Current situation

Key issues for the rights of returnees in 2016 remain the issues of providing equal access to public services; impartial investigations into misdemeanor and criminal offenses related to refugees and displaced persons and returnees; access to education without discrimination, as well as equal representation in institutions. Participation of returnee population in the decision-making processes in local government is directly connected to the results of local elections, it is expected a decline in turnout of returnees is expected, as well as the interest of refugees and displaced persons to vote in their pre-war places of residence. Organized mobilization and ensuring access to voting rights for displaced persons and refugees are present in only a few municipalities (Vareš, Stolac, Srebrenica, Bratunac). Returnee associations from eastern Bosnia have sent an initiative for amendments to the BiH Election Law which would guarantee minimal representation in municipal assemblies and councils to the constituent peoples, on the same principle as to the ethnic minorities, which would depend on the census results (quotas of 3, 6 and 9% of surveyed population).

The Central Election Commission of BiH issued a decision to facilitate voting through opening polling stations in diplomatic and consular missions in 24 countries, but the organization of voting can be canceled in case of a small number of registered persons. According to available information, activities on the registration of refugees and persons who are temporarily residing abroad for the local elections in 2016 have not been carried out. Despite the recommendations of civil society, the CEC has not undertaken concrete measures to facilitate registration and voting for persons abroad.

The status of the rights of children returnees in access to primary education has not been resolved yet. The boycott of classes in primary schools in Kotor-Varoš and Bratunac is still ongoing, and recently has spread to Primary school in Srebrenica. Parents and children from the Bosniak community are boycotting classes due to repudiation of the name of the Bosnian language (see: 3.4 *Youth and children's rights*), and the issue of organizing instruction of the so-called national group of subjects in accordance with the Interim Agreement on fulfilling the special needs and rights of returnee children. Student Association of Srebrenica proposed amendments to the Framework Law of Primary and Secondary Education in BiH, where it was requested clear specification of the names and the use of the official languages of the constituent peoples, given that the RS institutions refuse to acknowledge the name „Bosnian language“, and was announced proposal of a Law on Official Languages in BiH. Serious activities towards resolving these issues have not been initiated, considering that reactions to unequal treatment of Bosniak and Croat children in the RS, or Serb children in the Federation of BiH, still do not exceed the boundaries of local communities.

Recommendations

- Urgently start preparing a new Strategy for addressing Roma issues which will be harmonized with the EU Platform, covering all fields in which Roma do not exercise their rights;
- Adopt separate action plans for individual fields, especially health, housing, employment and education of Roma, and apply inter-sectoral approach in the implementation;
- Secure funds for the implementation of the Strategy and Action Plans;
- Strengthen the capacity of the Committee for Roma at the BiH Council of Ministers through determining precise criteria for the selection of members of the Committee;
- Formalize and mark the dates importance for Roma;
- It is necessary to strengthen and include representatives of the Roma community in BiH when addressing Roma issues and working on the Roma action plans.

Roma

Legal framework

In 2005 the BiH Council of Ministers adopted the *BiH Strategy for Addressing Roma Issues*. The BiH Council of Ministers only in July 2008 adopted the *BiH Action Plan for Addressing Roma Issues in the fields of employment, housing and health care*, and the same year BiH joined the Decade of Roma Inclusion. Since 2009, the BiH institutions have been allocating 3.000.000 BAM per year for the implementation of the Action Plan. This Action Plan was subsequently revised for the period 2013-2016.

Since 2004 there is an *Action Plan of BiH on the educational needs of Roma*, which was revised in 2010 and for whose implementation funds were never allocated. Given that the overall implementation of the regional program the Decade of Roma Inclusion failed to give desirable results, the European Union developed an *EU Framework National Roma Integration Strategies up to 2020 (EU Platform)*, which was adopted by the European Union in 2011, and obliges Bosnia and Herzegovina to harmonize its strategic documents with this platform and its principles.

All strategic documents for Roma in BiH have expired or expire this year, except for the EU Platform which should serve as a framework for drafting of these strategic documents. Given the lack of strategic documents, major issues such as the integration of Roma children into the education system or combating multiple discrimination against Roma woman and girls have not been resolved in the past period.

The Committee for Roma at the BiH Council of Ministers is composed of 11 Roma representatives and 11 representatives of the institutions. Roma associations from the Federation of BiH nominate 6 members from 6 areas, from Republika Srpska 3 members from 3 areas, and 1 member from the Brčko District and 1 member representing the Roma Woman Network. This principle of regional representation as the main criteria for the selection of members of the Committee may result in diminished quality of the Committee, because the experience and expertise of organizations that delegate their representatives are pushed into the background.

Current situation

Discrimination of Roma is still widespread and insufficiently addressed by the government. BiH has not implemented its international obligations in securing mechanisms for the improvement of Roma human rights, such as the right to adequate education, employment, housing, health care, security and protection against discrimination.

Roma men and woman are often victims of attacks and hate crimes. Particularly alarming is the exposure of Roma children to discrimination, both by their peers and by the teaching staff in the education system. Discrimination in employment is still prominent, which has not only economic, but also other consequences for the Roma in BiH. One of more prominent consequences is poor health insurance coverage which depends on paid contributions, where an increase in number of persons who do not

have health insurance is registered. This problem particularly affects Roma children. Although the law provides that all persons under the age of 18 are entitled to health insurance, in practice, the legal provisions are not applied and often is required a certificate of school attendance in order to exercise this right. Many Roma children do not attend school because their parents can not afford to provide them books, clothing and other equipment. In addition to that, Roma children leave school because of discrimination they are exposed to in the education system.

Marking of important dates for Roma, such as April 8, the *International Roma Day*, is an opportunity for Roma to become visible in the public space. In this regard it is important to mark the suffering of Roma in World War II, especially in the area of the so-called Independent State of Croatia.²⁹

²⁹ The Republic of Croatia, as the official day to commemorate the Roma victims during World War II, took 2 August, because on that day only in 1943 in the Nazi concentration camp Auschwitz was killed more than 3,000 children, women and elderly Roma.

4. MEDIA AND FREEDOM OF EXPRESSION

Recommendations

- Adopt legislation which will provide for the transparency of media ownership and financing of media from public budgets;
- Harmonize the laws on public broadcasting services with the umbrella Law on Public Broadcasting Service, as well as establish a sustainable model of financing public media and depoliticize the process of election and appointment of managing boards, program councils and directors of public services;
- Ensure efficient protection of safety of journalists through amendments to the Criminal Code and the Criminal Procedure Code at all levels of government in BiH;
- Prevent political influence on the work of the Communications Regulatory Agency for in order to more efficiently regulate the market of electronic media and compliance with professional standards of journalism.

Legal framework

BiH has an adequate legal framework which guarantees the protection of freedom of expression and freedom of information, but its implementation in practice is unsatisfactory and inefficient. The *Freedom of Access to Information Act (ZoSPI)* has been in force for 15 years, however, its massive application by citizens and journalists is still absent. A large number of public authorities still do not carry out obligations stipulated by this law, especially in regards to the appointment of information officials. The *Law on Protection against Defamation* has been applied in BiH for 13 years, with the effort of the courts to follow the standards and decisions of the European Court of Human Rights. It is an alarming fact that the number of defamation lawsuits is constantly increasing (on average 100 new lawsuits each year), and that processes take several years.

In BiH there are no laws which regulate the transparency of media ownership and protect the journalist profession against media clientelism. *Press and Online Media Code* and *Code on audiovisual media services and radio media services*, which set the standards of the profession, are neither consistently complied with, nor equally accepted by numerous media in BiH. The provisions of the *Law on Public Broadcasting Service*, which stipulate distribution of funds collected from the RTV fee and marketing, in practice is not respected by the entity public broadcasters (RTRS and RTVFBiH), which led to the financial collapse of the national public broadcaster (BHRT).

Current situation

In the previous period the *trends of pressures and attacks on journalist continued*. BiH Journalists' Association has recorded 60 cases of attacks on journalists, as well as violations of the freedom of expression, the integrity of the media and individual rights of media workers. Investigations on these cases are neither professional and efficient, nor are these attacks adequately processed, which is most likely due to the fact that among perpetrators there are highly positioned public officials, such as the president of the RS, security minister of BiH and parliamentarians, as well as media owners, police officers, religious officials, etc. According to research of the BiH journalists, only 15% of criminal offenses committed against journalists receive final court epilogue, while the majority of cases are ignored by the judicial institutions. Therefore, the media community has launched an initiative to amend the criminal legislation in BiH, in order to ensure legal protection of media professionals.

Significant improvement has been made in the field of cooperation of the Ministry of Human Rights and Refugees of BiH and media organizations and institutions, in order to establish permanent monitoring of institutional protection of freedom of the media. An Action Plan of the protection of human rights with a special section dedicated to the protection of the public broadcasting system, implementation of efficient investigations in relation

to the attacks on journalists and the media, as well as the creation of mechanisms and methodology of continuous reporting on the implementation of the right to freedom of expression in BiH was created.

After the function of director of the Communications Regulatory Agency has been performed by acting directors for full eight years, at a session of the BiH Council of Ministers, held on April 26, 2016, it was confirmed the appointment of the Director of the CRA in the full mandate. The Communications Regulatory Agency is still under *heavy political influence and in the state of complete passivity* and does not fully perform its function of an independent regulator, including decisions in relation to the digitalization, implementation of the Code on audiovisual media services and radio media services and other professional standards accepted by the conditions of the license for operation of electronic media in BiH. The Law on Communications in BiH prohibits interference of political lobbies in the work of the CRA, but the provisions of this law are an insufficient guarantee for the effective and independent work of the Agency. A lot more effective action of the Agency's Council is required, managing and professional staff, dedicated to the implementation of the EU standards of functioning of the electronic media market, preservation of ethical and professional standards of journalism, as well as democratic and cohesive role of the media in BiH society.

In BiH ownership and function of the media are regarded as identical. The media, especially private, are „subjugated“ to the interests of their owners and their editorial policies reflect the preferred political option, while simultaneously the political influences on editorial policies in public media are strengthened. The lack of transparency of media ownership, as well as fragmented and overflowing media market, contribute to the political instrumentalization of commercial media. On less than 4 million inhabitants, in BiH there are 7 daily newspapers, 3 political magazines, dozens of various periodicals, 6 news agencies³⁰, 46 television stations and 151 radio stations.³¹ Apart from the traditional media, in BiH, where 57% of population uses the Internet³², there is a large number of news portals, whereby there is no central register of online media and media portals, neither at public institutions nor at media regulators. Ownership of online media is particularly non-transparent and exposed to abuse by political entities.

Public services are exposed to *financial and political pressures*, which culminated in complete disintegration of the system of collection of the RTV fee and the *announcement of the Steering Board of BHRT that BHRT will suspend broadcasting in late June*. Pressures on Public Service are also present in the form of attempts of deepening ethnic divisions in the the public broadcasting system (introduction of the Croatian channel and dissolution of the BHT channel). The crisis in the functioning of public media (public services and local radio and television stations) requires more professional and

³⁰ Data is taken from the website of the BiH Press Council, <http://www.vzs.ba>

³¹ Data is taken from the website of the Communications Regulatory Agency: <http://www.cra.ba/bih/index.php?uid=1273787399>

³² Data is taken from: Review of Internet users and Internet operators in BiH in 2015, published by the Communications Regulatory Agency, <http://www.cra.ba>

responsible behaviour not only of the founders of public media (parliaments and municipal councils), but also of the administrative and management structures, editors, journalists and employees who must demonstrate to the citizens their commitment to the implementation of the mission of public media and work in the public interest, not political power centers. Also, it is necessary to provide a stronger participation of civil society and the media community in the selection of competent and expert managing and administrative structures in public services. According to the Press Freedom Index for 2016, Bosnia and Herzegovina has registered a decline in the total sum and currently is the penultimate country in the region regarding media freedom, in front of Macedonia, which occupies the very last position.

5. TRANSITIONAL JUSTICE

5.1 Regional issues, international obligations and transitional justice

Recommendations

- Prioritize the work on Category „A“ cases, processed at the International Criminal Tribunal for the former Yugoslavia (ICTY), in order to use the remaining time for the implementation of a national strategy in the most effective and purposeful manner;
- Adopt a Law on Victims of Torture of BiH;
- Create a reparations program to mitigate consequences of sustained traumas of victims, and settle their material and non-material damages and restitution of property.

The rights of victims of torture are still not protected adequately. Lawsuits of former camp inmates, who have sued the RS for war crimes, are being dismissed, whereby they have to bear the payment of high legal costs. In June 2015, the Joint Committee on Human Rights of the Parliamentary Assembly of BiH at a session dedicated to the victims of torture instructed the Council of Ministers to prepare a Bill on the rights of victims of torture by the end of 2015. A working group under the control of the Ministry of Human Rights and Refugees was formed, however, a year later the Bill still has not been submitted to the Council of Ministers or the Parliamentary Assembly of BiH. The state still neither has a reparations program, nor a system of data on all the victims in order to ensure the protection of the right to compensation. There are still problems regarding the functioning of the Missing Persons Institute, whose managing and supervisory boards are working in a technical mandate due to disagreements of the co-founders of the Institute (International Commission on Missing Persons (ICMP) and the BiH Council of Ministers). Members of the Board of Directors are also working in the technical mandate, whom the public accused of attempted politicization of the Institute. BiH never adopted a proposal for the transitional justice strategy for the period 2012-2016. Regional cooperation on the prosecution of war criminals has declined, as corroborated by the 2015 Report of the Chief Hague Prosecutor addressed to the UN Security Council. The Initiative for RECOM is one of a kind in the region and of crucial importance for the entire region. Given this situation, changes are required in the National Strategy of BiH for the work on war crime cases, including the establishment of new mechanisms, primarily a truth commission.

Certain progress has been made in regards to the treatment of victims of sexual violence in war. In May 2015, amendments to the BiH Criminal Code were adopted, which treat the existence of a an armed conflict as a compulsory circumstance sufficient to determine that a sexual act occurred without the consent, without having to prove the use of force or threat thereof. The law is thereby complied with international standards. Also, the practice of assigning compensation to the victims of sexual violence in war is continued (second instance judgement to Slavko Savić in February 2016 and verdict in the case Adil Veljić and Bekić Mešić in March 2016). On the other hand, the FBiH Government at the end of 2015 made draft amendments to the Law on Fundamentals of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children of the Federation of BiH, which stipulates the establishment of a special commission for determining whether an applicant for determining the status of civilian victim of war is a victim of sexual violence. This way, into the procedure is introduced a new irrelevant body, instead of using the existing and well-established mechanisms,

that is, the official Institute for Medical Verification of Health Status in the Federation of BiH.

In the Federation of BiH, in February 2016, the House of Representatives of the FBiH Parliament adopted a Draft Law on Prohibiting Denial, Minimization, Justification or Approval of the Holocaust, Genocide and Crimes against Humanity. The Draft Law was referred to public debate and consultations with victims' associations and the academic community. This issue is still unresolved in Republika Srpska and at state level. The BiH Council of Ministers on several occasions has proposed the adoption of a law that prohibits the operation of fascist and neo-fascist organizations and the use of these features, but the law never received the necessary parliamentary majority.

5.2 War crimes

Legal framework

According to the National Strategy for War Crimes Processing (2008), within the period of seven years the most responsible for the most complex cases of severe violations of international humanitarian law should have been processed, while other cases within the period of 15 years since the adoption of the Strategy. The Prosecutor's Office of BiH had requested three additional years to process the most complex cases, which should have been finalized by December 2015, therefore, it is questionable to what extent will be fulfilled the anticipated goals for the processing of other cases in the next eight years. The basis for the National Strategy was the information that in BiH there is about 10.000 persons who may be correlated to severe violations of international humanitarian law in BiH.

Current situation

So far about 30% of the aforesaid cases have been resolved, of which *over 2.200 cases by suspension of the process*. In 2005, the Prosecutor's Office of BiH overtook 18 investigations started by the Hague Tribunal (Category II cases), which were finalized only at the end of last year, either by raising indictments or by suspension of investigations.

Judicial institutions are still exposed to political pressures, while strong and decisive support of the international community is absent, such as mechanisms that the United Nations could provide through legal and human resources legacy of the ICTY, as well as through the establishment of control and direct participation in the implementation of the proposed amendments to the National Strategy. It is necessary to provide support not only for the Prosecutor's Office of BiH at all levels, but also for the work of judges and supporting agencies and services, specifically in the field of witness protection and support. Assistance of the international community is required in terms of financial support, but also through the institutional and legal framework which would ensure full capacities required to finalize cases, in particular those cases which were revised by the Rules of the Road, the majority of which have been „locked away“ in drawers for over 15 years.

The Prosecutor's Office of BiH shares responsibility for the implementation of the National Strategy with prosecutor's offices at lower levels (entity and cantonal), which is particularly problematic because of the lack of coordination between prosecutor's offices at different levels. The criteria for evaluation of the complexity of cases are vague and uneven, there is no single data base, investigations are doubled, and indictments of the Prosecutor's Office of BiH are transferred onto lower levels. All of this prolongs the duration of proceedings and further dissipates resources, because new prosecutors must get informed about the cases and summon witnesses all over again, which leads to deadlocks in proceedings. It seems that the lower prosecutor's offices and courts quite often „hide“ behind the decisions/activities of the higher levels, such as the Prosecutor's Office of BiH and the Court of BiH, and this is especially true of the prosecutor's offices and courts in Republika Srpska. As an illustration there is the case of Milenko Stanić, who is suspected by the ICTY and in accordance with the Rules of the Treaty of Rome classified in the Category „A“ of standard labels, and was an SDS nominee for the Vice-governor of the Central Bank of BiH, causing protests of the Associations of victims. The Category „A“ involves persons for whom, in accordance with international standards, there are reasonable grounds of having committed severe violations of international humanitarian law.

It was this case that raised questions of the implementation of cases revised by the Rules of the Road. In BiH, 848 complex cases are marked as Category „A“, of which so far has been prosecuted about 250 cases, while the remaining 600 cases are in an unknown stage. One part of these cases is at the lower prosecutor's offices, including the prosecutor's offices in Republika Srpska, where the fate of these cases is particularly questionable given that part of the RS judiciary dealing with war crimes has been systematically weakened for the sake of that part dealing with religious extremism and terrorism.

6. SELECTED TOPICS: ECONOMIC AND SOCIAL ISSUES

6.1 Labour, health care and social protection

Recommendations

- Based on the analysis of application of the provisions of the new labour laws by the end of 2016, amend articles that are not sufficiently clarified or there are obstacles in the implementation, as well as intensify inspection over the implementation of new legislation;
- Harmonize legislation in the field of social and health care with new solutions regarding the right to maternity leave for fathers;
- Equalize compensations in the field of social protection in order to provide equal treatment and equal rights in the field of labour, social and health care protection for all citizens;
- Repeal provisions which condition health insurance of the unemployed by the registration deadlines with the employment service;
- Adopt a framework Law on Infertility Treatment by Biomedically Assisted Procreation at the state level.

6.1.1 Labour rights

Registered unemployment is decreased to some extent compared to previous period, but still remains high. According to data of the Labour and Employment Agency of BiH, registered unemployment in March 2016 was 42.4%, while there are 530.370 unemployed registered in BiH and 721.633 employed at legal entities. It is estimated that about 200.000 employed persons work for a minimal monthly salary of about 370 BAM and that about the same number of the employed do not receive salary regularly, nor have their benefits/contributions paid. Even with the previous legislation that guaranteed protection of workers' rights to a certain extent, there were many cases of violations of the same and court cases in the field of employment disputes.

There has been no progress in solving the issues generated by privatization crime, which has been announced since the 2014 protests. Unbound service, irregular payment of contributions, unpaid salaries and other liabilities are still a reality of many workers in BiH. Workers' protests are still present, wherein the conventional methods of work stoppage, blockades of factories and traffic are being replaced by radical methods such as hunger strikes and suicide threats. Such cases have been reported in Tuzla in the factory „Tuzla kvarc“ (April 2016) and the Steelmill (January 2016). Both protests were ended by finding temporary solutions.

In the past year, in both BiH entities new labour laws were adopted, with disagreement of social partners and protests of trade union organizations (see: 1.2 *Parliaments* and 1.3 *Governance*). The new legislation improved certain rights, while reducing others. Among positive novelties are provisions that guarantee the prohibition of discrimination on any grounds, and provisions related to mobbing and violence at work; working week is shortened to 48 hours, which is in accordance with the Directive 2003/88 EC. A special article stipulates the prohibition of discrimination on the basis of gender, and it is also stipulated the possibility of establishing special measures in employment for the purpose of achieving gender equality. Nevertheless, this provision has not been elaborated in detail, therefore, it is difficult to estimate what effects will it have in practice and whether it will be integrated into the laws and regulations of legal entities. Provisions which prohibit employers to refuse to employ a woman because of her pregnancy and to terminate her employment contract during pregnancy, maternity leave, etc. have been introduced. A possibility that a child's father may use maternity leave in the duration of 42 days (FBiH), i.e. 60 days (RS) after childbirth has been introduced, but the regulation of compensation for such a leave in FBiH is left to cantons. Minimal duration of annual leave has been increased from 18 to 20 working days, and is also introduced the maximum duration of annual leave

of 30 working days. It was introduced an unfavourable decision by workers by extending the period to which can be concluded an employment contract for a definite period from two years to three years in the FBiH, while in the RS the period of two years remained, except in special cases. The duration of the collective agreement is limited to three years, after which it may be applied up to 60 days, unless the contracting parties conclude an agreement on the contract extension within 60 days (RS), i.e. 30 days (FBiH) before its expiration. Under the previous law, the collective agreement was applied until the conclusion of a new one, and this article was one of the main objections of trade unions to the new law. Provisions on determining severance have been adopted which are unfavourable for employees with more years of service.

6.1.2 Social protection

The social security system in BiH includes social insurance, social welfare, family and child protection, and veteran protection. The rights in the field of social protection are still unequal between entities, that is cantons, thus continuing discrimination and unequal treatment of beneficiaries of social protection depending on the place of residence. Social benefits are based on affiliation with a particular category, and not individual needs. Rigid requirements for fulfillment of the right to social protection, inadequate targeting and insufficient resources, pose a huge problem, especially for the most vulnerable beneficiaries of social protection. It is a frightening fact that about 30.000 people in BiH survives by eating in soup kitchens, that do not have enough capacities to cover the needs of the most vulnerable citizens and often depend on foreign donations and efforts of individuals. In December 2015, three people who were users of soup kitchens in Ljubija (Prijeedor) starved to death. Funds for social protection for years have been in a state of financial unsustainability, especially pension and disability insurance funds in both entities. The pension system, based on the principle of intergenerational solidarity, is effectively inapplicable in a state of continuously high unemployment rate, especially in the real sector. Social peace is „bought“ by unplanned and unproductive borrowing from global credit organizations, whose sole purpose is to provide sustainability of the budget and funds for social benefits. In Republika Srpska, the Government decided to no longer pay pensions from the funds of the over-indebted Pension Fund, thus in November 2015 drafted a set of amendments to the law transferring the Pension Fund to treasury operation system. This was explained by the need to stop borrowing from commercial banks, given its „negative financial result“ in the amount of 46.131.526 BAM at the end of last year. One of the consequences of this move is the decision of the RS Government, adopted at a special session on 11 and 12 April 2016, that all ministries suspend payments from the budget until further notice. This decision will affect the lives of all citizens, in particular the socially vulnerable categories.

In the Federation of BiH, the Pension Fund is also facing serious financial problems, which is why pensions are delayed and irregular. Because of this,

the Pensioners' Association of FBiH announced protests on several occasions, but abandoned this idea after signing the agreement with the FBiH Government in September 2015. However, the Government and the Pension Fund failed to respect the agreement, while the Fund and timely payment of pensions still have not been stabilized, and the situation is further aggravated by the entry of 15.000 new pensioners into the system at the end of 2015.

6.1.3 Health care

The health care system is still fragmented, with inconsistent legal provisions at different administrative levels. The accessibility of health care services still has not been universally provided, because a person insured in one entity/canton can not exercise their right in another entity/canton. Place of residence puts citizens in an unfavorable position also on other grounds of realizing health care, such as different entity/cantonal lists of medicines, which affect the availability and prices of medicines (which in BiH are still among the highest in the region). There were no changes in the legal framework in the field of health insurance, which is still conditioned by payment of contributions, causing people who are unemployed but not registered at the employment service, employees on service contracts, employees whose employer does not pay contributions, and the like, to lose health insurance. Short deadlines (30-90 days) for registration at the unemployment register in the FBiH exclude from the right to health insurance different categories of unemployed people (in particular youth, women from rural areas, marginalized groups and all workers to whom employers do not issue necessary documents within this period) until they are formally employed. In the cantonal budgets funds for financing the basic package of health care rights for uninsured persons from 2009 have not been provided yet, which is why about 500.000 citizens of the Federation of BiH do not have health insurance. Women's reproductive rights are also unequal, especially regarding the treatment of infertility by medically assisted procreation. Health insurance funds of the RS, FBiH and the Brčko District in full or in part finance two attempts of in vitro fertilization. However, the implementation of this rule in the Federation of BiH depends on financial resources of individual cantons. There are significant differences between entities and cantons in terms of the right to reimbursement and the amount of reimbursement costs,³³ and the upper age limit of women entitled to free attempts of medically assisted procreation (from 37 to 42 years of age). In March 2016, the Commission for Gender Equality of the House of Representatives of the Parliamentary Assembly of BiH referred into the parliamentary procedure a Proposal of Framework Law on Infertility Treatment by Biomedically Assisted Procreation, which would harmonize these rights. The proposal was negatively assessed twice by the Constitutional-Legal Committee, which the House of Representatives of PA BiH refused to adopt, therefore suspending the legislative procedure. When it comes to the delivery and post natal protection of women, according



33 See: „2016 Orange Report – Annual report on the state of human rights of women in Bosnia and Herzegovina“, Chapter 3. Health Care, available at: http://soc.ba/site/wpcontent/uploads/2016/02/NARAN.IZVJESTAJ_02_20.02.2014._FINAL_web.pdf

to the report of the organization „Save the Children“, BiH is on the 54th place on the scale of health of mothers and children which is the lowest ranking among the countries of the former Yugoslavia.³⁴ A research conducted in 2015 by the organization DRIP showed that women experience various forms of violence during childbirth. Of 539 women who gave birth in one of the 13 public and one private maternity hospitals in the RS, about 80% of respondents said they were not involved in the decision-making process on the type of delivery, and 59% said that they would not give birth in the same maternity hospital. Access to health care protection is particularly problematic for Roma women, of which 21% does not seek and/or does not receive prenatal health care during pregnancy.³⁵

6.1.4 Flood relief

The network of non-governmental organizations „Braná“ published in February 2016 a „Report on the implementation of funds for recovery from floods in BiH in 2014“, stating that so far about 31% of the funds promised at a donor conference in Brussels have been paid. According to the report, the expenditure of funds implemented through governmental institutions can precisely be determined only for 54% of the funds, while that percentage for donor assistance is significantly higher and amounts to 90%. Non-transparent expenditure of funds for reconstruction and assistance is reflected in the lack of clear and transparent reporting system (in a large number of reports there is no data on the type of funds (budget or donor), and the location and end-users of donations), and the lack of a single database on donations. It was also stressed that citizens are poorly informed about public calls for granting assistance, and the value of received assistance.

In Republika Srpska, in 2014 was adopted the Law on a Special Contribution for Solidarity in order to raise funds to help the victims. Based on that the RS Government has collected tens of millions of BAM which, according to reports of NGOs, were spent in a non-transparent manner and for which there is reasonable cause that they were not spent to help the flood victims. In 2015, amendments to the law were adopted, for which was filed a request to review the constitutionality. In February 2016, the Constitutional Court of Republika Srpska (in case no. U-63/14) determined that Article 6 of the Law on Amendments to the Law on a Special Contribution for Solidarity is unconstitutional on formal grounds, because it stipulated the entry into force of the law within one day after the announcement, while the constitutional norm stipulates a deadline of at least eight days. The Court dismissed the request to review the constitutionality of the very content of the law. The RS National Assembly adopted a new Law on a Special Contribution for Solidarity in December 2015 with the identical provision, with a Decision explaining that there are „specifically justified circumstances“ because contribution is connected to net incomes which are paid on a monthly basis.



³⁴ „2015 Mothers' Index“, <https://www.savethechildren.net/state-worlds-mothers-2015>

³⁵ „Guidelines for improving the situation of Roma children in Bosnia and Herzegovina“, http://www.mhrr.gov.ba/ljudska_prava/djeca_bih/default.aspx?id=4281&langTag=bs-BA

There is still no information whether a request to review the constitutionality of the new Law has been filed.

6.2 Census

The results of the 2013 Census of Population, Households and Dwellings in BiH have not been published yet, and political pressures on the statistical institutions have continued and intensified in the previous period, which is a direct consequence of the fact that the implementation of the census since the beginning was inadequately planned, poorly implemented, politicized and treated by political parties in BiH exclusively as a matter of ethnonational counting (see: *2015 Alternative Progress Report*).

Publication of the census results was one of the conditions for a credible application of BiH for EU membership, which was submitted in February 2016, despite failing to meet this condition. The deadline for the publication of the census results set by the Action Plan for the implementation of the Reform Agenda was the end of 2015, while the final legal deadline for the publication of the census results is July 1, 2016, after which the results will no longer be valid. In March 2016, the Prosecutor's Office of BiH launched an investigation with the aim of determining potential criminal responsibility for the current situation.

The publication of the results is delayed due to disagreement between the entity statistical institutions regarding the establishment of a Single Data Processing Program of the 2013 Census of Population, Households and Dwellings in BiH, specifically in the part relating to the criteria for establishing the resident population. The Central Census Bureau of BiH has met several times in order to agree on the criteria for determining the Single Data Processing Program, however, the agreement has not been reached despite pushing through all the deadlines. Scarce information from these meetings were quite concerning, such as testimony on a proposal to register the persons listed in the contested census forms (196.000 of them) as resident population, provided that the declaration of these persons on ethnic/national affiliation is deleted.

The Director of the Agency for Statistics of BiH announced on May 18 that the decision on the Single Data Processing Program was adopted, in accordance with the recommendations of the International Monitoring Mission (IMM), according to which the persons registered in the contested census questionnaire will be treated as resident population. Deputy Director of the Agency for Statistics from the Serb people publically expressed disagreement with this decision, and on this issue also commented the Government of RS, Institute of Statistics of RS, as well as representatives of the ruling and opposition parties from this entity, stating that Republika Srpska will not accept the census results should they be published in accordance with this methodology. Ultimately, the SNSD through its representatives in the House of Representatives of PA BiH transferred this discussion into the state

parliament, thus at the end of May, the 5th emergency session of the House of Representatives of PA BiH was held, requesting the Council of Ministers to within 10 days submit an „Information on the Decision on the Adoption of the Single Data Processing Program of the 2013 Census of Population, Households and Dwellings in BiH, adopted by Director of the Agency for Statistics of BiH Velimir Jukić“, after which the RS President announced, that in the event of publication of the census results in accordance with the adopted methodology, he will suspend all processes in which the RS participates at the state level and conduct a new census in Republika Srpska. The issue of the census and its results has been once again explicitly transferred from the field of profession to the field of political conflicts and interests, thereby continuing the collapse of the already disputable credibility of the conducted census.

ABOUT THE INITIATIVE

The Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina is an informal coalition of thirty civil society organizations, which contributes to monitoring of the reforms and overviews the application of EU policies, laws and standards, focusing on the issues of democratization, rule of law, and human and minority rights. Learn more about the Initiative at: <http://eu-monitoring.ba/o-inicijativi/>

Active member organizations:

Association for Democratic Initiatives, Sarajevo
 BH Journalists, Sarajevo
 The Center for Investigative Reporting, Sarajevo
 Youth Center KVART, Prijedor
 Center for Political Studies, Sarajevo
 Foundation Cure, Sarajevo
 Foundation 787, Sarajevo
 Forum ZFD, Sarajevo
 Helsinki Citizens' Assembly, Banja Luka
 Youth Initiative for Human Rights, Sarajevo
 Kali Sara – Roma Information Center, Sarajevo
 MyRight - Empowers People with Disabilities, Sarajevo
 Oštra nula (Straight Zero), Banja Luka
 Transparency International, Banja Luka/Sarajevo
 TRIAL – Track Impunity Always, Sarajevo
 Sarajevo Open Center
 Association Transitional Justice, Accountability and Remembrance, Sarajevo
 Association “Women to Women”, Sarajevo
 Vaša prava BiH (Your Rights BiH)
 Why Not, Sarajevo
 Land of Children, Tuzla

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