

Alternative Progress Report 2015: POLITICAL CRITERIA

INITIATIVE FOR MONITORING
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LIST OF ABBREVIATIONS

AP	Action Plan
APC	BiH Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
BD	Brčko District
BHRT	BiH Radio Television
BiH	Bosnia and Herzegovina
BPC	Bosna-Podrinje Canton
CBC	Central Bosnia Canton
CCI	Centres for Civil Initiatives
CEC	Central Election Commission BiH
CEDAW	Committee on the Elimination of Discrimination against Women (UN)
CoE	Council of Europe
CoM	Council of Ministers
CRA	Communications Regulatory Agency BiH
CSO	Civil Society Organizations
CSW	Centre for Social Work
DEI	Directorate for European Integration
DF	Democratic Front (political party)
DNS	Democratic People Union (political party)
EC	European Commission
ECHO	European Commission Humanitarian Aid and Civil Protection Programme
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EP	European Parliament
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
GAP	Gender action plan
HDZ	Croatian Democratic Union (political party)
HJPC	High Judicial Prosecutorial Council
HNC	Herzegovina-Neretva Canton
HP	House of Peoples (of the Parliamentary Assembly of FBiH and BiH)
HR PABiH	House of Representatives of the Parliamentary Assembly of BiH
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Persons
IMO	International Monitoring Operation of BiH Census
IPA	Instrument for the pre-accession Assistance
JMBG	Personal ID Number
JSRS BiH	Justice Sector Reform Strategy in Bosnia and Herzegovina
LFAI	Law on Freedom of Access to Information
LGBT	Lesbian, gay, bisexual and transgender people
MoI	Ministry of Interior
MoJ	Ministry of Justice
NARS	National Assembly of the Republika Srpska
NATO	North Atlantic Treaty

NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
OPD	Organizations of Persons with Disabilities
PA BiH	Parliamentary Assembly of Bosnia and Herzegovina
PC	Posavina Canton
PFBIH	Parliament of Federation of Bosnia and Herzegovina
PPA	Public Procurement Agency of 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 the Republika Srpska
RTV	Radio Television
RTVFBiH	Radio Television of the Federation of Bosnia and Herzegovina
SAA	Stabilization and Association Agreement
SBB	Union for a Better Future (political party)
SDA	Party for Democratic Action (political party)
SDP	Social Democratic Party of BiH (political party)
SIPA	State Investigation and Protection Agency
SNSD	Party of Independent Social Democrats (political party)
SPRS	Socialist Party of Republika Srpska (political party)
SSPACEI	Strategic Planning, Aid Coordination and European Integration
TI BiH	Transparency International BiH
TCC	Teaching plan and program
TS JSRS BiH	Technical Secretariat of Justice Sector Reform Strategy in Bosnia and Herzegovina
UPR	Universal Periodic Review
USA	United States of America
USC	Una-Sana Canton
WHC	West Herzegovina Canton

SUMMARY

This is the third Alternative Progress 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 rights organizations. Bearing in mind that the official Progress Report on Bosnia and Herzegovina is a political report of the European Commission, we believe that the publication of the Alternative report can 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 of 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.

No relevant progress has been made in regards to these issues in the time period between the summer of 2014 and the summer of 2015, the time span covered by this report.

The implementation process regarding the ECHR rulings in the cases Sejdić and Finci and Zornić v. Bosnia and Herzegovina has been fully marginalized and is no longer a matter of debate. Performance of the democratic parliaments and governments on state, entity and cantonal levels is extremely low. The work of the institutions is still characterized as unstable, inefficient and with notable lack of transparency. Not only that the decisions of the constitutional courts are not implemented, but the position itself of the Constitutional Court of BiH is questioned. No significant and systematic policies to combat human rights violations have been adopted. The expectations that the general elections held in October of 2014 would bring a more stable political structures, ready to face various problems, were not met. Since the elections to this day, Bosnia and Herzegovina has been in a state of constant political crises.

Judicial reform has been stopped, and the Structured Dialogue on Justice between BiH and EU does not show any progress. Not a single significant case of corruption has been processed. Minority and vulnerable groups still live in difficult conditions. Discrimination and violence are all-present, and the law on prohibition of discrimination did not yield the expected results, having in mind that only a few final judgements were passed in the six years after the enactment of the law. Comprehensive anti-discrimination policies for social integration do not exist.

The floods which hit the state in May 2014 additionally worsened the position of the economic and socially vulnerable groups.

The prosecution of war crimes and dealing with the past, as prerequisites for the creation of a healthy environment and the building of a common state, represent an additional problem. The political support provided by the leaders of political parties to the war criminals only further divides the highly fragmented society, as it already is.

Initiative for the Monitoring of the European Integration in BiH will certainly advocate changes concerning the adoption of the new laws and policies, and the implementation thereof. We also hope that the BiH authorities and the EU institutions will support a stronger representation of the civil rights organizations within the various forums within the EU integration of BiH. The civil society must become the third stakeholder in this process, along with the State and the EU institutions.

Editors
July 2015

1. DEMOCRACY AND FUNCTIONALITY OF THE STATE

1.1 Constitutions

Recommendations

- Adopt amendments to the BiH Constitution in line with the ECtHR rulings, regarding *Zornić* case and *Sejdić and Finci* case, which give equal political rights to all BiH citizens without introducing different values to the vote or furthering ethnic discrimination;
- Adopt the constitutional amendments at all levels of government in order to eradicate ethnic discrimination from the constitutions, while giving equal rights to all, and not solely to the people identifying as any of the three constituent ethnicities;
- Adopt the constitutional amendments which would ensure easier decision making process and more functional institutions at all levels of government, and particularly at the state level, especially regarding the legislations related to EU integration (for instance, introducing the “EU clause” which would repeal the “entity” provisions for all legislations related to EU integration).

“Sejdić and Finci” process

The primary focus of the constitutional reforms in Bosnia and Herzegovina has been the implementation of the European Court on Human Rights (ECtHR) decision in *Sejdić and Finci v. Bosnia and Herzegovina* case. Declaring the failure of the non-transparent negotiations, facilitated by Stefan Füle, the European Commissioner for Enlargement and European Neighbourhood Policy has stopped the entire process in the spring of 2014. The European Union has made no further efforts to facilitate the process, nor did the BiH leaders seek out a solution among themselves. The entire process has been stopped after the General Elections held in October 2014, when the foreign ministers of Germany and the United Kingdom announced the so-called *Germany–United Kingdom Initiative*. By doing so, the European Union has accepted its failure, taking a step further by removing the implementation of the *Sejdić and Finci* case from the list of requirements for the implementation of the Stabilization and Association Agreement (SAA), which took place on June 1, 2015.

The constitution reform issue has been replaced by the undefined requirement for the implementation of the *economic and social reforms*. Since the October of 2014 to this day, the issue of constitutional reforms has been entirely marginalized and is not a matter of the BiH political process. The assumption that the economic and social reforms can be carried out without significant constitutional reforms is alarming, taking the complete understaffedness of the cantons into consideration.

Other forms of ethnic discrimination

While the ethnic discrimination of the BiH Constitution is recognized in the decisions of the European Court on Human Rights in the cases of Azra Zornić and *Sejdić and Finci*, other forms of ethnic discrimination were confirmed in the meanwhile.

In March 2015, the Constitutional Court of BiH has reached a decision in the case no. U 14/12 of the applicant Mr. Željko Komšić, a Member of the BiH Presidency in the previous term, who filled a request for the review of constitutionality of provisions regulating the *election of presidents and vice presidents of both entities* in the Constitution of Republika Srpska, Constitution of Federation of Bosnia and Herzegovina and the Election Law of Bosnia and Herzegovina, considering the fact that only people identifying as any of the three constituent ethnicities can be elected for these positions. The Constitutional Court established the existence of discrimination, but has put off the implementation of the decision until the implementation of the *Sejdić and Finci* decision. The Constitutional Court has thus indisputably offered support to the current political determination of the European Union and BiH political parties not to discuss the issue of the ethnic discrimination in the constitutional system at this point.

The case of *Ilijaz Pilav v. BiH* still awaits the decision of ECtHR. We can expect that the court will establish the discrimination, in this case against a citizen identifying as one of the constituent ethnicities, which will further complicate this issue.

Lack of coordination

While the constitutional reform has failed because of an attempt to solve *the Croatian issue* through the implementation of the *Sejdić and Finci* case decision, the lack of cohesion among the different levels of government also drew attention of the international community regarding the access to reforms in BiH. The complex and inefficient decision making process continues to

make the implementation of the necessary structural reforms more difficult. The decision on the manner in which the coordination in the process of reforms would be implemented still has not been made, considering the fact that the different levels of government, i.e. the political elites behind them, still have opposite attitudes.

Decentralization of competences

It is still concerning that *the large number of competences is still decentralized to a large extent*, and brought to the entity and cantonal levels. In the key areas, such as agriculture and economic policies in general, as well as education and health care, the state level of government still has almost no competences. Each canton still has its own educational policy, including higher education, which is a rare example of the extreme decentralization of competence, in a way in which it is not present even in the more organized and more functional European states. Although the European Union does not prescribe the state organization (Federalism vs. Unitarianism, Centralization vs. Decentralization), it is a well-known fact that BiH, and its existing governmental structures, is not able to provide services and results which would be efficient and citizen-oriented, particularly in the aforementioned areas.

The attempts to form the state-level Ministry of Agriculture and Ministry of Education were stopped by the political parties; hence there is no political party which would show great interest in advocating for the solving of this issue. During the time span covered by this report, no effort has been made to discuss this issue and to engage in negotiations, e.g. within the process of government forming, at the level of FBiH, nor at the state level.

Recommendations

- Parliamentary Assembly of BiH must start and facilitate the consultation process of constitutional reforms, regarding the entire state and different actors;
- Clear and transparent agenda for the socio-economic reforms, reforms of the public administration and the rule of law at state and entity levels, must be adopted and a part of the public debate;
- The respect for the legal provisions on gender equality in governments and parliaments must be ensured.

1.2 Parliaments and governments

Post-election period

Following the *General Elections in Bosnia and Herzegovina*, in October 2014, the legislative and executive government bodies were again formed upon expiry of the legal deadline, and cases of political corruption and violations of constitutional provisions were observed.

The House of Representatives of the Parliamentary Assembly of BiH was formed two and a half months after the Central Election Commission confirmed the official results of the election. House of Peoples of the PA BiH, however, was formed only in mid-February, while the Council of Ministers was confirmed by the PA BiH only on March 31, 2015, the same day when the Government of Federation of BiH was formed. The standstill in the forming of the government was caused by the disagreement between coalition partners in FBiH, in particular by the demand that HDZ BiH receives an equal number of ministries as SDA; as well as by the obtrusive behaviour of the representatives of SNSD and DNS in the House of Representatives of the PA BiH and by the constant boycott of the sessions of the HR PABiH, which occurred after their petition for the removal of the Chairman of the HR PABiH because of the alleged involvement in war crimes.

Parliament of Federation of still has not been formed in the full capacity. The Constitution of BiH stipulates that the House of Peoples of the PA BiH is formed from the members of cantonal parliaments and that it consists of an equal numbers of delegates of three constituent peoples (17 each) and seven delegates who are Others, provided that the Chairman and Vice-Chairmen belong to different peoples. Since a sufficient number of Serbian representatives were not elected for the cantonal parliaments, the House of Peoples was formed with 13 Serbian delegates, and only one Vice-Chairman was elected, instead of two. The Central Election Commission BiH confirmed the incomplete constitution of the House of Peoples of the PFBiH in January, but it also called for the urgent amendments to the Election Law of BiH, in order to ensure the implementation of the constitutional provisions in the Parliament of FBiH in the

current term. In May 2015, almost four months following this recommendation, both houses chose their representatives for the inter-sectoral work group which faces the task of *preparing the amendments to the Election Law of BiH*. It is important to point out that the House of Representatives of the PABiH has rejected the proposition that the civil society organizations engage in the process of the expert group, while the House of Peoples has accepted it. The final decision regarding these issues still has not been made.

Constant crises in Federation of BiH

Having considered the fact that the Government of FBiH was not formed and that it could not draw up a draft Budget for the FBiH, in January 2015 the Parliament of FBiH adopted Decision on Temporary Financing until March 31, 2015. On this date, in a span of only a few hours, the Parliament of FBiH confirmed the composition of the federal Government, who then adopted the draft Budget and sent it to the Parliament, which adopted it in urgent procedure. Apart from its complete lack of transparency - considering that the public did not even have any access to the Budget, nor was there an opportunity for the public debate to be held - in this manner even the procedure for the adoption of legislation by urgent procedure was violated. FBiH Government, formed in this manner six months following the elections, was soon in a crisis due to the disagreement of the coalition partners regarding the control policy in public companies. As a reaction to the DF declining to terminate the appointment of directors and boards of directors of the aforementioned companies before their current mandates expire, HDZ announced that their ministers would boycott the sessions of the Government until their demands for terminations are met. The representatives of HDZ presented this boycott to the public as a struggle for the political rights of Croats, once again exhibiting the worrisome tendency to inciting ethnic tensions and to political blackmail. Soon after the temporary solution to the crisis, the ministers from the SDA and HDZ adopted the *Regulation on the appointment of the management structures in public companies*, opposed by DF. This has led to the DF ministers leaving the FBiH Government and to the dissolution of the parliamentary majority in the Federation of BiH in June 2015. Having the weak coalition potential of the SDA and HDZ, as well as SDP and SBB rejecting to form a coalition with them, it remains unclear how will the FBiH Government implement a reform agenda in this situation, which was adopted after DF ministers left it.

The *cantonal governments* are formed, with the exception of the Herzegovina-Neretva Canton. Since no agreement on the statute of the City of Mostar and the City's local government has been reached, it is a bad sign that SDA and HDZ cannot reach an agreement on the cantonal level in HNC, despite being partners at higher levels of governance.

Situation in Republika Srpska

National Assembly of the Republika Srpska (NARS) was formed on November 24, 2014. The parliamentary majority was formed only a few days following the airing of the audio recording in which the RS Prime Minister, Željka Cvijanović, notifies another party member that the two opposition representatives in NARS were paid up to support the SNSD-DNS-SPRS coalition in the National Assembly of RS. Until today, no prosecution or investigative body in RS or BiH has opened an investigation or bring an indictment regarding this case. On the other hand, the journalists who published the recording were exposed to the police interrogation, as well as to the search of their premises. The Government of Republika Srpska, lead by Željka Cvijanović, was formed on December 17, 2014, despite the publicly available evidence on political corruption.

The National Assembly of RS also adopted the RS Budget without a public debate and disregarding the legal procedures.

Apart from that, NARS passed the *Law on Public Peace and Order* (see 3.3, *Freedom of expression*) which limits freedom of speech and which introduces prison sentences for misdemeanours. This law extends the meaning of “public space” to online social networks, which may be understood as a legalisation of the practise of the intimidation of Internet users in Republika Srpska, which was previously demonstrated during the JMBG protests in 2013 (see *2014 Alternative Progress Report*). Following the passing of this law, Transparency International BiH and BiH Journalists’ Association filed a request for the review of the constitutionality and legality of Articles 7, 8 and 22 of the aforementioned law.¹ Apart from that, the club of the coalition in power in the NARS submitted a draft Law on Public Work of Non-Profit Organizations (see 1.7, *Civil society*), which targets organizations which receive any type of donations from abroad, *de facto* exposing them to the infinite administrative persecution. The European Integration and Regional Cooperation Committee of the NARS rejected this draft, but the fact that it entered a parliamentary procedure is an obvious step towards the realization of the continuous threat Milorad Dodik and SNSD make towards the civil society organizations in Republika Srpska. Another alarming attempt was made when the Government of RS drafted a Law on Public Gatherings, aiming at additional restrictions of the provisions on public gatherings in Republika Srpska. This draft, in the same as the previous two drafts, has been harshly criticized by CSO in Republika Srpska and Bosnia and Herzegovina, while the Initiative for the monitoring of EU Integration of BiH member organizations appealed to the Government and to the National Assembly of the RS, in an attempt to obtain the opinion of the Venice Commission on the draft law.

Gender equality

Women’s representation in governmental institutions is still lower than that prescribed by the BiH Law on Gender Equality (40%). Council of Ministers has better women’s representation in this term in comparison to the previous term, considering that now there are two female ministers (out of the 9 members of CoM). The RS Government has three female ministers and a female Prime Minister, while there are four female ministers in the FBiH Government. The most extreme example of the disregard for the legislations on gender equality in the governmental institutions is the Government of Zenica-Doboj Canton, in which no women were appointed. None of the cantons has more than 22% of appointed female ministers.

The civil society has openly pointed out the need to ensure an equal gender representation. As initiated by Sarajevo Open Centre, the Women’s Network BiH urged the Gender Equality Agency of BiH and the Gender Centre of FBiH to investigate the violations of the Law on Gender Equality, and it is still in the process.

A reform agenda: New opportunities, old problems

By the end of May 2015, the annual work plan was adopted only by the Council of Ministers. Neither of the two entity governments has adopted the annual action plan and program goals.

There has been no progress in the efficiency of the work of the Parliament. In 2014, the PA BiH adopted only eight legislations. The Centre for Civil Initiatives Monitoring Report states that the PA BiH adopted a total of 85 legislations for the entire duration of the 2010-2014 term, twice as many were adopted during the previous term, while 67 bills were rejected.² In the current term, PA BiH has adopted four legislations; Parliament of the Federation of BiH has adopted three (all in relation to the budget), while the National Assembly of RS adopted five legislations. There is a noticeable regression in this area, proving that the governmental structures are not willing to motivate the country in the direction of the reforms and the EU integration.

¹ Text of the Initiative available at: <http://ti-bih.org/wp-content/uploads/2015/05/Filed-Initiative-to-Review-Constitutionality-of-the-Law-on-Public-Peace-and-Order.docx>

² Centres for Civil Initiatives (2015): Summary of the mandate report for the Parliamentary Assembly BiH 2010-2014 (available at: http://www.cci.ba/download/docs/PS_BiH_2010_2014_sazetak_izvjestaja.pdf/5832a29f43a9da35da74c3945b59b8f9)

After the BiH government committed to the implementation of the socio-economic reforms, the *transparent process of the making of the reform action plan* did not ensue. The civil society, as well as the state and entity parliaments, was completely excluded from the process. The FBiH Government and the Council of Ministers of BiH have adopted the reform action plan in June 2015, while the Republika Srpska Government has refused to sign it. Subsequently, the Commissioner for European Neighbourhood Policy & Enlargement Negotiations, Johannes Hahn, cancelled his visit which was to ensue the signing of the action plan. Such turn of events shows how BiH politicians are more interested in maintaining *status quo*, then in the implementation of an open, inclusive and transparent reform process.

Recommendations

- Adopt a law on the BiH Constitutional Court;
- Formally determine the responsibility of the BiH Council of Ministers to monitor and implement the decisions from the appellate jurisdiction of the Constitutional Court;
- Enable the Institution of Human Rights Ombudsman of BiH to address the Constitutional Court in order to determine the constitutionality of laws and other regulations;
- Harmonize the Rules of Procedure of the RS Constitutional Court with the BiH Constitution.

1.3 Constitutional courts

Legal framework

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

Current situation

It is not uncommon for the decisions of the Constitutional Court not to be implemented by the state and entity legislative and other bodies. According to the data provided by the Constitutional Court in May 2015, *89 court decisions have not been implemented or have been implemented with a delay*³. Other decisions that have not been implemented yet and which deeply affect the BiH political system and the powers of the state are: Decision on the State Property which sets out the principles for defining what is state and entity property and its implementation is a precondition on the path towards NATO membership and Decision on the Statute of the City of Mostar and the Election Law, which sets unique electoral principles for the City of Mostar in the same way as it is defined for the local municipalities in the entire state. The BiH Council of Ministers and the BiH Parliamentary Assembly have not made any concrete steps in implementing both decisions until today. When it comes to the city of Mostar the local elections cannot be held without the amendment in the Statute and the Election Law. All in all, we can conclude that there was no progress when it comes to the implementation of Court's decisions.

The best example of the disregard shown for the Constitutional Court of BiH is the fact that the *Declaration of the National Assembly of RS* was passed in May 2015. It clearly states that the decision of the Constitutional Court would not be taken into consideration, in case it is a positive ruling in the case of the application of Bakir Izetbegović, member of the Presidency; that is if the celebration of May 9th as the Day of Republika Srpska is disputed. It is worrisome that both the governing and the opposition parties voted for this decision. The Club of Bosniak People's Delegates in the Council of Peoples of RS decided to address the Constitutional Court of RS, in order for it to determine the constitutionality of the *Declaration* itself.

A former member of the BiH Presidency, Željko Komšić has submitted an application before the BiH Constitutional Court regarding the compliance of the FBiH Constitution and the RS Constitution with the BiH Constitution relating to the full enjoyment of rights by all citizens

³ More information available at: <http://www.klix.ba/vijesti/bih/ustavni-sud-bih-iako-najvisa-sudska-istanca-odluke-ovog-suda-nisu-provedene-u-89-slucajeva/150417094>

in regard to the election of the entity presidents and vice-presidents. In November 2013 there a public hearing was held on whether the discriminatory provisions which limit the passive electoral rights at the entity level are in accordance with the State Constitution. In March 2015, the BiH Constitutional Court has delivered a ruling on this matter, confirming that it is a case of ethnic discrimination (see chapter 1.2 *Parliaments and governments*), having in mind that Others cannot run and cannot be elected for this mandate.

The Constitutional Court has postponed the implementation of this decision until the decision of the European Court on Human Rights in the case "Sejdić and Finci" has been implemented.

The Constitutional Court of the Federation of Bosnia and Herzegovina has not worked in full capacity since 2008. In March 2014 the FBiH Parliament appointed 2 judges to the Council for Protection of the Vital National Interests within the FBiH Constitutional Court.

The RS Constitutional Court still applies anti-constitutional Rules of procedure in processes regarding the protection of vital national interest in the entity Republika Srpska. The call from Bosniak MPs to amend the Rules of procedures has been ignored until today. From May 2015 onwards, the appeal for the determining of the constitutionality of the new RS Law on Public Peace and Order is before the Constitutional Court of RS (see 1.2 *Parliaments and governments*). It will be interesting to see the Court's decision regarding this initiative, having in mind that the experts, the largest international organizations such as the OSCE, the European Commission and the Human Rights Watch, as well as the embassies of the USA and the United Kingdom, etc. denounced the law for the too broad definition of the public space and for allowing its misuse.

Recommendations

- Engage in urgent drawing up of the Action Plan 2 Public Administration Reform and its adoption, in order to start with the planned reforms in 2015 and ensure them;
- Provide unhindered communication and collaboration at the sectoral level between the relevant ministries, agencies and professional services of the Council of Ministers, government and relevant ministries and other administrative bodies.

1.4 Public administration

Legal framework

The Council of Ministers of Bosnia and Herzegovina and the entity governments agreed that the public administration in the state is necessary, and that it is a prerequisite for the more successful process of the EU accession. In 2003, Council of Ministers of Bosnia and Herzegovina and the entity governments committed to the implementation of the public administration reform, and in 2006 they have adopted the *Public Administration Reform Strategy* and the *Action Plan* for the period 2006-2010. The Public Administration Reform Strategy has proposed the reform in three stages (short-term, medium-term, long-term). The duration of the implementation of the Strategy has not been precisely defined, but it has been planned that it is realized in three phases, with the implementation of the first operational document (*Action Plan 1*) scheduled for the period 2006-2010. After this period, the Action Plan has been revised, resulting in *Revised Action Plan 1 (RAP1)* for the period 2011-2014, which was adopted by all the levels of government. After the deadline for the implementation of RAP1, a continuation of the public administration reform in Bosnia and Herzegovina has been brought into question, and there was discussion on the continuation of the public administration reform after 2014, at the operational level. The drafting of the Action Plan 2 for the public administration reform has been initiated on several occasions (as it was planned in the Strategy), but these activities failed to gain the approval of the decision makers at all levels of government.

Current situation

The coordinating role of the Office of the Coordinator for Public Administration Reform in Bosnia and Herzegovina is insufficient for the effective implementation of the public administration reform. Various levels of government are independent in conducting activities in the field of public administration reform, which additionally complicates the coordination of the process and leaves room for the possibility of slowing down the process of reform due to various political agendas.

The Office of the Coordinator for Public Administration Reform is currently without Action Plan, as well as without the manager, since the previous Coordinator, Semiha Borovac, was appointed to the position of Minister of Human Rights and Refugees of Bosnia and Herzegovina.

The last revision of the public administration reform by SIGMA in May 2015 refers to the two main priorities Bosnia and Herzegovina should uphold while implementing the public administration reform. First, a functional strategic and management framework of public administration reform should be established, in order to ensure, through a comprehensive political management and monitoring, a priority approach to the reforms in accordance with the available financial resources and personnel.

Another priority is the organization of a professional civil service, in accordance with the EU principles, through the implementation of the adopted legislation on civil service and the tools for proper management of human resources, with the support of the capacity of the central management who have the authority and resources to organize coherent standards and common practice at all levels of administration.

In connection with the aforementioned, we can already conclude that the establishment of coordinating mechanisms for cooperation in matters relating to the implementation of the public administration reform activities, particularly between the Federation of BiH Government and cantonal governments will pose a particular challenge. The establishment of such mechanisms implies a provision of framework for the reform continuation, which must include cantons, cities and municipalities; inclusion of cantonal institutions in the process of preparation of the projects of importance to the public administration reform; facilitate effective mutual exchange of information and data, and systematic monitoring of the enforcement of the commitments; and regular and mandatory reporting to the relevant authorities.

So far, we can safely say that the reform activities in this area have not focused on citizens and the transparency of the process. Therefore, the civil society organizations feel that it is extremely important that the priorities and activities within the public administration reform shift the focus to citizens and service users. The public administration reform must be more visible, both regarding the budget funds intended for the financing of the administration itself, and the responsibilities the administrative procedures are establishing for the citizens and businesses.

We believe that the quality of the public administration is largely dependant on activities focusing on a more efficient organization of the state administration (at micro and macro levels), analytical assessment of jobs in civil service, the creation of conditions for the employment based on merit, optimizing the number of employees, etc.

Regarding the area of public finances, it is essential that special attention is paid to the "lowering" of the information systems for budget management to the level of canton, city or municipality; to the process of strengthening the systems of internal and external controls; to the establishment of uniform accounting standards; and to the approach to the development system of the public-private partnership in order to unburden the public spending and an increase in investments.

A legitimate question arises whether, and in what time period, the competent governmental authorities in BiH can fulfil the goals and responsibilities outlined in the Strategy and the Action Plan.

Recommendations

- Through the interdepartmental working group, and with the participation of the civil society and the international community, develop and adopt a new Election Law of BiH, which will make the electoral process more functional, fairer and faster, while decreasing the lack of transparency and the possibilities of electoral irregularities.

1.5 Elections and the electoral system

The organization of elections in Bosnia and Herzegovina always opens the discussion on electoral irregularities, and even electoral fraud. And that is how it was also after the General Elections 2014. The fact that 7% of the ballots were declared invalid is alarming, since it points out the dissatisfaction of citizens, as well as the fact that a certain number of valid ballots are transformed into invalid ballots. In particular, a large number of invalid ballots were recorded in municipalities with large populations of returnees, such as Srebrenica, Grahovo, Drvar, Glamoč and Petrovac; and also in returnee communities such as Kozarac in Prijedor.

In comparison with 2010, there has been a decrease in voter turnout in 2014 (54.47%). The poor turnout of youth is particularly worrying, since it remains below 20%. *Gender equality* policies have been implemented only in the legal minimum when it comes to numbers. The fact is that the quotas of 40% for the less represented gender were applied to the electoral lists, but that there have still been only 15% of the electoral lists with a woman who was the list bearer.

Since the elections are organized every two years in BiH, and that the six-month pre-election and post-election periods are marked by complete paralysis of institutions, even of those not dependant on the new appointments of parliaments and governments, the idea of *the merging of general and local elections* is being re-considered. Although the election process would be more complicated in that case, the idea could contribute to the stabilization of the political situation in the state.

In November 2014, the Central Election Committee of BiH has, due to these problems, among others, urged the Parliamentary Assembly of BiH to work on the *amendments to the Election Law*.

Damir Arnaut, a representative of the SBB, proposed the amendments to the BiH Election Law in the House of Representatives of the PABiH in February 2015, in order to alleviate the problem of *insufficient number of members in the Club of Serb People's Delegates in the House of Peoples PFBiH* (see 1.2 *Parliaments and governments*). The initiative was rejected, hence leaving the House of Peoples incomplete.

In May 2015, the Parliamentary Assembly of BiH appointed the *interdepartmental group for the amendments to the Election Law*. While the House of Peoples has supported the initiative that representatives of civil society also be named to the interdepartmental group, the House of Representatives has rejected it. Bearing in mind that the initiatives of previous interdepartmental groups have not received support in PA BiH due to the lack of political will and consensus to address the issues they dealt with, the work of this group may also be compromised due to similar issues.

Recommendations

- The procedure for the appointment of new Ombudsmen is to be carried out as soon as possible, in a transparent manner, in conformity with Paris Principles, with the active involvement of the civil society organizations;
- Add amendments to the Law on Ombudsman for Human Rights in order to give the Institution of the Ombudsman a clearer and more efficient role as well as an improved internal structure, also strengthen financial stability and staffing of the Department to eliminate all forms of discrimination;
- Institution of the Ombudsman should based on their expertise initiate strategic cases to appear before the BiH courts and thus influence the creation of judicial practice;
- Institution of the Ombudsman should develop structured and continuous dialogue with civil society, rather than act in an ad-hoc manner.

1.6 Institution of Human Rights Ombudsman of Bosnia and Herzegovina

Legal framework

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is the central institution for the protection against discrimination and the implementation of policies and strategies in order to protect the human rights guaranteed by international laws, the constitution and other national laws.

Bearing in mind the wide-set mandate of the institution, we can conclude, through the monitoring of its previous work, that *the conditions for smooth, independent and efficient work* of the Ombudsmen/Ombudsman have not been provided so far, which would: further contribute to the protection of human rights, particularly when it comes to vulnerable and marginalized groups; have direct implications on the speed and manner of dealing with complaints; make the institution available to all citizens through a permanent presence on the field; introduce mechanisms for the implementation of recommendations issued by the Institution; ensure that the work of the Institution does not mean solely ad hoc reactions in individual cases; and provide a range of activities in order to promote human rights, initiate amendments to the legislations, etc.

During 2015, the Ministry of Human Rights and Refugees of BiH has started working on *draft Law on Ombudsman for Human Rights of BiH*, which should be in legislative procedure by the second half of 2015. While monitoring the process, the civil society organizations expressed their concerns about the deviations from the recommendations of the UN International Coordinating Committee (ICC) for the accreditation of the national institutions for the human rights protection, the Venice Commission, the Universal Periodic Review (UPR) and other bodies and mechanisms. By the time of writing this report, the Ministry of Human Rights and Refugees has not responded to the request of the civil society organizations to enable them access to the working group of the Ministry.

Since the adoption of the *Law on Prohibition of Discrimination* in 2009 (see chapter 3.8 *Fight Against Discrimination*) until today, no progress was made in terms of the implementation of this Act and thereby protection of human rights, which prevents marginalized persons as well as vulnerable groups in society from having equal access to rights. Although the Law assumes the existence of specific budget items for the work of the Department for Elimination of all Forms of Discrimination within the Institution of Ombudsman, the funds were never secured. Limiting the finances and staffing of the Department significantly restricts the exercise of jurisdiction established by law and in particular the implementation of research and proposals of legislative solutions that would lift human rights standards in the country to a higher level. In terms of independence, the concern is the fact that the budget of the Ombudsman is an integral part of the budget of BiH, and in the period from 2009 to 2014, the budget was undermined, while it was insignificantly increased in 2015 by 91,000 BAM. Such financial situation prevents the Institution from normal functioning. Having the BiH orientation towards the European Union accession in mind, it is necessary to introduce new amendments to the Law on Prohibition of Discrimination in order to *harmonize it with the anti-discriminatory regulations of the *acquis communautaire**.

Current situation

In December 2014, the *mandate of the Ombudsman for Human Rights of BiH expired*, and the selection of new ombudsmen or a possible re-election of the same should have been started as soon as possible. Since we waited until March for the formation of Government following the General Elections in BiH, the selection process for the ombudsmen in the ad hoc body to the Parliamentary Assembly of BiH was started in May 2015.

Civil society organizations gathered in the Initiative for the Monitoring of the European Union Integration of BiH expressed their concerns regarding the process of appointing three ombudsmen to the ad hoc committee of both houses of PABiH, since the Rules of Procedure have not been adopted by the Committee due to the disagreeing attitudes and the insisting of Croat members of the Committee on the candidate's proving their ethnicity when applying to the position. Also, it is worrying that the only members of the ad hoc committee are representatives of the ruling parties, without any presence of the opposition, representatives of the profession and of the civil society.

In this regard, the members of the Initiative, lead by the highest standards of the democratization of society, the European acquis, the *Paris Principles* regarding the status of the national/state institutions for the promotion and protection of human rights, and by the concrete recommendations of the International Coordinating Committee of National Human Rights Institution (ICC) and its sub-committees, have demanded to be *actively and formally engaged* in the entire process of appointing ombudsmen. A formal letter of the Initiative remained unanswered. The ad hoc committee has held only one session, thus leaving the current ombudsmen in the mandate, even though the aforementioned mandate expired more than six months ago. Even if the process of appointing finally moves from a standstill, it should be noted that the appointing will be conducted according to the existing rules, which will result in indirect discrimination of the Others, having in mind that the House of Peoples of the PABiH will confirm the candidates if they are ethnically a member of any of the three constituent peoples.

The Institution of the Ombudsman has been *operating without institutional Strategy* in 2015, as the previous strategy has expired in 2014. In December 2014, the Institution has organized one-day consultations with the civil society organizations, but the outcome of them is not known. The Institution has not, even after multiple enquiries, submitted a report and conclusions to the participants of the consultations. *The consultations with the civil society organizations have since been unstructured and ad hoc*, without a permanent advisory body in the Institution itself which would allow better cooperation between the civil society and the ombudsmen.

It should be noted that the issue of the *Special Report on the State of Human Rights of LGBT persons*, requested by 20 civil society organizations, could not have been resolved without the intervention of the Parliamentary Assembly of BiH. Namely, this request has been made in September 2013, and only after the initiative of the Joint Committee on Human Rights of the PABiH, which ensued in May 2015, did the Institution of the Ombudsman accept the invitation and committed to the making of the report. The thematization of certain politically undesirable issues in the field of human rights, such as the rights of LGBT persons, should not be dependant on external interventions and initiatives, but the Institution of the Ombudsman should work in an independent and proactive manner on all human rights issues, and particularly on those which are a social taboo.

The *2014 Annual Report of the Institution of Ombudsman*, published only in May and never presented to the civil society, points out the statistical data on the overall activities of the Institution of Ombudsman, as well as on the activities in certain areas of human rights, and the results of the complaints of the citizens and the recommendations for the breaches of human rights and civic freedoms, as well as the observations, conclusions and recommendations. This report of the Institution of Ombudsman was rejected on the first reading in the House of Representatives of PABiH.

The mandate of the Institution is not precisely defined by law, especially regarding the promotion of human rights. Although it is recommended the Institution is not in a position to appeal to the Constitutional Court, and its financial independence is at risk, due to the manner in which the budget is determined. As it was the case in the previous period, covered by the

2014 Alternative Progress Report, we can conclude that the efforts for the promotion and protection of human rights (particularly regarding the marginalized groups) were insufficient, and that the presence of the Institution of the Ombudsman on the field, in the local communities, has not been ensured, which would provide all the citizens, and particularly those who live in small and isolated communities, with the protection and access to the rights. We should point out the problem with the decision making, which must be adopted by the consensus, which, unfortunately, in a certain number of cases results in the situation that a decision cannot be reached in that particular case, due to the blockade by an Ombudsman.

Recommendations

- Stop all legislative processes that would restrict or limit the work of civil society organizations;
- Adopt the strategy for the development of civil society at state and entity levels, with precise measures which will include systematic financing from the suitable funds and the inclusion of the civil society in the process of creating and adopting public policies and legislations;
- Establish the Office for Cooperation with Civil Society within the Council of Ministers;
- Create and implement transparent and inclusive mechanisms of public consultations with the civil society organizations.

1.7 Civil society

During the last year, the attempts to restrict the freedom of work and association, as well as the actions of the civil society continued, and were intensified in some cases. Instead of the creation of supportive atmosphere for the development of the civil society and its engagement in the decision making process, BiH and its entities continue to move in the wrong direction.

In 2013, the *Federation of BiH Government* proposed a *Draft Law on Associations and Foundations* (see chapter 3.4 *Freedom of assembly and association*). The draft proposed that the ban of civil society organizations would no longer be in jurisdiction of the courts requiring a proper court procedure, but transferred instead to the Federal Ministry of Justice. Given that the legal provisions, cited as the bases for the legal ban on CSOs are broad, vague, and open to different interpretations, a particular problem is that the draft proposed that the Ministry has the sole discretion for the decision. The Parliament did not accept the urgent procedure for the law and it was sent back to the Government in draft format for additional editing. However, even though the law was not passed, it shows a clear intent of the FBiH Government at the time to impose restrictive measures upon the work of civil society organizations, aiming to overtake the role of the court in deciding on their legal status.

During the last year, no efforts for formalizing the relationship between the entity bodies and the civil society were made. The office for cooperation with civil society has not been established and there are no indicators showing that anything would be done in the near future on that issue. The organizations engaged with the promotion and protection of human rights, as well as the monitoring of the implementation of the public policies are not in a position to receive support from the government, since their work is not covered by the suitable calls for project proposals.

The process of *registration of organizations and foundations* still has not been simplified, and can last up to a year. Although the law stipulates that BiH Ministry of Justice must respond within 30 days after the submission of documents, which is often not the case. *The public consultations in the matters of public policies and legislations* are often reduced to the publishing of documents on web sites. The written commentaries almost never receive a response, and it is unknown to which extent they are even considered.

In 2014, no official attempt has been made in *Republika Srpska* to restrict the work of civil society organizations, although the representatives of the ruling parties made threats on multiple occasions and their statements were responsible for the hostile atmosphere for the work of the civil society organizations (see *2014 Alternative Progress Report*). The situation in *Republika Srpska* worsened in 2015. Apart from the *Law on Public Peace and Order*, which was adopted in February of 2015, two more problematic laws were drafted in the National Assembly of *Republika Srpska*: *Law on Public Gathering*, and *Law on public work of non-profit organizations*.⁴ While the first law aims to make the organization of protests and public gatherings more difficult, in terms of temporal, spatial, security and technical demands, the

⁴ Reaction of the Initiative for the Monitoring of the EU Integration of BiH regarding the draft laws is available at: <http://eu-monitoring.ba/vlada-rs-a-je-krenula-u-pogresnom-smjeru-briga-o-civilnom-drustvu-a-ne-represija/>

latter is but a classical model of targeting civil society organizations which are critical towards the government. Although both draft laws were removed from the agenda of the National Assembly⁵ (May 2015), the RS Government and the ruling parties' club in the NARS face no obstacles to re-introduce this or similar drafts to the procedure.

Such behaviour of entity governments is worrisome. Instead of supporting the supporting the development of civil society by setting up funds for the support of the organizations and their involvement in the decision making process, the RS Government continues to engage in their intimidation, making them to be "foreign agents".

5 <http://eu-monitoring.ba/bosnia-daily-rs-parliament-will-not-vote-on-heavily-criticized-draft-laws/>

2. RULE OF LAW AND CORRUPTION

2.1 Judicial system

Recommendations

- Without further delay adopt the BiH Justice Sector Reform Strategy as a framework document for the work of the justice sector in BiH for the period 2015-2018;
- Adopt the Law on the High Judicial and Prosecutorial Council, bearing in mind the redefinition of criteria for the appointment of judicial officials and representatives of the HJPC in terms of their tightening;
- To commence the implementation of the Regulation on conflict of interest in the HJPC, and create regulations for all other levels of the judicial institutions;
- Redefine the way of evaluation, rewarding and sanctioning of judicial and prosecutorial officials and the method of standardization of cases in CMS;
- In relation to the criticism of the work of the Office of Public Prosecutor, an equal emphasis should be put on the ongoing work within the HJPC and the courts and prosecutor's offices to protect the integrity of those institutions and their procedures, such as the selection and appointment, ethical conduct, independence and impartiality of judges and prosecutors when making decisions.

Reform of the Justice Sector

The last session of the *EU-BiH Structured Dialogue On Justice* was held in May 2014. Like most of the previous recommendations through which the EU is seeking to ensure that the reforms of the BiH legal system are in line with the European perspective of BiH, the recommendations from the last session ended up as a dead letter. Formed working groups within the BiH judicial system, led by the Commission of Justice of BiH for issues of Structured Dialogue, have responded to the recommendations in the reports which were submitted to the EU representatives, but the implementation of most decisions did not take place. The EU-BiH structured Dialogue on Justice still does not represent a unified platform for dialogue led by the domestic authorities. Despite the EU efforts to use this process to ensure that the BiH authorities move in the direction which will ensure that Sections 23 and 24 of the Negotiations will not be a deadlock at the moment of opening the accession negotiations, the Structured Dialogue did not become a unified or functional mechanism for the reform changes in justice sector. The Rapporteur of the European Parliament (EP) for BiH, Cristian Dan Preda, reported on February 22nd, 2015 that he was "gravely concerned about the inefficiency of the judiciary apparatus, the risk of political interference in the court proceedings, the politization of the appointment procedures and the risk of conflict of interest in the judiciary."

In April 2015, the European Union Delegation in Bosnia and Herzegovina informed the Supervisory Body for monitoring the implementation of the State Strategy for the work on war crime cases that the second tranche of funds for the processing of war crime cases for 2015 would not be paid to BiH until the adoption of the *2014-2018 BiH Justice Sector Reform Strategy (JSRS BiH)*. One of the reasons why the second tranche has not been paid is also the non-dedicated expenditure of IPA funds. By doing so, the EU has brought the further processing of war crime cases in BiH into question. In response to this problem, the BiH Minister of Justice, Josip Grubeša, committed to the implementation of the conclusions of the Structured Dialogue in a meeting with the EU officials on April 28th, 2015, through the referral of the relevant legal documents to the procedure. The formulation of the *Justice Sector Reform Strategy* was supposedly agreed upon by the Minister of Justice on May 11th, 2015 and it will be referred to the Council of Ministers, entity governments and the BD Judicial Commission for adoption. With the past experience regarding the drafting and coordination of the Strategy, the question arises; to what extent will the implementation itself suffer because of the political disagreements.

The cooperation with the civil society organizations in this process remains indisputable and it is laudable that the sessions of the last meeting of the Structured Dialogue on justice, in May 2015, were at least partially open for their representatives. The EU representatives ensured that the CSO which are engaged in the area of judiciary have the possibility to provide their commentaries and recommendations during the meetings with the EU representatives, while they in turn committed to provide and promote all the relevant information on the EU-BiH Structured Dialogue On Justice, and to represent the views of other civil society organizations engaged in the justice sector in BiH in regards to this process.

The independence and transparency of the judicial institutions

The interference of the executive and legislative authorities, and of the political representatives, in the activities of the judicial institutions is still one of the main problems the judiciary in BiH faces for a long period of time, especially when it comes to the judicial authorities at the state level. The long-time propositions of the amendments to the *Law on HJPC* still have not been adopted, although there is the need for its reform, in terms of structure, operation and decision-making, in order to ensure the greater independence of the judicial system. The Draft Law, as planned by the Ministry of Justice, was supposed to be in the procedure in April 2015, but the necessary steps in that direction still have not been taken. It is necessary to mention the adoption of the Book of Rules on Conflicts of Interest of the HJPC in November 2014 as a positive progress, as it was adopted in accordance with the existing Law on HJPC, and since it includes the concrete rules, definitions of terms and meanings of the possible conflict of interest, as well as the necessary measures in case the conflict of interest is determined. However, soon after the adoption of the Book of Rules, certain members of the HJPC criticized the document and requested amendments which would challenge the efficiency of the proposed measures. Although the *Book of Rules on the qualifications and written examinations for the judicial officers in BiH*, the procedure of appointment of judges, prosecutors and expert associates is still not fully transparent and independent. There is still no agreement on the establishment of a *more efficient manner of financing* judicial institutions as an important mechanism for ensuring the independence of the judiciary, so there is still a direct, and very common in practice, influence of the executive authorities on the judiciary. Opening the individual sessions of HJPC to the public represents *an improvement in the transparency of their work*, but that is a single institution in the judicial sector. *The trial monitoring* for the representatives of the CSO is formally well designed, but in practice there is a series of shortcomings which need to be removed. The procedure of obtaining a permit for attending trials is very long, and certain courts do not issue permits in time, nor do they respond to inquiries.

Efficiency and effectiveness of judiciary

The fragmentation of financing of the judiciary is still one of the obstacles to the establishment of efficient judicial system. Although it has been a subject of discussions in the judiciary and in the international community on multiple occasions, the agreement regarding the unified judiciary budget was not reached in 2014. This budget would have been created by the judicial institutions in order to ensure the financing of courts and prosecutor's offices in the Federation at a single level, with full respect for their real needs.

According to the statistics of the HJPC for the first quarter of 2015, in the first three months of the current year, the courts have resolved *68,010 of the oldest cases* in the plan for resolving cases, which is a 7% increase in comparison to the same period of 2014.⁶ Even though there is the trend of increasing the efficiency of court operation, there is still a high number of *unresolved cases* before the courts. This is caused by the enormous influx of certain type of cases, particularly cases arising from the unpaid utility bills (the so-called "utility cases") and their number is constantly growing. The adopted *Analysis of legislative changes for utility cases and enforcement cases relocation from the courts to public or private enforcement agencies*, in line with the recommendations of the EU for the implementation of the SJSR in BiH and the Structured Dialogue, and it is a step forwards towards the solving of the problem of long duration of the enforcement procedure. *The Book of Rules on Timeframes for acting in cases before the Courts and Prosecutors' Offices in BiH* has established the criteria and methodology for establishing and monitoring the optimal and predictable deadlines for resolving of the cases before the courts and the prosecutor's offices in line with the guidelines of the European Commission for the Efficiency of Justice.

⁶ <http://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=55414>

But, these steps did not yield the expected results. The problem with the *lack of enforcement of the court rulings* still has not been systematically resolved, but there is some progress in the form of consultations for finding the optimal mode with the judicial community.

The problem with the *lack of enforcement of the court rulings* is still present, as well as the insufficient and inadequate capacity of the Prosecutor's Office in BiH, in terms of opening new investigations and launching indictments for the prosecution of defendants who are (former or current) senior political, state and entity officials.

Responsibility and professionalism

The confidence of the citizens in the judicial system in BiH is still at a low level. *The Office of the Disciplinary Prosecutor (ODP)* has received 1,129 new complaints, while 1,138 complaints were resolved. 18 disciplinary proceedings were launched and one proceeding of temporary suspension, while 17 disciplinary proceedings were completed.⁷

The manual *Professional and Ethical Standards in Judiciary of Bosnia and Herzegovina* was created as a part of the module on the subject of professional and ethical standards in BiH judiciary. Contrary to these results of the work of ODP, the public perception is that there is corruption and nepotism in the judicial sector, and that the ODP did not fully fulfil its mandate and purpose. It should still be noted that ODP deals with consequences and that it is only the final link in the chain of responsibility. *The Public Dialogue between the BiH Court and BiH Prosecutor's Office in 2014 and 2015*, in which both sides accused the other one for the lack of professionalism in treatment, is a clear reflection of the mutual distrust of these institutions and their lack of professionalism.

Regarding the *improvement of the capacities of judicial institutions*, the Centres for Education of Judges and Prosecutors (CEJP) in both entities provide education for the judicial officers. The Centres for Education prepare an annual curriculum, including the modules for learning based on a survey conducted by the courts and prosecutor's offices, the reports of the domestic and international organizations, following the amendments to the law, implementations of the current laws and the presented needs and recommendations in the country. However, it is still problematic that the judges and prosecutors only apply for the training solely to fulfil the formal requirement of attendance.

⁷ The responsibility of judges for the following disciplinary offences has been determined: "unjustified delays in issuing decisions or other actions in relation to the exercising of judicial functions, or any other repeated disregard for the duties of judges", "failing, without a valid reason, to comply with decisions, orders or requests of the Council", "behaviour in court and outside the court which demeans the dignity of judicial office". Prosecutors are accountable for disciplinary offences: "carelessness or negligence in the performance of official duties", "unjustified delays in issuing decisions or other actions in relation to the performance of prosecutorial functions, or any other repeated disregard for the duties of the Prosecutor", "any other behaviour which represents a serious breach of official duties or which compromises the public confidence in the impartiality and credibility of the Prosecutor's Office."

Recommendations

- Identify large and complex cases of corruption (especially in the framework of public procurement, privatization and major infrastructure works) which should be a priority solved before judicial institutions;
- Conduct a comprehensive analysis of the situation in the judiciary and law enforcement agencies, which would serve as the basis for further dialogue and as a basis for measuring progress;
- Strengthen mechanisms and independence of internal controls within the Office of Disciplinary Prosecutor of HJPC and within the law enforcement agencies, as well as strengthen human and material resources in the department for organized crime and corruption within the Prosecution;
- Introduce the practice of filing assets declarations for all elected officials, the judiciary and the leaders among law enforcement agencies, and their veracity should be subject to verification.

2.2 Fight against corruption

After a series of modifications and amendments, *Public Procurement Law of BiH*, came into force in May 2014, but its implementation has been delayed by six months, until 28th November 2014. The new law contains solutions that are in line with the SIGMA recommendations and new EU Directives. However, according to the BH experts in this area, the law does not provide the minimum standards for the successful prevention, education and sanctioning of the irresponsible participants in public procurement in BiH, nor does it provide the transparency, competitiveness, efficiency and rationality regarding the public spending of budgetary funds in the public procurement process. The new legislation proposes significant fees for appealing, which is an additional burden on bidders, due to the creation of administrative barriers and high costs for the transparent procedures, and it further undermines the efforts to fight corruption in public procurement. In addition, the fines for the responsible persons in contractual powers are lower than the penalties provided by the previous Public Procurement Law of BiH, which will certainly not raise the level of responsibility. Also, the establishment of new branches of the Office in Banja Luka and Mostar was planned, but they still have not been established.

After the prevention of the adverse amendments to the *Freedom of Access to Information Act for BiH* (FAIA) in 2013, the BiH Council of Ministers has ordered the appointment of a new working group with the aim of creating amendments to the FAIA, in line with the initiative of the Personal Data Protection Agency in BiH. Although invited to take part in the new working group, the office of Human Rights Ombudsman of BiH have excluded themselves from its operation, since they believe that there is a legal inconsistency due to the fact that the previous working group has never formally stopped working. Currently there are no activities in the direction of making the amendments to the FAIA; however, we can expect new proposals. Meanwhile, the laws at the entity level are not harmonized with the law at the state level, in regards to the sanctions for the violations of the law; thus, at this point, we have the legal framework which is not harmonized at state and entity levels, which is unacceptable.

The existing *Law on Financing of Political Parties in BiH*, including the amendments to the law from 2012, points out the lack of will of the legislative authorities in BiH to establish control over the expenditures of the political parties, whose main sources of income are public subsidies at all governmental levels in BiH. The Central Election Commission BiH has no clear authority for the audit of expenditures, and focuses mainly on income. The sanctions for the violations of the law had not been amended, i.e. for the potential gains obtained through its use. In addition, the amounts of the voluntary contributions of legal and natural persons have significantly increased, and the sources of financing of the political parties have further expanded (the publishing, credits with commercial banks). Apart from that, in line with the new Book of Rules on Pre-Election and Post-Election Financial Reports of the Political Subjects, the parties are no longer required to include the ID numbers of people and companies who finance them, so all the legal obstacles for the publishing of the sources of income (i.e. the protection of personal data) have been removed. However, it remains to be seen whether CEC will publish these reports in its entirety.

The Law on Conflict of Interest, adopted in 2013, has significantly eroded the legal framework in this area - the responsibility for monitoring the implementation of the law, held previously by the Central Election Commission, was transferred to the jurisdiction of the parliamentary committee the members of which are selected from the members of the Parliamentary Assembly. Such a solution does not provide even the minimal grounds for a transparent and responsible approach in deciding on the potential conflict of interest of the party colleagues of the committee members. In addition, the proposed penalties for the proven conflict of interest are significantly

reduced, which further weakens the mechanisms for the prevention of conflicts of interest. The issue of transfer of departments which worked on issues of conflict of interest from the Central Election Commission to the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in BiH (APIK) still has not been resolved. The issue of systematization and the budget is still controversial, and there are still no satisfactory solutions for the both sides, which allowed that the appointment of staff after the 2014 General Elections passes without the required verification of a potential conflict of interest of the proposed candidates.

Following the adoption of the *Law on Protection of Persons Reporting Corruption in the Institutions of BiH*, in December 2013, the jurisdiction over the implementation of the law was given to the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption in BiH (APIK). In the last year, APIK has received 7 requests for granting the status of “whistle-blower”, 2 of which were granted. However, the laws at the entity levels still have not been adopted and due to the administrative structure of BiH, APIK is responsible only for the state level of government. This legal void may lead to the situation that more than one institution will be working on the implementation of the law or that no one will be working on it, thus leaving the “whistle-blowers” without the adequate support.

Before the end of the term of the Strategy for Fight Against Corruption in BiH 2009 - 2014, APIK has started working on the new Strategy for Fight Against Corruption in BiH for the period 2015-2019, and on the accompanying Action Plan. The text of the Strategy itself has been prepared by the team of international experts in collaboration with the APIK representatives. Another novelty is that, during the work on the Strategy, a working group was formed, made up by a large number of representatives of the institutions, the judicial system, civil society, and the media, which allows a wide range of consultations, and a better quality of the strategic plan. The prepared Action Plan contains realistic and measurable indicators which can be traced during the monitoring of the implementation of the strategic goals. The prepared documents have been forwarded to the BiH Council of Ministers for adoption in December 2014. Due to the fact that the new composition of the BiH Council of Ministers has not been appointed by March 2015, the Strategy and the Action Plan have been placed on the agenda of a session only in May 2015, when they were adopted as well, without any amendments. We are still waiting for the formal start of the activities as proposed in these documents.

In the Federation of BiH, at the very end of the mandate of the previous federal Government, the Confiscation of Assets Law in the FBiH was adopted, and it should have come into force in March 2015, but its implementation was postponed, because the Agency for custody, management and disposition of forfeited assets acquired through criminal offences has not been formed, and it is responsible for the enforcement of the law.⁸ Considering the crisis of the authorities which occurred less than two months following the formation of the FBiH Government, the implementation of the law is still uncertain.

Recommendations

- Adopt the Law on Torture;
- Harmonize the laws on civilian victims of war throughout the country by amending the laws in Republika Srpska to introduce a specific category for persons who have suffered rape or other forms of sexual violence during the war without giving any time constraints for the application, in line with the international human rights standards.

2.3 War crimes

The Court of BiH and Prosecutor's Office of BiH have achieved certain results if we consider the number of prosecuted cases, while the entities and the District are behind, in terms of results. However, if one takes into account the total number of 9,879 persons who are suspected of committing war crimes, it is more than clear that all the cases prosecuted so far, are but a “drop in the ocean” and that there will be no progress without systematic solution to the problem.⁹ The unsolved transnational issues in the area of persecution of the war criminals are

⁸ <http://istinomjer.ba/federalni-uskok-bez-glave-i-repa/>

⁹ <http://www.mreza-mira.net/10889-pravosudje-bih-kao-okosnica-tranzicione-pravde-procesuiranje-ratnih-zlocina/>; http://www.oscebih.org/documents/osce_bih_doc_2011051909500706bos.pdf

largely eased with the signing of protocols and agreements, but they do not solve the essential problems.¹⁰ An additional burden on the situation is the conflict between the Prosecutor's Office and the BiH Court, as they are blaming each other for the failed processes.¹¹

The prosecutor's offices and the courts have employed additional staff to work on war crime cases, but the *processing of the most complex cases is still protracted*, which was pointed out in the Report on the work of the Supervisory Body for monitoring the implementation of the State Strategy for the work on war crime cases, as well as during the visit of the Hague Tribunal Chief Prosecutor Serge Brammertz, who referred to this problem during a meeting with the members of the BiH Presidency. The deadline for the solving of these problems is by the end of the year, as proposed in the Strategy. In February 2015, the BiH Prosecutor's Office has notified the Supervisory Body that the 352 of the most complex war crime cases are in the procedure, and that they should (only) be finished by the end of 2018.

Meanwhile, the political structures continue to put pressure regarding the processing of the war crime cases, including the implementation of the decision of the European Court on Human Rights in the case *Maktouf and Damjanović v. Bosnia and Herzegovina*. At the same time, there has been an increase in the number of complaints against the judicial officers, considering that the current legal framework contains no adequate sanctions for the unlawful conduct of the judicial officers.

According to the Report of the BiH Prosecutor's Office for 2014, the prosecutors of the Special Department for War Crimes have brought 57 indictments against 119 persons, which is, as they state, the highest number of indictments in the history of the BiH Prosecutor's Office and it is an increase of 84% in comparison with the indictments raised in 2013, or a 70% increase of persons charged. However, the conclusion of the State Strategy for the work on war crime cases is that the bringing more indictments for the same case does not contribute to the efficient and quality prosecution of war crimes, which the BiH Court agrees with, and they believe that the "division of complex investigations into more smaller indictments, or raising more indictments against a single individual, disables the economic and efficient court procedures since the same witnesses are called to the stance on multiple occasions, and the cost also increases".

Another serious problem has also been noticed, namely the indictments which avoid that the crimes are prosecuted and qualified as *crimes against humanity* (Article 172 of the BiH CC), or crimes of the prosecution of victims on a discriminatory basis committed during a widespread or systematic attack on the civilian population, although for such actions, in the same temporal and spatial aspects, the elements of crime have already been established in a number of rulings of the Court of BiH and the of International Criminal Tribunal for the former Yugoslavia.

Sexual abuse cases

In the last year there has been a noticeable improvement as well as the additional efforts to put an end to impunity in the prosecution of the cases of wartime sexual violence. However, this improvement is still not enough with regards to the number of victims of rape and other forms of sexual violence committed during the war. The practise of transferring these cases to the lower courts has not been proven as a positive one, because the victims and witnesses were not provided with the adequate psychological support before the lower courts, which causes re-traumatisation.

In the Federation of BiH there are certain legal frameworks which regulate the rights of the victims of sexual violence, while in Republika Srpska these victims do not have an adequate status, namely they do not have to right to the legal compensation (monthly income), nor the

¹⁰ Escape to Republic of Serbia of finally convicted Novak Đukić; Press release of the Court of BiH which states the reasons for issuing an international warrant for Đukić, <http://www.sudbih.gov.ba/?id=3465&jezik=s> , <http://www.klix.ba/vijesti/bih/kako-su-ratni-zlocinci-bjezali-iz-bih-od-radovana-stankovica-do-novaka-djukica/140709103>

¹¹ Press release of the Court of BiH on 27.10.2014 in which the facts are presented in detail and in which they state that the Prosecutor's Office of BiH "continuously deceive the public by making daily announcements". <http://www.sudbih.gov.ba/?id=3509&jezik=b>

right to psychological and social, and legal support. The Government of Republika Srpska and the National Assembly of RS have started dealing with the issues of the persons who have survived wartime sexual violence in order to provide these persons with justice, recognition and compensation. Within these activities, a Study on the Position of Serb Women Victims of War in BiH was created, but the aforementioned study deals only with victims of a single ethnicity, not including all the victims who live in the area of RS. The National Assembly of RS should provide that the proposed legal solutions for the improved status of these women are not one-national and that they are providing the legal protection for all the wartime sexual violence victims who live in the RS area regardless of their ethnicity.

In November 2014, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* was presented in Sarajevo. The Protocol establishes the standards for gathering, documenting and keeping evidence and information on the crime of sexual violence in line with the international law, and it proceeds in the direction of education of the judges, prosecutors and investigators, which should contribute to the prosecution of the war criminals responsible for these serious offences. Although non-binding, the Protocol was envisioned as a practical tool for the investigators of the cases of sexual violence in conflicts, to ensure justice for the victims in a suitable manner, as well as the compensation for the trauma they had undergone, and the education of prosecutors and investigators, which should contribute to the improvement of the prosecution of war criminals responsible for the serious offences.

The Parliamentary Assembly of BiH has adopted, in May 2015, *the amendments to the BiH Criminal Code*, regarding the amendments of the definition of crime of sexual violence, committed as a war crime against the civilian population or crime against humanity. These provisions are in line with the international standard, meaning that the determinant of the use of force or of the threat of the use of force to the victim or to the people close to them was abolished as an element of this criminal offence. The amendments also introduce the forced disappearance as a separate criminal offence and they provide a clearer definition of the criminal offence of torture and more severe punishments for the perpetrators.

Witness protection and support

The *Law on Witness Protection Program in BiH* was adopted in April 2014. However, the law applies only to the witnesses testifying before the BiH Court, and not before the district courts in Republika Srpska, the cantonal courts in the Federation of BiH or the courts in Brčko District. The witnesses testifying before the lower courts cannot realize the right to protection and support in the entities as prescribed by the law.

Anonymisation

In October 2014, the High Judicial Prosecutorial Council of BiH has established that there were no obstacles for the publishing of the indictments and verdicts in the cases of war crimes and other serious offences on the websites of the judicial institutions. In particular, the HJPC Working Group has created the *Guidelines for publishing court and prosecutorial decisions on official Internet pages* and concluded that the indictments and verdicts can be published.

However, even though the HJPC Working Group has concluded that the verdicts are public and that they can be published without limitations regarding the nature and gravity of the criminal offence, the fact is that some courts still withhold the information from the public. Thus, the District Court in Banja Luka only provides the information to the parties in the procedure, while the Supreme Court of Republika Srpska still withholds the information from the cases, although it is in the interest of the public to make the information from the trials publicly available.

Recommendations

- Adopt the law on free legal aid at state level, and introduce a monitoring mechanism for implementation of the state, entity and cantonal laws;
- Clearly define the role of civil society in the context of the provision of free legal aid.

2.4 Access to justice

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

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

The Constitution of Bosnia and Herzegovina, Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Accords), provides for no *judicial authority at state level*, so it does not anticipate the existence of a Supreme Court of BiH. In 2002 the Law on the Court of Bosnia and Herzegovina established the Court of Bosnia and Herzegovina. However, due to the closely identified competencies and non-hierarchical relationship to the Entity Courts, it does not compensate for the absence of the Supreme Court of Bosnia and Herzegovina. These organizational shortcomings in the judiciary of Bosnia and Herzegovina are bringing the Constitutional Court of Bosnia and Herzegovina, which is by its nature, not a standard judicial body in regard to jurisdiction, to exceed its prescribed appellate jurisdiction in certain cases. At the same time, there are uneven legal solutions at entity levels, as well as at the level of Brčko District of Bosnia and Herzegovina, which have a complete judicial system, but *ad interim* uneven application of the law and a practice of discordant interpretation of entity laws. The consequence of organizing judicial authorities in Bosnia and Herzegovina in this fashion is the inequality of the access to justice of the citizens, particularly in relation to the entity and/or canton in which the party is doing the proceeding and therefore which laws apply.

Exercising the right to free legal aid and access to justice without discrimination is still not entirely legally regulated throughout Bosnia and Herzegovina. In Republika Srpska and Brčko District a centre or an office for legal aid has been established. The system is decentralized in the Federation of Bosnia and Herzegovina where the cantons have taken on the role of the legal aid providers. There is no law on free legal aid in two cantons of FBiH, while there is a series of problems in other cantons, among them the lack of harmonization and the fragmented legislature which leads to different treatment without an objective reason for it. There is no state level legal framework for legal aid provision in civil cases, although the Ministry of Justice has submitted the Draft Law on Free Legal Aid for consideration to the BiH Parliamentary Assembly several times. The current system is complicated and reflects the current political structure of the state, which has been demonstrated as dysfunctional in almost all sectors. The criteria and procedures for obtaining free legal aid are also different depending on the jurisdiction in which an individual lives. Due to the absence of state law and the process of harmonization, the legislation in the area of free legal aid is discriminatory towards citizens. In addition, there is the issue of availability of legal aid to citizens who live outside of the cities

in which the institutions for legal aid are established. In fact, all of the entity and Cantonal institutions are established in major cities of these jurisdictions. For citizens of low financial standing even the travel expenses to major cities can be a significant financial burden, while, additionally, the distance of these institutions indicates a very possible lack of information in the rural communities of the existence of such assistance.

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

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

3. HUMAN RIGHTS AND PROTECTION OF MINORITIES

Recommendations

- Necessarily include civil society organizations who work on the promotion and protection of human rights in the process of monitoring of the human rights instruments, in a systematic manner, and not ad hoc;
- Through the interdepartmental group of BiH Council of Ministers, the Joint Committee on Human Rights of the PABiH, entity governments and the civil society organizations, initiate and create a multi-annual National Action Plan for the Promotion and Protection of Human Rights in BiH, based on the specific recommendations of the authorities and mechanisms of the United Nations, European Union, Council of Europe and Organization for Security and Co-operation in Europe (OSCE).

Recommendations

- Amend the *Law on Movement and Stay of Aliens and Asylum* which, in fact, allows for the indefinite “preventive detention” of aliens.
- In the upcoming legal reform, the role of National Prevention Mechanism should finally and officially be assigned to the Institution for Human Rights Ombudsman of Bosnia and Herzegovina.

3.1 International human rights instruments

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

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

For example, thus has the Strategy for the Implementation of the Istanbul Convention been created in mid-2014, and almost a year later, it still has not been adopted by BiH Council of Ministers.

There is still a very low level of cooperation between relevant ministries and the civil society when it comes to reporting to the international mechanisms. Thus, i.e. the State Report on Human Rights in Bosnia and Herzegovina for the UN Universal Periodical Review (UPR), discussed in Geneva in November 2014, presents an unrealistic and distorted picture of the state of human rights in Bosnia and Herzegovina.

It is worrying that the Joint Committee on Human Rights of the PABiH did not have the opportunity to participate in the creation of the report, and that the certain human rights violations, such as “two schools under one roof”, had not even been mentioned.

BiH Council of Ministers in the technical mandate has not been able to respond whether they accept the recommendations BiH received as a part of the UPR process in November 2014. By doing so, BiH has become one of the few countries in the world which did not respond to these recommendations within the set deadline. So far, there has been no action on the implementation thereof.

3.2 Prevention of torture and ill-treatment

The Law on Movement and Stay of Aliens and Asylum (Article 102, paragraph 6) still provides the opportunity of, in fact, unlimited *preventive* detention of aliens in the Immigration Centre in East Sarajevo, out of criminal proceedings which would possibly determine the criminal responsibility of the particular person. This practice is contrary to the legal standards of the European Convention on Human Rights (Return Directive, 2008/115/EC), which *without exceptions* stipulates a maximum period of detention. Practically indefinite detention, without any hint of a possible change of the situation, raises questions concerning the *right to freedom from torture or cruel, inhuman or degrading treatment or punishment*, as well as concerning other rights, such as the right to freedom and security of person, private and family life, effective remedy, etc. In the case of the Syrian Imad Al-Husin, known as Abu Hamza, this *preventive detention* has lasted for almost seven years, with no end in sight. In its progress reports, the European Commission has warned of the need for the harmonization of the relevant BiH legislation with the EU legislations, but it has still not been done.

Recommendations

- Ensure the stable financing of the public service and the charging of the RTV fee, in order to ensure its sustainability as independent sources of information;
- Strengthen the independence of the Communications Regulatory Agency and prevent all forms of political interference with its work, in particular with the appointments of the Councils and the Agency Director;
- Harmonize the defamation laws at different levels of legislative power and unify the judicial practice in the prosecution of slander before the courts in Federation of BiH, Republika Srpska and Brčko District;
- Ensure a thorough investigation of attacks on journalists and create a legal framework for the criminal protection of journalists - victims of violence in the workplace and/ or during the performance of the professional duties.

3.3 Freedom of expression

Background

In 2015, the key challenges for the BiH media community, civil society and the local authorities are the protection of the freedom of expression and the safety of the journalists, as well as the improvement of the legal framework regarding the free flow of information, expression of different opinions and high quality of informing the citizen through the media, especially regarding the independent and sustainable system of public media services. Despite the existence of a large number and different types of media, it still cannot be stated that BiH is applying the democratic standards for the freedom of expression, pluralism of information and the diversity of media content which could fully meet the information needs and interests of all citizens.

Current situation

In 2015, the public broadcasters have faced *serious threats to their financial* existence due to the lack of an efficient and stable system of charging the RTV fee for the three public broadcasters (BHRT, RTVFBiH and RTRS). Also, due to the political pressure, and the attempts of further divisions of the public information systems according to the ethnic and political interests,¹² and not according to the information needs of the BiH citizens, the survival of public broadcasters as independent and professional media has been seriously jeopardized. If we add the fact that *BiH will be the only country in the Western Balkans and Europe whose public broadcasting services will not switch to digital broadcasting* to this, thus preventing the other TV stations from receiving the digital signal, it is reasonable to conclude that BiH citizens are under the threat of "information blackout" and the information isolation from the rest of the world.

Of special concern are the influences on the editorial policies in the public media (BHRT, RTVFBiH and RTRS, as well as on the public broadcasters at the local level) who, based on non-professional criteria and usually according to their political preference, conceptualize their relationship with the public and the various socio-political groups, their activities and results in the field of improving the position of citizens and strengthening the democratic processes in BiH.

Under *strong political influence is also the Communications Regulatory Agency*¹³ which has no director in full term since 2008, nor is capable of resisting various influences and assuming a more active role in the field of BiH electronic media market regulation. Although the Law on Communications prevents the interference of various political and ethnic lobbies in the selection and appointments of the members of the CRA Council and the Agency Director, the events which took place in the previous years and the refusal of the BiH Council of Ministers to initiate the procedure for the appointment of CRA director point to strong political influence on the choice of key people of the Agency, and through them to the making decisions of importance to the broadcast market in BiH.

During the ten years of the BiH *Law on Protection against Defamation*¹⁴ application, a positive jurisprudence has been created, including the court endeavour to follow the standards and decisions of the European Court on Human Rights. The disturbing fact is that there is still a large number of defamation lawsuits (on average a hundred new cases annually) and that the processes last for years, contrary to the objectives of the legislations, adopted in order to protect freedom of expression. It is particularly worrying that the defamation laws at different levels of BiH legislative power are not harmonized, especially in the part referring to the proving of liability for

¹² Nikola Lovrinović, the representative of the HDZ BiH to the House of Representatives PABiH and the member of the Committee on Transport and Communications has, on 27th April 2015, in the session of the Committee re-opened the establishment of the channel in Croatian, thus announcing the more determined action of the HDZ BiH that this issue is solved during the participation of the party in the ruling coalition at state level.

¹³ Kemal Huseinović, Acting Director since 2008, has left the Agency in late 2014, and Jasenko Lasta, an employee of the CRA Office in Mostar, was appointed to his position in March 2015

¹⁴ Association BH Journalists did an Analysis of ten-year implementation of Law on Defamation in 2013. Analysis is available at: www.bhnovinari.ba

defamation, court X and the estimating of non-pecuniary damage caused by defamation, which results in differential treatment of the BiH citizens before the competent judicial institutions.

In BiH, *media ownership and function are equated*. The media, especially private, is a “slave” of the interests of their owners, and their editorial policies reflect the preferred political option, rather than citizens’ key interests and needs presented through the work of the public authorities and CSO. Media clientelism, the creation and structuring of the informational program content according to the political and/or ethnic interests, or the interest of the business lobbies, have caused that the professional journalist standards and work in the interest of public are put into the background. There are no laws in BiH which would regulate transparency of the media ownership and protect journalist profession from their influence, while making the media more available to all stakeholders on the social scene in the same way and without exclusiveness or favouring of any individual, state authority or social group. Indeed, there are the Press Code and codes for broadcasters which require that the media must report in a professional manner, but there is no consistent and efficient respect for the documents, nor are they equally accepted by all the media in BiH.

The *Freedom of Access to Information Act* in BiH even today, more than ten years following its adoption, is not applied by the satisfactory number of citizens or the journalists, which shows that the interest of the public to engage in the decision making process and the fight against corruption is insufficient. Additionally, a large number of public authorities are still not fully complying with their legal obligations, in particular with regard to the appointment of the information officers.

The impunity of the attacks on journalists and security threats have become a grave legal problem in BiH, particularly in the context of journalists’ and media workers’ access to justice and the (in)equality of citizens before the law. BiH Journalists’ Association found that 60 criminal offences¹⁵ were committed against journalists in the period from 2006 to the end of 2014. As a result, the representatives of the media and the media institutions launched a series of protests in early 2015, after which the initiative for the initiative of the legal procedures for the protection of journalists while fulfilling their professional duties was defined.

3.4 Freedom of assembly and association

Recommendations

- Systematically regulate the issue of the registration and operation of associations and foundations at all levels of government, with consultations with the civil society organizations;
- Guarantee the right of assembly to minority groups as well.

Legal framework

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

Current situation

As stated in chapter 1.7 *Civil Society*, the pressure on civil society organizations has rapidly intensified in Republika Srpska. It should be noted that it is a continuation of attacks on civil society organizations in Republika Srpska. Let us recall that the ruling political party in Republika Srpska (SNSD) has published a book containing a *list of associations undermining the constitutional order of Republika Srpska* on their official website in February 2014; the list has been recognized by the public as “the black list of non-governmental organizations”. Disclosure of such content by the ruling party is threatens the safety of human rights defenders, who work in these associations, which can potentially result in attacks on them.

Civil society organizations warn that the mechanism of rigorous control of their financial and

¹⁵ The subjects of the analysis were: physical assault on journalists, death threats, hate speech and causing extensive damage to the journalist equipment and materials

tax activity has never been questioned and that the alleged motive of the ruling structures of “establishing order in the civil sector” is only an excuse for introducing repressive measures. All associations and foundations are obligated to act according to the national legislation, including the mandatory annual financial reports to the authorities, and to be fully accessible to the auditing.

The Right to Freedom of Assembly is still compromised. To date there has been no criminal prosecution of the last year’s attack on the LGBT Festival *Merlinka* (on February 1st, 2014), when the police of the Sarajevo Canton, although the assembly was duly announced, has failed to ensure the festival.

The registration of organizations and foundations is still made difficult by the procedures of the relevant institutions. The process of registration takes up to a year, which is illegal. BiH Ministry of Justice, one of the ministries authorized for the registration of associations, presumes the role of intervening in the text of the objectives of the association, restricts the choice of name of the future association or foundation, for which there are no reasonable or objective reasons.

3.5 Women’s rights and gender equality

Legal framework

In 2014 and 2015, BiH cannot speak of significant progress when it comes to women’s rights. The results of the General Elections, the responses of the authorities to the floods, as well as the issue of maternity benefits, testify to the attitude of the state and the society towards women.

BiH has good legislative and institutional framework for gender equality. The Law on Gender Equality is in force, which in addition to recognition of gender-based discrimination obliges the state to take the affirmative measures that would lead to a more equal position of women. Gender Action Plan (GAP) 2013-2017 defines priority actions, as well as the Action Plan 1325 2014-2017. The Election Law stipulates a quota of 40% of the “less represented sex” on the electoral lists.

Bosnia and Herzegovina has ratified all major international instruments in the field of women’s human rights, including the Istanbul Convention. The entity laws on protection from domestic violence are in force (Republika Srpska - October 2012, Federation of BiH - March 2013).

Current situation

In 2013, BiH adopted the *(Istanbul) Convention* of the Council of Europe, on preventing and combating violence against women and domestic violence, thus pledging to take more effective legislative and other steps in order to ensure legal, institutional and organizational framework for the prevention of violence against women, protection of victims of violence, as well as for the punishment of perpetrators of violence. The Strategy for the implementation of this Convention for the period 2014-2014 still has not been adopted by the BiH Council of Ministers, and the process of adopting the Strategy has not started even after a year. The entity laws on protection from domestic violence were adopted, but the analyses and research continue to indicate that gender-based violence is widespread.

Even in 2015, the Federation of BiH failed to comply with the legal obligations when it comes to co-funding safe houses, and their existence is compromised without foreign donors. Consistent and adequate funding of safe houses in RS still presents a challenge.

When it comes to public policies and mechanisms for gender equality, it should be noted that the implementation of Gender Action Plan 2014-2017 still has not started. Also, the complete *lack of public policies for gender equality at the cantonal level* should be emphasized. Although Gender Action Plan defines a set of priority measures, their implementation has focused largely on the state and entity levels so far. On the other hand, the cantons in FBiH are levels of government with large, in some cases even exclusive, powers regarding e.g. education, health system and employment, and it is very problematic that they do not implement the

Recommendations

- Amend the rights on maternity issues in FBiH, ensuring regular and adequate compensations and treating these fees as a part of social security and not as a measure of social protection, the way it is currently regulated;
- Urgently adopt and start implementing the Framework Strategy for the Implementation of the Istanbul Convention;
- Through amendments to the Election Law, ensure a system which will, regardless of the vote distribution, result in the election of at least 40% of women to the Parliament. Regulate the choice of governments in a manner that the confirmation of government is not possible without at least 40% of women in ministerial positions.
- Keep in mind the women that are subject to multiple discriminations (women with disabilities, Roma women, older women, LBT women, etc.) in all adopted policies and proposed measures.

measures for achieving gender equality. The local level as well indicates that the obligation of adoption and implementation of the local action plans has been reduced to a very small number of municipalities and towns. Therefore, the need for the reform of the *Law on Gender Equality* arises, as well as its harmonization with the European Union *acquis communautaire*, in order to strengthen the issue of gender equality in all areas and at all levels of government.

The Election Law, although harmonized with the Law on Gender Equality, *did not ensure a greater participation of women in BiH political life*. The representation of women in parliaments is still below the target of 40%, namely it is less than 20%. Regarding the executive power, the situation is even worse, bearing in mind that there are governments without a single female minister, such as the Zenica-Doboj Canton Government. After the 2014 General Elections, the RS Government has only three female ministers (there was five women in the previous term), out of the 16 seats in the FBiH Government, only four of them are occupied by women, and out of the 9 seats in the Council of Ministers of BiH, only 2 seats are occupied by women. In the following period, it is necessary to provide more rigorous measures, such as introducing the quota of 50% and others, which would result in a higher number of elected women. The issue regarding the choice of government at all levels of government needs to be regulated in such manner that it is not possible to confirm the government unless women are represented by at least 40% of the ministerial positions.

The women in Bosnia and Herzegovina also suffer discrimination in access to *economic and social rights*, especially in the employment and management of public enterprises, *access to the right to maternity leave and benefits*. The issue of exercising the right to maternity leave and the harmonisations of benefits between the entities and cantons puts women in an even harder position in the job market. Maternity benefits are inadequate.¹⁶ The trend of laying off women due to pregnancy and maternity leave continues, especially by private employers.¹⁷ Certain cantons still do not pay maternity benefits (Herzegovina-Neretva Canton), or they are late, even up to several months (Zenica-Doboj Canton).

Gender Equality Agency has conducted a research in 100 companies, finding that women are represented by 20% in the steering committees, and by 15% in the supervisory boards of these companies.¹⁸ Based on that, the Agency has concluded that there *is still a "glass ceiling" which prevents the full equality of women in the job market*.

In particularly difficult position are women victims of domestic and other forms of violence, belonging to *multiple marginalized groups*. It is harder for these women to obtain information about their rights; they are exposed to prejudice and less likely, in comparison with other women, to seek out help and services. We argue that the institutions must develop measures aimed at further protection and support of marginalized women who are at a high risk of becoming, or already are, victims of domestic violence. It is necessary to ensure, during the implementation of laws and measures prohibiting and combating violence against women, that these provisions and activities are applied equally to the protection of LBT women, women with disabilities, Roma women, and socially deprived women, without discrimination on any grounds.

¹⁶ According to: OSCE: The right to social protection in Bosnia and Herzegovina (<http://www.osce.org/bs/bih/107169>) - The issue of appropriateness and equality of benefits during the maternity leave, in most cases, they are lower than the salaries women earn and they are between 60% in Sarajevo Canton to 90% net salary in Tuzla Canton. OSCE states that the benefits unemployed women receive during pregnancy and maternity leave is between 10% and 20% of average net salary, in some cantons they receive one-time assistance, while in some cantons this assistance is not paid.

¹⁷ Group of non-governmental organizations: Alternative report on CEDAW Convention implementation and on the women's human rights in Bosnia and Herzegovina (2010, 2013), available at: http://www.rightsforall.ba/publikacije-bs/docs-bs/CEDAW_final_bos.pdf

¹⁸ Gender equality agency of BiH: Report on the Review of progress made in the implementation of the Beijing Declaration and Platform for Action (1995) and the outcomes of the twenty-third special session of the General Assembly (2000) in BiH 2014. Available at: http://arsbih.gov.ba/wp-content/uploads/2014/06/B+20_BHS_FINAL.pdf

Recommendations

- Harmonize the Criminal Law with the international standards, Council of Europe Convention on Action against Trafficking in Human Beings and the Palermo Protocol, and the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse;
- Establish alimony funds in the entities and Brčko District;
- Ensure the adequate access to dental services for the children with disabilities;
- The competent institutions should include funds for the implementation of inclusive education in their budgets.

3.6 Children's rights

Legal framework

No progress regarding the harmonization of criminal legislation with the international standards has been made over the previous period. The FBiH Criminal Code still does not incriminate the act of human trafficking, and the victims of human trafficking are still not exempt from offences committed as a direct result of the status of the trafficked person, except in Brčko District Criminal Code.

The national strategy in the field of juvenile delinquency has not yet been adopted. Although the federal *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings* came into force in early 2015, there are still no physical, technical, material and human resource capacities of judicial institutions for its implementation. Certain progress has been made in the field of protection of children against child pornography and paedophilia through the adoption of the *Action Plan for Child Protection and Prevention of Violence against Children through Information-Communications Technologies in Bosnia and Herzegovina 2014-2015*, but its implementation, like the implementation of all other strategic documents, is largely dependant on the international funds.

In FBiH, the reform of foster care system was initiated, and the process of the creation of policies and laws on foster care was started.

Current situation

The ethnic segregation and discrimination is still *de facto* present in certain state school in FBiH through the practice of *two schools under one roof*. Due to the lack of political will, the final verdict of the FBiH Supreme Court regarding the abolition of "two schools under one roof" still has not been implemented by the HNC (see 5.2 Education and education system).

There is still a significant problem regarding the segregation in *the education of the Bosniak returnee children in RS*. Bosniak children from Konjević Polje still attend instructive lessons in Nova Kasaba, because the Petar Kočić Elementary School, even after the First Instance Court in Srebrenica issued a provisional decision, fails to enable them to study national subjects according to their national curriculum. In order not to lose another school year, 82 Bosniak students of the St. Sava Elementary School in Vrbanjci near Kotor Varoš have attended instructive lessons in the Majlis of Islamic community, held by teachers from 1st March Elementary School in Jelah. The FBiH Government allocated BAM 61,157. The attitude of the competent RS Ministry of Education and Culture is that the diplomas of these Bosniak children will have no significance, and that this school year will not be recognized.¹⁹ The remaining 40 Bosniak students from this school were forced to go back to the standard education process due to the pressure on parents and the blackmail that they would receive no child benefits unless the children are reintegrated in the standard education process.

Punitive measures are still imposed on the parents, as well as fines in the amount of BAM 250, because their children did not attend regular classes in the previous year. The lawsuit parents raised against St. Sava Elementary School for the discrimination in education of Bosniak children on ethnic grounds was rejected by the First Instance Court in Kotor Varoš, and the parents were ordered to pay court costs in the amount of BAM 5,000.

The adoption of a new Curriculum for the primary education in RS for the 2014/2015 school year further deepens the discrimination against the ethnic non-Serb students, since it provides that the ethnic Serb students can officially call their language Serbian, while Bosniak and Croat students can only study "the language of Bosniak people" or the

¹⁹ <http://www.nezavisne.com/novosti/obrazovanje/Mutabdzija-Ministarstvo-ne-priznaje-alternativni-oblik-obrazovanja-268628.html>

language of Croat people". In this way, the national subject group is abolished even in cases where children previously had the right to study them.

Even with the budgetary allocations and action plans for the improvement of the education of Roma, there are still no textbooks or lessons in Romani language. Romani language is not taught in elementary or high schools, nor as a mother tongue or as an elective class.²⁰

In the last year, there was no progress regarding the *harmonization of cantonal laws on pre-school education* with the Framework Law. Three cantons (CBC, HNC and WHC) still have not passed a law on pre-school education, which denies the children mandatory pre-school education in the year prior to their enrolment in primary school. Significant progress has been made in the Tuzla Canton in which 100% of the children were enrolled in the mandatory pre-school program prior to their enrolment in elementary school.

In BiH there is still no *lex specialis* law to regulate *the field of foster care*. There is no system of control of foster families, so it is not rare that children are exposed to various forms of violence and abuse in foster families.²¹ There is no official and unified register of data regarding foster families and children in BiH, and according to the data of competent CSW in BiH, there is at least 589 placed in foster families. Compensations for foster families are uneven and irregular, ranging from BAM 150 to BAM 740, depending on the place of living, or the economic power of the canton, which results in discrimination of these children based on territorial basis. Legislations in the area of social protection do not clearly define the manner of spending or control over the foster care compensations, so it is often abused and inappropriately used by the foster parents. The process of drafting the Law on Foster Families has been started in FBiH, as well as the public policies on the development of foster care, while the RS has made certain progress when it comes to the adoption of regulations for this field, which defines the conditions for becoming a foster family, the forms and ways of taking care, as well as the supervision over the work of fosters.

The police and the judicial institutions still have not secured the human, mater and technical resources and equipment for the implementation of the *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings*. In RS, only the District Court in Banja Luka and the District Prosecutor's Office in East Sarajevo employ a psychologist to provide the psychological support to the victims and witnesses, while the standard is met in 40% of cantonal courts, and 50% of prosecutor's offices in FBiH. BD Police is the only in BiH which has employed a psychologist. Three cantonal courts have no specially designed for the hearings of children and do not possess suitable audio-visual equipment. There is no organized supervision and monitoring of perpetrators of sexual offences against children, while the security measures provided in the Criminal Code do not include the possibility of imposing a measure of mandatory psychosocial treatment on the perpetrators, nor that they be banned from working with children. There is no single list of sexual violence against children perpetrators in BiH. Although there is a confirmed indictment for negligent performance of duty against four caregivers from Home for Children without Parental Care in Tuzla, since they failed to act in accordance with the current regulations and to provide adequate assistance and protection to a child, despite knowing that a nine-year old girl had been sexually molested by two older residents, they continue to work freely in this institution and have direct contact with children.

The BiH Ministry of Human Rights and Refugees *has not yet established the Department for Children's Rights*, nor has there been any improvement regarding the human, technical and financial resources in accordance with the recommendations of the UN Committee on the Rights of Children in the sector for human rights.²²

²⁰ Report on implementation of the Revised Action Plan on Educational Needs of Roma, adopted on the 119th session of the Council of Ministers, held on 21st January, 2015

²¹ Research of the Centre for Investigative Reporting, <http://www.cin.ba/hraniteljstvo-po-vlastitoj-savjesti/>

²² Council of Ministers BiH: BiH Report for the second cycle of the universal periodic review, drafted in line with Article

According to the latest research,²³ over 80% of the alimony payers *have been avoiding paying child support* and do not contribute in any way to the supporting of the child, which puts single parents and their children in a difficult position. The enforcement proceedings for the payment of alimony are slow, and single parents are not exempt from payment of court fees, even when the other parent is found guilty for failure of alimony pay. Even though the non-payment of alimony is a criminal offence punishable by prison (one month to three years), there has been no imprisonments during the last 25 years. In jurisprudence, the alimony usually amounts to BAM 300 or 400, and is not determined based on the developmental needs of the child, as determined by the family legislations, but based on the parental income.²⁴ The decision on the establishment of alimony fund adopted by the federal Government in the previous term is encouraging, and the similar initiative was filed in the RS by the RS Council for Children.

The lack of harmonization of the criminal law on the issue of human trafficking, especially in FBiH, still influences the decrease in *the identification of victims of human trafficking and prosecution* by the relevant authorities. Social, police and prosecutorial institutions still hold a view on the forced marriages of minor Roma children as customs and traditions of the nation, and often as the neglect of the child. The national referral mechanism for combating human trafficking did not include labour inspectors, which hampers the efforts to identify victims of human trafficking and to provide them with assistance. Of the total number of identified victims of human trafficking in 2014 (49), 37 are minors (24 females and 13 males). The most common form of the exploitation of children is begging, followed by sexual exploitation. The number of identified victims could have been higher if the acts of forcing minors to beg, or the organization of begging, were not treated as demeanour of disturbing the public order in FBiH. This act is punishable by fines, the amounts of which vary between the cantons. In 99% of all cases, the fines are inefficient in combating child begging, since it is impossible to collect them from the perpetrators of the act. Significant progress has been made in RS by adopting a General Protocol on the procedure in cases of violence, abuse and neglect of children, as well as in Tuzla, where the first multi-sectoral Protocol on procedure in cases of vagrancy, begging and other forms of economic exploitation, violence and abuse of children was signed in early 2014, at the initiative of the NGO "Land of Children". In late 2014, the first Children's Shelter was opened in the same canton, thus creating conditions for the functioning of the new referral mechanism of protection and adequate care for children exposed to various forms of violence and economic exploitation.

Children with developmental difficulties are still not covered by preschool education in PC, BPC Goražde and Canton 10, while the children in USC are sporadically included. *The inclusive education has not taken hold* because the state fails to provide adequate orthopaedic, typhlotechnical and other aids, teaching supplies and textbooks, class assistants, etc. The budgetary funds for these purposes are planned, whereas in the past both BiH entities have planned special budgetary funds for the financing of special schools for children with disabilities. The process of assessing abilities of children with disabilities for school enrolment is conducted in Centres for Social Work or in special schools which are not the child's natural setting and it usually lasts less than 30 minutes, which is not enough for the child to show their true abilities. The education and socialization of children and youth with disabilities from the autistic spectrum and with other developmental disabilities is still inadequate, as special schools do not have the capacity, nor are their programs customized for individual work

5, Annex to the Resolution 16/21 UN Committee on Human Rights, adopted in 106th session on 30th July, 2014

23 Institution of Human Rights Ombudsman, Special report "Children in conflict divorces"; http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013111913333951cro.pdf

24 "Recently the Municipal Court in Sarajevo issued a verdict that the father of the child is to pay alimony in the amount of only BAM 150 a month. As the explanation of the verdict, it is stated that the mother can feed the child using leftovers since she works as a cook in one of the schools in Sarajevo". „More than 80% of fathers in BiH avoid paying alimony" - <http://manjine.ba/?p=4593>

based on the needs of the child. The system of recognizing and diagnosing of developmental difficulties within the education and health system is also inadequate, and it affects the long duration of the process, thus diminishing the chances for the efficient work with the children and them reaching their full potential. The system of the early intervention and education of children with disabilities is not established within the public school system, and the few programs provided by the civil sector are insufficient to meet the existing needs. The result of this is that the children who do not have the access to such programs, or whose parents cannot afford them, are deprived of the early intervention which is the key for their socialization and the full development of their psychological and physical abilities. Children in this category still *lack the adequate access to dental services*. Due to the lack of the dental personnel, the only specialist clinic for dental care for patients with disabilities under general anaesthesia in Sarajevo is not functioning in full capacity.

Recommendations

- Harmonize the existing legislation with the provisions of the Convention on the Rights of Persons with Disabilities, in particular abolishing the discrimination against persons with disabilities in the law. Particular focus must be on the issue of status and rights of children with disabilities;
- The state must develop mechanisms in order to ensure health insurance for all persons with disabilities and in order to adjust and extend the possibility of acquisition of orthopaedic aids and of rehabilitation for persons with disabilities;
- Involve Organizations of Persons with Disabilities (OPD) and the organizations that represent them in all segments of life (mainstreaming), from the process of defining, creating and implementing support programs for persons with disabilities to engagement in the process of amending the Law on Prohibition of Discrimination and other laws at all levels of government.

3.7 People with disabilities

Legal framework

The state of human rights of persons with disabilities in BiH is unchanged compared with the last year. The legal system does not provide persons with disabilities with protection against discrimination, nor their equality. Persons with disabilities continue to have a disadvantaged position and are discriminated against based on their disability in everyday life., including poor physical access to shared public facilities and services; the access to services and information in available manners or in the available formats, in the context of social inclusion; discriminatory treatment by the public officials and service providers; the integrated access to basic democratic rights and the failure to get rid off or finance changes to and the adaptation of the facilities and services in order to provide persons with disabilities with equal opportunities for the active exercising of their rights and an equal access to public services.

The analysis of the harmonization of the national legislation with the UN Convention has shown that only 3% out of the 231 legislations under study are harmonized with the UN Convention. The analysis was conducted on laws and accompanying regulations and ordinances at all levels in the areas of labour and employment, social protection, health care, education, sport and culture.²⁵

While some legislations explicitly prohibit *discrimination based on disability* (e.g. Entity laws on employment or the legislations on education and health protection), most other legislations do not contain such provisions. Even the *Law on Prohibition of Discrimination* does not directly recognize disability as one of the possible grounds for discrimination. Moreover, the legal framework directly discriminates against persons with disabilities based on the cause of disability.

The scope and content of the rights and the conditions for their realization are determined based on the cause and circumstances of the disability, place of residence and age of the person, and not based on the actual need for the ensuring adequate conditions of living and ensuring equal opportunities. An obvious example for that would be the different scope and content of the right to support for people whose disability *has been directly or indirectly caused by war events* and for people whose disability is a result of other causes or circumstances. Such discrimination is pronounced throughout BiH, in the manner that the rights of the disabled war veterans are recognized when they are estimated at 20% loss of physical, cognitive, sensory or other functions. For the civilian victims of war, the criterion is 60% of disability (damage to the organism), while the criterion is 90% for everyone else. Such obvious discrimination is unacceptable, especially bearing in mind its direct effect on the quality of life and functioning of persons with disabilities.

²⁵ See: <http://www.ukljuci.in/index.php/bs/izvjestaji>

People with disabilities are excluded from most social processes and have little opportunity to participate in decision making process regarding issues of importance to them, either as persons with disabilities, or as members of the society. *Women and girls with disabilities are exposed to multiple discrimination*, they are isolated and excluded even from the activities organized by organizations of persons with disabilities, as reflected in the lack of their participation in the governing bodies of these organizations and the low levels of their involvement in non-formal educational activities of these organizations.

Many social, educational, economic, physical and transport obstacles, as well as the attitudes and prejudice of the public, are preventing or significantly impeding persons with disabilities from exercising their fundamental rights. This is the general state of public services, but the situation is particularly alarming in the spheres of health care and education.

Although the legal framework in the field of *health care* is such explicitly prohibits discrimination based on disability, its implementation shows that people with disabilities cannot exercise the same rights to health care like the rest of the citizens. The *physical lack of access to the majority of primary health care facilities* in urban and rural settings is obvious, as well as the absence or lack of the adjustment of the diagnostic and other instruments and equipment, especially for the persons with the most severe disabilities (e.g. dental and other health services for children and adults with intellectual difficulties). Also, it is impossible to use specific and rare medicine for prevention or halting of the increase in the level of disability, and the specialized dietary regimens aimed at prevention of disability or its progress.

Another problem is the *unavailability of services specifically tailored for women with disabilities* (gynaecological services regarding maternity and reproductive health counselling; unsuitable equipment for gynaecological examinations). The fact is that there are no programs for education of students of medical schools and nursing schools, nor for the education of medical and paramedical personnel working in health institutions on the rights of persons with disabilities and on working with them, and that the programs of medical rehabilitations are not available for all persons who need rehabilitation. It is necessary to point out the lack of programs for the adequate determination of needs for the orthopaedic and other aids, suitable for the individual needs of persons with disabilities, as well as non-existence of programs ensuring hygienic and sanitary materials. People with disabilities do not automatically receive free health insurance based on disability. Given that many of these persons are unable to work, or they face difficulties finding work due to discrimination, they rely on the access to health protection through being covered by someone else's insurance, or they exercise this right through the status of the unemployed or as users of social protection.

In certain areas of life, such as *education*, the laws on higher level actually exist, but the necessary by-laws and mandatory regulations and rulebooks have not been designed, nor do the budgets allocate the necessary funds for the implementation of legal provisions. The legally guaranteed right to inclusive education is denied to children and youth with difficulties because the funds necessary for the provision of such services or for ensuring the physical accessibility of the object are not allocated. On the other hand, the funds intended for special schools are regularly allocated, resulting in the perpetration of the unnecessary segregation of children who would benefit from inclusive education.

Recommendations

- Urgently harmonize the BiH Law on Prohibition of Discrimination with the *acquis communautaire*, and through amendments correct the noticed oversights in the previous implementation, with the close collaboration and equal participation of the BiH Ministry of Human Rights and Refugees, the BiH Joint Committee on Human Rights, in order to ensure the parliamentary support, and the civil society organizations who are working on combating discrimination;
- Establish a regular practice of reporting about the various forms of discrimination, which would include a proposal of measures to eliminate and prevent discrimination trends;
- Develop multi-annual Strategy for Combating and Preventing Discrimination in cooperation with the civil society organizations.

3.8 Fight against discrimination

Legal framework

With the pressure from the international community and with the goal of visa liberalization, Bosnia and Herzegovina adopted the Law on Prohibition of Discrimination in 2009. A large number of obligations arising from law that were supposed to happen a few months after the adoption of the law were never fulfilled. Ministry for Human Rights and Refugees of Bosnia and Herzegovina has started preparations for the amendment of the Law on Prohibition of Discrimination. It is necessary to harmonize the law with the *acquis communautaire* of the European Union, as Bosnia was asked to do in Structured Dialogue on Justice for BiH in May 2014 (see chapter 2.1 *Judicial System*), and to ensure that the process of developing the Strategy for Combating and Preventing Discrimination is not postponed, but that the process is started immediately.

Current situation

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

There has been *a series of problems in the application of the law* (see chapter 1.6 *Institution of Human Rights Ombudsman*) such as short deadlines for instituting proceedings for protection against discrimination, ineffective protection against retaliation in a case of discrimination and testifying in cases of discrimination.

The Law on Prohibition of Discrimination *is not harmonized with the non-discriminatory regulations of the European Union*. The Law does not list some characteristics as potential basis for protection from discrimination, such as age and disability, while the listed grounds such as sexual orientation or sexual expression have not been defined and do not reflect the true intention of the legislature to prohibit discrimination against LGBT people. The Law also contains a wrong definition of *exemption from the principle of equal treatment*.

At the practical level institutions, especially the institutions in which everyday citizens demand their rights, lack institutional policies and *rules of procedure for handling cases of discrimination*. Neither the institutions nor the courts have mandatory and regular *education on the Law on Prohibition of Discrimination*. Therefore a new legal doctrine for Bosnia and Herzegovina, such as transfer of the burden of proof is arising in court processes. Problems are arising in jurisprudence because of ignorance and the failure to apply the *test for discrimination* as it has been established by the European Court of Human Rights. The Institution of Human Rights Ombudsman in Bosnia and Herzegovina, as a central institution for the protection against discrimination cited *lack of human and financial resources* necessary for implementation of the Law on Prohibition of Discrimination as a serious obstacle to the application of this decree.

The state budget, adopted in May 2015, once again does not plan special funds for the Department for Elimination of all Forms of Discrimination within the Institution of Ombudsman, although the Law assumes its existence.

Citizens are not aware of the *Law on Prohibition of Discrimination* and the protection mechanisms. There have been no major public campaigns for promoting the existence of these

laws and the protection mechanisms in 2014 or in 2015. Civil society organizations provide help and assistance to citizens by providing free legal aid and information, especially in cases of strategic collective complaints such as a case of “two schools under one roof”.

Although the law guarantees the *de-jure* prohibition of discrimination, some groups, such as Roma and LGBT people, do not use it due to limited access to institutions and due to homophobia in the institutions. BiH institutions did not make any attempts to thematise these issues, thus the urgent adoption and implementation of the *Strategy for Combating and Preventing Discrimination*, which would propose concrete measures at all levels of government, must be made a priority.

Recommendations

- Amend the FBiH Criminal Law to include hate crime and hate speech provisions, including, for example, on the grounds of ethnicity, nationality, religious belief, race, skin colour, gender identity and sexual orientation;
- Amend the RS and BD Criminal Law to include hate speech provisions;
- It is necessary to include education about crimes committed out of hatred in the curricula of police academies in Republika Srpska and the Federation of Bosnia and Herzegovina, as well as in the training programs of the existing officers.

3.9 Hate crime and hate speech

Legal framework

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

Since December 2012, the CSO Coalition to Combat Hate Crime and Hate Speech,²⁶ as well as the other stakeholders, has been advocating for adoption of hate crime provisions in the FBiH Criminal Law. Amendments were adopted in July 2013 in the FBiH House of Representatives, but not confirmed through adoption in the second chamber – the FBiH House of Peoples. The Club of Female Parliamentarians of the FBiH House of Representatives has put forward another proposal to amend the criminal law and include hate crime. The amendments were adopted by the FBiH House of Representatives in spring 2014, but they were never put on the FBiH House of Peoples’ agenda. The comprehensive blockade of the institutions before the elections (see chapter 1.2 *Parliaments and governments*), has made the amendments to the Criminal Law impossible. Thus FBiH remains the only territory in the Western Balkans where the sanctioning of hate crime is not regulated by the Criminal Law. It is concerning that the issue has not been reopened by June 2015.

A *hate speech provision* covering, for example, ethnicity, nationality, religious beliefs, race, skin colour, gender identity and sexual orientation, is not included in the Criminal Laws of FBiH, or in the criminal laws of RS and Brčko District. There has been no attempt to amend the criminal laws to include hate speech provisions. The RS Committee for Combating Online Hate Speech, appointed by the RS Government in February 2014, did not live up to the expectations since it is limited only to mini-campaigns and workshops, without any real effect.

We have yet to see what influence the Law on Public Order and Peace in Republika Srpska, adopted in February 2015, will have on hate speech, bearing in mind that the large portion of the civil society and of the international community (led by OSCE Special Representative on Freedom of the Media) has voiced their concerns regarding its adoption.

Current situation

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

In 2014, there has been a resurgence of documented crimes committed out of the hatred against LGBT people²⁷ (see 3.10 *Lesbian, gay, bisexual and trans* people*). Canton Sarajevo Mol

26 More on the Coalition: <http://soc.ba/parlament-fbih-usvojio-prijedlog-definicije-predlozen-od-strane-koalicije-za-borbu-protiv-govora-mrznje-i-zlocina-iz-mrznje/>

27 See annual report on the state of the human rights of LGBT people: <http://soc.ba/en/pink-report-annual-report-on-the-state-of-the-human-rights-of-lgbt-people-in-bosnia-and-herzegovina-in-2014/>

has collaborated with Sarajevo Open Centre in 2014, and around 1300 police officers have attended half-day educational sessions. Still, last year's attack on LGBT festival "Merlinka" (February 1, 2014) still has not been in the proceeding. In 2014, multiple threats and attacks on activists of the Banja Luka Association of Queer Activists were not processed either.

Two more groups that are targets of hate crime and hate speech acts are *returnees and Roma*. Graffiti and attacks on religious buildings, cemeteries and monuments are frequent occurrences. Attacks that happen around religious holidays bring instability and mistrust into local communities. The offices of organizations of Roma are also under attack, as it was the case in Bijeljina in 2015.

It is worrisome that the First Instance Court in Zvornik has reached a verdict which is lower than the prescribed minimum in April 2015, in *the case of causing serious bodily harm* to the returnee N.D., without considering the aggravating circumstance that the crime was committed out of hatred.

In addition to the right to prosecute the crime, the police authorities need to start or intensify trust-building work, especially with the minority groups (i.e. returnees, LGBT people, Roma).

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

Recommendations

- The Institution of Human Rights Ombudsman of BiH should, as soon as possible, realize the initiative of the Joint Committee on Human Rights of PABiH, and prepare a Special Report on the state of human rights of LGBT persons. The report should contain concrete recommendations to be implemented by the institutions of BiH, entities and cantons.
- Investigate the needs and violations of rights of LGBT people, and based on the results of research develop a multi-annual Strategy for the Promotion of rights and social inclusion of LGBT people, bearing in mind that this is the only social group whose rights have not been thematized by any public policy of the state and of the entities;
- Guarantee and protect freedom of expression and peaceful assembly of LGBT people.

3.10 Lesbian, gay, bisexual and trans* people

The social and political situation

Although the political parties fully ignored the issue of the rights of LGBT people during the 2014 election campaign, the readiness of the Joint Committee on Human Rights of PABiH to work on this issue still needs to be noted as a positive event. Thus, on the occasion of May 17th - International Day against Homophobia and Transphobia, the first parliamentary session on the rights of LGBT people was held in 2015. Although the session was only symbolic, without an effect on the everyday life of LGBT people, it was still significant since it opened room for concrete steps, such as the preparation of the Special Report on the state of human rights of LGBT people.

LGBT issues are being covered in electronic, print and online media. In the previous period, the media reporting has increased and improved drastically in quality and quantity,²⁸ but the manifestations of homophobia through hate speech (i.e. death and violence threats) and sensationalist reporting are still present, especially in online media. It is worrisome that. Unlike FTV, RTRS as a public broadcaster did not accept an invitation for collaboration by one of the civil society organizations regarding the promotion of human rights of LGBT people.

The problems and the rights of LGBT people are rarely discussed in textbooks, so they are still perceived as social deviation.²⁹ No efforts were made to remove stereotypical content regarding gender, sexual orientation and gender identity from the textbooks, or to make school more inclusive for LGBT issues, using the lessons the topic of which is already human sexuality and human rights.

LGBT activism is getting more and more visible, but it is also facing obstacles. The registration of the Banja Luka Association of Queer Activists lasted for over a year since they have experienced unnecessary imposition of different obstacles from the BiH Ministry of Justice, which prolonged the process into endlessness. Similar cases have occurred previously when it comes to the registration of LGBT associations. It is a serious concern that freedom of association is not guaranteed and that the civil society organizations are treated differently in the state institutions depending on the area of their involvement.

²⁸ The Annual Report on the state of the human rights of LGBT people: <http://soc.ba/en/pink-report-annual-report-on-the-state-of-the-human-rights-of-lgbt-people-in-bosnia-and-herzegovina-in-2014/>

²⁹ The research: <http://soc.ba/en/izvjestaj-o-homofobiji-bifobiji-i-transfobiji-u-skolama-u-bih-2/>

Discrimination and the institutional ignoring

The BiH Law on Prohibition of Discrimination from 2009 covers the prohibition of discrimination on the grounds of “sex expression and/or orientation.” Different laws on the state, entity and cantonal levels do cover sex/gender, sexual orientation and gender identity. BiH has not so far discussed or adopted any LGBT anti-discrimination policies that would define concrete measures on how to fight discrimination, prejudices and the promotion of tolerance and equality on the state, entity, cantonal and/or local levels. Thus LGBT people remain institutionally excluded, since they are the only social group the state has not devoted any documents to, nor did it include the realization of their rights in the existing documents.

Institution of Human Rights Ombudsman of Bosnia and Herzegovina has documented *an increase in number* of the registered cases of discrimination based on sexual orientation in 2014.³⁰ Although it rejected to prepare the Special Report in 2013 and 2014, the Institution of the Ombudsman has committed to preparing a Special Report on the State of Human Rights of LGBT People in 2015 (see 1.6 *Institution of Human Rights Ombudsman of Bosnia and Herzegovina*), as initiated by the Joint Committee on Human Rights of PABiH in May 2015. Even during the last year (June 2014 - June 2015), there has been no efforts towards the realization of the *right to right to registered partnership for the same-sex couples* in any administrative unit in BiH. There is no medical support for transsexual persons. Surgeries have to be undertaken abroad, while the official health care and social security system does not cover any percentage of the costs. The *Brčko District Law on Birth Register Books* still does not recognize “sex reassignment” as a ground for legal change of personal data. Civil society organizations have called upon the Brčko District Government in 2013 to amend the law, which they refused to do.

Hate crime and hate speech

Since December 2012, the CSO Coalition to Combat Hate Crime and Hate Speech³¹ has been advocating for the need to adopt hate crime regulation in the Criminal Law of FBiH (see chapter 3.9 *Hate crime and hate speech*), which has not been done. It is worrisome that there is a trend of growth regarding the number of attacks on LGBT people, and that the number of the criminal offences committed out of hatred has risen during 2014. Institution of Ombudsman of has appealed to the Republika Srpska in 2015, asking them to implement the measures of educating police officers on hate crimes issues, in order to contribute to the combating of hate crimes.

Freedom of assembly

On February 1st 2014, there was an attack at the *LGBT film festival Merlinka* in Sarajevo by a group of hooligans. Even though the event was registered with the police 16 days in advance, the police were 50 minutes late to the festival location. During this attack two festival speakers were physically hurt and 25 other participants experienced fear and trauma. Even though the main human rights institutions and ministries were invited to condemn the attack, the BiH Institution of Human Rights Ombudsman was the only official body to do so. It took 14 days for the BiH Ministry of Human Rights and Refugees to issue a statement. The lack of prosecution of the case is especially worrying, if one considers that the BiH Constitutional Court ruled in the case of the *Queer Sarajevo Festival* in September 2014 (see 1.3 *Constitutional Courts*), confirming that the right to public assembly of LGBT people was violated.

³⁰ The Annual Report of the Institution of Ombudsman: http://www.ombudsmen.gov.ba/documents/obudsmen_doc2015051514434319eng.pdf

³¹ See more: <http://soc.ba/parlament-fbih-usvojio-prijedlog-definicije-predlozen-od-strane-koalicije-za-borbu-protiv-govora-mrznje-i-zlocina-iz-mrznje/>

Recommendations

- Take effective measures to protect the returnees, refugees and internally displaced persons, especially regarding employment, health care and education.

3.11 Returnees and property rights

After the General Elections in Bosnia and Herzegovina, the issue of amendments to the Law on Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina has not been re-opened (see *2014 Alternative Progress Report on Bosnia and Herzegovina*). That is also a result of the fact that the number of returnees who have accessed the registration of residence at the addresses in Republika Srpska is reduced, and that the active mobilization of the returnee community has been reduced to minimum from July 2014 to this date.

At the same time, there have been *restrictions to the budgetary funds* allocated to the provision of right to health care in the Federation of BiH for the returnee population in RS, which resulted in the cancellations of residence in RS, mostly in the region of Eastern Bosnia.

The procedures before the Municipal Court in Srebrenica and the District Court in Bijeljina for the people from the Srebrenica area who were charged with “the provision of false and inaccurate data during the registration of residence” have been stopped in the cases where the people appeared before the court. After the Decision on the Verification of Accuracy and Authenticity of Data during the Registration of Permanent residence was found to be unconstitutional on July 4th 2014 by the Constitution Court of Bosnia and Herzegovina, the representatives of the RS Governments have not adopted new decision with the same or similar formulation, even though such action was mentioned in the media.

The consequences of the political conflict, as well as the legal voids, have left a mark on the returnee community, and on the internally displaced persons. Direct results were a *decrease in the number of returnees voting in the 2014 elections*, the cancellations of registrations of residence and re-application in the Federation of BiH area. The long-term effects are: the unsolved status of persons who practically reside in the RS, but who exercise their rights and gain access to public authorities in the area of FBiH; and the permanent restriction of the mobilization of returnees in the election procedure due to the link between the status of residence and the right to vote.

The violations of the rights to freedom of movement and a free choice of place of residence have had the “desired effect” in practice, since the process of registering residence at the returnees’ and internally displaced persons’ pre-war addresses was discouraged effectively, even though the relevant courts have dismissed the evidence during the misdemeanour proceedings, as unfounded and insufficient, the same evidence the police believed to be sufficient for reaching decision on the annulment of residence.

During the election campaigns, certain candidates have announced intervention regarding the entity Law on Cadastre and Law on Property Taxes, in order to ease the legalization of the property status, with special emphasis on the specific position of the refugees and persons with temporary residence abroad. Still, the expected changes did not occur in practise.

The issue of the *education of the children of returnees* remains unsolved. The so-called group of national subjects is not offered everywhere, thus the issue of the justification for the segregation of children in general is brought to question, bearing in mind that the final court judgements ending segregation of children in education, i.e. “two schools under one roof”, were already delivered in the Federation of BiH (see *5.2 Education and education system* and *3.6 Children’s rights*). The inclusive solutions satisfying the needs of all ethnic groups were not sought.

Recommendations

- Provide funding for implementation of the Strategies and Action Plans for health, housing, employment and education of Roma;
- Intensify the measures of integration of Roma children in the educational system;
- Define measures to combat multiple discrimination against Roma women and Roma girls.

3.12 Ethnic minorities and Roma*Roma*³²

Bosnia and Herzegovina has adopted a *Revised Action Plans for Roma in the areas of employment, health care and adoption for 2013 - 2016 (December 2013)* and the *Revised Action Plan of BiH on the Educational Needs of Roma (2010)*; the Council of Ministers has formed a Committee for Roma BiH.

A lot has been achieved at the level of legislation and policy during the Decade of Roma. At the same time, the Special report on the situation of Roma in BiH issued by the Institution of Human Rights Ombudsman in Bosnia and Herzegovina emphasizes the stance of Roma non-governmental organizations that *in practice little has changed*. Organizations found that the budgets for implementation of the Strategy and Action Plans are insufficient, the procedures are complicated and lengthy; the lack of building land, migration of Roma families, unresolved property relations, the legalization of existing facilities, the resistance of the local population and similar issues are causes of poor implementation of strategic documents. Most Roma are not aware of their rights and the possibilities provided by the strategic documents.

A high percentage of Roma still has no identity documents and therefore cannot realize their rights. Little has been done to inform and provide legal support to Roma communities as well as to abolish the widespread stereotypes of Roma.

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

Still insufficient, but slightly greater improvements are noticeable in education. From 2010, when the Revised Action Plan for education was adopted, there is a notable growth of children enrolled in elementary schools, but it should be noted that dropping out of school in the upper grades of elementary school is still present, but a significant increase in the enrolment of Roma children in secondary schools and universities has not been noticed.

Other national minorities

The dominant position of the three ethnic groups limits the access to public life for national minorities and those who do not identify themselves as belonging to any of the ethnic groups. Even though there are national minority councils on state and entity level their inclusion is more of symbolic significance. There are no guaranteed seats for national minorities in cantonal, entity or state parliaments (there are seats in some parliaments for "Others", which does not mean that national minorities will be elected). Some ethnic minority groups are not even recognized by the state law as national minorities. The Jewish community has a special position in the BiH society and is very well integrated in the BiH public life, even though the anti-Semitic incidents which occurred in June 2015 at the football match between Israel and Bosnia and Herzegovina in Zenica were not condemned by the authorities.

In 2014, the Ministry of Human Rights and Refugees in BiH has published the draft of the Strategic Platform to address issues of national minorities in Bosnia and Herzegovina, the first such document aimed at the improving the status and rights of national minorities. But, the draft does not propose concrete institutions, measures, deadlines and funds for the advancement of the position and the rights of national minorities, which raises doubts about the serious intentions of the Ministry to address the rights of the national minorities.

³² <http://www.osce.org/bs/bih/110497?download=true>

Recommendations

- Make prosecutions and punishments for perpetrators of war crimes efficient and make the court proceedings that available to the public and ensure that the purpose of the punitive system is satisfied;
- Provide support to members of the associations of surviving victims and individuals in the exercise of their rights;
- Adopt Law on Victims of Torture in BiH.

4. TRANSITIONAL JUSTICE

It is necessary to strengthen the criminal justice system in BiH, as the main mechanism of transitional justice, but also to use other mechanisms of transitional justice. It is essential to redefine the strategies and to accelerate the realization of projects which support other mechanisms of transitional justice as well, foremost the mechanism of the right to truth (truth-telling). It has been shown that the trials conducted both before the Hague Tribunal and before the national courts failed to accelerate the reconciliation process in BiH, or the region, nor did they succeed in bringing closer the different interpretations of the wartime events, or the crimes committed, and thus in the connecting the war-torn society in BiH.

Criminal justice

In the area of the criminal prosecution of those responsible for serious violations of the international humanitarian law in BiH from 1991 to 1995, the aims of the national strategy for the procedure of war crime cases as a multi-annual key mechanism of transitional justice in BiH, were not met. A particular problem is the obstruction regarding the adoption of the new strategy for the judicial reform, equally relevant for the prosecution of war crimes, primarily by the political stakeholders from Republika Srpska.

The criminal prosecution of those responsible in BiH is inseparable from the Court and the BiH Prosecutor's Office. However, for several years the chief prosecutor of the Hague Tribunal warns about the failures and inactivity of the BiH Prosecutor's Office regarding the so-called Category II cases³³ in his semi-annual and annual reports to the UN Security Council, or he points out the pending investigations of the Hague Tribunal which were transferred to BiH Prosecutor's Office. Also, in the European Union Progress Report published in October 2014, it is stated that "serious, consistent efforts are to be made in order to solve the war crime Category II cases, which were transferred by the Court (ICTY) to BiH". It is clear that the period of seven years is lost in BiH in terms of processing those responsible for the crimes committed at the highest levels, and in particular regarding the pending investigations of the Hague Tribunal concerning the high levels of responsibility in BiH.

The transitional justice mechanisms are largely (and almost inseparately) tied to domestic politics governing the ruling structures, and it is particularly worrisome that the BiH politics seeks to gain the control over the selection of members of the High Judicial Prosecutorial Council, the umbrella institution of the judiciary, as well as over the selection of prosecutors, and that the politics is interfering in the prosecution of war crimes, which is also stated in the EU Report.

In the context of criminal justice, it is necessary to ensure *justice for the victims of sexual violence*, as the number of indictments, and thus the number of verdicts, is very low in comparison with the other crimes in the area of serious violations of the international humanitarian law. Also, the provision of support for the protection of war crime witnesses should be continued in the forthcoming period through the creation of a comprehensive system of protection which still does not exist.

Truth-telling

In BiH, there have been attempts to constitute truth commission in the recent years, with the help of the international community, but to no avail. Apart from the domestic politics, the Hague Tribunal presented an obstacle during the first attempt in 1997, and in 2000 and 2005, the most significant victims associations were also against it. The strategy of the transitional justice devised in BiH has proposed the participation of 36 state and entity institutions in its realization,

³³ 2014 Annual and Semi-Annual ICTY Reports. http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2014_en.pdf, http://www.icty.org/x/file/About/Reports%20and%20Publications/CompletionStrategy/completion_strategy_16may2014_en.pdf

and the formation of certain mechanisms or a commission which was supposed to complete the transitional activities in terms of mechanisms regarding the right to truth, or truth-telling, which did not occur. But, all this ended in written. The only active and living project and most importantly, of regional character, is the Coalition for REKOM.³⁴ The revitalization of the transitional methods and mechanisms, when it comes to BiH, can be seen in the work of the Coalition for REKOM, or in the mandate of the commission which should be formed at the regional level. It is clear that the focus of transitional justice and in the region³⁵ could be, in conditional terms, on the other mechanism, or the mechanism of the right to truth, or truth-telling.

Support to victims

Regarding the war reparation mechanism in BiH, the adoption of the Law on Victims of Torture in BiH is still crucial. The current solutions are partial, they do not include all the victims; there is inequality in their treatment, particularly in the financial aspect (see *2014 Alternative Progress Report*). In this respect, it is necessary to find the solution of the issue of different approach to the assessment of disability of the civilian and military war victims, and the different amounts of the financial benefits for certain categories.

The division between the entity legislations contributes to the lack of a single list of users, their rights and their status. The only rational and reasonable explanation for the lasting agony in terms of reparations is that the governments in BiH do not want uniform laws due to their personal political interests. Uniform and comprehensive legislations would put the victims in an equal position. The politics, as well, does not want to harmonize the existing legislations simply because the budgetary funds allow it to control the majority of organizations, or to influence their members. Hence, the obstacles are created for the uniform legislation which would set up compensation, rehabilitation or any form of reparation as the state institution which would allow the introduction of systematic and equal assistance for all the victims indiscriminately.

In order to achieve a complete sense of justice to the victims, and their re-socialization, it is necessary that the state creates a reparation program, to alleviate the consequences of the trauma they suffered, and to meet their material and non-material damages, and the property restitution. It is necessary to establish a system of data about all the victims in order to ensure the complete protection of the right to compensation.

It is important to point out the lasting, continuous initiative of ICTY³⁶ to the UN Security Council to establish a fund for the victims as a part of the ICTY - Residual Mechanism, the legal heir of ICTY. It would be extremely important if the international community, primarily the EU, would support this ICTY initiative and help the establishment of the ICTY / Residual Mechanism fund financially,³⁷ which would be a sort of signal to the local authorities and the civil society in BiH, and the region.

³⁴ This independent, regional, civil society initiative aimed at establishing a regional intergovernmental commission for truth, proceeds from the basic assumption that a regional approach is necessary to the process of truth-telling, given the historical context and the regional dimension of human rights violations during the war. <http://www.zarekom.org/>

³⁵ There are numerous reports of the international observers of the NGOs on the collapse of criminal prosecution in states formed in former Yugoslavia involved in the work of ICTY. Although numerous agreements and protocols of cooperation, the collaboration in prosecution is weak, burdened by political interests and influences, and the processes themselves in the countries were reduced to peripheral and rare individual cases of prosecution. For example, the cooperation between Serbia and Croatia was stopped because the Croatian Parliament adopted the Law of Nullity (<http://www.zakon.hr/z/506/Zakon-o-ni%C5%A1tetnosti-odre%C4%91enih-pravnih-akata-pravosudnih-tijela-biv%C5%A1e-JNA,-biv%C5%A1e-SFRJ-i-Republike-Srbije>). Also, the collaboration between Serbia and BiH does not yield results, despite the signed protocols between the two prosecutor's offices.

³⁶ http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/110606_pdt_robinson_un_sc_bcs.pdf

³⁷ Article 7 of the UN Security Council Resolution S / RES / 827 (1993) of 25 May 1993 also decides that the work of the International Tribunal (ICTY) will not impair the right of victims to seek compensation, through the appropriate procedures, for the damage they were inflicted by violations of international humanitarian law; It should also be noted that the International Criminal Court (ICC) has a fund for the victims in the framework of its mandate.

Institutional Reforms

It is necessary to establish the legal framework for the implementation of continuous checks of employees in public institutions at all levels of government, and to ensure that the governmental institutions act in accordance with the law, the principles of professionalism, transparency and the accountability to its citizens.

The Law Prohibiting Genocide Denial has not been supported by the Parliamentary Assembly of BiH, but the Federation of BiH has adopted the amendments to the Criminal Code in this direction. The crime denial has particularly escalated during the General Elections, and during the certain more prominent events in BiH and the region. The legal framework regarding the selection and appointment of judges by the HJPC needs to be amended. The selection and appointment procedure must be more transparent and it must include the possibility of public control and the right of appeal. The procedure of the selection and appointment of the executives of law enforcement agencies presents a particular problem, and so does the inconsistency and incompleteness of the regulations which, for example, allows that the current SIPA director performs duty although he was indicted by the BiH Prosecutor's Office and sentenced by the BiH Court for the negligent performance of duty.

Formally, the civil society is treated as an equal partner in the activities and actions in the area of transitional justice, but practically, the participation of the civil society has never been fully realized.

Reparations

Although the criminal courts have the possibility to assign the total or partial compensation to the damaged party, or to refer them to a civil procedure, in all the cases the victims organizations are familiar with, the victims were usually referred to individual court reparation proceedings.

The possibility of receiving reparation in a criminal proceeding is usually important for the damaged parties who have the status of a protected witness and who have no clear guarantee that they will be protected during the criminal proceedings.

The courts should cease the practice of automatic referring of the damage parties to carry out their property claims in civil procedures, and they should examine such claims in a comprehensive and complete manner and issue a decision regarding the main subject-matter in the criminal proceedings whenever possible.

In 2014, the BiH Constitutional Court and the FBiH Supreme Court changed their interpretation on the application of the statute of limitations regarding the damage inflicted in the war, and in the lawsuits filed against the entities, believing that the statute of limitations should be applied and that such claims should be dismissed. With this change in case law, the victims' rights are unprotected and they have no other options of realizing this right guaranteed by the international mechanisms. The Supreme Court has once again *assumed a different position on the issue in 2015*, in the way that the Article 377, Law on Contract and Torts is again interpreted in favour of the damaged party/victims, and that it awards compensations for the damage and dismisses the objections of the defendants that there is the statute of limitations (the entities and BiH), if the damaged party is in possession of the final convicting verdict.

The category of victims which constantly faces issues regarding compensation is the former camp prisoners. Since 2006 BiH claims that the adoption of Law on the Rights of Civilian Victims of War is "inevitable", but does not take any concrete measures to fulfil this commitment. The two other initiatives regarding the rights of victims of serious violations of human rights, including their right to compensation; or, to be more precise, the Strategy on Transitional Justice and the Program for Improvement of the Status of Victims of Sexual Violence, still have not been adopted.

Memorials

The culture of memory is one of the very important segments of transitional justice and a contribution to the recognition of suffering of all the victims, and to the raising the awareness about the past, which serves the purpose of preventing the repetition of the crime. The memorials contribute to the education, and they represent the historical memory based on truth.

There is no institutional support to memorials which is why the marking of the crime depends on the support from the local authorities and in practise usually remains limited to the members of the largest community of the municipal/city area. A prominent example of such case is Prijedor, where the protest gathering/support gathering on the occasion of White Armband Day, May 31st, took place this year as well, when the city authorities were asked to erect a monument for the murdered children of Prijedor, but these demands remain unanswered by the local authorities.

5. ECONOMIC AND SOCIAL REFORMS

5.1 Census 2013

The problems regarding the 2013 Census of Population, Households and Dwellings in BiH continued in the previous period. The BiH Statistics Agency has repeatedly announced and did not meet the deadlines for the publishing of the official census results. In the past year, the groundlessness of persuasion of the Agency and the governmental officials that the census methodology was complete and harmonized at the time of the Census, as well as the rating of the IMO mission on the properly conducted Census, has become more than obvious. Moreover, the final event, the publishing of the official results has shown that the methodology of data processing has not been agreed upon, even to this day. Due to the political disagreements in establishing the criteria for the treatment of the absent and present (resident) population, the official results publishing has been postponed indefinitely, i.e. until a political agreement is reached. It is still not clear if the criteria and the methodology for the destruction of the personal data of the citizens, gathered during the Census, were determined, and that they are not used for the statistical purposes, even though a year and a half has passed since the Census.

5.2 Education and the education system

The education in BiH is not changing - twenty years after the war the teaching methods in elementary and high schools have not evolved - it is still the case that the teachers present, the children write down and later reproduce, wither orally or in written. The grades students take with them from one educational level to the other are a reflection of their work, and their grades are given exclusively by the person who teaches a certain subject.

The BiH education system is unified in terms of operating mode, of the structure of the teaching plans and programs (TPP). All national teaching plans and programs are based on the prescribed content, while the evaluation of the students' accomplishments is disregarded. However, if we observe the content of the TPP (in particular the national subject group), it is clear that there are three education systems.

Still, formally we can discuss a sort of a *communal educational politics at the level of BiH*, although in practice it is hard to find the results of the communal educational politics at the entire state territory.

In 2008, the BiH Council of Ministers has adopted the *Strategic Directions for the Development of Education in Bosnia and Herzegovina, with the Implementation Plan 2008-2015*. In this period, among other things, a *system of grading and evaluating the quality of work* should have been set up; as well as the renewable licence for the teaching profession; unloading of educational content and its linking to the current contemporary trends; and a more open and inclusive education. Out of all we mentioned, it only the standards of students' achievements that are in a later phase, but they are still not completed. (The Agency for the pre-school, elementary and high school education in BiH has only published the accomplishments regarding the subjects of Bosnian, Croatian, Serbian language and literature, and the foreign language).

The *inequality in textbook policy* is still present. Although there were announcements of liberalization and the possibility of bidding for different textbooks and their approval, in Republika Srpska the textbooks are still published by the Institute for Textbooks and Teaching Materials, so that there is only one textbook per subject on the RS territory. In the schools where the lessons are held in Croatian, teachers can choose between the textbooks offered by two publishing companies, mostly developed for the needs of elementary schools in Croatia and adopted to the current TPP.

In November 2014, the BiH Constitutional Court has reached a verdict regarding the appeal of the association "Your Rights BiH" to the Cantonal Court in HNC in the case of "two schools under one roof" (see 2014 Alternative Progress Report). The Court has confirmed the first-instance verdict of the Municipal Court in Mostar and has established that such practise constitutes ethnic segregation and discrimination of the students and that, as such, it must be abolished. From the moment the verdict was reached until today, no efforts were made regarding the abolishing of "two schools under one roof".

The salaries of the employees in the education sector are still the dominant expenditure in the budgets of the competent ministries, while the investments in the quality of education are omitted.³⁸ In Sarajevo Canton, the competent ministry has announced the "Program of budget rationalization measures of the Ministry of Education, Science and Youth of Sarajevo Canton aimed at the improvement of the quality of the teaching process and the successive disbursement of the claims" - the program of austerity measures which could additionally jeopardize the quality of education in the canton, in particular in regards to minority groups.

No progress has been made regarding the education of children with disabilities (see 3.6 Children's Rights).

For the last two years, the *external graduation* has been conducted in the Sarajevo Canton. Although the complicated process of the external grading is performed well, with minor omissions, the formulation of the tests is such that it only examines what the students have remembered from the content of the TPP, without examination of the higher-order thinking - analysis, evaluation, creation.

The high school system in BiH is changed in the slowest manner and it requires much greater efforts in order to transform the teaching plans and programs into curricula, and to modernize the teaching methods, adapting it to the labour market and enabling the professional orientation of the youth.

In the following period, the BiH education system requires the following: the creation of a unified politics of education; conducting of an additional systematic teacher education; adapting the existing TPP into curricula; participating in the international external assessment of students' accomplishments' for the BiH society it is vital that the future education system fosters and nurtures the universal values (peace, solidarity, freedom, education, equality...) and that it insists on the developing of critical thinking; the textbooks should not be a mandatory teaching aid, but an additional aid, only one of the sources of information and knowledge.

Recommendations

- Harmonise the rights in the area of social protection at all levels, and to equalize the levels of benefits stemming from exercising these rights
- Ensure that a minimum of social protection on the entire territory of BiH (cantons/entities/Brčko District) is not below the poverty line;
- Adopt uniform legislations (or harmonize the existing ones) across the country in order to ensure health care for all individuals regardless of their status in terms of insurance;

5.3 Labour, health care and social protection

Legal framework

The social security system in BiH includes: the social insurance, the social benefits, the family and children's protection and the veterans' protection. These rights are the exclusive jurisdiction of the entities/cantons and Brčko District. Depending on the place of their residence, the BiH citizens, hence, are treated differently in regards to the realizing of the right to social protection. In the previous period no significant progress has been made regarding the easing of the position of the poor and socially vulnerable, nor towards the equalizing of the social rights in the entire state,

The payment of benefits related to social protection is regulated differently in the entities/cantons. E.g. the amount of financial assistance in Republika Srpska is prescribed by the RS Law on social protection, while this is decided at the cantonal level in the Federation of BiH. For this reason there are differences in the amounts of the financial assistance which is provided

³⁸ In the Strategic Directions for the Development of Education in BiH it is stated that "around 88% is spent on the gross salaries of the employees, around 8% on the material costs, and 4% on capital investments. From 2008 onwards, the situation has not changed significantly.

- Adopt a uniform law concerning the rights of patients (or harmonize the existing ones) across the country which would allow all the patients to have an equal and dignified treatment with full respect for their rights.

to the system users, not only between the two entities, but also between the cantons in the Federation of BiH.

Regarding the civilian war victims and people with disabilities not related to the armed conflict, this problem has been solved in 2006 through the amendments to the Law on Basics of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of FBiH, which proposes a transfer of the budget for the social protection of these categories of users from the cantonal level to the level of Federation of BiH. Still, this is not the case regarding the other categories of users of social protection.

The right to health in BiH is ensured through the system of social protection and health insurance, and its realization and regulation is the responsibility of the entity and cantonal levels of government. The system of health protection is divided and fragmented, considering that both the entity and cantonal ministries of health and the health funds act in the Federation of BiH, Republika Srpska has a single ministry of health and a single fund of health insurance, while Brčko District has its own separate fund. Such structure creates an additional problem, due to the lack of the harmonization of the legal provisions (in particular between the cantons), and due to the discrimination of citizens based on the place of their residence and the opportunity to use the services of the health protection. This raises the question about the principle of availability of health services to all the citizens indiscriminately, considering that an individual insured in one canton cannot exercise their rights in another canton or entity.

Current situation

After some of the demands stated at the February 2014 protests were formally adopted by the federal and cantonal governments, in the last year nothing has been done to implement them, apart from the sporadic moves of abolishing the so-called “white bread” (the privilege of the officials to maintain their income up to a year following their stepping down from a function). Workers’ rights are still violated to a great extent, the witness of which can be the numerous examples of workers’ protests such as the Banja Luka “Kosmos” workers, who have not received a salary in a year; and the disturbing protest march of the workers of the factories in Tuzla: Aida, Konjuh, Dita and the Tuzla Steel Foundry, from Tuzla to the border with Croatia.

The Tuzla factory workers decided to do so in late 2014, when it became obvious that the new cantonal government, formed after the February protests, would not solve the accumulated problems of these companies. It is clear that the problems caused by the crimes related to privatization still are not solved, and that those responsible for the mismanagement of contracts, drawing the capital from the privatized companies and their intentional destruction are not prosecuted. Apart from these cases, there are increasing accounts of the non-compliance with the workplace safety regulations, the lack of adequate equipment and labour conditions, exposing the workers to life hazards, as was the case with the tragic death of the miners in Raspotočje (Zenica) in September 2014 and in the surface mine Dubrave (Tuzla) in February 2015, as well as the deadly outcomes at construction sites in the Sarajevo Canton. No one appeared before the court for these accidents either.

The *effects of the catastrophic floods which hit Bosnia and Herzegovina in May 2014* should be added to the situation we already described. Thousands of people once more faced the enormous damage to their households, people lose jobs every day, and people in some areas still lack access to the basic infrastructure. It is particularly worrisome that the effects of the last year’s floods were felt strongest by women. Women property owners and farmers suffered the greatest losses and damages, given that about 27% of houses in the Federation of BiH and almost 40% in Republika Srpska are registered to women, and considering the fact that

a greater number of women than men works in agriculture.³⁹ This farms were often the only source of income for the entire family, thus it is necessary to determine equal criteria for the restitution if the affected households.

A report on the consequences of floods has been published in Republika Srpska, but the measures taken for the reparations of damage are far from enough. In the Federation of BiH there are still no official documents on the consequences of the floods, or on the steps taken in order to re-build them.

In 2014, a "Compact on Growth and Jobs", which served as a basis for the Statement signed by the members of Presidency of BiH, with the support of the political parties; and it also served for the creation of the business atmosphere in BiH, that is, measures such as the lowering of income tax; as well as the creation of the Reform Agenda signed by the BiH Government and the BiH Council of Ministers (see 1.2 *Parliaments and governments*).

In these documents, at least those available to the public, the emphasis is on creation of a positive business atmosphere in BiH, that is on measures such as the lowering of the income taxation; increasing the openness and competitiveness of the labour market; reducing the demands and time needed for starting a business; adopting the improved bankruptcy framework for the accelerated re-structuring of the company; the creation of public and transparent e-registers and procedures for obtaining permits, etc. On the other hand, little or no attention has been paid to the measures for the improvement and protection of labour rights, and on the procedures regarding the privatization crime, which is worrisome bearing in mind the already critical state of the area.

Although the acceptance of the Compact and the signing of a joint Statement on the Accession Principles of Bosnia and Herzegovina to the European Union has brought BiH the chance to move from the standstill regarding the European integration; the Compact itself and the solutions drafted in it, as well as the manner of creation and adoption of the reform agenda, are a subject of criticism of a part of the BiH society, in particular of the worker's unions and movements/organizations whose main focus is on the worker's rights.

One of such examples is the first item of the Compact which focuses on the lowering of labour tax burdens. The text of the Compact states that the tax burdens to the salary are high, or that the employer, if they want to pay the salary to the potential worker, has to pay almost 40 percent of the amount in different taxes and contributions which is considered to be a significant factor creating an obstacle for employing. That is the reason why the employers shy away from employing new workers or why they are employing unreported workers, which contributes to the increase of the gray economy, and disables them from exercising their social benefits and workers rights (exercising the rights to retirement and health insurance).

The procedure for the amendments to the legislations which would reduce the personal income tax and contribution rates has been started in Republika Srpska, and it is assumed (according to the proponents of amendments to the law) that it will cause the decrease in tax revenues by 72.3 million (assets of the Pension Fund will be decreased by 13.4 million, the Fund for Health Insurance will be decreased by 43.3 million, the Fund for Child Protection by 4.5 million and assets of the Employment Bureau will be decreased by 11.1 million KM).⁴⁰ The idea of the proponents is that the lost funds could be compensated by increasing the rate of value added tax (VAT), which would require amendments to the VAT Law at the state level, for which there has not been enough support in the previous years in the BiH Parliamentary Assembly. Apart from the

³⁹ UN Women: Gender Equality in Post-Disaster Needs Assessment in Bosnia and Herzegovina, str.2, 2014. Dostupno na: <http://www.mreza-mira.net/10472-floods-bih-reports-gender-aspects/>

⁴⁰ See Draft Law on The Law on Amendments to the Law on Contributions of Republika Srpska, adopted during the 7th session of the National Assembly of Republika Srpska (submitted for the public debate procedure).

fact that the feasibility and applicability of such reforms is questionable, there is also the problem of their effectiveness and justification. It is worrying that such reforms are announced without conducting a thorough economic study and without the public debate in which the professional community, the representatives of the workers and the civil society would be included, since the professional opinions on the functionality of this fiscal reform are quite varied.

The lack of transparency and inclusiveness throughout the entire process makes room for concerns regarding the direction of the reform in the area of social protection and retirement insurance. Although it has been announced that the reform will proceed in the direction of reducing the number of preferential pensions and the better targeting of the social assistance, in order for it to reach those who really are in the state of need, the lack of concrete information on the manner these issues were treated in the reform agenda and the exclusion of the public and the interested parties from the entire process is worrying. A particular problem is the fact that the ruling parties have a strong foothold and a large number of base voters, in particular in the categories of privileged users of social assistance, and it is questionable whether the reform will actually proceed towards the abolishing of privilege and enforcement of equal rights, based on the actual needs.

Due to a series of factors such as the catastrophic floods, the economic crisis, the high percentage of the unemployed, especially the long-term unemployed, inequality regarding the realization of rights, and political interests, if there is a lack of serious and quality application of adequate social and economic reforms, we can expect that the poverty and exclusion rates will continue to rise, which could be a cause for serious shocks of the BiH society.

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/en/about-the-initiative/>

Active member organizations:

Association for Democratic Initiatives, Sarajevo
BH Journalists, Sarajevo
The Center for Investigative Reporting, Sarajevo
Youth center KVART, Prijedor
Centre for Political Studies, Sarajevo
Foundation Cure, Sarajevo
Helsinki Citizens' Assembly, Banja Luka
Youth Initiative for Human Rights, Sarajevo
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Oštra nula (Straight Zero), Banja Luka
Rights for All, Sarajevo
Transparency International, Banja Luka/Sarajevo
TRIAL – Track Impunity Always, Sarajevo
Sarajevo Open Centre
Vaša prava BiH (Your Rights BiH)
Why Not, Sarajevo
Land of Children, Tuzla

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