



Proposals for the Improvement of the Institutional Framework for the Protection and Promotion of Human Rights through the Reform of the Institution of Ombudsman for Human Rights in Bosnia and Herzegovina

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CONTENT

Introduction	3
General provisions	4
JURISDICTION AND FUNCTIONS OF THE INSTITUTION OF OMBUDSMEN	5
COMPOSITION AND APPOINTMENT OF OMBUDSMEN	7
Participation of civil society organizations in the appointment of Ombudsmen	8
Role of the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina in the appointment process	9
Two-thirds majority regarding the selection	10
Appointment Criteria	12
Ensuring pluralism in the composition of the Institution	12
The mandate of six years with the possibility of re-election	14
INTERNAL INSTITUTIONAL STRUCTURE	16
FINANCING OF THE INSTITUTION	18
STRATEGY OF THE INSTITUTION	20
INITIATIVE FOR ADOPTING AND AMENDING THE LAWS AND OTHER REGULATIONS	21
INITIATIVE FOR THE EVALUATION OF THE CONSTITUTIONALITY OF LAWS	23
PARTICIPATION OF THE CIVIL SOCIETY ORGANIZATIONS IN THE WORK OF THE INSTITUTION OF OMBUDSMAN	25
REPORTING ON THE STATE OF HUMAN RIGHTS	27

INTRODUCTION

The Institution of Human Rights Ombudsman of BiH is a central, independent institution for the protection and promotion of human rights. Having in mind that there are no other institutions of ombudsman nature in Bosnia and Herzegovina (e.g. thematic ombudsman), nor other institutions for human rights, such as foundations or government offices for the promotion of civil society, the importance of the Institution of Human Rights Ombudsman of BiH is even greater.

In order to:

- Ensure the greater independence of the institution,
- Improve the institutional efficiency in carrying out its mandate of protection and promotion of human rights,
- Enable a greater presence of the institution among the citizens in the field and to increase the trust in the institution,
- Reinforce the institutional financial independence,
- Advance the internal structure of the institution,
- Reinforce the cooperation of the institution and the representatives of the civil society organizations, the academia and the professionals,
- Finally regulate the issue of National Preventive Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment , and to
- Create the conditions for the accreditation of the Institution of Human Rights Ombudsman in “A” status,

Drafting and adopting a new Law on Human Rights Ombudsman of Bosnia and Herzegovina is of key importance.

The Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina, as an informal coalition of thirty civil society organizations which contribute to monitoring of the reforms and overseeing the application of EU policies, laws and standards, with the focus on the issues of democratization, rule of law, and human and minority rights, has recognized that this is an issue of great importance, and wants to be involved in the reform process through the suggestions it makes. We hope that we are providing an adequate support to the process by proposing the amendments and explanations, and that the aforementioned propositions will be recognized by the competent institutions.

GENERAL PROVISIONS

Article (Scope of the law and terms)

1. *This Law stipulates: functions and jurisdictions, the composition, the selection and dismissal of ombudsmen, financing, position and mode of operation of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.*

2. *In this Law, the term:*

a) *“Institution” designates the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina;*

b) *“an/the Ombudsman” designates one of the four Ombudsmen;*

c) *“the Ombudsmen” designates all four Ombudsmen comprising the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina;*

d) *“government body(ies) of BiH” refers to all institutions, authorities, agencies, and departments of the government(s) in Bosnia and Herzegovina (state, entity, Brčko District of BiH, cantonal city, municipal, and other legal entities performing public authorities);*

e) *“collegium of the institution” refers to the governing body of the institution, comprised of all four ombudsmen and the general secretary.*

3. *The Headquarters of the Institution shall be in Sarajevo. The Institution shall have regional offices in Banja Luka, Mostar and Brčko. The Institution may establish field offices beyond the headquarters and the regional offices. The field offices shall be subordinate to the regional offices.*

Article (Gender neutrality in expression)

Words and conceptual collocations that have gender significance, regardless of whether they are used in masculine or feminine gender, relate equally to masculine and feminine gender.

In these articles the proposal offers an explanation of the basic terms used in the law, including the instruction on the use of gender neutral language. The proposals also state that the headquarters of the Institution is in Sarajevo (in line with the Annex 6 of the Dayton Peace Accords), while the regional offices are in Banja Luka, Mostar and Brčko. The Institution may also establish field offices beyond the headquarters and regional offices. This opens the possibility for the Institution to set up field offices in order to ensure availability of the Institution in the entire region of BiH, in line with the perceived need, based on the population, the number of complaints, or on the estimated prevalence of human rights violations, as well as on the budgetary means. Such regulation is in line with the recommendations of the Venice Commission that the Institution should be allowed the freedom to set up additional offices, determining their number and structure, in order to carry out their mandate in a suitable manner, without the participation of the legislative authority in the making of such decision.¹

¹ CDL-AD(2009)043 – Opinion on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro, adopted by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009), par. 9 and 14.

JURISDICTION AND FUNCTIONS OF THE INSTITUTION OF THE OMBUDSMAN

Article (Jurisdiction and Functions)

1. *The Institution is an independent body established by the Parliamentary Assembly of Bosnia and Herzegovina with the aim of promoting and protecting the rule of law and human rights and freedoms enshrined in the international law in the field of human rights and freedoms, in the Constitution of Bosnia and Herzegovina and in its legislations.*

2. *The Institution shall perform four basic functions:*

- a) Protecting human rights,*
- b) Promoting human rights,*
- c) The function of national preventive mechanism, and*
- d) The function of the body for the protection of equality and combating discrimination.*

The Institution may perform other functions as well, as determined by special laws.

3. *The Institution shall promote and protect human rights and freedoms and the rule of law by considering the complaints on the existence of illegal actions and irregularities in the functioning of the authorities in Bosnia and Herzegovina, and, if such a provision is made in special laws, review the complaints against other legal and natural entities.*

4. *The Institution shall promote human rights and freedoms by monitoring the situation and indicating the need for their protection, conduct research and analysis activities, document the human rights violations, develop and maintain the data base, have an active and regular cooperation with the civil society organizations, international organizations and the professional and academic communities, inform the public and stakeholders in a timely and orderly manner, conduct educational, informative activities and the activities aimed at raising the awareness, and shall initiate the harmonization of legislation with the international and European standards in the field of human rights and freedoms.*

The Paris Principles relating to the status of national/state institutions for the promotion and protection of human rights (hereinafter: the Paris Principles), adopted in 1993 by the United Nations General Assembly, represent the minimal international standards for the establishment of the state institutions for human rights. The Principles stipulate that the institutions for human rights should have “*as broad a mandate as possible*”, which should be “*set forth in a constitutional or legislative text*”, and which should stipulate “*the promotion and protection of human rights*”, with the stating of the particular responsibilities the Institution should have.²

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and its subcommittees (the ICC) have offered additional explanations regarding this standard. Thus, regarding Bosnia and Herzegovina, in November 2009, the ICC has recommended, in the process of re-accreditation of the Institution of the Ombudsman of BiH, that the *mandate of the Institution* of the Ombudsman of BiH is reinforced by including the *promotion of human rights* in its scope, thereby referring to the General Observations of the ICC regarding the issue of the mandate of the institutions for the human rights, which represent the authoritative interpretation of the Paris Principles. Namely, these observations³ point out that all the state institutions³ for the promotion of human rights should have a legally assigned mandate both for the protection and promotion of human rights. Thereby, the promotion includes, according to the aforementioned interpretation of the Paris Principles, the functions needed for the creation of the society with the widespread respect for the human rights and understanding of them, which can be achieved through the

² Paris Principles, Section A.1 and A.2., as well as A.3

³The updated version from 2013. G.O. 1.2 Human Rights Mandate.

functions of education, training, counselling, and communication with the public and through advocacy. By contrast, the protection of human rights is achieved through the functions of responding to the committed human rights violations, or through their prevention. This includes the functions of monitoring, inquiry, conducting investigations, reporting on the violations, as well as the management of individual complaints. The broad set of the mandate of the Institution of the Ombudsman, both for the protection and promotion of human rights, is in line with the recommendations of the Venice Commission.⁴

The aims of the proposals for the new institutional framework, in terms of the legal specification of the combination of different types of the Institution's powers, are directed towards the Institution of Ombudsman ensuring the effectiveness of the protection of human rights, combined with the Ombudsman tasks of:

- *Tribunal's powers* – the protection of rights through the receiving and resolving the individual complaints of the citizens (while respecting the principle of the efficient access - Article 6 of the European Convention on Human Rights; Articles 41 and 47 of the EU Charter of Fundamental Rights, and in line with the EU directives and recommendations no.2 (CRI(97)36) and no.7 (CRI(2003)8)ECRI))
- *Promoting human rights* (in line with the Paris Principles of the UN General Assembly A/RES/48/134 National institutions for the promotion and protection of human rights)
- *Being a body for the protection of equality and for combating discrimination* (in line with the European Union directives 2006/54/EC, 2004/113/EC, 2000/43/EC);
- *Jurisdiction of National preventive mechanism* (in line with Article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT-Convention)
- *Investigative-analytical jurisdictions* - investigate the specific events in practice, analyse the causes of the observed trends and suggest the systematic solutions (in line with the EU anti-discrimination directives and recommendations no. 2 (CRI(97)36) and no. 7 (CRI(2003)8)ECRI)
- *Report to the Parliament and the public on the observed occurrences of the systematic violations of human rights* (in line with the Paris Principles of the General Assembly of the United Nations A/RES/48/134 National Institutions for the Promotion and Protection of Human Rights);

⁴ CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 7 and 13.

COMPOSITION AND APPOINTMENTS OF OMBUDSMEN

Article (Composition)

1. The Institution shall consist of four Ombudsmen. The maximum of one Ombudsman shall be appointed from the ranks of each of the constituent peoples or from the ranks of the Others.
2. Discrimination on any grounds in appointment of Ombudsmen shall be prohibited, in line with the Law on Prohibition of Discrimination of Bosnia and Herzegovina.
3. When appointing the Ombudsmen, the equal representation of both sexes shall be considered, in line with the Law on Gender Equality of Bosnia and Herzegovina.

Article (Appointment Procedure)

1. The Ombudsmen shall be appointed by the Parliamentary Assembly of Bosnia and Herzegovina for a period of six years and may be re-elected. The House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina shall reach a decision regarding the appointment by a two-thirds majority, in line with the Rules of Procedure of both houses.
2. The appointment procedure shall be initiated and carried out by the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina. The procedure shall be regulated by the separate Rules of Procedure adopted by the Joint Committee on Human Rights.
3. The candidate list is determined on the basis of open competition, the submitted proposals of the concept of work of the Institution, the interviews and the prescribed proceedings. The list of candidates, together with the rationale and the curricula vitae, shall be submitted to the houses of the Parliamentary Assembly of BiH for further proceeding.
4. The Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina shall actively engage the representatives of the civil society organizations, international organizations and the professional and academic communities who work on the protection and promotion of human rights, in its work, through the public calls.
5. The Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina shall make a proposal for appointing a new Ombudsman six months before the expiration of the mandate of the Ombudsman, at latest, or 30 days following the vacation of the post due to other reasons.
6. Where an Ombudsman post becomes vacant for a reason other than the expiration of the mandate, the remaining Ombudsmen shall provisionally perform his or her duties until the appointment of a new Ombudsman has been completed. The Ombudsman who is appointed to the vacant position shall perform the duty for the remaining portion of the mandate and may be re-elected.

Article (Requirements for the Appointment)

1. In order to be appointed an Ombudsman, an individual shall satisfy the following requirements:
 - a) Be a citizen of Bosnia and Herzegovina,
 - b) Have not been convicted and there are no ongoing criminal proceedings against him/her,
 - c) Not be a member of a political party,
 - d) Have graduated in social sciences,
 - e) Excellent knowledge of at least one foreign language,
 - f) Have passed the Bar examination or has a Master degree in Social Sciences,

- g) Have at least 10 years of professional experience, at least 5 of which are in the field of human rights and at least 3 in managerial positions,
- h) Be an esteemed expert, recognized by the public as a protector and promoter of human rights and freedom, and of rule of law, and as a person of a high moral stature.

Article (Termination of Mandate)

1. The mandate of an Ombudsman shall terminate for any of reasons below:
 - a) Expiry of his or her term of office,
 - b) Resignation,
 - c) Death,
 - d) Such circumstances that her or she no longer meets the requirements for appointment,
 - e) Inability to perform duties for a period longer than six months,
 - f) Failure to perform duties stipulated by Law.
2. The House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina shall decide on the termination of duty if the circumstances referred to in Paragraph 1, items d), e), and f) occur, and on the vacancy of the Ombudsman position, by a two-thirds majority, in line with the Rules of Procedure of both houses, with the prior opinion of the Joint Committee on Human Rights obtained.
3. When an Ombudsman post becomes vacant because of the expiration of a term of office, he or she shall continue to perform his or her duties until the appointment of a new Ombudsman has been completed.

The Ombudsman Appointment Procedure is one of the most significant issues which need to be considered in order to guarantee the independence of the human rights institutions, on the one hand, and to promote pluralism on the other, as the two principles which represent the corner of these institutions, in line with the international standards.

Participation of civil society organizations in the appointment of Ombudsmen

The proposed amendments include the participation of the representatives of the civil society organizations, international organizations, and of the professional and academic communities, in the selection of Ombudsmen, who are engaged with the procedure through an open call.

Guided by the highest standards of the democratization of a society, by the *acquis communautaire*, the Paris Principles, and by the particular recommendations of the ICC, it is necessary and useful that the civil society organizations who work in the field of the promotion and protection of human rights be actively engaged in the entire process of the appointment of Ombudsmen.

The Paris Principles, chapter B.1 “*Composition and guarantees of independence and pluralism*”, call on the United Nations member states to regulate the composition and appointment of the national institutions of human rights, in case of BiH - the appointment of human rights ombudsmen, in a procedure which will ensure all necessary guarantees for the pluralist representation of the social groups (the civil society) engaged in the promotion and protection of human rights.

According to the *General Observations of the ICC*, there are several ways of ensuring pluralism, including the participation of the civil society in the appointment procedure and other ways of efficient cooperation with the civil society. It is stated that the election procedure must be open and transparent, in order to ensure independence and efficiency, as well as the public trust in the Institution. In order to achieve that, the procedure needs to be under the control of an independent and trustworthy body, and it needs to include open and fair consultations with the NGO and civil society. Thereby, it is acknowledged that the

expertise and experience of the non-governmental organizations and the civil society lead to a greater public legitimacy of the institutions of human rights. The ICC has recognized that the ensuring of the extensive consultations and participation in the process of applying, reviewing the applications and the selection, promotes transparency, pluralism and public trust in the entire procedure, as well as in the selected candidates, and finally, in the Institutions itself.⁵

In this context, it needs to be noted that the ICC, i.e. its subcommittees researching the institutional harmonization with the Paris Principles, has issued recommendations specifically in relation to the BiH state in order to formalize the participation of the civil society in the process of the appointment of Ombudsmen. The ICC has in November 2009, in relation to Bosnia and Herzegovina, in the process of re-accreditation of the Institution of Ombudsman of BiH, established that the civil society and other groups have not been included in the process of appointing Ombudsmen and that there is a need for a more transparent and participatory process of appointing Ombudsmen. In November 2010, the ICC has, among other things, recommended the re-accreditation of the Institution of Ombudsman in A status, particularly due to the fact that the Institution has stated their intentions propose the amendments to the legislature in order to ensure pluralism and independence of the Institution through a suitable process of selection and appointment.

In November 2012, the ICC has once more, in relation to BiH, underline the need for a “clear, transparent and participatory selection process, which promotes the selection based on merit, which ensures pluralism, promotes the independence and the public trust in the management of the state institution of human rights”. In this context, the ICC has called for the formalization of the selection process through the relevant regulations, and through the implementation of public tenders, rating the candidates based on the pre-selected, objective and publicly available criteria, as well as through the extensive consultations with the civil society and/or their participation in the process of applying to the tender, evaluation and the selection of the candidates.

The comparative experiences of the neighbouring Republic of Croatia regarding the appointment of attorney general and of the Ombudswoman, as well as the practice of other states in the European Union, have shown that the civil society organizations can contribute significantly to the quality of the appointment process, by being included in the process of evaluation of each of the candidates, interviewing the candidates, and finally, through the suggestion of the best candidates for the appointment by the Parliament.

Role of the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina in the appointment process

Having the key role it has in the protection of fundamental human rights and in combating discrimination, the selection of ombudsmen is extremely significant for the democratic life of a society, and cannot be limited to a small circle of representatives of the most represented political parties or to be reserved for the political elites. In this sense, the procedure of appointing ombudsmen *should not be managed by an ad hoc committee* which does not deal with the field of protection of human rights in a systematic manner, and it should be managed by a standing parliamentary body which should include a proportional number of the representatives of the ruling and the opposition parties.

The Venice Commission has issued a recommendation in one of its previous opinions on the Institution of Ombudsman of Bosnia and Herzegovina⁶ that the Law should be amended in the manner that the joint committee of the two houses of Parliament is tasked with the

⁵ The updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution; G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

⁶ The opinion in question was regarding the Ombudsman at the level of Federation of BiH, but as desirable, this solution can be applied to the Parliamentary Assembly of BiH as well.

appointment of ombudsmen. As recommended by the Venice Commission, the composition of the committee should be stipulated *ab initio* in the Law itself or in the Rules of Procedure. As specified, it would be harmful for the transparency of the procedure - and thus for the credibility of the institution - to determine the composition of the committee *ad hoc* aimed at determining the proposition for the appointment for each of the mandates of the Ombudsmen.⁷

Having in mind the aforementioned arguments, the most suitable body for performing this important task is *the existing Joint Committee on Human Rights* of the Parliamentary Assembly of BiH. On the one hand, it represents the body of both houses of the Parliamentary Assembly of BiH, and its members are the representatives of the ruling and the opposing political powers, with respect to the territorial representation⁸. On the other hand, it would be perfectly natural to assign the procedure of the selection of the candidates for the Institution of Ombudsman to this body, as it already deals with the issue of the protection of human rights in a systematic manner and since it collaborates with the Institution of Ombudsman.⁹ Thus, the jurisdiction of the existing Joint Committee on Human Rights of the PA BiH includes, among other things, the consideration of the “issues related to the implementation of the human rights and fundamental freedoms guaranteed by the Constitution of BiH and the BiH legislature, by the state bodies, public institutions and organizations with public powers, in cases presented by the Institution of Ombudsman of BiH, the citizens and the entities, and notifying the houses.”¹⁰ Such solution would also be in line with the pluralist representation of the social groups included in the promotion and protection of human rights, as stated in the Paris Principles.

Two-thirds majority regarding the selection

In the aforementioned opinion¹¹, the Venice Commission has in regards to BiH recommended that the Law is amended in the manner that the *two-thirds majority is required in both houses* when appointing Ombudsmen, which would definitely contribute to ensuring the pluralism regarding the appointments, as defined by the Paris Principles. The Venice Commission has determined that the notion of the simple majority in both houses is not suitable, assessing that it does not guarantee a broad consensus of all powers in the houses, and that the appointment of Ombudsmen without such a consensus might compromise the credibility of the Institution. As the Venice Commission has stated, the only way of ensuring the recognition of the impartiality of the Institution as an objective fact, recognized by all the citizens, is making sure to reach the broadest possible consensus regarding the persons in question.¹²

⁷ CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 2.

⁸ Permanent committees have nine members. The committees receive the members in proportion with the size of the clubs of the representatives in the House, two-thirds of members are appointed from the territory of Federation of BiH, and one-third from the territory of Republika Srpska.

⁹ In this respect, the Venice Commission has, in the opinion regarding Serbia in 2004, recommended the engagement of the Constitutional Commission in the procedure of the appointment of Ombudsmen, due to the fundamental importance of this institution for the state, and due to the fact that the Constitutional Commission deals with the issues of human rights protection. See CDL-AD (2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe. (Strasbourg, 6 December 2004), par. 12.

¹⁰ This is stipulated in the Rules of Procedure of both houses of the Parliamentary Assembly of BiH.

¹¹ CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 2.

¹² CDL-INF(99)10 - Report of the Working Group of the Venice Commission and the Directorate of Human Rights on Ombudsman institutions in Bosnia and Herzegovina

The Venice Commission underlines such solution as desirable in relation to the appointment and dismissal of duties in the institutions for human rights protection *in other states of the Council of Europe*, such as Bulgaria, Serbia, Macedonia, Montenegro, Armenia and Kazakhstan. Thus it has stated in its opinion that it was needed for the securing of “politically and socially broad base for the appointment of Ombudsmen”, “for the reasonable consensus to be reached”, “so that the public trust in the independence of Ombudsmen would be ensured”, and it has underlined that “the greater the majority of representatives, the greater independence and public authority of the Ombudsmen”.¹³ The significance given to this solution by the Venice Commission is also visible from the fact that it has, in regards to Montenegro in 2007, underlined the need for the Constitution to stipulate the qualified majority as necessary for the appointment of Ombudsmen by the Parliament.

In the context of Bosnia and Herzegovina, *the decision-making by two-thirds majority is not common in the Parliamentary Assembly of BiH*, and it is limited to making decision of great importance, such as amendments to the Constitution of BiH. However, it should be underlined that the two-thirds majority for the appointment of Ombudsmen *was already stipulated for the appointment of Ombudsmen in the 2002 Law on Ombudsman for Human Rights*, until the Law was amended in 2006 and this provision was removed. We should also note the fact that the two-thirds majority is still stipulated in Article 12, paragraph 2 of the current Law, which relates to the decision-making process regarding the vacant position of Ombudsmen under certain circumstances.

Lastly, regardless of whether the two-thirds majority vote will be selected as a preferred solution in the houses of PABiH, following the detailed debate on the issue, it is also important to ensure other procedural guarantees that the selection and appointment of Ombudsmen will be conducted in line with the Paris Principles and the recommendations of the Venice Commission. In this sense, the Venice Commission had stated, e.g. in the opinion in relation to Serbia in 2004, that it would be necessary to seek out other possibilities which would ensure the same result, with such modality guaranteed in the legislature, in case that the constitutional regulations make the meeting of this requirement impossible.

In this context, an important possibility available to Bosnia and Herzegovina, and which represents the minimum which needs to be met is the aforementioned engagement of the Joint Committee on Human Rights of the PA BiH. The management of the selection of the candidates who meet the requirements for the selection of Ombudsman set by this body, with the adequate participation of the representatives of the civil society, would help meet the requirement stipulated in the Paris Principles, which states, in line with the interpretation of the ICC, that this procedure should be “controlled by an independent and trustworthy body” in order to ensure pluralism, independence and efficiency, as well as the public trust in the Institution.¹⁴

¹³ CDL-AD(2008)009 – Opinion on the Constitution of Bulgaria adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008), par. 81.; CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 11.; CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe.(Strasbourg, 6 December 2004), par. 8.1 and 11.; CDL-AD(2003)007 - Opinion on the Draft Law on the Public Attorney of “The former Yugoslav Republic of Macedonia” adopted by the Venice Commission at its 54th Plenary Session (Venice, 14- March 2003), B.II Article 5.1.; CDL-AD(2003)006 - Opinion on the Draft Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 54th Plenary Session (Venice 14-15 March 2003), II Article 3.; CDL-AD(2011)034-e, Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 16.

¹⁴ The updated version from 2013. G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

Appointment Criteria

The proposal includes a partial amendment of the requirements an individual needs to satisfy in order to be appointed an Ombudsman.

The institutional capacities as a pre-requisite of the effective protection of fundamental human rights depend primarily on the expertise and professionalism of the human resources, particularly of those in managerial positions. In this sense, and in line with the Paris Principles, the pre-requisites of the participation in the procedure of Ombudsman selection need to be specifically defined in the legislature, available to the public, and they need to be discussed through the means of consultations with all stakeholders, including the civil society, at the time of their adoption.¹⁵

As elaborated by the ICC in its General Observations, “the evaluation of the candidates based on the basis of pre-selected, objective and publicly available criteria, promotes the appointment of candidates based on their merit, limits the possibility of unjustified interference in the selection process and serves the ensuring of adequate management and efficiency of the state institution”.¹⁶

In this respect, in order to ensure the quality management of the state institution responsible for the protection of human rights, the proposition stipulates the degree in social sciences, the passed Bar exam or a Master degree in social sciences, at least 10 years of professional experience, at least 5 of which are in the field of human rights and at least 3 years in the managerial positions. Besides that, it is also stipulated that he/she is an esteemed expert, recognized by the public as a protector and promoter of human rights and freedom, and of rule of law, and as a person of a high moral stature, as well as that he/she has an excellent knowledge of at least one foreign language. Apart from the general professional experience, a requisite currently stipulated in BiH, it would be of a great significance for the position to add the particular experience in the field of the protection of human rights, which is, among other things, in line with the recommendations of the Venice Commission¹⁷, and experience of being in managerial positions. Through the process of standardizing the requisites which prove the competence in the field of protection of human rights and in the management of the Institution, we ensure the quality basis for the effective and efficient work of the Institution, In this context, a significant possibility is that the process of candidate selection also considers the concept of work of the Institution, as envisioned by the candidates, as the amendments stipulate that it is mandatory to submit it. In the context of ensuring the public trust, and with the aim of ensuring independence, the proposal, following the example of the solution adopted in Croatia in regards to the Ombudsman, stipulates that an individual is not a member of a political party.

In the end, all of these criteria support the public trust in the work of the Institution of Ombudsman.

Ensuring pluralism in the composition of the Institution

The proposal stipulates that the Institution consists of four Ombudsmen, as well as that *the maximum of one Ombudsman shall be appointed from the ranks of each of the constituent peoples or from the ranks of the Others*. Apart from that, the proposal stipulates the

¹⁵ General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution;

General Observations of the ICC /the updated version from 2013. G.O. 1.8 Selection and appointment of the decision-making body of National Human Rights Institutions;

¹⁷ Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 19.

prohibition of discrimination, on any basis, and the consideration of the *equal representation of both sexes*, in line with the Law on Gender Equality of BiH.

In line with the Paris Principles, there are different models of ensuring pluralism in the composition of national institutions for human rights. One of the important items in this regard is that the members of these bodies represent different segments of the society, and that, in line with that, the criteria which unduly narrow down and limit the diversity and pluralism in the composition of institutions should be avoided.¹⁸ The requisite of pluralism, in the sense of Paris Principles, is directly related to the requisite of independence, credibility, efficiency and availability, and it implies the broad representation of the entire society within the framework of the Institution of Ombudsman, including the gender representation, ethnicity and national minorities.

With the proposed solution we achieve the consent between the ruling political principle of national tripartite and the guarantee of equal treatment of all persons, regardless of their ethnicity, including the members of national minorities or those who refuse to identify as members of one of the three constituent peoples (the constitutional category of the *Others*). The number of the Ombudsman is increased from 3 to 4, in order to ensure that, apart from the representatives of the three constituent peoples, a representative from the ranks of ‘Others’ will participate in the work of the Institution. At the same time, the proposed solution provides the guarantee of the protection from the domination of one of the groups (constituent peoples or the Others) over the others, which is standardized in the manner that the maximum of one Ombudsman can be nominated from the ranks of any of the constituent peoples or the Others.

Namely, the current legislature proposes the *representation of the three constituent peoples*, as stipulated in Article 8, Law on Ombudsman: “(1) The Institution of the Ombudsman shall consist of three persons, who shall be, in line with Article 7, appointed from the ranks of the three constituent peoples (Bosniak, Croat and Serb)”. Although the Law later stipulates that this does not “exclude the possibility of appointing an Ombudsman from the ranks of the Others”, which is used as a declarative distancing from the formal exclusion of the persons from the ranks of the Others from this public function, *this regulation has a discriminatory effect*, as there is a total of three positions, as it is stipulated that the three positions should be occupied primarily by the members of each of the three constituent peoples. Thus, it is not clear in which manner could one or more representatives from the ranks of the Others be appointed to this position. This is proven by the fact that the Institution of the Ombudsman has consisted of *the three Ombudsmen from the ranks of the three constituent peoples: Bosniak, Croat and Serb peoples for the last two mandates*. To date, there has been no situations that someone from the ranks of the Others would be in the race for the Ombudsman, even in the situation when the Ombudsman from the ranks of Croatian people Ivo Bradvica has vacated the position in 2009, when the *ad hoc committee which started the procedure of appointing an Ombudsman from the ranks of Croatian people* was formed.

Since the adoption of this legal solution, envisioned at the time so that it would ensure the distribution of functions following the ethnic principle inherent to the consociational democracy as it is present in BiH, there has been a substantial change in the public opinion as well as the multiple court verdicts regarding this form of discrimination in regards to the availability of different public functions, when it comes to the citizens who are members of national minorities, or when they refuse to identify themselves with a particular constituent people. In this regards, the most significant are the verdicts of the European Court of Human Rights in the case of *Sejdić and Finci v. BiH* and in the case *Zornić v. BiH*, as well as the other verdicts of the BiH Constitutional Court, and other documents and recommendations of

¹⁸ General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution.

the international and domestic bodies condemning any form of discrimination against the citizens who belong to the ranks of the ‘Others’. In the context of the problematic composition of the Institution of Ombudsman, among other things, the Venice Commission has recommended that the “stipulation of the draft Law stating that the Ombudsman and the two assistant ombudsmen shall be elected from the ranks of the ‘three constituent peoples (Bosniak, Croat and Serb)’ should be amended to ensure that the persons from the rank of the “Others” are not disabled from being appointed Ombudsman or assistant ombudsmen.”¹⁹ Apart from that, as a part of the last examinations for the accreditation of the Institution of Human Rights Ombudsman of BiH, in November 2012, the ICC has pointed out the need of a more participatory and transparent Ombudsman selection process, with a particular emphasis on the fact that the direct referring to the appointment of Ombudsmen from the ranks of the three constituent peoples in the Law does not appear to be in line with the broad interpretation of the principle of pluralism other than in regards to ethnicity.

The suggested solution would thus be the harmonization with the Paris Principles and the compliance with the recommendations of the Venice Committee, as well as the consistent implementation of the principle of the prohibition of discrimination in BiH.

In this respect, it should be noted that it is also necessary to *ensure the equal representation of both sexes in the Institution of Ombudsman*, in order to meet the requirement of pluralism emphasized in the Paris Principles and in the international standards of human rights protection. Hence, it is recommended that the equal representation of both sexes is taken into consideration when appointing Ombudsmen, in line with the Law on Gender Equality in Bosnia and Herzegovina.

A balanced representation of women and men in positions of social influence and power is a pre-requisite of democratic decision-making with regards to the equal representation of these two groups in the society. The domination of persons of one sex in the positions of social influence despite the fact that the other sex represents 50% or more of the population is a reflection of the structural discrimination based on sex. The balanced representation promotes the probability that the Institution will be willing to pay attention to the problems and interests of women and men alike. The requisite of balance encourages the bodies responsible for the selection to appeal to a higher number of persons of both sexes which increases the pool of possible candidates and promotes the probability that the best candidate will be selected. A balanced representation also contributes to breaking of the traditional gender specific stereotypes regarding persons of either sex.

The mandate of six years with the possibility of re-election

The proposal stipulates the appointment of Ombudsmen to a period of *six years, with the possibility of a single re-election*. The conduct of the Ombudsman duty should still be limited to the maximum of two mandates of six years, primarily in order to *ensure the independence of the Institution*, and to allow the criticism of the executive government in relation to the Parliament. It is necessary to ensure that the mandate of the Institution of Ombudsman is in no way *related to the duration of a mandate of the Parliament*. At the same time, it is necessary in order to ensure that the Institution has a motivated and ambitious leadership familiar with the most recent trends of human rights protection at any given time, on the one hand, and in order to prevent the personification of the position with the person, it is necessary to limit the possibility of re-election to the maximum of two mandates.

The proposal also stipulates that the Joint Committee on Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina should start the procedure for the appointment of

¹⁹ CDL-AD(2004)031 Opinion on the Draft Law on Amendments to the Law on Ombudsman for Human Rights in Bosnia and Herzegovina adopted by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004), par. 14 and 29.

Ombudsman, at least six months before the expiration of the mandate of the Ombudsman, at latest, or 30 days following the vacation of the post due to other reasons. This solution is in line with the recommendations of the Venice Committee, in order to ensure the continuity in the work of the Institution²⁰, and it is also available in the comparative practice (e.g. Croatia).

²⁰ Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), par. 21.

INTERNAL INSTITUTIONAL STRUCTURE

Article (Distribution of tasks and management)

1. The Ombudsmen shall, within 30 days of their appointment, distribute the fields of work among themselves, so that each of them individually manages the work in one or more fields, in line with the functions of the Institution.
2. The work of the Institution shall be governed by the Collegium of the Institution. The Coordination of tasks in the work of the Collegium of the Institutions shall be undertaken by one of the Ombudsmen, who is the Chairman at the time. The sequence of Ombudsmen who coordinate the work of the Institution shall be determined by the alphabetical order of their last names.
3. Each Ombudsman shall appoint the Assistant Ombudsman in their field of work. The mandate of the Assistant Ombudsman shall be linked related to the mandate of the Ombudsman and shall be terminated with the mandate of the Ombudsman.
4. A person can be appointed an Assistant Ombudsman if he or she who has completed a degree in law, excellent knowledge of at least one foreign language, and at least 5 years of professional experience, at least 3 years of which in the field of human rights.
4. All four Ombudsmen shall cooperate and seek compromise in their decision-making. In case of conflict or misunderstanding in the decision-making process, the final decision rests with the Chairman of the Ombudsman.
5. In case of uncertainty which of the Ombudsmen shall receive the complaint for the treatment, the final decision lies with the Chairman of the Ombudsman. Within his or her field of work, the individual ombudsman shall independently make recommendations regarding the submitted complaints.
6. For the execution of professional, research, promotional and administrative activities, a professional service of the Institution shall be established. The work of professional services shall be managed by the General Secretary.

Article (Organization of the Institution)

1. The Rules of Procedure shall govern the internal structure of the Institution, the number, organization and operation of the regional and field offices, mode of work of the Institution and the Ombudsmen, the coordination of the tasks of the Institution, the work of the Collegium of the Institution, the mode of planning and completing tasks, the methodology of drafting annual and special reports, the scope of the permanent advisory body, as well as the number and manner of selection of its members and other issues of importance for the performance of tasks.
2. The Rules of Procedure shall be adopted with 45 days following the appointment of Ombudsman.
3. The Institution shall adopt the Regulations on the internal organization and systematization governing the number of staff needed to perform duties, with the description of their basic duties, tasks, technical conditions necessary for the performance of their tasks, their powers and responsibilities, and other issues relevant to the work and activities of staff. The staff of the Institution shall be appointed and dismissed by the Institution. Staff shall be appointed through public competition.
4. The Institution may in line with the Law and the Rules of Procedure adopt other regulations needed for the performance of the tasks.

The past experience of the Institution of Ombudsman has shown that often it is not clear which Ombudsman is responsible for what, which meant that the decisions on many issues,

including such simple issues as a decision on who will be a guest speaker at a round table, had to be made at the level of the three Ombudsmen. The principle of joint decision-making often slows down the decision-making process, and sometimes it stops it fully. In order to solve this issue, and to make the work of the Institution more effective, it is extremely important that there is a division of labour between the appointed Ombudsmen. Similar division of labour is also present in the comparative practice. For example, the Institution of Ombudsman in Sweden also has four Ombudsmen, each of whom works on different matters, in line with their responsibilities, i.e. the functions the Institution performs. The four Ombudsmen in BiH can distribute the responsibilities among themselves in a similar manner. One of the models which enables each of them to undertake certain responsibilities stems from the functions of: 1. Protection of human rights, 2. Promotion of human rights, 3. National prevention mechanism, and 4. Combating discrimination.

Another model of division of labour would be:

1. Ombudsmen for gender equality (working on issues related to: discrimination and equality based on gender, sex, sexual orientation and gender identity; gender-based violence and domestic violence; the right to private and family life),
2. Ombudsmen for national equality and national minorities (performing the duties related to: discrimination and equality based on race and ethnicity, religious, political, and other beliefs; the children's rights, the rights of the elderly, the rights of the persons with disabilities),
3. Ombudsman for civil and political rights (working on issues related to: the national preventive mechanism; fundamental rights; asylum; right to an effective legal procedure and to a fair trial), and
4. Ombudsman for democracy and social solidarity (the right to good governance, access to documents, personal data protection, environmental protection, freedom of expression and information, freedom of assembly and association, the right to education; freedom of ownership; right to work; social and health care).

This manner of labour division would enable the specialization of Ombudsmen and the supporting staff in regards to particular issues, which would eventually lead to the improving of the expertise of the body.

In regards to performing the joint duties, such as the budget and the Institutional financing, or devising agendas, strategies, collaboration with the civil society or the drafting of the annual reports, all four Ombudsmen collaborate and reach decisions on these issue at the level of the Collegium of the Institution. In regards to performing the administrative and technical duties, a separate service will be opened, managed by the General Secretary of the Institution. Ombudsmen are always seeking to find a compromise, and in case of any potential disagreement, the final decision is in hands of the Chairman of Ombudsman Institution. The Rules of Procedure determine which issues will be considered at the Collegium level, and which by the Ombudsmen themselves.

Each of the Ombudsmen appoints his/her assistant, whose mandate is linked to the mandate of the Ombudsman in question. The Rules of Internal Organization and Systematization regulate other issues related to the staff of the Institution of Ombudsman.

FINANCING OF THE INSTITUTION

Article (Financing of the Institution)

1. Annual funds for the work of the Institution should be sufficient to allow for its full, independent and effective performance of the assigned responsibilities and functions.
2. The Institution shall, in line with the provisions of the Law on the Financing of Institutions of BiH, propose a draft of the annual budget and it shall submit it to the committee of the Parliamentary Assembly of BiH for adoption. The competent committee shall seek out the opinion of the Joint Committee on Human Rights of the Parliamentary Assembly of BiH before the adoption of the decision.
3. Upon receiving the approval from the competent committee, in line with the Law on the Financing of Institutions of BiH, the Institution shall submit the request that the budget of the Institution is an integral part of the budget of the institutions of BiH to the Ministry of Finances and Treasury of BiH.
4. The Ministry of Finances and Treasury of BiH, the Council of Ministers of BiH and the Presidency of BiH may provide their opinion on the proposal of the budget of the Institution, without a possibility of amending the proposal of the budget previously approved by the competent committee of the Parliamentary Assembly of BiH.
5. The Chairman of the Ombudsman shall approve the request for financing the expenses of the Institution and shall submit them to the Ministry of Finances and Treasury of BiH for processing.
6. In case that state budget is decreased due to austerity measures or for any other reason of financial nature, the budgetary item regarding the Institution shall not be decreased more than the total budget of the Parliamentary Assembly of BiH is, in term of percentage.
7. The salary of Ombudsman shall be the same as the salary of the judges of the Constitutional Court of BiH. The salary of the Assistant Ombudsmen and other employees shall be equated with the pay scales in the Constitutional Court of BiH.

The financial problems, or the budgetary limitations, to a great extent influence the scope and efficiency of the activities of the Ombudsman of BiH. One of the ways of ensuring the independence of the Institution of Ombudsman is precisely ensuring the financial independence of the Institution of Ombudsman. In this sense, the proposal stipulates the procedural guarantees that the demands of the Ombudsman regarding the budget will be adequately considered. In this regards, in line with the recommendations of the Venice Commission²¹, the proposal stipulates the explicit referral to the need for ensuring the adequate means needed for the efficient and independent work of the Institution and was inspired by the solution adopted in Serbia. The other procedural guarantee which is adopted is that the Institution of Ombudsman submits the draft the budget directly to the competent commission, similar to the solution adopted in Montenegro, with the implementation of the demands of the commission without further interventions from the Ministry of Finances, the Presidency or the BiH Council of Ministers. In order to ensure the financial independence, the additional procedural guarantee is also stipulated, reflected in the principle that the budget of the Institution in comparison to the last year's budget cannot be decreased in terms of percentage than it is the case for the Parliamentary Assembly of BiH. This option is line with

²¹ CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 35.; CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 28 and 30.VI.

the recommendations of the Venice Commission²², and a similar solution was predicted for the *Audit Office of the Institutions of BiH*²³.

The Paris Principles, as interpreted by the ICC in General Observations²⁴, stipulate that it is necessary to ensure the suitable amount of funds for the Institution for the protection of human rights to be able to function efficiently, in order to guarantee its independence and the ability to freely determine its priorities and activities. The ICC has, in regards to Bosnia and Herzegovina, in 2009 stated the importance of the issue of the financial independence, both in terms of drafting the budget, and in terms of the financial control. In 2010, during the next examination, the ICC has expressed concerns over the process of ensuring the adequate means, and it has underlined the notion that the Institution needs to be completely independent in terms of finances, as a separate budgetary item under its full control. In 2012, in relation to BiH, the need that the state to ensure the adequate means for the Institution to perform its mandate was once more underlined.

²² CDL-AD(2006)038 – Opinion on Amendments to the Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006), par. 80 and 81.

²³ See Law on Revision of the Institutions in BiH,

http://www.revizija.gov.ba/zakoni_i_akti/zakon_o_reviziji/Default.aspx

²⁴ General Observations of the ICC/the updated version from 2013. G.O. 1.10 Adequate funding of National Human Rights Institutions

STRATEGY OF THE INSTITUTION

Article (Strategy)

The Collegium of the Institution shall adopt a multi-annual work strategy of the Institution. The Strategy shall define the aims of work, manners of implementation, monitoring and evaluation. The permanent advisory body shall participate in the drafting and implementing the Strategy. The mandate of the strategy shall be linked to the mandate of the Ombudsman. The strategy shall be adopted within 180 days following the appointment of Ombudsmen.

The Institution of Ombudsman has recognized the importance of the fact that the approach to the promotion and protection of human rights should be strategically oriented and it sets the condition that the work and reaching of the full functionality of the Institution of Ombudsman is based on the aforementioned principle. This was the reason for starting the drafting of the Work Strategy of Human Rights Ombudsman for the period 2010 – 2014. The first strategy of the Ombudsman Institution has been prepared based on the consultations both within the Institution itself, and with other institutions, non-governmental organizations, the representatives of the media and the international organizations.

Continuing such positive practice, the proposal stipulates the obligation of adopting a multi-annual strategy of the work of the Institution in the legislature itself, with the consultations of a permanent advisory body. In this manner, the existing practice of the Institution of Ombudsman is standardized, with the consideration that it stipulates the requirement of adopting a new strategy in a timely manner and that it is linked to its mandate, with the purpose of ensuring the continuance of the work of the Institution in line with the strategic principles.

INITIATIVE FOR ADOPTING AND AMENDING THE LAWS AND OTHER REGULATIONS

Article (Legislative initiative)

1. The Ombudsman may propose an initiative for the adoption of a new law or for the amendments to the existing laws and regulations to any legislative body in BiH, when he/she deems it necessary during the performance of its functions and mandates, with the aim of improving the protection of human rights in BiH, and it can warn of the need for the harmonization of the Law and other regulations with the international standards and the Constitution of Bosnia and Herzegovina.
2. The relevant legislative body must consider the initiatives proposed by the Ombudsman.
3. The Ombudsman is authorized to, in the process of drafting regulations, give its opinion on proposed laws and other regulations, if they are concerned with the issues that are of importance to the protection of human rights and freedoms.
4. The Institution may participate in the work of the commissions of the legislative bodies in BiH and to attend the sessions of legislative bodies if the issues on the agenda fall under the jurisdictions of the Institution.

In order to overcome the restrictions related to the *legislative initiative* of the Institution and the inconsistencies in the current Law, the proposal stipulates the possibility for the Ombudsman to propose an initiative for the new law or for the amendments to the existing laws and regulations to any legislative body in BiH, when he/she deems it necessary during the monitoring of the situation in regards to his/her scope of work and with the aim of improving the protection of human rights in BiH and/or harmonization with the international standards and BiH Constitution. The proposal stipulates the possibility for the individual Ombudsmen to propose such initiative, while considering the need of the effective performing of the Institution's mandate and of the specialized expertise of certain Ombudsmen for particular issues in regards to human rights protection.

The current Law narrows down the ability of Ombudsmen to propose the amendments to the Law and other regulations when he/she finds it fit, exclusively to the annual or special report of the Institution. Additionally, it is unclear from the current position of the stipulation in the item of the Law related to the treatment of cases whether the initiative for the amendments to the Law is possible regardless of the particular case in question. Finally, the legislative initiative is limited to the amendments to the Law, and it does not provide the possibility of initiative for drafting new laws and other regulations.

Unlike the aforementioned, the proposed solution allows for the legislative initiative, including the initiative for the drafting of the new laws or other regulations, as well as the amendments to them, at any given time, *regardless of the annual or special reports*, and regardless of any particular case, or treatment of any particular complaint. It also stipulates the mandatory consideration of the proposal by the body it was addressed to. Finally, this stipulation introduces the possibility for the Ombudsmen, in the process of proposing regulations to the bodies working on them (the ministries or legislative bodies), to provide opinions in relation to the issues of importance for the protection of human rights, and to participate in the work of the commissions of the legislative bodies in BiH and to attend the sessions of these bodies if the issues under the jurisdiction of the Institution are being considered.

The proposed amendments represent a significant step towards the harmonization of the jurisdictions of the Institution of Ombudsman with the Paris Principles, who see the state institutions for the protection of human rights responsible for guiding the Government, the Parliament and other relevant bodies on the issues related to human rights. It is a requirement

for these institutions to promote and provide the laws which will incorporate or transform the international standards to the domestic legislature. In this respect, the Paris Principles require of these institutions to examine the current laws and other regulations, as well as the proposals and drafts in the procedure, and to issue recommendations they deem necessary for the provision of their harmonization with the fundamental principles of human rights and with the international instruments binding the state, including the recommendations for the amendments to the existing laws or the adoption of new laws and other regulations.²⁵ Such solutions, related to the legislative initiative and to the mechanisms of consultations of these bodies in the process of drafting the laws and in the work of the legislative bodies are also in force in the neighbouring states of Serbia, Croatia and Montenegro. The Venice Commission supports such solutions in its recommendations.²⁶

²⁵ Paris Principles, A. Competence and responsibilities, 3. (a) and (b).

²⁶ See e.g. the opinions adopted in regards to Serbia and Azerbaijan: CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par. 21 and 32.; CDL(2001)083 - Consolidated Opinion On the Law on Ombudsman in the Republic of Azerbaijan (Strasbourg, 7 September 2001), par. 6,7 and 18 (see CDL(2001)PV 47, par. 6).

INITIATIVE FOR THE EVALUATION OF THE CONSTITUTIONALITY OF LAWS

Article (Initiative for the abstract control of the constitutionality)

1. The Ombudsman, in line with his or her functions and jurisdictions, may initiate the evaluation of compatibility of the Constitution or of a law with the Constitution of Bosnia and Herzegovina towards the authorized proponents, as stipulated in Article VI/3 item a) of the BiH Constitution.
2. The body towards which the initiative from this article, item 1 was proposed is required to make a statement on the initiative.

The proposal of the alternative, but it requires the previous amendment to the Constitution of BiH:

The Ombudsman is, in line with his or her functions and jurisdictions, authorized to initiate the procedure, before the Constitutional Court of Bosnia and Herzegovina, of the evaluation of the compatibility of a law with the Constitution of Bosnia and Herzegovina.

The Ombudsmen, the focus of whose work is on the promotion and protection of human rights are in a very good position to notice the regulations which are not harmonized with the BiH Constitution and with the international standards of human rights protection, and which are a cause of common and systematic violations of human rights. Thus, the European standards, as well as the recommendations of the Venice Commission emphasize the desirable and logical nature of giving the institutions for the protection of human rights the jurisdiction to initiate the abstract evaluation of the constitutionality of laws and other regulations when they deal with human rights and fundamental freedoms.²⁷ *The Venice Commission* states that in doing so, the Ombudsman should be provided with the possibility of initiating the evaluation of constitutionality at his/her own initiative or as a response to an individual complaint addressed to the Institution.²⁸

In the context of Bosnia and Herzegovina, this possibility would require an amendment to the BiH Constitution, and as such is recommended by the Venice Commission in its opinions regarding the mandate of the Ombudsman of the Federation of BiH in relation to the Constitutional Court of Federation of BiH.²⁹ The state institutions for the protection of human rights in all the countries of the region (Serbia, Croatia, Montenegro, Slovenia and Macedonia) are provided with the possibility of initiating the procedure before the Constitutional Court, with the aim of evaluating the harmonization of laws and other regulations with the Constitution and the international treaties.

With the aim of amending the laws in order to approach these standards and the comparative practice, two alternatives of the amendments have been proposed: the first which would provide the Ombudsman with the possibility to initiate the procedure of abstract control of the constitutionality before the Constitutional Court of BiH, which would require the amendments to the Constitution of BiH in terms of extending the circle of the authorised proponents, and the second alternative which would provide the Ombudsman to initiate the procedure before the authorized proponents, provided that it would be mandatory for them to consider it.

²⁷ CDL-AD (2010)039rev – Study on individual access to constitutional justice adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010), par. 64.

²⁸ CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007), par. 14 and 19.

²⁹ CDL-INF(2001)007 (English only) – Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina, approved by the Venice Commission at its 46th Plenary Meeting (Venice, 9-10 March 2001), par. 7.; CDL-INF(2000)9 – Opinion on Locus Standi of the Ombudsman of the Federation of Bosnia and Herzegovina before the Constitutional Court of Bosnia and Herzegovina, approved by the Venice Commission at its 43th Plenary Meeting (Venice, 16 June 2000).

In respect to both proposals, with the aim of effective functioning of the Institution, the authorization for the initiative proposal is assigned to particular Ombudsmen.

PARTICIPATION OF THE CIVIL SOCIETY ORGANIZATIONS IN THE WORK OF THE INSTITUTION OF OMBUDSMAN

Article (Collaboration)

1. The Institution shall actively and regularly collaborate with the civil society organizations, international organizations, professional bodies and the academic community.
2. With the aim of promoting its work, as well as the further improvement regarding the certain issues in the field of protection and promotion of human rights and freedoms, the Institution shall hold the regular and thematic consultations with the civil society organizations, international organizations, professional bodies and the academic community.
3. The Institution shall establish a permanent advisory body which shall discuss and proposed the strategic guidelines in the field of promotion of human rights and freedoms, provide the continuous collaboration in the field of human rights and freedoms between the Institution and the civil society organizations, academic community, media and the professional field, and it shall consider other issues of importance for the Institution in the field of promoting human rights and freedoms. The permanent advisory body shall participate in the drafting of the Strategy of the Institution and in its implementation.
4. The members of the permanent advisory body shall be appointed by the Collegium of Ombudsmen for the period of 2 years from the ranks of the representatives of the civil society organizations, academic community, media and the professional field. The members of the permanent advisory body shall not receive any form of reimbursement for their work.

The Paris Principles relating to the working method of the national/state institutions for human rights have determined that they should develop relations with the non-governmental organizations devoted to the promotion and protection of human rights, to the economic and social progress, combating racism, protecting particularly vulnerable groups (primarily children, migrant workers, refugees, persons with mental and physical disabilities) and with the non-governmental organizations working in specialized fields.³⁰

According to the *General Observations of the ICC*, pluralism, as one of the fundamental requisites in the work of the national/state institutions for human rights, can be ensured in several ways, without being limited solely to the composition of the Institution's management, or the participation of the civil society in the appointment procedure, but also in relation to other ways of effective collaboration with the civil society in the implementation of the activities.³¹

In order to fully respect the Paris Principles, the ICC states that a “regular and constructive cooperation with all relevant stakeholders is essential for the effective fulfilment of the mandate of national institutions for the protection of human rights (...)”. In this respect, it is recommended that the Institutions “develop, formalize and maintain regular, constructive and systematic work relations with other domestic institutions established for the promotion and protection of human rights (...)”, including, among others, “civil society organizations and non-governmental organizations”.³²

As it is stated in the General Observations, this interaction can include the exchange of knowledge, including the research studies, the best practice, education programs, the statistical data and the general information of the implemented activities.

³⁰ Paris Principles, C. Methods of operation, (g).

³¹ General Observations of the ICC/the updated version from 2013. G.O. 1.7 Ensuring pluralism of the National Human Rights Institution; G.O. 1.8. Selection and appointment of the decision-making body of National Human Rights Institutions

³² General Observations of the ICC/the updated version from 2013. G.O. 1.5 Cooperation with other human rights bodies.

It is emphasized that the effectiveness of a state institution for the human rights in implementing its mandate of protection and promotion of human rights is very dependant on the quality of its work relations with other bodies, including the organizations of the legal profession, the media and the civil society organizations. Through the collaboration, these institutions can, as it is specified, achieve better understanding of the issues in relation to the human rights throughout the country, and also on the room for their improvement. It is acknowledged that the certain groups of the civil society have developed a particular expertise, due to their specialized mandate, which enables them to provide the institutions with the valuable advice on the basic problems in regards to human rights the vulnerable groups face throughout the country. In this respect, the ICC encourages the national institutions to consult the civil society regularly, at all stages of planning and implementing the programs, and adopting the policies, in order to ensure that the institution's activities are a reflection of the public problems and priorities. Building the effective relationships with the mass media is also stated as an important means for education human rights.

In addition, the ICC believes that such collaboration is necessary in order to ensure the full realization of human rights throughout the state. In this manner, we can ensure the increased availability to all the categories of citizens who are distanced due to geographical, political or social reasons, as these organizations work closely with the vulnerable groups in the field and as they have a greater network than the institutions themselves. In this sense, the institutions for the protection of human rights can use the civil society as a mechanism of gaining access to the vulnerable groups.

In order to ensure regular and constructive work relations and the transparency of the state institutions for the protection of human rights with others, it is of particular importance to emphasize the formalization of clear and manageable work relations with the civil society and other bodies for the protection of human rights.³³

Additionally, in regards to the state of Bosnia and Herzegovina, the ICC has, in November 2009 within the process of the re-accreditation of the Institution of the Ombudsman of BiH, welcomed the Institution's efforts to implement the regular consultation mechanism with the civil society organizations. However, at the same time, it was emphasized that this collaboration needs to be formalized.

In order to ensure the greater transparency and democracy of the work of the Institution of Ombudsman, and to provide the Ombudsmen with better information regarding the trends in everyday life, the Law, as proposed, would establish a Permanent advisory body of the civil society for human rights, which would compose of the appointed representatives of the civil society organizations, the academic community, the media and the professionals, whose engagement in the body would be voluntary. The model for this is the existing practice in the neighbouring Croatia.

³³ General Observations of the ICC/the updated version from 2013. G.O. 1.5 Cooperation with other human rights bodies.

REPORTING ON THE STATE OF HUMAN RIGHTS

Article (Annual report)

1. The Institution shall draft its annual report on the state of human rights and freedoms. In the report, the Institution shall represent its activities from the previous year, point out the state of protection and violations of human rights in Bosnia and Herzegovina, propose the concrete measures of the legislature, public policies and practice, and offer an insight in the previously adopted recommendations which have not been implemented.
2. The annual report shall be published before March 31 of the following year, and it shall be submitted to the Parliamentary Assembly of Bosnia and Herzegovina, National Assembly of Republika Srpska, Parliament of the Federation of Bosnia and Herzegovina and to Assembly of Brčko District of Bosnia and Herzegovina. A debate shall be organized regarding the annual report, and the report is acknowledged. Based on the conducted debate, the aforementioned bodies may adopt the conclusions which shall, as needed, be submitted to the other relevant and competent bodies.
3. The Joint Committee on Human Rights of the Parliamentary Assembly of BiH shall organize a thematic session in regards to the annual report, and it shall adopt the conclusions, which may if needed be submitted to the relevant and competent bodies.
4. The Joint Committee on Human Rights of the Parliamentary Assembly of BiH shall pay special attention to the issue of the Institution's recommendation focused on the elimination of the systematic violations of human rights and on the previous recommendations which have not been implemented.
5. BiH Council of Ministers shall draft the action plan before September 30, which shall define the specific measures which need to be undertaken in order to eliminate the violations of human rights identified in the annual report and to improve the protection of human rights.
6. The Institution shall draft special reports annually, focusing on the issues related to certain marginalized groups or to specific occurrences of the violations of human rights and freedoms.

The Paris Principles require that the state institutions for the human rights to report to Parliament, the Government and other competent bodies, in regards to all issues related to the protection and promotion of human rights. It is emphasized that there reports should state the recommendations regarding the adoption or amendments to any legal or other regulations, including proposals and drafts; the data on all situations of human rights violations, on the issue of human rights in general, or on some more specific issues; and the recommendations for eliminating human rights violations, as well as the opinion of the institution on the proposals and the state response in regards to these situations.³⁴

The General Observations of the ICC regarding the Paris Principles³⁵ offer guidance on the aforementioned requirements, stating that the annual, special and thematic reports serve the purpose of presenting the key progress and trends regarding the human rights in a particular state; offer the platform for the public evaluation of the effectiveness of the state institutions for human rights; and present the tools the Ombudsmen can use to deliver the recommendations regarding the protection of human rights to the authorities, as well as for monitoring the respect for the human rights. Thus, it is stated that they should contain the outline of the activities of the Institution with the aim of implementing its mandate, as well as the stipulations on its opinions, recommendations and proposals in response to all worrisome

³⁴ Paris Principles, section A.3(a)

³⁵ General Observations of the ICC/the updated version from 2013. G.O. 1.11 Annual Reports of National Human Rights Institution.

issues regarding the human rights and actions undertaken by the authorities in response to those recommendations.

The General Observations particularly emphasize the importance of publishing and wide distribution of the annual reports with the aim of educating the public on the state regarding the human rights in the state, as well as on the transparent work of the Institution. Of great importance is also the requirements put before the legislative bodies to debate and consider the reports of the Institution, with the aim of ensuring that its recommendations are considered by the relevant and competent bodies in a suitable manner.

In the light of these standards, it is necessary for Bosnia and Herzegovina to carry out the requirement of reporting to the Parliament on the respect of human rights in BiH, through submitting the annual Report aimed at *presenting the state of human rights in the state*; identifying the systematic violations of fundamental rights in BiH; evaluating the harmonization of the national legislature and practice with the requirements stemming from the European Convention law and other relevant European and international standards of protecting human rights.³⁶ With the aim of promotion and protection of human rights in BiH, the report should contain the opinions, recommendations and proposals for removing the human rights violations and/or improving the current state of the human rights protection. A special emphasis, e.g. in a separate chapter, should be devoted to the analysis of the previous recommendations of the Institution, which still have not been implemented, as well as to the problems of the human rights violations which remain unsolved, and the focus should be on the measures which still need to be taken in order to eliminate the systematic shortcomings and irregularities.

This solution would go in the direction of the recommendations made by ECRI issued in regards to Bosnia and Herzegovina in the report from 2011: that the authorities in Bosnia and Herzegovina “should take all the necessary steps in order to ensure the respect for all the decisions of the Institution of Ombudsman for Human Rights”. Further, this would be a response to the problems of weak political support for the work of the Institution of Ombudsman and of poor implementation of its recommendations, as they are identified in the progress report of the European Commission in 2014 in relation to Bosnia and Herzegovina.³⁷ The proposal stipulates that the annual report is to be submitted to the state, entity and Brčko District parliaments until March 31, and that the thematic sessions of the Joint Committee on Human Rights of the Parliamentary Assembly of BiH, during which the findings of the report would be discussed, with a particular focus on the Ombudsman recommendations aimed at eliminating the systematic human rights violations and on the previous recommendations which still have not been implemented (including the recommendations regarding the individual cases, as well as the general recommendations formulated in the special reports or as a result of conducted research). Based on the debate, the Joint Committee would adopt the conclusions which would then be sent to the other bodies, those responsible and with the jurisdiction over certain issued of the violation and protection of human rights and which can improve the state of human rights. All interested representatives of the civil society and the media should attend the session, as they can further work on the advocacy for the improving the protection of human rights and on eliminating the problems identified in the annual report. In this manner, a synergy would be created which would make the report a significant tool for the promotion and protection of human rights. At the same time, it would ensure the wide distribution of the findings of the report in the public, as stipulated in the Paris Principles.

³⁶ The report will also present the activities of the Ombudsman, the results of the conducted research and the results of work on particular cases.

³⁷ http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

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
MyRight - Empowers People with Disabilities, Sarajevo
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

Coordinators of the Initiative:

Sarajevo Open Centre
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Supporting organizations:

ACIPS, Sarajevo; Association of Students of Tuzla University's Faculty of Law; Banja Luka; Association of Queer Activists (BUKA), Banja Luka; Centre for Socio-ecological Development, Banja Luka; Human Rights Centre of the University of Sarajevo; Crvena (Red), Sarajevo; European Research Centre, Sarajevo; Foundation 787, Sarajevo; Green Council, Sarajevo; Infohouse, Sarajevo; YCC Abrašević, Mostar; Perpetuum Mobile, Banja Luka; Association PEKS, Živinice; Vesta, Tuzla; Foreign Policy Initiative BiH, Sarajevo; Green Neretva, Konjic