

SARAJEVO OPEN  
CENTRE

AND

HELSINKI CITIZENS'  
ASSEMBLY  
BANJA LUKA

On Behalf Of  
The Initiative For  
Monitoring Of  
The European  
Integration Of  
Bosnia And  
Herzegovina

**ALTERNATIVE  
ANSWERS  
OF CIVIL SOCIETY  
ORGANIZATIONS  
TO THE EUROPEAN  
COMMISSION  
QUESTIONNAIRE**



**SARAJEVSKI  
OTVORENI  
CENTAR**





SARAJEVO OPEN CENTER AND HELSINKI CITIZENS' ASSEMBLY BANJA LUKA ON  
BEHALF OF THE INITIATIVE FOR MONITORING OF THE EUROPEAN INTEGRATION  
OF BOSNIA AND HERZEGOVINA

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Sarajevo, June 2017

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# INTRODUCTION

This document represents a joint effort of organizations and individuals involved in the work of the Initiative for Monitoring of the European Integration of Bosnia and Herzegovina with a view to provide a part of the response to the European Commission Questionnaire for BiH.

The document relies on the four-year work of the Initiative, which, through alternative reports since 2013, has provided an overview of BiH's progress on its path to the EU. The answers presented here are not comprehensive in terms of answering all questions in the Questionnaire, which was not the goal. Comprehensive answers should be provided by the state, while civil society organizations wanted to give their perspective and provide answers to questions concerning, first of all, democracy and the rule of law in BiH. The answers are based on knowledge, analyses and first-hand experiences of civil society organizations acquired in their work. Our goal is to contribute to the official answers and more accurate, balanced and citizen-oriented assessment of issues relevant to BiH's EU candidacy status.

It is our firm belief that BiH's progress towards EU membership needs to be thorough, complemented with real reforms, better governance and strengthening of democratic processes, in order for BiH citizens to truly benefit from the EU accession process. We hope that this document will contribute to achieving this goal.

Editors, June 2017

## POLITICAL CRITERIA

# DEMOCRACY AND THE RULE OF LAW

(QUESTIONS 1-291)

1

PLEASE PROVIDE A BRIEF DESCRIPTION OF THE CONSTITUTIONAL AND INSTITUTIONAL SET-UP IN BOSNIA AND HERZEGOVINA. HOW IS THE CONSTITUTIONAL SYSTEM OF CHECK AND BALANCES BETWEEN THE THREE POWERS (EXECUTIVE, LEGISLATIVE, JUDICIARY) IMPLEMENTED?

The Constitution of Bosnia and Herzegovina is part of the General Framework Agreement for Peace in Bosnia and Herzegovina (Annex 4 to the Agreement) signed by the Republic of Croatia, the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia in Paris on 14 December 1995. It is also known as the Dayton Agreement or the Paris Agreement, after the cities where it was initialled and signed. The Dayton Peace Agreement consists of one framework agreement and twelve special agreements, referred to as Annexes to the General Framework Agreement for Peace in BiH. The special agreements, which were signed by different parties, relate to civilian (Annexes 2 through 11) and military aspects (Annexes 1-A and 1-B).

Annex 4 contains the Constitution of Bosnia and Herzegovina, which, unlike other annexes, was not made in the form of an agreement. The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska all approved the Constitution of Bosnia and Herzegovina. Although the last sentence of Article XI states that the Agreement shall be signed in the three official languages of Bosnia and Herzegovina (i.e. Bosnian, Serbian, and Croatian) and English language, the Constitutional Charter of Bosnia and Herzegovina was officially signed only in English. There are neither official versions nor official translations of the Constitution in the languages of Bosnia and Herzegovina. Only unofficial translations of the Constitution have been in use since 1995. The Dayton Peace Agreement, including the Constitution, has never been published in the Official Gazettes of the State and/or Entities.

The Constitution of Republika Srpska (RS) was adopted on 28 February 1992 and published in the Official Gazette of Republika Srpska. There have been more than 120 amendments to the Constitution since 1992. Article 1 of the Constitution states that the territory of the Republic shall be unique, indivisible and inalienable constitutional and legal entity, and that shall independently perform its constitutional, legislative, executive, and judicial functions. The Constitution created a centralized federal unit within the asymmetrical federal system in Bosnia and Herzegovina.

The Federation of Bosnia and Herzegovina (FBiH, Federation) was created by the Washington Agreement in 1994. On 30 March 1994, the Constitutional Assembly of the Federation of Bosnia and Herzegovina adopted its Constitution, establishing the second of the two entities in Bosnia and Herzegovina. This Constitution has been amended at least one hundred times since 1994. Unlike Republika Srpska, the Federation of BiH is extremely decentralized and is made up of ten cantons. The creation of cantons was stipulated by the FBiH Constitution, while the ten Cantons were established by the Law on Federal Units (the Cantons) in 1996. The cantons have been given wide powers under the FBiH Constitution, resulting in discrepancies in the fields of education, culture, health care, etc, within the Federation of BiH. Each canton has its own constitution, government and assembly.

The Brčko District of Bosnia and Herzegovina was established in 2000, following an arbitration process taken by the High Representative, who is in charge of overseeing the implementation of civilian aspects of the peace settlement. Brčko District is a neutral, self-governing administrative unit under the sovereignty of Bosnia and Herzegovina. The Constitution of BiH, as well as all relevant decisions and laws regarding the institutions of BiH, are directly applicable throughout the territory of the District. Brčko also has its own Statute regulating the functions and powers of the District, its cooperation with the Entities, human rights and freedoms, organization of the District and division of powers, competences and institutions. The status of the District was secured with the adoption of the first amendment to the Constitution of BiH in 2009.

2

HOW IS THE IMPLEMENTATION OF THE CONSTITUTION COORDINATED? WHICH ARE THE BODIES INVOLVED AND WHICH ARE THEIR RESPECTIVE COMPETENCES IN RELATION TO THE IMPLEMENTATION OF THE CONSTITUTION?

The Constitutional Court of Bosnia and Herzegovina has a direct responsibility to implement and safeguard the Constitution of BiH. Article VI/3 stipulates that *the Constitutional Court shall uphold this Constitution*. The Presidency of BiH, the Parliamentary Assembly of BiH and the Council of Ministers have direct responsibility to implement the Constitution and to act in accordance with the Constitution.

3

WHAT IS THE RELATION BETWEEN DOMESTIC AND INTERNATIONAL LAW ACCORDING TO THE CONSTITUTION? WOULD THE CONSTITUTION ALLOW THE PRIMACY OF EU LAW OVER DOMESTIC LAW UPON ACCESSION?

The Constitution prescribes that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in BiH. The Constitution gives the European Convention for the Protection of Human Rights and Fundamental Freedoms priority over all other law.

5

IS THERE ANY INSTRUMENT OF INTERNATIONAL OVERSIGHT OVER THE DOMESTIC CONSTITUTIONAL AND LEGAL FRAMEWORK, AND INSTITUTIONS? IF YES, WHAT IS THE IMPACT OF SUCH INTERNATIONAL OVERSIGHT ON DOMESTIC LAW AND THE FUNCTIONING OF DOMESTIC INSTITUTIONS?

Annex 10 to the Dayton Peace Agreement established the High Representative as the final authority in the area regarding interpretation of the Agreement on civilian implementation of the peace settlement. The High Representative is tasked with monitoring, facilitating, mobilizing and coordinating the implementation of civilian aspects of the Peace Agreement. The High Representative is also tasked to report periodically on progress to the United Nations, the European Union, the United States, the Russian Federation and other interested governments, parties and organizations.

In December 1997, the Peace Implementation Council held its fourth Conference in Bonn. The conclusions of the Peace Implementation Conference in Bonn had reaffirmed the High Representative as the final authority in the area regarding interpretation of the

Agreement on Civilian Implementation of the Peace Settlement and stated the support for the Office of the High Representative (OHR) to make binding decisions in order to ensure implementation of the Peace Agreement. These measures, known as the 'Bonn powers', include intervening when the parties are unable to reach an agreement; ensuring smooth operation of joint institutions and actions against persons holding public office and who "are absent from meetings without good cause or who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement".

The 'Bonn powers' have, among other things, been implemented in order to impose laws, resolve political stalemates and remove from office public officials who violate legal commitments and the Dayton Peace Agreement. However, the use of Bonn powers and the active role of the OHR in the political process in BiH have been reduced significantly in the past decade.

## 6

### WHO IS THE FINAL INTERPRETER OF THE CONSTITUTION?

The Constitution states that the Constitutional Court of BiH shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities, or between BiH and an Entity or Entities, or between institutions of BiH.

## 7

### IS THERE A CONSTITUTIONAL COURT? WHAT IS THE LEGAL BASIS FOR ITS ESTABLISHMENT AND FUNCTIONING? HOW ARE ITS JUDGES APPOINTED AND HOW IS THE INDEPENDENCE OF THE COURT GUARANTEED?

Article VI of the Constitution of BiH established the Constitutional Court of BiH. Jurisdiction of the Constitutional Court of BiH is exclusively prescribed by the Constitution of BiH. All decisions of the Court are final and binding. The Court by itself determines which entities shall implement the decisions of the Court, measures that need to be taken and deadlines within which the measures are to be implemented.

The Constitutional Court of BiH has nine members. Four members are selected by the House of Representatives of the Federation of BiH and two members by the National Assembly of Republika Srpska. The remaining three members are selected by the President of the European Court of Human Rights after consultation with the Presidency of BiH. The appointed judges serve until age 70 (unless they resign or are removed by consensus of other judges). The Constitutional Court decisions are final and binding. Also, the judges are financially independent.

Due to the normative incompleteness of the Constitution of BiH in the part relating to the regulation of functioning of the Constitutional Court of BiH, a large number of issues is regulated through the Rules of Procedure of the Constitutional Court of BiH.

## 8

### WHO HAS THE RIGHT TO APPROACH THE CONSTITUTIONAL COURT?

Disputes which are resolved by the Constitutional Court may be referred by a member of the Presidency of BiH; the Chair of the Council of Ministers; the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly of BiH; one-fourth of members of either chamber of the Parliamentary Assembly of BiH, or by one-fourth of either chamber of a legislature of an Entity.



The Constitution also stipulates that the Constitutional Court shall have appellate jurisdiction over issues under the Constitution arising out of a judgement made by any other court in BiH. The parties which participated in the proceedings may file an appeal in the course of which the decision challenged by the appeal is rendered.

9

#### WHAT IS THE SCOPE OF THE COMPETENCES OF THE CONSTITUTIONAL COURT IN RELATION TO OTHER COURTS?

The Constitutional Court has appellate jurisdiction over issues under the Constitution arising out of a judgment made by any other court in BiH. The Constitutional Court has jurisdiction over issues referred by any court in BiH concerning whether a law, on whose validity its decision depends, is compatible with the Constitution, with the European Convention on Human Rights and Fundamental Freedoms and its Protocols, or with the laws of BiH concerning the existence of or the scope of a general rule of public international law pertinent to the court's decisions.

10

#### HOW MANY LAWS HAVE BEEN INVALIDATED, IN FULL OR IN PART, BY THE CONSTITUTIONAL COURT IN THE LAST 5 YEARS? PLEASE PROVIDE A CLEAR BREAKDOWN OF CASES ACCORDING TO THE COMPETENCES OF THE COURT.

There were 8 cases before the Constitutional Court in which laws have been fully or partly invalidated. The cases are as following: U-3/13, U-14/12, U-26/13, U-10/14, U-13/14, U-9/12, U-1/11 and U-4/12

11

#### HOW ARE THE DECISIONS OF THE CONSTITUTIONAL COURT IMPLEMENTED? ARE THERE CASES OF DECISIONS OF THE CONSTITUTIONAL COURT THAT HAVE NOT BEEN IMPLEMENTED OR HAVE NOT BEEN TAKEN INTO CONSIDERATION? PLEASE SUBMIT THE FULL LIST OF UN-IMPLEMENTED JUDGEMENTS AND THE REASONS FOR NON-IMPLEMENTATION.

The decisions of the Constitutional Court of BiH are final and binding. The Court itself determines which entities should implement the decision, the measures that need to be taken, and the deadlines within which the measures are to be implemented. The Court's decisions are implemented directly rather than in a separate enforcement proceedings, as it is the case with regular courts. The Constitutional Court of BiH usually undertakes an active role in the monitoring of the implementation of its decisions. It requests information from the competent authorities regarding those decisions and, if justified, leaves an additional period of time for implementation.

Over the past years a considerable number of the decisions rendered by the Constitutional Court of BiH have not been implemented. It has to be emphasized that this problem does not only relate to missing persons cases, but to other things of general nature. However, in this submission only the decisions relating to missing persons and their relatives will be presented, emphasizing that our considerations concerning non-enforcement of the decisions relating to missing persons are also applicable to decisions concerning other matters. The existence of this extremely serious problem, which utterly undermines the rule of law and general trust towards the highest judicial body in the country, has been

singled out and defined as a concerning matter by a number of international institutions.

TRIAL International has brought 12 cases of enforced disappearance before the UN Human Rights Committee (HRC), in which it has presented 53 family members of 26 missing persons. The HRC has rendered positive decisions in all 12 cases, declaring a human rights violation and urging BiH authorities to take action.

In the aforementioned decisions, the Constitutional Court had previously, beginning with the year 2005 (inter alia, case no. AP-1182/05) ordered the Council of Ministers of BiH, the FBiH Government, the RS Government and the Brčko District Government to provide for operational functioning of the institutions established in accordance with the Law on Missing Persons, namely the Missing Persons Institute, the Fund for the Support of Families of Missing Persons in BiH and the Central Records on Missing Persons in BiH. The decision was to be implemented no later than 30 days after it was adopted. The Fund has not been established yet, while the Central Record on Missing Persons in BiH still remains incomplete.

The non-establishment of the Fund results in non-implementation of a significant number of decisions rendered by the Constitutional Court of BiH in missing persons cases, whereby the payment of compensation to relatives recognized as victims of grave human rights violations is related to the establishment of the Fund, which was expressly ordered by the Constitutional Court of BiH. The decisions include the following cases:

AP-129/04 from 27/5/2005,  
 AP-228/04 from 13/7/2005,  
 AP-1226/05 from 23/2/2006,  
 AP 143/04 from 23/9/2005,  
 AP 2980/06 from 13/5/2008,  
 AP-95/07 from 13/5/2008,  
 AP 171/06 from 13/9/2007,  
 AP 1143/06 from 13/9/2007,  
 AP 159/06 from 26/6/2007,  
 AP- 1182/05 from 12/4/2006,  
 AP-36/06 from 16/7/2007,  
 AP-206/06 from 10/1/2008,  
 AP-384/06 from 10/1/2008,  
 AP-521/06 from 14/2/2008.

In its 2014 follow-up report, the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) affirmed that it is “deeply concerned that the Fund for the Support of Families of Missing Persons has not been established yet”. The Fund was provided for by the Law on Missing Persons that entered into force in 2004. The non-establishment of the Fund has specifically deprived the victims of reparation resulting in the fact that BiH is not only in contradiction with its international obligations, but also with a number of decisions rendered by the Constitutional Court of BiH. The Working

Group has called on BiH to establish the Fund as a matter of priority.

Furthermore, in the decisions that had been rendered by the Constitutional Court of BiH, the Council of Ministers of BiH, the FBiH Government, the RS Government and the Brčko District Government were ordered to provide all available information to relatives of missing persons regarding the fate and whereabouts of their loved ones, urgently and without further delay and no later than 30 days from the date of receipt of the decision concerned. However, the applicants have not received such information to date.

On 20 December 2012 and in March 2013, the Constitutional Court of BiH rendered two decisions (cases no. AP-3783/09 and AP-2101/11), adopting approximately 50 applications relating to missing persons. In those decisions, the Constitutional Court of BiH partially amended its existing practice in relation to such cases. Namely, in previous decisions, the Court would only order the Council of Ministers of BiH, the FBiH Government, the RS Government and the Brčko District Government to forward to the applicants all existing relevant information regarding the circumstances of disappearances during the war in BiH through their monitoring bodies. However, this time around the Court also ordered the competent institutions to undertake all necessary activities and conduct a thorough and comprehensive investigation regarding the disappearance of the applicants' relatives and inform the applicants about the results of such investigation.

This time, the Court did not order the obligation to ensure operational functioning of the Fund for the Support of Families of Missing Persons, although this part of its previous decisions on missing persons cases has not been enforced yet.

The majority of applicants - family members of 71 missing persons referred to in the decisions, have filed criminal complaints regarding the disappearance of their relatives to the Prosecutor's Office of BiH. Some of these complaints have also pointed out to alleged perpetrators of the crime. So far, only one family, from one of the complaints filed, has received positive feedback in terms of filing an indictment against the convicted perpetrator.

## 12

### WHAT ARE THE MECHANISMS OF ENFORCEMENT AND THE EVENTUAL LEGAL CONSEQUENCES IN CASE OF NON-IMPLEMENTATION OF THE DECISIONS OF THE CONSTITUTIONAL COURT? PLEASE PROVIDE DATA.

After reaching and rendering a decision, the Constitutional Court of BiH requests information from the competent authorities regarding the implementation of its decisions. If the competent authorities find the request justified, the Court leaves an additional period of time for implementation. The authorities that fail to implement the decisions of the Constitutional Court state the reasons for failure to implement the decision, and the Court examines these reasons in each case. If the Court finds that there are valid reasons for non-implementation, it marks the decision as justifiably unimplemented.

The Court keeps a record of the unimplemented decision in its internal document, the non-implementation information which is adopted periodically.

If a decision is not implemented within the prescribed deadline, the Court adopts a decision on failure to implement, stating that the decision has not been implemented, and may decide how the decision should be implemented. The decision on failure to implement is submitted to the state prosecutor.

The filing of applications (which is not a criminal charge by itself) may lead to the initiation

of criminal proceedings. Article 239 of the Criminal Code of Bosnia and Herzegovina stipulates the penalty of imprisonment for a term between six months and five years, for an official who refuses to enforce or prevents enforcement of a final and enforceable decision of the Constitutional Court of BiH, the Court of BiH, the Human Rights Commission or the European Court of Human Rights.

The failure to implement the decisions of the Constitutional Court is a criminal offense under domestic legislation, and criminal offenses should automatically be prosecuted by the Prosecutor's Office. However, to this date, only one such case has been tried in court, initiated by a lawsuit filed by the injured party.<sup>1</sup>

In the decisions of the Constitutional Court of BiH relating to relatives of missing people, the measures to be adopted are referred to the Council of Ministers of BiH, the FBiH Government, the RS Government and the Brčko District Government, which, therefore, are formally in charge of implementing the decisions of the Constitutional Court of BiH. However, a criminal proceedings cannot be initiated against an institution, but only against a natural person or legal person.

Legal persons are defined in Article 122 of the BiH Criminal Code, whose paragraph 1 reads as follows:

“This Chapter regulates criminal liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brčko District of Bosnia and Herzegovina, canton, city, municipality and local community, for a criminal offense perpetrated by the perpetrator in the name of, for account of or in favour of the legal person”.

This means that after rendering a ruling on non-implementation of the Constitutional Court of BiH's decisions which usually order measures to those institutions which are exempt from liability under the quoted provision (i.e. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brčko District of Bosnia and Herzegovina), the Prosecutor's Office in the process of investigation must identify a natural person (an individual) from these institutions who has committed the criminal offense of non-implementation of decisions rendered by the Constitutional Court of BiH. In order to initiate a criminal proceedings, first it is necessary to establish who, for example, within a given ministry was in charge for the implementation of the Constitutional Court of BiH's decisions, or which municipal authority has this competence. In the light of the above said, the Prosecutor's Office of BiH has not been able to initiate criminal proceedings relating to the non-implementation of decisions delivered by the Constitutional Court of BiH. In this context, it seems that criminal prosecution is not the most effective tool to achieve implementation of the decisions of the Constitutional Court of BiH.

The fact that the decisions of the country's highest judicial body can remain unimplemented without any significant consequences for those responsible constitutes the ultimate undermining of the rule of law and general trust towards the institutions.

On the other hand, the Constitutional Court itself has not always acted in accordance with its Rules of Procedure (Rule 72.6) and, in some cases, has failed to adopt decisions on failure to implement or to determine the adequate manner of implementation of its decisions.

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1 Small Steps – Great Effects: Optimizing the Execution of Decisions of the Constitutional Court of Bosnia and Herzegovina, Adrijana Hanušić, Open Society Fund Bosnia and Herzegovina, 2011, p. 12, URL: [http://www.osfbih.org.ba/images/Prog\\_docs/PDFP/pdfp\\_10-11/Studies/BHS\\_65\\_Adrijana\\_Hanusic.pdf](http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdfp_10-11/Studies/BHS_65_Adrijana_Hanusic.pdf)

In the example provided by TRIAL International in BiH, in relation to the Court's decision no. AP-36/06, rendered on 16 July 2007, the Court ordered the establishment of the Fund for the Support of Families of Missing Persons in BiH within a maximum of 30 days. Given that the Fund was not established, the applicants wrote to the Court, requesting that a ruling on non-implementation be adopted. The Court never adopted such a ruling. Moreover, the Court has replied in a statement that this decision is being implemented, although such Fund has not been established to date.

16

PLEASE DESCRIBE THE PROCEDURE NEEDED TO REVISE THE CONSTITUTION. HAVE THERE BEEN ALREADY REVISIONS OF THE CONSTITUTION? IF SO, PLEASE EXPLAIN RELEVANT AMENDMENTS, PROCEDURE, SCOPE AND CHANGES MADE.

The Constitution may be amended by a decision of the Parliamentary Assembly of BiH, including a two-thirds majority of those present and voting in the House of Representatives.

There has only been one amendment to the Constitution of BiH. The Brčko District status was secured with the adoption of the first amendment to the Constitution of BiH in 2009.

17

ARE THERE ANY PLANS TO AMEND THE CONSTITUTION? PLEASE EXPLAIN.

In September 2015, the Council of Ministers of BiH reported that it had adopted the Action Plan for the execution of the ECHR rulings in cases „Zornić“ and „Sejdić and Finci“, and tasked the Ministry of Justice of BiH to prepare a draft decision on the formation of a working group for drafting constitutional amendments and harmonization with the BiH Election Law. The Action Plan has never been published and the decision on the formation of the working group has not been adopted.<sup>2</sup>

Since then, the Council of Ministers of BiH has discussed the Action Plan twice, at sessions held in June and December of 2016. On both occasions, a conclusion was adopted stating that the Ministry of Justice of BiH should draft a revised Action Plan, form the working group and set reasonable deadlines for the implementation of the Action Plan. There has not been any progress on these tasks yet.

At this point, we would like to emphasize that in addition to official initiatives, none of which is currently in parliamentary procedure, there are also many initiatives created by civil society organizations that advocate and demand changes to the Constitution. At the moment one of the more active initiatives is the Initiative “Women Citizens for Constitutional Reform”, whose set of gender amendments to the Constitution of BiH has been recognized by the Commission for Gender Equality of the Parliamentary Assembly of BiH as vital and referred into further procedure to the Council of Ministers of BiH and the Collegium of the House of Representatives of BiH.

Considering that the Constitution of BiH does not contain provisions which explicitly relate to the equality of women and men in society, or uses gender-sensitive language, the Initiative “Women Citizens for Constitutional Reform”, among other things, advocates for:

2 BiH Alternative Report 2016: Political Criteria, Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina, Sarajevo, July 2016, URL: [http://eu-monitoring.ba/site/wpcontent/uploads/2016/07/HRP\\_alternativni-izvjestaj\\_ENG-\\_web.pdf](http://eu-monitoring.ba/site/wpcontent/uploads/2016/07/HRP_alternativni-izvjestaj_ENG-_web.pdf)



- a) the introduction of an unambiguous definition of gender equality into the Constitution of BiH and prohibition of direct and indirect discrimination of women in public and private spheres, and
- b) the introduction of affirmative measures in order to contribute to equating the position of women in all spheres of society, which include a set of policies and practical measures that are introduced wherever it is clearly indicated, from statistical data and analysis, that a specific group or groups do not enjoy an equal position.

The Initiative also advocates for the extension of the existing catalogue of human rights and the introduction of the principle of direct democracy which would enable citizens, both women and men, to participate in the decision-making processes through referenda or civic initiatives.

## 18

ARE THERE CONSTITUTIONAL PROVISIONS WHICH COULD PREVENT BOSNIA AND HERZEGOVINA FROM ALIGNING WITH EUROPEAN STANDARDS AND/OR EU *ACQUIS* AND REQUIRE AMENDING THE CONSTITUTION? PLEASE PROVIDE A LIST OF SUCH PROVISIONS IF APPLICABLE.

The European Court of Human Rights has ruled that the Constitution of BiH is in violation of Article 14 of the European Convention on Human Rights, taken in conjunction with Article 3 of Protocol No. 1. to the European Convention on Human Rights; as well as Article 1 of Protocol No. 12. to the European Convention on Human Rights.

This was established in a decision reached in the case „Sejdić and Finci v. Bosnia and Herzegovina“ (2009) which affirmed the ineligibility of the applicants, Dervo Sejdić and Jakob Finci, to run for office of Presidency of BiH, or be appointed in the House of Peoples of the Parliamentary Assembly of BiH based on their Roma and Jewish ethnic origin, which excludes them from the “constituent peoples” in BiH. Similar conclusions were drawn in cases „Zornić“ (2014), in which the applicant Azra Zornić claimed that she had been denied the passive voting right because she did not declare herself a member of any of the „constituent peoples“; and case „Pilav“ (2016), in which the applicant Ilijaz Pilav asserted that he had been prevented to run for office of Presidency because he is a Bosniak living in Republika Srpska, bearing in mind that a Bosniak member of the Presidency of BiH has to be elected from the Federation of BiH, while residents of Republika Srpska can only run for a Serb member of the Presidency of BiH.

The articles of the Constitution which had been contested in the abovementioned cases are as follows:

Article IV/1. (House of Peoples)

The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

Article V (Presidency)

The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniak and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

19

PLEASE DESCRIBE THE COMPETENCES, SELECTION PROCEDURES AND DECISION-MAKING PROCEDURES OF THE HEAD OF STATE. ARE THERE ANY SPECIFIC ELIGIBILITY REQUIREMENTS FOR CANDIDATES? ARE THERE ANY VETO MECHANISMS IN THE DECISION-MAKING PROCEDURES OF THE INSTITUTION?

The Presidency of Bosnia and Herzegovina represents the collective head of the complex state. Since 1995, the Presidency has been an executive body consisting of one Bosniak, one Croat and one Serb. In addition to the usual parity of ethnic groups, which is evident in the House of Peoples of the state Parliament, the election of the Presidency also has a territorial component outlined in the election rules. Eligible voters (citizens over the age of 18) in the Federation of BiH may directly elect a Bosniak and Croat member, while eligible voters in Republika Srpska may directly elect a Serb member of the Presidency (Article V of the Constitution of BiH).

Serbs from the Federation of BiH, and Croats and Bosniaks from Republika Srpska, as well as all other citizens who do not belong to any of the three constituent peoples, do not have a passive electoral right and cannot run for the Presidency.

Members of the Presidency are elected for a period of four years and can be re-elected for a second consecutive term of office. The Constitution stipulates that a member of the Presidency who has served two consecutive terms, can run for the same position again, four years after their second term in the Presidency is ended.

The powers of the Presidency are a combination of elements of a parliamentary and presidential democracy. In addition to the usual representative responsibilities, the office also comes with important political duties. The most important are, as defined by Article V 3, Article V 4 of the Constitution of BiH; and the Rules of Procedure of the Presidency of BiH:

- 1) Conducting the foreign policy of BiH (which, among other things, includes appointing ambassadors and other international representatives; representing the country in international and European organizations and institutions; arranging international agreements, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties etc.);
- 2) Appointing the Chair of the Council of Ministers (who shall take office upon the approval of the House of Representatives of the Parliamentary Assembly of BiH);
- 3) Proposing (upon the recommendation of the Council of Ministers) an annual budget to the Parliamentary Assembly;
- 4) Civilian commanding of the armed forces (until the unification of the armed forces the Presidency had authority over the two separate entity armed forces); and
- 5) Appointing five members to the Governing Board of the Central Bank of BiH

All members of the Presidency have, ex officio, the right to submit petitions to the Constitutional Court.

In principle, the Presidency should make decisions based on consensus. However, if one of the members is overruled, he/she may declare a decision destructive for the vital interest of the entity from which he/she was elected and forward the decision to the competent entity body for final revision. If the declaration was made by a Serb member, elected from Republika Srpska, the Presidency decision will be referred to the National Assembly of Republika Srpska for confirmation. If a Bosniak or a Croat member made

the declaration, the respective Bosniak or Croat delegates in the House of Peoples of the Parliament of the Federation of BiH would make the decision. If a veto on vital interests is confirmed by a two-thirds majority of the entity body within ten days of the referral, the decision shall not take effect (Article V 2 of the Constitution of BiH).

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## 20 WHAT IS/ARE THE OFFICIAL LANGUAGE(S) OF BOSNIA AND HERZEGOVINA?

The Constitution of Bosnia and Herzegovina does not specify the official language in the state.

The Constitution of the Federation of BiH stipulates that the official languages of the Federation of BiH are the Bosnian language, Croatian language and Serbian language and the official scripts are Latin and Cyrillic (Article 6 of the Constitution).

The Constitution of Republika Srpska stipulates that the official languages in Republika Srpska are the language of the Serb people, the language of the Bosniak people and the language of the Croat people, and the official scripts are Cyrillic and Latin (Article 7 of the Constitution).

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## 24 TO WHAT EXTENT DO THE RULES OF PROCEDURE OF THE PARLIAMENT REGULATE THE ISSUE OF GENDER BALANCE? IS GENDER EQUALITY TAKEN INTO CONSIDERATION WHEN DELIBERATING THE LAWS, POLICIES OR BUDGET?

The Rules of Procedure of both Houses of the Parliamentary Assembly of BiH state that both Houses will endeavor to ensure representation of both genders within their bodies, which in practice does not result in gender balance. Gender equality is seldom taken into consideration when deliberating the laws, policies and budgets.

All parliamentary bodies may submit draft legislation for an opinion to the Gender Equality Agency of Bosnia and Herzegovina before its referral to the adoption procedure. (Ova rečenica je bila u verziji koju sam prevodila, vidim da je nema u ovoj B/H/S verziji, pa eto sta ja znam izbaci je ili je ostavi).

The competent body which should give its opinion whether a law, policy or proposed budget at the state level has taken into account the principles of equality between men and women, i.e. whether the proposed law, policy or budget is in line with the BiH Law on Gender Equality, is the Agency for Gender Equality of BiH, and at the entity level, Gender Centers of Republika Srpska and the Federation of BiH.

In 2013, the Parliamentary Assembly of BiH drafted and adopted a document “Instruction on the Use of Gender-Sensitive Language in the Parliamentary Assembly of Bosnia and Herzegovina.” On the basis of this document, amendments to the Uniform Rules for Legislative Drafting in the Institutions of BiH, which have been harmonized with the BiH Law on Gender Equality, have been drafted and adopted. The amendments stipulate that all regulations adopted by the Council of Ministers of BiH and the Parliamentary Assembly of BiH must be published exclusively with respect to gender equality by: using gender-neutral forms (i.e. person), specifying language forms for female and male gender when expressions refer to men and women respectively.

In fact, this is the most common practice – a standard sentence that „the terms used in the



regulation include equally male and female genders“ is simply put in a law or regulation, without a realistic assessment as to what kind of impact that law will have on men and women.

## 40

IS THERE A CONSTITUTIONAL OR ORDINARY LEGAL FRAMEWORK FOR THE USE OF INSTRUMENTS OF DIRECT DEMOCRACY, INCLUDING REFERENDUM? WHAT IS THEIR SCOPE OF APPLICABILITY AND THE PROCEDURE TO BE FOLLOWED? DO THEY HAVE BINDING AND DIRECT LEGAL EFFECTS OR ARE THEY MERELY CONSULTATIVE? CAN INTERNATIONAL TREATIES BE SUBJECT TO A REFERENDUM? IS A REFERENDUM ON THE EU ACCESSION TREATY FORESEEN?

The Constitution of BiH does not provide for the use of instruments of direct democracy (plebiscite, referendum, civic initiative) in any of its articles, whereby citizens of BiH are prevented from direct participation in making of changes to the Constitution, as well as creating and proposing constitutional solutions.

The text of the Constitution of BiH does not mention nor provides for the possibility that international treaties be subject to a referendum.

The FBiH Constitution, constitutions of cantons and the Statute of the Brčko District also do not contain provisions that regulate the referendum issue. None of the cantons in the Federation of BiH has a separate Law on Referendum. In the Federation of BiH, this issue is regulated by the Law on Local Self-Government Principles which defines that direct participation of citizens in decision-making in local self-government units is achieved through a referendum, local assembly of citizens and other forms of direct vote. The Law prescribes that a referendum may be called on issues which are within the scope of competence of local self-government units, such as amending the statute or proposing an act of general application.

Unlike the Federation of BiH and Brčko District, the RS Constitution stipulates the possibility of calling for a referendum. Thus, Article 2 of the RS Constitution states that “the agreement on the change of the inter-entity boundary line between Republika Srpska and the Federation of Bosnia and Herzegovina may be taken out for the confirmation by the way of a referendum in Republika Srpska”, while Article 70 of the Constitution states that calling for the republic referendum falls under the competence of the National Assembly of Republika Srpska.

In addition, the Law on Referendum and Civic Initiative has been in force in Republika Srpska since 2010.

The Law regulates the calling for and holding of referenda at the entity level and at the level of municipalities, i.e. towns, authorities in charge of holding referenda and specifies who has the right to submit a proposal for calling a referendum. The Law does not specify the content of the referendum question at the entity level. Article 2 only stipulates that a “Referendum in Republika Srpska (hereinafter referred as: the Republic referendum) may be called for the purpose of prior declaration of citizens, in accordance with the Constitution.”

The National Assembly of Republika Srpska used this right in 2016, after it had decided to call for the referendum with the question: “Do you support marking and celebrating January 9 as Republic Day?”. The decision to call the referendum was made after the Constitutional Court of BiH had declared January 9, the Day of Republika Srpska,

unconstitutional and had instructed the amendment of the RS Law on Holidays. Although the decisions of the Constitutional Court of BiH are final and binding, the National Assembly of Republika Srpska has made a decision to call a referendum, assessing the decision of the Constitutional Court as a political one. The referendum was held on 25 September 2016, just before the local elections in BiH.

67

PLEASE EXPLAIN HOW THE CIVIL SOCIETY IS INVOLVED IN THE PROCESS OF PUBLIC CONSULTATION ON DRAFT LEGISLATION AND POLICIES. IS THERE A STRUCTURE OR MECHANISM IN PLACE, INCLUDING A WEB-PLATFORM? ARE CIVIL SOCIETY PROPOSALS TAKEN INTO CONSIDERATION BY THE RELEVANT AUTHORITIES? (SEE ALSO UNDER PUBLIC ADMINISTRATION REFORM)

There is still no actual cooperation between the state and civil society organizations. While there is a non-functioning mechanism at the state level, there are neither institutional mechanisms for cooperation between governmental and non-governmental sectors at the entity level, nor the will for their establishment.

The rules for consultations with civil society on drafting legal regulations have been in place for many years, but are generally not implemented. In January 2017, a new Rules for Consultation for Legislative Drafting in the Institutions of BiH<sup>3</sup> was adopted, on which the Ministry of Justice of BiH held consultation with representatives of civil society in late April 2016. The novelty is the establishment of an official online platform for consultation of state institutions with interested public and civil society organizations on legislative drafting.<sup>4</sup> The platform has been put into operation, although it is still not fully functional.

The organization of public debates is also regulated by the rules of procedure of the legislative bodies (the rules of procedure of both Houses of the Parliamentary Assembly of BiH, the rules of procedure of the RS National Assembly, the House of Peoples of the FBiH Parliament and cantonal assemblies) and the rules of procedure of the Council of Ministers of BiH, but analyses show that this mechanism does not function in a satisfactory manner.

The analysis of the functioning of public debate mechanisms in BiH<sup>5</sup> has shown that these rules of procedure do not contain criteria for assessing which regulations of public interest must be referred to a public debate, so that decisions are made for each individual case in parliament. The analysis has also shown that the rules of procedure stipulate different duration of public debates, that information about public debates is inadequate, and that civil society organizations and other participants in public debates do not receive reports on the conducted debates nor explanations why their proposals were not adopted.

3 Rules for Consultation for Legislative Drafting (Official Gazette of Bosnia and Herzegovina, 314/16) [http://www.ads.gov.ba/v2/attachments/4257\\_PravilaKonsultacije.pdf](http://www.ads.gov.ba/v2/attachments/4257_PravilaKonsultacije.pdf)  
 4 eKonsultacije Platform (<https://ekonsultacije.gov.ba/>)  
 5 “Public Debates in Bosnia and Herzegovina – from the Form to the Essence“, 2014, Tuzla: Centers for Civic Initiatives, available at: [http://www.cci.ba/dokumenti/Javne\\_rasprave\\_u\\_BiH.pdf](http://www.cci.ba/dokumenti/Javne_rasprave_u_BiH.pdf)

## 68 ARE LAWS, BYLAWS, STRATEGIES AND POLICY REFORMS EFFECTIVELY CONSULTED WITH CSOS (IN TERMS OF ADEQUATE ACCESS OF INFORMATION, SUFFICIENT TIME TO COMMENT, SELECTION AND REPRESENTATIVENESS OF WORKING GROUPS, ACKNOWLEDGEMENT OF INPUT, FEEDBACK ETC.)?

In general, legislative procedures in parliaments are not inclusive or open to the public, including civil society organizations. There is a worrying trend of adopting crucial legislation in urgent procedures, without a proper parliamentary debate, let alone consultations with civil society.<sup>6</sup> The 2016 research of the openness of parliaments has also shown that parliamentary bodies do not consult experts or any other external bodies<sup>7</sup> and that parliaments at the state and entity level are generally closed to the public in their work.

## 69 IS PUBLIC FUNDING OR ANY OTHER FORM OF SUPPORT AVAILABLE FOR CSOS? PLEASE PROVIDE DATA ON THE AMOUNTS FOR THE LAST 5 YEARS.

State support for the work of CSOs is not transparent, while mechanisms and criteria for the allocation of funds are arbitrary and depend on the institution that allocates funds.

In addition, some studies show that more than half of public funds distributed to CSOs have been assigned without an invitation to tender or public procurement procedures. Some of these funds have also been allocated to public institutions or religious organizations. Audit reports at the state and entity level also point out to the lack of transparency and control over these funds and the way they are distributed.<sup>8</sup>

According to the 2012 data, most funds are allocated to sports organizations, followed by veteran and disabled associations, organizations providing social services, while about 34,4% of funds go to all other types of associations. Most funds for associations and organizations are allocated by municipalities.

## 71 DOES LEGISLATION PROVIDE TAX INCENTIVES FOR INDIVIDUAL OR CORPORATE FINANCING THE NON-PROFIT SECTOR?

There are no such incentives.

## 136 DESCRIBE THE LEGAL/POLICY FRAMEWORK TO GUARANTEE THE QUALITY AND EQUAL ACCESS TO PUBLIC SERVICES. HOW ARE NEEDS OF SPECIAL GROUPS ENSURED (SUCH AS PERSONS WITH DISABILITIES, FOREIGNERS, SENIOR CITIZENS ETC.)?

The legislation of BiH provides for equal access to public services and services which are open or provided to the public. All services on paper must be accessible to all citizens on equal terms. The normative framework is relatively good at entity levels, because the laws

6 See: BiH Alternative Report 2016: Political Criteria, The Initiative for the monitoring European Union Integration of Bosnia and Herzegovina, Sarajevo, July 2016, pages 7-8

7 Parliament openness in the region and Bosnia and Herzegovina, Tijana Cvjetičanin, Zašto ne/Action SEE, March 2017, p. 7, URL: <http://zastone.ba/site/wp-content/uploads/2017/05/Parliament-openness-in-the-region-and-Bosnia-and-Herzegovina-CA-Why-Not.pdf>

8 "Heads or Tails: Allocations of the governmental sector to the non-governmental sector in Bosnia and Herzegovina for 2012", (Sarajevo: FSU in BiH and CPCD, February 2013) (<https://www.cin.ba/sto-miliona-maraka-za-nevladin-sektor/>)

on spatial planning and construction and by-laws prescribe the obligations and standards for institutions and individuals participating in the planning and construction process to ensure physical accessibility for persons with disabilities. The accessibility regulations in both entities have perfectly prescribed accessibility standards and deadlines for making public institutions accessible, and if these regulations were to be consistently applied, accessibility for persons with disabilities would improve tremendously.

Bodies and institutions that implement regulations in practice, as well as those in charge with monitoring the implementation of regulations, including inspections, do not implement the prescribed norms. Due to their irresponsibility towards citizens, decision makers do not plan funds for these purposes in the budgets of their institutions. Apart from physical accessibility, where some progress has been made lately, other forms of accessibility, such as providing information and communicating in accessible formats, exist only in formal terms. Some laws prescribe the obligation to provide an interpreter for the sign language or materials in the Braille alphabet (Law on the Use of Sign Language (BiH) and Law on the Library for Blind Persons (RS)), but in practice there is no systematic approach for the implementation of these laws, and thus are implemented sporadically. The accessibility of alternative and augmentative techniques or texts which are adapted for persons with intellectual disabilities is not even mentioned. The law does not regulate in detail the accessibility of information on public television broadcasters or other telecommunications operators, and it entirely depends on the good will of individual service providers.

Accessibility of transport for persons with disabilities is not regulated by laws and by-laws, so there is no obligation for transport organizers to provide access to means of transportation to persons with disabilities in rural and urban areas. There is still no accessible public transport for persons with disabilities in any of the larger cities in the country.

Laws on health care at the entity level also guarantee the highest possible level of health care, which is not provided in practice, and which directly jeopardizes the health of persons with disabilities. Health care facilities are inaccessible, while diagnostic and other instruments and equipment, especially for persons with the most serious types of disabilities, as well as women and children, are not available.

Apart from the inaccessibility of facilities and services, it is important to mention that there is neither a prescribed legal obligation to provide public officials with a training programme on the rights and prevention of discrimination of persons with disabilities and their families (taking into consideration all differences in age, gender, sexual orientation, etc.), nor the obligations of public institutions in which persons with disabilities are employed.

On the whole, persons with disabilities are not provided with adequate accessibility of public services and public institutions, causing their exclusion and discrimination, and does not provide them with equal opportunities to exercise their rights.

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## 152 WHAT MEASURES HAVE BEEN TAKEN TO ENSURE AN INCREASED AWARENESS WITHIN THE SECURITY FORCES OF ISSUES SUCH AS HUMAN RIGHTS AND NON-DISCRIMINATION?

Civilian oversight and awareness-raising within the security forces on issues of human rights and non-discrimination is carried out through civil sector commissioners. In the armed forces that person is a parliamentary commissioner for military matters, and through the Law on Service in the Armed Forces of Bosnia and Herzegovina, every

member of the Armed Forces of Bosnia and Herzegovina commits to respecting human rights and non-discrimination on different grounds.

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## 233 PLEASE DESCRIBE THE DOMESTIC LEGAL FRAMEWORK FOR PROCESSING WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE, AND PROVIDE A TRANSLATED COPY OF THE RELEVANT LAWS.

In BiH there are four laws which regulate the processing of war crimes, crimes against humanity and genocide. These include: the Criminal Code of Bosnia and Herzegovina, the Criminal Code of Republika Srpska, the Criminal Code of the Federation of Bosnia and Herzegovina and the Criminal Code of the Brčko District.

The provisions on the processing of war crimes in the entity laws have been taken from the Criminal Code of the Socialist Federal Republic of Yugoslavia, which is not the case with the Criminal Code of Bosnia and Herzegovina. The entity laws do not contain provisions relating to the processing of crimes against humanity.

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## 234 DOES THE LEGISLATION INCLUDE THE NOTION OF COMMAND RESPONSIBILITY, AS DEFINED BY THE ICTY STATUTE (ART. 7.3) AND THE ROME STATUTE OF ICC (ART. 28)?

The BiH Criminal Code contains provisions that relate to the concept of individual and command responsibility. There is no concept of a joint criminal enterprise, but is applied in accordance with customary international law and the practice of the Hague Tribunal.

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## 235 IS THERE A NATIONAL STRATEGY ON WAR CRIMES? DOES IT FORESEE ANY COMPLEMENTARITY SYSTEM BETWEEN COURTS? PLEASE DESCRIBE HOW THE AUTHORITIES ARE IMPLEMENTING THE STRATEGY AT ALL LEVELS OF GOVERNANCE.

The Council of Ministers of BiH adopted the National Strategy for Processing of War Crimes Cases in December 2008. According to the Strategy, the most complex cases should be processed within the period of seven years, while all other cases within the period of 15 years. The problem arose in the assignement of cases between judicial institutions at the state and entity level.

The Prosecutor's Office of BiH not only worked on complex cases, but also on cases of lesser complexity, which should have been done by some entity institutions. The problem that often occurred in entity courts was witness protection, that is, the inability to provide protection. The problem with implementation of the Strategy arose at the very beginning, because a database containing all war crimes cases, i.e. investigations had not been established within the set deadline, and which was requested in order to avoid conducting parallel investigations in several prosecutions. The database problem was solved a few months later.



## 236 WHICH COURTS AND PROSECUTION OFFICES ARE COMPETENT? DESCRIBE THEIR FINANCIAL AND HUMAN RESOURCES SITUATION

The Prosecutor's Office of BiH and the Court of BiH, all cantonal courts and prosecutor's offices in the Federation of BiH, all district courts and prosecutor's offices in Republika Srpska, the Supreme courts in the Federation of BiH and Republika Srpska, as well as the Prosecutor's Office and Court of the Brčko District have competence in processing war crimes.

Since the beginning of work on war crimes cases, the Prosecutor's Office of BiH has had personnel and financial capacities for the processing of war crimes. As for the courts, the Court of BiH did not have any personnel or financial problems, but two years ago they launched the issue of courtrooms, i.e. the number of courtrooms in relation to the number of indictments. For this reason, the trials were organized in two shifts – thus, some trials begin at 09:00 hrs in the morning and last until 13:00 hrs, while other trials begin at 13:00 hrs and the courtroom is available until 16:00 hrs, i.e. the end of working hours. The Court in Goražde has never worked on war crimes cases due to insufficient number of judges for trials, because, in addition to three members of the Trial Chamber, the Court requires one preliminary proceedings judge, one appellate judge, and three judges in the event of appeal against the Trial Chamber's decision. Investigations conducted by the Prosecutor's Office of Bosnian-Podrinje Canton were transferred to the nearest court.

When talking about witness protection, the District Court in Trebinje is unqualified to provide protection due to technical conditions. They had one witness who was assigned protection, and was questioned in a way that he/she gave a statement before the Trial Chamber without the presence of the parties. After that the Trial Chamber read the statement in the courtroom and asked the parties which questions would they ask the witness if he/she were present. When the parties answered, the Trial Chamber withdrew again and summoned the witness and questioned him/her. With the help of UNDP, witness protection departments have been secured at the Cantonal Court in Sarajevo, the District Court in Banja Luka, the Cantonal Court in Novi Travnik and the Cantonal Court in Bihać.

In courts, except for the Court of BiH, there was a constant problem of the lack of psychologists who would help traumatized witnesses, i.e. the lack of a Department for Protection of Witnesses under Threat and Vulnerable Witnesses. Psychologists and relevant staff, as well as investigators working on war crimes cases, have been recruited, while their pays have been secured from IPA funds.

In December 2013, the European Commission paid the first tranche which enabled recruitment of 142 prosecutors, judges, expert associates and administrative workers in courts and prosecutor's offices throughout the country to work on war crimes cases.

When a problem arose due to delay in the adoption of the Justice Sector Reform Strategy and the European Commission blocked IPA funds in 2015, majority of employees did not receive their pays. Some presidents of courts and chief prosecutors secured additional funds from the cantonal budgets. The problem of IPA funds affected the witnesses themselves (for instance, the District Court in East Sarajevo could not pay the costs of transporting witnesses to court).

## 237 PLEASE DESCRIBE THE SITUATION AS REGARDS PROCEEDINGS ON WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE. HOW MANY PROCEEDINGS HAVE BEEN FINALISED AND HOW MANY ARE ONGOING?

According to the data of the High Judicial and Prosecutorial Council, all courts in BiH from 1992 to the end of 2016 rendered a total of 320 convictions and 106 acquittals. Three judgements were rejected and there were 17 decisions to suspend the proceedings.

A total of 666 indictments has been brought and some of these trials are still ongoing.

## 238 HOW MANY PERSONS ARE INDICTED FOR WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE BY COURTS IN BOSNIA AND HERZEGOVINA? IS THIS LIST PUBLIC? PLEASE ATTACH A COPY OF IT. HOW MANY ADDITIONAL INDICTMENTS IN TOTAL ARE FORESEEN?

According to the data of the High Judicial and Prosecutorial Council of BiH, a total of 666 indictments has been brought. There is a total of 436 investigations in war crimes cases in which the perpetrator is known and 267 investigations in which the perpetrator is unknown.

According to the data of the Prosecutor's Office of BiH, 690 persons have been indicted since the beginning of the operation of the Office. However, this number is also related to cases transferred to entity courts, given the fact that the Prosecutor's Office of BiH has been criticized for bringing indictments in order to fulfill the norm and not to meet the standards in regards to war crimes processing.

## 239 HOW MANY SUCH CASES HAVE BEEN PROCESSED? HOW MANY VERDICTS WERE REACHED? PLEASE PROVIDE A LIST. WHAT IS THE EXPECTED TIMEFRAME TO PROCESS ALL FORESEEN WAR CRIME CASES?

A total of 3.849 applications and 2.811 investigations have been processed at all levels.

However, having not met the deadlines of the National Strategy for Processing of War Crimes Cases, a Working Group was established consisting of representatives of the Ministry of Justice of BiH, courts from Republika Srpska, Brčko District and the Federation, the Ministry of Security of BiH, the Prosecutor's Office of BiH, as well as the OSCE representatives. The Council of Ministers of BiH established the Working Group, while the Chairperson is a person from the Ministry of Justice of BiH. They had two meetings, but they have not done anything yet in terms of concrete changes to the National Strategy for Processing of War Crimes Cases.

## 240 HOW MANY PERSONS ARE INDICTED SPECIFICALLY FOR SEXUAL VIOLENCE RELATED WAR CRIMES? HOW MANY SEXUAL VIOLENCE RELATED PROCESSES HAVE BEEN CONDUCTED AND VERDICTS RENDERED? PLEASE PROVIDE A LIST.

According to the latest available OSCE data, there were 27 accused of sexual violence in local courts by the end of 2014. According to BIRN BiH data, the Court of BiH, since the beginning of its work, has done 51 cases of wartime sexual violence.

## 241 HAVE THE AUTHORITIES TAKEN ANY MEASURES TO MONITOR AND TRACK COMPLEX WAR CRIME CASES INVOLVING SENIOR- OR MID-LEVEL OFFICIALS, OR HAVING A WIDE GEOGRAPHICAL OR TEMPORAL SCOPE? PLEASE PROVIDE DISAGGREGATED INFORMATION.

The authorities in BiH have never undertaken measures to monitor complex war crimes cases. The task of the Prosecutor's Office of BiH is to process war crimes cases, that is, complex cases against senior-level officials, but the Prosecutor's Office of BiH does not have the obligation to submit information about a case to anyone, meaning that these data is not available to the public.

According to the National Strategy for Processing of War Crimes Cases, there is a Supervisory Board for the implementation of the National Strategy for Processing of War Crimes Cases, but their work is not public.

## 242 HAVE THE AUTHORITIES UNDERTAKEN ANY MAPPING EXERCISE TO UNDERSTAND THE EXTENT TO WHICH KNOWN CRIMES HAVE BEEN ADDRESSED AND THE CRIMES STILL TO BE PROSECUTED? ARE THE AUTHORITIES AWARE OF ANY SPECIFIC ACCOUNTABILITY GAP?

No actions have been taken on mapping the crimes committed. There are attempts by the non-governmental sector to carry out the mapping, but it still has not been fully completed.<sup>9</sup>

## 243 ARE THERE TRAINED JUDICIAL PERSONNEL (PROSECUTORS, LAWYERS, JUDGES) TO PROCESS DOMESTIC WAR CRIMES TRIALS? WHAT KIND OF TRAINING ACTIVITIES HAVE BEEN DONE, ARE ONGOING AND PLANNED? WHAT SPECIALISED TRAININGS HAVE BEEN PROVIDED TO JUDGES, PROSECUTORS AND DEFENCE LAWYERS?

When war crimes trials began, lawyers, prosecutors and judges underwent training aimed at training them to deal with war crimes. The problems arose when the Prosecutor's Office of BiH began to employ inexperienced prosecutors who had not received any special training in war crimes cases, which is reflected in the war crimes indictments. An analysis recently published by the OSCE points out to several issues in this field such as: indictments which were brought only for the purpose of meeting the prosecutor's work quota; separation of war crimes indictments into several cases; insufficient knowledge of prosecutors on command responsibility and joint criminal enterprise, etc.<sup>10</sup> The High Judicial and Prosecutorial Council of BiH has tasked the Prosecutor's Office of BiH to implement recommendations provided in the analysis, including the recommendation to revise the existing war crimes indictments and to revise the criteria for determining the complexity of cases and only retain the most complex cases at the state level, etc.

9 Mapping Detention Camps 1992-1995 in BiH, „Transitional justice, Accountability and Remembrance“, URL: <http://www.tranzicijska-pravda.org/profil-logora-i-zatocenickih-objekata/>

10 Processing of War Crimes at the State Level in Bosnia and Herzegovina, Joanna Korner, Organization for Security and Co-operation in Europe, June 2016, URL: <http://www.osce.org/bih/247221?download=true>



## 244 IS BOSNIA AND HERZEGOVINA PREPARED TO FULLY COOPERATE WITH ICTY/MICT ON DOMESTIC TRIALS ON WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE, INCLUDING BY ACCEPTING EVIDENCE AND OTHER SUPPORTING MATERIAL FROM THE ICTY/MICT AS WELL AS FROM THE JUDICIARIES OF OTHER COUNTRIES IN THE REGION? IS EVIDENCE COMING FROM THE ICTY/MICT AND FROM OTHER COUNTRIES ACCEPTABLE, IN THEORY AND IN PRACTICE, IN COURT PROCEEDINGS?

BiH cooperates with the Hague Tribunal and Hague Tribunal materials are intensively used in war crimes cases at the state level. In regards to cooperation with the Hague Tribunal, it is satisfactory and the transferred cases, the so-called 11 bis, have all been resolved in fair trial. The first cases transferred to the Court of BiH from the ICTY, such as Mejakić et al., Paško Ljubičić, Milorad Trbić, and the like, were completed by final judgements. Some of the Category A cases remained in the investigative phase for a long time and only a few were completed by final judgements.

In a large number of war crimes cases in BiH, suspects, witnesses and victims are located in other countries, which is why regional cooperation is vital. It is indisputable that the work of the Tribunal has had an impact on the legal systems of countries in the region that have been given a number of war crimes cases to conduct. BiH has signed agreements on mutual concession of evidence with the Republic of Croatia<sup>11</sup> and Montenegro<sup>12</sup>. The War Crimes Prosecutor of the Republic of Serbia and Deputy Chief Prosecutor of BiH signed a Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide<sup>13</sup> on 31 January 2013. These protocols define instruments for the effective processing of war crimes perpetrators and facilitate the concession of evidence and information in war crimes cases between the two prosecutions on a voluntary basis.

Realizing regional cooperation in full capacity has not been accomplished due to the political instrumentalization of cases and the lack of legal framework which would regulate regional cooperation. The existence of a ban on extradition of its own nationals or the prevention of access to documents and evidence from other countries has negative consequences on the conduct of war crimes proceedings.

## 245 IS BOSNIA AND HERZEGOVINA PREPARED TO ACCEPT FULL AND TRANSPARENT INTERNATIONAL MONITORING OF DOMESTIC TRIALS ON WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE, WHERE RELEVANT TO ALLOW MONITORING THE ACCOUNTABILITY PROCESS AS A WHOLE? DOES THIS APPLY ALSO TO ACCESS TO INFORMATION ON INVESTIGATIONS, AND IF SO UNDER WHICH CONDITIONS?

There have already been some monitoring activities in this field, such as the one conducted by the OSCE. Monitoring of trials did not reveal any obstacles, however, access to cases in the Prosecutor's Office of BiH was temporarily prevented by former Chief Prosecutor Goran Salihović (who, at the time of writing of the answers to this questionnaire was

- 11 Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide between the State's Attorney Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina, 2013., [http://tuzilastvobih.gov.ba/files/docs/Protokol\\_Hrvatska\\_BIH.pdf](http://tuzilastvobih.gov.ba/files/docs/Protokol_Hrvatska_BIH.pdf)
- 12 Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide between the Supreme State Prosecutor's Office of Montenegro and the Prosecutors's Office of Bosnia and Herzegovina, 2014., URL: [http://www.tuzilastvobih.gov.ba/files/docs/Protokol\\_bos\\_.pdf](http://www.tuzilastvobih.gov.ba/files/docs/Protokol_bos_.pdf)
- 13 Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide between the Prosecutor's Office of Bosnia and Herzegovina and the War Crimes Prosecutor's Office of the Republic of Serbia, 2013., URL: <http://tuzilastvobih.gov.ba/files/docs/Protokol-bos.pdf>

suspended from duty). The access was eventually granted after public pressure arising from the media debate regarding the issue.

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## 246 HAVE THERE BEEN EXTRADITION REQUESTS FOR ALLEGED PERPETRATORS OF WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE? IS BOSNIA AND HERZEGOVINA READY TO CONCLUDE EXTRADITION AGREEMENTS COVERING ALLEGED WAR CRIMES PERPETRATORS WITH NEIGHBOURING COUNTRIES?

BiH is not ready to conclude extradition agreements in war crimes cases. BiH has signed the Agreement on Extradition with the Republic of Croatia and the Republic of Serbia, respectively, covering criminal offenses of organized crime, but not war crimes cases.

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## 247 HAS BOSNIA AND HERZEGOVINA ADOPTED ANY COMPREHENSIVE TRANSITIONAL JUSTICE STRATEGY AIMED AT FIGHTING IMPUNITY, PROVIDING RECOGNITION AND REDRESS TO VICTIMS, FOSTERING TRUST, STRENGTHENING THE RULE OF LAW AND CONTRIBUTING TO RECONCILIATION AND NON-RECURRENCE? IF YES, PLEASE PROVIDE DETAILS ON ITS CONTENTS AND STATE OF IMPLEMENTATION.

Bosnia and Herzegovina has not adopted any transitional justice strategy yet.

In 2010, under the auspices of the United Nations Development Programme (UNDP), the process of drafting and adopting a National Strategy for Transitional Justice was initiated. The Ministry of Human Rights and Refugees of BiH formed a working group tasked with drafting the strategy with UNDP's support.<sup>14</sup> The working document containing the draft Transitional Justice Strategy was expected to be adopted by the Parliamentary Assembly of BiH in the summer of 2012. Nonetheless, this did not happen.

In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended BiH "to expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft strategy on transitional justice aimed at improving access to justice".

In its 2014 follow-up report, the Working Group on Enforced or Involuntary Disappearances (WGEID) expressed "deep regret that the Transitional Justice Strategy could not be adopted and encourages Bosnia and Herzegovina to speed up the process of its adoption. It underlines the fact that this strategy is regarded as a priority by victims of the war who have been waiting for justice and redress over the past 20 years".

BiH authorities also failed to adopt a Programme for Victims of Sexual Violence. The aim of the Programme, which was jointly launched in 2011 by the Ministry of Human Rights and Refugees of BiH and the UN Population Fund (UNPFA), is to create tools that will allow survivors access to reparation. The programme document was completed in 2012 and sent to the entities for formal opinions. However, failing to receive positive response on the document's content from the RS Government, the Ministry of Human Rights and Refugees never submitted it to the Council of Ministers of BiH for adoption.

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14 Working text of the Transitional Justice Strategy in Bosnia and Herzegovina 2012-2016. URL: <http://www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/Strategija%20TP%20-%20bosanski%20jezik%20fin%20doc.pdf>

The lack of strategic approach to transitional justice is evident in the political, judicial and social sphere. The existing initiatives in the field of transitional justice mostly come from civil society and face obstacles at all levels of government. The victims and survivors of war crimes lack reparations, while persons indicted or incarcerated for war crimes are often celebrated as war heroes and given official recognition as „upstanding citizens“ within the political and administrative frameworks of the ethnic communities they come from. One of the more striking examples is naming of a student dorm in Pale after Radovan Karadžić, ceremonially opened by the current President of Republika Srpska, Milorad Dodik. However, there are numerous other cases where current political officials publicly supported, welcomed or honored persons indicted or incarcerated for war crimes. There are several cases of war crimes indictees who have returned to active politics after serving their sentence, which is a problem particularly evident at the local level. In some cases, persons who directly participated in war crimes have resumed their political or administrative positions in local communities, putting the victims of war crimes and returnees in a particularly vulnerable position.

# ANTI-CORRUPTION

(questions 248-291)

## 248 PLEASE PROVIDE ANY ANALYSIS OR RESEARCH MADE BY THE COUNTRY'S AUTHORITIES OR OTHER BODIES (E.G. INTERNATIONAL ORGANISATIONS AND NGOS) ON THE PROBLEMS OF CORRUPTION FACED BY BOSNIA AND HERZEGOVINA.

Below is a list of relevant research on the problems of corruption in Bosnia and Herzegovina made by civil society organisations, international organizations and institutions:

- National Integrity System Assessment of Bosnia and Herzegovina, Transparency International in BiH, 2015, <https://ti-bih.org/wp-content/uploads/2015/12/National-Integrity-System-Assesment-BIH-2015.pdf>
- Monitoring Report on the Seizure of Illegally Acquired Property in Bosnia and Herzegovina, Transparency International in BiH, 2016, <https://ti-bih.org/wp-content/uploads/2017/03/Monitoring-oduzimanje-nezakonito-stecene-imovine.pdf>
- Monitoring the Implementation of Anti-Corruption Reforms in Bosnia and Herzegovina, Transparency International in BiH, 2016, <https://ti-bih.org/wp-content/uploads/2016/12/Monitoring-provodjenja-antikorupcionih-reformi-u-BIH-2016.pdf>
- Monitoring Report on the Implementation of the United Nations Convention against Corruption, Transparency International, 2016, <https://ti-bih.org/wp-content/uploads/2016/11/Monitoring-UN-Konvencije-za-borbu-protiv-korupcije.pdf>
- Research on the Application of the Freedom of Access to Information Act of Bosnia and Herzegovina, Transparency International in BiH, 2016, <https://ti-bih.org/wp-content/uploads/2016/09/Istrazivanje-o-primjeni-zakona-o-slobodi-pristupa-informacijama-u-BIH-2016.-TIBIH-1.pdf>
- Monitoring the Implementation of the Strategy and Action Plan for the Fight against Corruption 2015-2019, Transparency International in BiH, 2016, <https://ti-bih.org/wp-content/uploads/2016/08/Monitoring-Strategije-za-borbu-protiv-korupcije-2015-2019.pdf>
- Diagnostic Analysis of the Integrity of the Justice Sector in Bosnia and Herzegovina and Potential Risks of Corruption and Unethical Conduct in the Judiciary, USAID's Justice Project in Bosnia and Herzegovina, 2016, <http://usaidjp.ba/assets/files/publication/1454581034-diagnostic-analysis-of-the-integrity-of-the-judicial-sector-in-bih-and-potential-risks-of-corruption-and-unethical-conduct-in-judiciary.pdf>
- Business, Corruption and Crime in Bosnia and Herzegovina: The impact of bribery and other crime in private enterprise, UNDOC 2013, [https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Prevod\\_izvjestaja\\_BHS\\_fina\\_za\\_stampu\\_ispravljeno.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/corruption/Prevod_izvjestaja_BHS_fina_za_stampu_ispravljeno.pdf)
- Anti-Corruption Capacities of Public Procurement in the Security Sector, Centre for Security Studies, Sarajevo, 2016, [http://css.ba/wpcontent/uploads/2013/11/ACroSS\\_AK\\_2016.pdf](http://css.ba/wpcontent/uploads/2013/11/ACroSS_AK_2016.pdf)

- Corruption Perceptions Index 2016, Transparency International, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)
- Global Corruption Barometer 2015/16, Transparency International, [https://www.transparency.org/research/gcb/gcb\\_2015\\_16/0/](https://www.transparency.org/research/gcb/gcb_2015_16/0/)

**249** PLEASE GIVE COMPREHENSIVE, COUNTRY-WIDE OVERVIEW OF THE EFFORTS GEARED TOWARDS TACKLING THESE ISSUES (I.E. ADOPTION OF LEGISLATION, INTERNATIONAL CONVENTIONS, ADOPTION OF STRATEGIES AND ACTION PLANS TO IMPLEMENT LEGISLATION, REINFORCEMENT OF INSTITUTIONAL AND HUMAN RESOURCES CAPACITIES TO DEAL WITH CORRUPTION). WHICH ARE THE MAIN PRIORITIES IN THIS FIELD? WHICH ARE THE BODIES RESPONSIBLE FOR THE FIGHT AGAINST CORRUPTION? HOW IS COORDINATION BETWEEN DIFFERENT SERVICES ENSURED HORIZONTALLY AS WELL AS ACROSS THE LEVELS OF GOVERNANCE?

In regards to the fight against corruption in BiH, the legal institutional framework for the fight against corruption remains inadequate. A particular problem in the fight against corruption is the complex institutional framework, and consequently the fragmentation of strategic documents and action plans for the fight against corruption, which makes the implementation of anti-corruption measures less effective. Corruption in BiH is still widespread in many fields and is one of the most important challenges for BiH in the future. In order to effectively combat corruption, in the future BiH must pay special attention to improving and advancing the legislation framework for the fight against corruption (such as laws on public procurement, conflict of interest, financing of political parties, access to information, protection of whistleblowers, etc.), as well as strengthening institutional capacities for the fight against corruption and improving cooperation with civil society organizations, academic community, the media and citizens aimed at a more efficient fight against corruption. Also, it is necessary to increase the number of investigations and judgements for corruption offenses, in particular judgements against high-ranking officials. Available statistical data on processing corruption before courts and prosecutions in BiH show that in the past several years there has been a decrease in the number of judgements for corruption offenses in BiH. Particularly concerning is the data from the analysis of final court judgements before six courts in BiH for the period 2009-2014, published by Transparency International in BiH, that only 19% of high-ranking officials accused of corruption end up with a conviction.

Regarding the strategic documents for the fight against corruption in Bosnia and Herzegovina, the following documents are adopted:

### **Anti-Corruption Strategy of Bosnia and Herzegovina**

The Council of Ministers of BiH, at its session held on 7 May 2015, adopted the Anti-Corruption Strategy for 2015-2019 and the Action Plan for the Implementation of the Anti-Corruption Strategy for 2015-2019. The Strategy consists of five strategic objectives, namely: establishment and strengthening of institutional capacities and improvement of the normative framework for the fight against corruption; development, promotion and implementation of preventive anti-corruption activities in the public and private sectors; improvement of the effectiveness and efficiency of the judicial institutions and law enforcement authorities in the field of the fight against corruption; raising public awareness and promoting the need for participation of the whole society in the fight against corruption; and the establishment of efficient mechanisms for coordination of

the fight against corruption, and monitoring and evaluation of the implementation of the Strategy. The five mentioned objectives are developed through 69 strategic programmes, and further in the Action Plan through a total of 226 activities.

### **Anti-Corruption Strategy of the Federation of Bosnia and Herzegovina**

The FBiH Government, at its session held on 16 September 2016, adopted the Anti-Corruption Strategy of the Federation of Bosnia and Herzegovina for 2016-2019 and the Action Plan for its implementation. The fundamental guidelines in achieving the objectives outlined in the Strategy are: prevention, repression, raising awareness about the harmfulness of corruption and cooperation with civil society. With a view to successfully implement the Strategy, the FBiH Government has formed an Anti-Corruption Team in charge of the implementation of the Strategy.

### **Anti-Corruption Strategy of Republika Srpska**

The Anti-Corruption Strategy of Republika Srpska was adopted for the mandate period 2013-2017. The priorities of this strategic document are: increasing the level of trust in public institutions; strengthening preventive policies and mechanisms to deter corruption; raising the level of law enforcement; and re-examination of sanctions policy. The Commission for the Implementation of the Anti-Corruption Strategy of Republika Srpska is responsible for managing this process and monitoring the implementation of the Strategy and the Action Plan.

In addition to strategies and action plans at the level of BiH and entity level, the governments of eight cantons in the Federation of BiH have developed their own Anti-Corruption Strategies and/or Action Plans, while the process of drafting strategic documents is under way in the remaining two cantons.

In addition to the above listed anti-corruption strategic documents, Bosnia and Herzegovina, for the purpose of complying with international standards, is a signatory to the following International Conventions and Protocols relating to anti-corruption:

- United Nations Convention against Corruption
- United Nations Convention against Transnational Organized Crime
- Council of Europe Criminal Law Convention on Corruption
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- Council of Europe Civil Law Convention on Corruption
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption

When it comes to anti-corruption bodies, there are two groups of bodies on the basis of jurisdiction:

- a) Anti-corruption coordination bodies;
- b) Institutions and bodies from the legislative, executive and judicial authorities at all levels in Bosnia and Herzegovina.

When it comes to anti-corruption coordination bodies, in addition to the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK), which is the central institution for the prevention and coordination of the fight against



corruption at the state level, the following anti-corruption bodies have been set up at lower levels of governance:

- Commission for the Implementation of the Anti-Corruption Strategy of Republika Srpska
- Anti-Corruption Team of the Government of the Federation of Bosnia and Herzegovina
- Commission for the Prevention of Corruption and Coordination of Activities on Combating Corruption of Brčko District
- Anti-Corruption Team of the Government of Sarajevo Canton
- Anti-Corruption Working Body of the Government of Una-Sana Canton
- Anti-Corruption Team of Central Bosnia Canton
- Anti-Corruption Team of Bosnian Podrinje Canton
- Anti-Corruption Working Body of Herzegovina-Neretva Canton
- Anti-Corruption Team of Tuzla Canton
- Anti-Corruption Team of Canton 10
- Anti-Corruption Team of Zenica-Doboj Canton
- Anti-Corruption Team of Posavina Canton

West Herzegovina Canton has formed a Commission for drafting the Anti-Corruption Strategy and the accompanying Action Plan.

In addition to anti-corruption coordination bodies which, apart from APIK, include all bodies at lower levels of governance, institutions and bodies from the legislative, executive and judicial authorities at all levels of BiH constitute the institutional framework for the fight against corruption. This particularly applies to institutions in the field of adoption of regulations, prevention, control, supervision, detection, proving and processing of corruption, such as: legislative and executive authorities at all levels of BiH, independent supervisory bodies, inspections, law enforcement agencies, prosecutions, courts, etc.

When talking about the cooperation of the abovesaid institutions in the fight against corruption, the complex constitutional arrangement and fragmentation of the system of competencies at multiple levels of governance in BiH largely reduce institutional cooperation in the fight against corruption. This is especially true of the cooperation of institutions at different levels of governance in BiH, while the situation is not much better in terms of institutional cooperation within the level of governance.

## 250 IS THERE A NATIONAL ANTI-CORRUPTION STRATEGY? WAS THIS STRATEGY THE SUBJECT OF BROAD CONSULTATION AT ALL LEVELS (E.G. INTERDEPARTMENTAL, CONSULTATIONS WITH STAKEHOLDERS IN THE PRIVATE SECTOR, CIVIL SOCIETY AND THE MEDIA)? WHAT IS THE STATUS OF ADOPTION OF STRATEGIC POLICY DOCUMENTS, INCLUDING THE ACTION PLANS, AT ALL LEVELS OF GOVERNANCE?

The Anti-Corruption Strategy of Bosnia and Herzegovina and the Action Plan for its implementation for 2015-2019 was adopted by the Council of Ministers of BiH in May 2015, at the proposal of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. The process of developing the Strategy was inclusive and, in addition to representatives of 23 institutions from all levels of governance, civil society organizations working in the field of anti-corruption were included in the interdepartmental working group for the development of the Strategy. The Strategy and the Action Plan are adapted to the specificities of the constitutional order of BiH, without prejudice to the constitutional competencies of the lower levels of governance, and provide the basis for lower levels of governance to develop their own anti-corruption strategies and align them with the general principles of the state level strategy. The process of developing the Strategy and the Action Plan was supported by the European Union through the technical assistance project „PAK“.

Regarding the lower levels of governance in BiH, Republika Srpska has adopted the Anti-Corruption Strategy for 2013-2017, while the Federation of BiH has adopted the Anti-Corruption Strategy for 2016-2019.

## 251 IS THERE A MONITORING/EVALUATION MECHANISM OR IS THERE MID-TERM REVIEW PLANNED AND IS THERE AN IMPACT ASSESSMENT PLANNED AT THE END OF THE IMPLEMENTATION TO SEE WHETHER OR NOT THE STRATEGY/ACTION PLAN GENERATED TANGIBLE RESULTS? IS THERE A DESIGNATED MONITORING BODY, WHICH MEETS REGULARLY AND OVERSEES EFFECTIVELY THE IMPLEMENTATION? PLEASE PROVIDE INFORMATION ABOUT BUDGET ALLOCATED IN THIS REGARD FOR THE LAST 3 YEARS.

The central role in monitoring the implementation of the Anti-Corruption Strategy and the Action Plan in BiH, based on legal authorities, has the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (the Agency). Also, based on the Law on the Agency, the Agency is the institution responsible for making the annual assessment of the Strategy.

The first assessment of the Strategy by the Agency was published by the end of 2016. In addition to the assessment prepared by the Agency, in August 2016, Transparency International BiH published its research titled Monitoring the Implementation of the Strategy and Action Plan for the Fight against Corruption 2015-2019 for the first year of implementation of the Strategy.

With regard to budgetary resources, the Agency as the central institution responsible for coordinating the implementation of the Strategy has had the following budget in the last three years:

- 2015: BAM 1 321 000

- 2016: BAM 1 427 000



- 2017: BAM 1 355 000

## 252 PLEASE DESCRIBE EFFORTS TO STRENGTHEN IMPLEMENTATION OF THE ABOVE AND PROVIDE CONCRETE RESULTS RELATED TO THE FIGHT AGAINST CORRUPTION.

The first assessment of the Strategy was published by the Agency at the end of 2016. Findings show that only 27% of the measures have been fully implemented, 70% are in the implementation phase, while 3% of the measures have not been implemented.

The data from the research Monitoring the Implementation of the Strategy and Action Plan for the Fight against Corruption 2015-2019, which was prepared by Transparency International BiH in August 2016, show that out of 61 activities planned to be implemented in the first year following the adoption of the Strategy, only 23% have been fully implemented, 46% of the activities are in the implementation phase, while 31% of the activities are not being implemented at all. When it comes to activities for which continuous implementation is planned after the adoption of the Strategy, out of 37 activities only 38% of them are in the process of implementation, while the implementation of other activities has not even begun.

## 254 WHICH MEASURES ARE TAKEN TO RAISE AWARENESS OF CORRUPTION AS A SERIOUS CRIMINAL OFFENCE (E.G. CAMPAIGNS, MEDIA AND TRAINING)? WHO IS RESPONSIBLE FOR AWARENESS-RAISING? ARE MEASURES THAT INCLUDE AWARENESS RAISING INCLUDED IN THE NATIONAL ANTI-CORRUPTION STRATEGY AND OTHER POLICY DOCUMENTS? PLEASE PROVIDE SOME PRACTICAL EXAMPLE. IS THERE ANY SEPARATE BUDGET ALLOCATED FOR THIS AND IF YES PLEASE PROVIDE DATA FOR THE LAST 3 YEARS.

Awareness-raising campaigns on the damaging effects of corruption are for the most part activities conducted by civil society organizations. There is a wide range of campaigns conducted by civil society organizations such as Transparency International BiH, Anti-Corruption Civic Organizations' Unified Network (ACCOUNT), Centers for Civic Initiatives and others concerning access to information, employment in the public sector, corruption in the judiciary, corruption in education, etc.

The Anti-Corruption Strategy of BiH for 2015-2019 recognizes the importance of raising awareness on the damaging effects of corruption, and one of the strategic objectives of the Strategy is to raise awareness and promote the need for participation of the entire society in the fight against corruption. The Strategy provides a number of programmes related to awareness-raising among citizens and other stakeholders in society about corruption, its modalities, causes, effects and methods of opposing it, as well as strengthening of trust between public institutions and other stakeholders in society.

The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is the central institution for the implementation of these activities. In this regard, the Agency has signed memoranda of cooperation with civil society organizations in relation to the implementation of these activities. However, the budget does not provide for a specific item that relates to the measures of awareness-raising about corruption, and the Agency does not conduct awareness-raising campaigns about the damaging effects of corruption independently, but is included in these activities through the activities of civil

society organizations. Monitoring of the implementation of the Strategy published by Transparency International BiH shows that these activities are generally conducted at the initiative of civil society organizations.

## 256 WHAT SPECIALISED ANTI-CORRUPTION BODIES EXIST? PLEASE DESCRIBE THEM, INDICATING THEIR LEGAL AND INSTITUTIONAL STATUS, COMPOSITION, FUNCTIONS, POWERS AND RESOURCES (I.E. PUBLIC AND PRIVATE SECTOR CORRUPTION). HOW ARE THE INDEPENDENCE AND APPROPRIATE LEVEL OF EXPERTISE AND RESOURCES FOR THESE BODIES ENSURED?

The central institution for the prevention of corruption and coordination of the fight against corruption in BiH is the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. According to the Law, the Agency is an independent administrative organization that reports to the Parliamentary Assembly of BiH. The Agency is responsible for the prevention of corruption and coordination of the fight against corruption in public and private sector institutions. The competencies of the Agency are: development of the Strategy and the Action Plan; coordination and supervision of the implementation of the Strategy; coordination of the work of public institutions in preventing corruption and conflicts of interest; monitoring of conflicts of interest, giving recommendations for a conflict of interest management strategy in individual cases and issuing guidelines for a conflict of interest management policy in governmental institutions; prescribing a uniform methodology for collecting data on assets of public officials; analyzing the submitted data with a view to determine the occurrence of corrupt activities; collecting and analyzing statistical and other data, and informing all relevant entities in BiH on the results of research; following up on the received applications indicating corrupt activities in accordance with applicable regulations; coordination of the work of institutions with the authorities in fighting corruption; monitoring the effects of the implementation of laws and by-laws aimed at preventing corruption and giving opinions and instructions regarding their application, initiating activities in relation to amendments to the existing legal solutions and their harmonization; cooperation with domestic scientific and expert organizations, media and non-governmental organizations in the fight against corruption; cooperation with international organizations, institutions, initiatives and bodies; establishing and maintaining a database collected in accordance with this Law; development of education programmes on the prevention of corruption and the fight against corruption; publishing information on the state of corruption; informing competent institutions and the public about the obligations under international legal acts; prescribing a uniform methodology and guidelines for developing integrity plans and providing assistance to all public institutions in their implementation; and other activities related to the prevention of corruption.

In addition to the competencies provided by the Law on the Agency, pursuant to the Law on the Protection of Persons Who Report Corruption in the Institutions of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 100/13), the Agency is the institution responsible for supervising the implementation of this Law, and is in charge of granting a whistleblower status.

When it comes to powers, it is important to emphasize that the Agency, apart from the competencies from the provisions of the Law on the Protection of Persons Who Report Corruption, does not have executive powers, but represents a coordinating point in the fight against corruption in BiH.

The Agency is an independent administrative organization that reports to the Parliamentary Assembly of BiH, while parliamentary Commission for the selection and monitoring the work of the Agency, composed of representatives of both Houses, two representatives of the academic community and one representative of civil society, is responsible for overseeing its work. The Agency is financed from the budget of the institutions of BiH. For information on the independent work of the Agency see the answer to question 257.

When talking about special bodies responsible for the development and implementation of anti-corruption strategies and action plans at lower levels of governance in BiH, these are mainly *ad hoc* bodies established for the purpose of developing and monitoring the implementation of strategic documents. Bodies at lower levels of governance responsible for the implementation of strategic anti-corruption documents are:

- Commission for the Implementation of the Anti-Corruption Strategy of Republika Srpska
- Anti-Corruption Team of the Government of the Federation of Bosnia and Herzegovina
- Commission for the Prevention of Corruption and Coordination of Activities on Combating Corruption of Brčko District
- Anti-Corruption Team of the Government of Sarajevo Canton
- Anti-Corruption Working Body of Una-Sana Canton
- Anti-Corruption Team of Central Bosnia Canton
- Anti-Corruption Team of Bosnian Podrinje Canton
- Anti-Corruption Working Body of Herzegovina-Neretva
- Anti-Corruption Team of Tuzla Canton
- Anti-Corruption Team of Canton 10
- Anti-Corruption Team of Zenica-Doboj Canton
- Anti-Corruption Team of Posavina Canton

In addition to the aforementioned anti-corruption bodies, West Herzegovina Canton has formed the Commission for drafting the Anti-Corruption Strategy and the accompanying Action Plan.

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## 257 IN CASE THERE IS A DEDICATED ANTI-CORRUPTION BODY IN LINE WITH THE UNCAC PROVISIONS

- a) Has it sufficient budget, staffing, equipment and a clear mandate? Describe its legal status and mechanisms of accountability.
- b) Does it enjoy the necessary independence and is it protected from political influences? Is it cooperating with other anti-corruption bodies, national security agency, NGOs?
- c) Is able to rely on other agencies for obtaining data? It is well connected with the law enforcement bodies and receives feedback on potential cases handed over to these bodies. Is the non-delivery of requested data punishable?

- d) Has the Agency/Commission/Department or any other authority operational responsibilities (including the power to start administrative investigations) related to:
- i. Asset declarations and verifications?
  - ii. Conflicts of interest?
  - iii. Political party financing?
  - iv. Lobbying (keeping register)?

The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is a specialized body for the prevention of corruption and coordination of the fight against corruption.

a) The Agency's budget ensures financing of the staff as well as all other material and technical costs of the institution. On average, this budget amounted to about BAM 1.35 million in the last three years. The Agency is an independent administrative organization that reports to the Parliamentary Assembly of BiH. The key mechanism for ensuring the independence of the Agency from political and other influence is established by the Law which stipulates a special body (the Commission) that reports to the Parliamentary Assembly and is responsible to monitor the work of the Agency and inform the Parliament about it. The Commission does not have competence to interfere with the Agency's day-to-day work or require information held by the Agency, but relate to individual cases.

b) The legal framework provides for formal independence of the Agency. However, in practice, the Council of Ministers of BiH has a major impact on organizational and financial independence of the Agency, which is particularly evident from the process of ensuring material conditions for the work of the Agency. Namely, the director of the Agency adopts a rulebook on internal organization and systematization of jobs with the prior consent of the Council of Ministers.

c) The Law on the Agency defines that all institutions and agencies at all levels, public services and other bodies with public authorities are required to cooperate with the Agency and submit all necessary data and information at the request of the Agency. However, given that this Law does not stipulate sanctions for institutions and heads of institutions for non-compliance in accordance with the provisions of this Law, there is a number of issues in cooperation with other institutions at all levels of governance in regards to submitting and collecting data.

d) The obligation of filing property cards, conflict of interest and financing of political parties are regulated by different legal acts, which assign the competences for the application of these regulations to different bodies. The obligation to submit declarations of assets for the elected candidates in the elections is prescribed by the BiH Election Law, which gives the Central Election Commission of BiH the authority to collect and disclose these data. However, as stated in the Election Law itself „the Central Election Commission of Bosnia and Herzegovina is not responsible for the accuracy of the data relating to the data contained in the form“, and is not authorized to verify this data. Declarations of assets for the judiciary are also mandatory and are submitted to the High Judicial and Prosecutorial Council, but there is also no adequate verification, nor are these reports available to the public.

- The conflict of interest is regulated separately at the level of institutions of BiH, Republika Srpska, the Federation of BiH and Brčko District, given that the Law on Conflict of Interest in the Governmental Authorities of the Federation of Bosnia and

Herzegovina, in practice, has been repealed since 2013, when amendments to the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina were adopted. Namely, by 2013, both Laws have prescribed competence for establishing a conflict of interest to the Central Election Commission and this competence was abolished by the amendments to the Law at the state level in 2013. This is the reason why the FBiH Law remained practically inapplicable, and amendments to the Law which would prescribe the competence, i.e. establish a body for its application have not been adopted yet. At the state level, the competence for implementation of the Law on Conflict of Interest in Governmental Institutions of BiH, which applies to elected and appointed officials and advisors, as well as establishing and sanctioning of conflict of interest has the Commission for Deciding on Conflict of Interest composed of three members from the House of Representatives and the House of Peoples of the Parliamentary Assembly (of which at least 1/3 is from the opposition parties) whose mandate is related to the mandate of that convocation, and three members from the management of the Agency for the Prevention and Coordination of the Fight against Corruption. Considering the abolishment of competence of the Central Election Commission, which was responsible for the implementation of the Law on Conflict of Interest in Institutions of Brčko District, amendments to the Law on Conflict of Interest in Institutions of Brčko District were adopted in February 2015, which gave the competence for establishing conflict of interest to the Election Commission of Brčko District. However, this Law is contrary to the BiH Election Law which explicitly defines the competences of all commissions in the vertical direction. In Republika Srpska, ever since the adoption of the Law on the Prevention of Conflict of Interest in Governmental Institutions of Republika Srpska in 2008, the Commission for Identification of Conflict of Interest in the Authorities of Republika Srpska is responsible for the implementation of the Law.

- Pursuant to the Law on Political Party Financing of BiH, the Central Election Commission is responsible for the implementation of regulations on the financing of political parties and the audit of financial reports, which again has very restricted mandate when it comes to the audit and control of party financing, particularly in the field of cost auditing.

In regards to lobbying, BiH has not yet adopted regulations on lobbying at any level of governance, which is why there is no body which would be responsible for monitoring these activities.

## 259 TO WHAT EXTENT AND FROM WHICH SOURCES ARE STATISTICAL DATA AVAILABLE ON CORRUPTION CASES (INVESTIGATIONS, CASES IN COURT, CONVICTIONS AND SANCTION LEVEL), INTERNATIONAL CO-OPERATION IN CORRUPTION CASES, THE LINK BETWEEN CORRUPTION AND ORGANISED CRIME AND THE LINK BETWEEN CORRUPTION AND MONEY LAUNDERING?

Statistical data on corruption cases can be obtained at the request from judicial institutions, primarily from the High Judicial and Prosecutorial Council (HJPC), which is responsible for monitoring the work of the judiciary and keeping statistics. Basic information is also published in annual reports on the work of the HJPC and other institutions. There are legal restrictions on access to information regarding investigations and cases that are pending or are in the investigation phase, bearing in mind that the exemptions from the application of the Freedom of Access to Information Act provide for security interests, the prevention and detection of crime and the protection of personal data. Judicial institutions still do not have the practice of proactive disclosure of information, compiling analytical information on trends in certain fields, as well as interconnections between different forms of crime.



## 263 DO BOSNIA AND HERZEGOVINA AUTHORITIES TAKE ANY MEASURES TO PROTECT WHISTLEBLOWERS IN THE FIGHT AGAINST CORRUPTION? IF YES, PLEASE PROVIDE DETAIL ON SUCH MEASURES, THEIR LEGAL BASIS AND THEIR IMPLEMENTATION.

The Law on Whistleblower Protection in the Institutions of Bosnia and Herzegovina is in force in BiH and stipulates only protection for persons employed in the institutions of BiH and legal entities that establish the institutions of BiH, while it does not include all persons who report or disclose information relating to a threat or damage to the public interest in the private or public sector, which is accepted as an international standard. The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is the body responsible for granting the status of whistleblowers in the institutions of BiH. When it comes to Republika Srpska, the Law on Protection of Persons Reporting Corruption was adopted in mid-2017. However, the laws at the state level and at the RS level are not aligned. While the state-level Law stipulates administrative protection of persons employed in the institutions of BiH who report corruption, the RS Law stipulates the judicial protection of whistleblowers, and bearing in mind that it has just entered into force, its effects are not visible yet. In addition, international organizations and civil society organizations had numerous objections to the manner of defining corruption in this Law, as well as other provisions (including prescribed procedures for reporting corruption, the amount of sanction for false reporting and non-compliance with the Law at the state level). Also, the relevant law on the protection of persons reporting corruption at the FBiH level has not been adopted yet, and there is no legal protection for persons who report corruption at the FBiH level.

The analysis of the provisions relating to the role and protection provided by APIK shows that the status of a whistleblower is granted by this Agency on the basis of an application, which is in turn evaluated in accordance with the Law. It is particularly emphasized that the application must be submitted in good faith, thus making it the most important requirement. The protection of the Agency itself is very important, because, in relation to it, the possibility of eliminating the harmful action is established, but only after the applicant/identified whistleblower is informed that a harmful action has been taken against him. APIK does not have the obligation to ex officio investigate circumstances relating to the report and whistleblower, and whether the person concerned has been put at risk by taking harmful actions. The legislator has not decided to thus strengthen the role of APIK and the nature of the provided legal protection, without providing for the investigation on the basis of official authorities. Protection in the form of identifying and eliminating harmful actions taken against a whistleblower is possible only after the person concerned informs the Agency about the harmful circumstances. From that moment on, the competences and the role of a specialized body, which further determines the existence of harmful actions, are „activated“. A significant element of protection lies in the fact that if the head of the institution claims that a harmful action would be taken against the whistleblower even if he did not report corruption, the legislator puts the burden of proof on the employer.

According to the 2016 Report on the work of APIK, from the date of entry into force of the Law, until the end of 2016, a total of 16 applications for granting the status of a protected whistleblower have been submitted. In 12 out of 16 applications, it was found that there were no grounds for granting the status, in three cases the status of a whistleblower was granted, while one case/application is in the processing phase.

## 270 PLEASE PROVIDE SUCCINCT INFORMATION ON LEGISLATION OR OTHER RULES GOVERNING THIS AREA. IN PARTICULAR, PLEASE MENTION:

a) Whether there is a clear definition of corruption (passive and active) and in which type of acts: policy documents and/or legal texts? Which type of conduct can be sanctioned as corruption? Is active and/or passive bribery sanctioned? In the public and/or private sector? Trading in influence? Corruption of foreign and international public officials? What kind of sanctions exist (e.g. possibility of confiscation of proceeds, disqualification measures)? Does legislation contain provisions designed to prevent corruption?

b) Whether the country is party to the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption; and whether the legislation is aligned with the above conventions.

c) What are the practical implications of implementation of the above mentioned international conventions including internal measures and anti-corruption strategies and initiatives to improve international anti-corruption cooperation (e.g. International Anti-Corruption Agency)

d) Whether the criminal code criminalises the following offences: bribing national and international public officials, money-laundering embezzlement, misappropriation or other diversion by a public official, trading of influence, abuse of office; bribery and embezzlement in the private sector, laundering of proceeds of crime, concealment and obstruction of justice.

e) Whether illicit enrichment is criminalised.

a) Definitions of corruption exist in a variety of legal and strategic documents. The Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption defines corruption as „any abuse of power entrusted to a public servant or a person holding a political position at the State, entity, cantonal levels and the level of Brčko District of Bosnia and Herzegovina, city or municipal levels, which may result in private gain. It may also include, in particular, any direct or indirect soliciting, offering, giving or taking of bribe or any other inappropriate gain or privilege or possibility thereof, which destroys the adequate exercise of any duty or conduct that are expected from the bribe recipient.“ This definition evidently does not include the private sector. In this regard, the definition contained in the Council of Europe Civil Law Convention on Corruption was used when drafting the Anti-Corruption Strategy of Bosnia and Herzegovina 2015-2019, which states the following: „corruption means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.“ However, in terms of criminal offenses which according to the High Judicial and Prosecutorial Council are on the list of criminal offenses, it is clear that the BiH legislation still does not recognize all forms of corruption.

**Pursuant to the BiH Criminal Code, these offenses include:**

- Violating the Free Decision-making of Voters – If the criminal offense has been committed by the act of bribery.
- Disclosure of Secret Data

- Trafficking in Persons – If the criminal offense has been committed by an official person by „giving or receiving payments or other forms of benefits, and the issuance of travel or identity documents for the purpose of facilitating trafficking in persons, all characteristics of corruption are realized.
- Smuggling in Persons – If the criminal offense has been committed by „abuse of office“.
- Accepting Gifts and Other Forms of Benefits
- Giving Gifts and Other Forms of Benefits
- Illegal Interceding
- Abuse of Office or Official Authority – Only if the gain has been obtained through the commission of the criminal offense.
- Embezzlement in Office
- Fraud in Office
- Using Property of the Office
- Violation of Law by a Judge

**Pursuant to the FBiH Criminal Code, these offenses include:**

- Violation of Secrecy of Letters and Other Consignments – Only if the criminal offense has been committed by an official person for the purpose of gaining a benefit for himself.
- Violating the Free Decision-making of Voters – Only if the criminal offense has been committed by the act of bribery.
- Abuse in Bankruptcy Proceedings – Only if a gain has been obtained or promised.
- Abuse of Authority in Economic Business Operations – Only if the perpetrator is a holder of public authority (public enterprises).
- Abuse of Privatisation Process
- Abuse of Appraisals – Only if a gain has been obtained.
- Concluding a Prejudicial Contract – If the perpetrator is a holder of public authority and has received unlawful gain or a promise of a gain.
- Disclosure and Unauthorized Procurement of a Business Secret – Only if a material gain has been obtained through the commission of the offense.
- Disclosure and Use of Stock Market Secrets
- Breach of Trust – If the perpetrator is a holder of public authority.
- Breach of Court's Decision on Ban on Carrying out a Certain Occupation, Activity or Duty – If it refers to facilitating the performance of an official duty by another official.
- Violation of Law by a Judge
- Accepting Gifts and Other Forms of Benefits



- Giving Gifts or Other Forms of Benefits
- Illegal Interceding
- Abuse of Office or Official Authority –Only if the gain has been obtained through the commission of the criminal offense.
- Embezzlement in Office
- Fraud in Office
- Using Property of the Office
- Disclosure of Official Secret –If the criminal offense has been committed out of greed.

**Pursuant to the RS Criminal Code, these offenses include:**

- Violation of Secrecy of Letters or Other Consignments –Only if the criminal offense has been committed by an official person with the purpose of gaining a benefit for himself or someone else.
- Violating the Free Decision-making of Voters – If the criminal offense has been committed by the act of bribery.
- Corrupt Practices at an Election
- Trafficking in Human Beings – If the criminal offense has been committed by an official person by „giving or receiving money or other forms of benefits“.
- Abuse of Trust – If the perpetrator is the holder of public authority.
- Abuse in Bankruptcy or Forced Settlement Procedure –Only if the gain has been obtained or promised.
- Abuse of Powers in Business – If the perpetrator is a holder of public authority (public enterprises).
- Unlawful Accepting of Gifts
- Unlawful Giving of Gifts
- Disclosure and Unauthorized Procurement of a Trade Secret – If the criminal offense has been committed out of greed.
- Disclosure and Unauthorized Procurement of Stock Market Secrets
- Abuse of Office or Official Authority – If the gain has been obtained through the commission of the criminal offense.
- Embezzlement in Office
- Fraud in Office
- Unauthorized Use of Official Property
- Accepting Bribe
- Offering Bribe

- Trading in influence
- Disclosure of an Official Secret – If the criminal offense has been committed out of greed.
- Breach of Court Order on the Ban on the Performance of Certain Occupation or Duty
  - If it refers to facilitating the performance of an official duty by another official.
- Violation of Law by a Judge

Penal measures for the commission of these offenses include fines and imprisonment, as well as the seizure of proceeds obtained by a criminal offense.

Measures aimed at preventing corruption, i.e. preventive measures, are contained and disseminated in a number of other legal acts, including conflict of interest laws, the Law on Public Procurement, the Law on Political Party Financing, the Election Law, the Freedom of Access to Information Act, laws on civil service and other acts containing measures to ensure transparency and accountability. However, the problem is the lack of harmonization of regulations as well as their inefficiency in preventing corruption.

d) Criminal codes in BiH under a criminal offense consider bribery of state and international officials, as well as money laundering, embezzlement, misappropriation and abuse of office, illegal interceding and trading in influence. Bribery in the private sector is not equally regulated at all levels of governance. Criminal offenses defined in the FBiH Criminal Code and BD Criminal Code, in terms of giving and accepting gifts or other forms of benefits, stipulate that this offense may be committed by an official or a responsible person in an enterprise or other legal person who, in view of his/her duty or based on aspecial authority is entrusted with a certain set of activities.

The RS Criminal Code contains specific articles that regulate this issue, namely: for the active form of commission - a criminal offense of „unlawful accepting of gifts“ (Article 267) and for the passive form of commission - a criminal offense of „unlawful giving of gifts“ (Article 268). However, these criminal offenses do not include the issue of interceding or the possibility of giving or promising a benefit to a third person. In addition, Article 267, as one of the elements of this criminal offense, introduces causing of damage to the legal person under whose authority it acts, which is contrary to the Convention.

The BiH Criminal Code also does not have adequate solutions to potential bribery situations in private enterprises that are established and operating under the state-level laws. Although there are not many enterprises like that, the question remains whether the act of bribery in these enterprises is criminalised by the criminal legislation of BiH. Article 7 of the Law on Court of BiH establishes the jurisdiction of the Court of BiH also over „criminal offenses prescribed by the laws of the Federation of BiH, Republika Srpska and Brčko District of BiH when such criminal offenses may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina.“ This way the Court of BiH could possibly apply the appropriate entity law or the law of Brčko District.

e) Illicit enrichment has not yet been criminalised in the criminal legislation of BiH.

**273** WHAT ARE THE RULES GUARANTEEING THE AVOIDANCE OF CONFLICT OF INTEREST IN THE PERFORMANCE OF OFFICIALS, IRRESPECTIVE OF WHETHER THEY ARE MEMBERS OF PARLIAMENT, GOVERNMENT, THE ADMINISTRATION AND THE JUDICIARY AT ALL LEVELS OF GOVERNANCE? ARE THE BODIES THAT IMPLEMENT CONFLICT OF INTEREST LEGISLATION IN PLACE, AND HOW IS THEIR EFFECTIVENESS ENSURED? HOW ARE THE CONTACTS WITH THIRD PARTIES REGULATED? DOES THE LEGISLATION PROVIDE FOR PUBLIC DECLARATIONS OF WEALTH AND/OR INTEREST FOR THE MENTIONED OFFICIALS? HOW ARE SUCH DECLARATIONS ASSESSED, CHECKED AND FOLLOWED-UP? WHAT ARE THE RULES ON ASSET DECLARATION FOR MEMBERS OF PARLIAMENT, EXECUTIVE OFFICE HOLDERS AND JUDICIARY RESPECTIVELY? ARE THERE SPECIFIC POST-EMPLOYMENT RESTRICTIONS FOR CERTAIN CATEGORY OF PUBLIC OFFICIALS AFTER COMPLETION OF THEIR ELECTED OR APPOINTED MANDATE?? ARE THERE REGULAR AWARENESS RAISING CAMPAIGNS (E.G. IS THE CONCEPT OF CONFLICTS OF INTEREST WELL UNDERSTOOD)?

The four existing legislations are not mutually aligned in terms of persons they relate to, sanctions for violating the provisions and institutions that apply them. This is also emphasized in the fourth evaluation report of the Group of States against Corruption (GRECO), as well as in the 2016 European Commission Report on Bosnia and Herzegovina, in which it was noted that the normative and institutional framework for conflict of interest is inadequate and that the amendments to the law are necessary. The circle of persons subject to conflict of interest laws is narrow and includes only elected and appointed officials and their advisers, while it does not include a large number of persons with public authorities, including managements of public enterprises and institutions. The provisions relating to the performance of other functions and the incompatibility of functions are inconsistent. Limitations following the termination of the function provide a too short period of time (six months) and in the Law apply only to privatization agencies and public enterprises.

The obligation to submit declarations of assets for the elected candidates at the elections is prescribed by the BiH Election Law, which gives the Central Election Commission of BiH the authority to collect and disclose these data. However, as stated in the Election Law itself, „the Central Election Commission of Bosnia and Herzegovina is not responsible for the accuracy of data relating to the data contained in the form“, and does not have the authority to verify these data. Also, the register of financial statements is not available to the public, although there are no legal obstacles for its publication. Declarations of assets for the judiciary are also mandatory and are submitted to the High Judicial and Prosecutorial Council (HJPC), but there is also no adequate check, nor are these reports available to the public.

The issue of preventing conflict of interest in the judiciary is not regulated by uniform rules. The provisions concerning the prevention of conflict of interest are regulated and contained partly in the positive entity procedural laws, partly in the Law on High Judicial and Prosecutorial Council and partly in the Code of Ethics for Judges and the Code of Ethics for Prosecutors.

The special rulebook deriving from the Law on HJCP regulates the prevention of conflict of interest only for members of HJCP. The conflict of interest for judicial office holders is partially regulated in several legal documents and is not prescribed by a special regulation, but is contained in the existing procedural laws within the exemption clause, while the Law on HJPC regulates issues of incompatibility of functions with the duties of judges and issues of the prohibition of performing public and other duties.

In July 2016, the High Judicial and Prosecutorial Council adopted Guidelines for the Prevention of Conflict of Interest in the Judiciary which are a set of recommendations and measures that should be used by the judicial office holders to understand conflicts of interest and recognize the risks posed by the simultaneous existence of public and private interests in the performance of their duties and which may lead to abuse of office or unlawful obtaining of benefits for themselves and/or other interest-related persons. However, bearing in mind that HJPC cannot by its internal act prescribe obligations for the rest of the judicial community, these guidelines are neither binding nor there are sanctions for conduct which is not in line with the Guidelines. This issue will have to be regulated later with amendments to the Law on HJPC in order to introduce supervision and prescribe repressive measures.

Awareness raising activities on conflict of interest issues have so far been initiated mainly by non-governmental or international organizations through campaigns and training programmes, while there is no planned approach by the institutions.

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## 274 IS THERE A LEGAL OBLIGATION TO DECLARE ASSETS? BY WHOM? WHICH LAWS SPECIFY THOSE OBLIGATIONS? ARE DECLARATIONS OF ASSETS MADE PUBLIC AND ARE THEY PRO-ACTIVELY USED AS A TOOL TO UNDERCOVER ILLICIT WEALTH? IS THERE ANY INDEPENDENT MONITORING AGENCY, NATIONAL SECURITY AGENCY, OR NGO VERIFYING THE ASSET DECLARATIONS? IF YES, ARE THEIR REPORTS PUBLIC? WHAT IS THE ROLE OF THE TAX AUTHORITY, IF ANY, IN VERIFYING ASSET DECLARATIONS?

The obligation to submit declarations of assets for the elected candidates at the elections is prescribed by the Election Law of BiH, which gives the Central Election Commission of BiH the authority to collect and disclose these data. However, as it is stated in the Election Law itself, „the Central Election Commission of Bosnia and Herzegovina is not responsible for the accuracy of data relating to the data contained in the form“, and does not have the authority to verify these data. Also, the register of financial statements is not available to the public, although there are no legal obstacles for its publication. Declarations of assets for the judiciary are also mandatory and are submitted to the High Judicial and Prosecutorial Council (HJPC), but there is also no adequate verification, nor are these reports available to the public.

276. Are citizens being made aware on how to report irregularities and are complaint mechanisms easily accessible? Is there a legal obligation to follow up on complaints and to inform citizens accordingly?

A number of institutions in BiH have begun introducing mechanisms for reporting irregularities and corruption, as well as using online tools that enable citizens to report irregularities. This includes the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption which enables citizens to report corruption, but does not have direct authority to follow up on them and forwards them to other competent authorities. Online applications for reporting corruption have been launched on the website of the RS Government as well as at the level of Sarajevo Canton. The Ministry of Defense of BiH and several other institutions have put into operation the so-called ‘Ethics Line’ which is intended for reporting corruption and other irregularities. In addition to the activities of institutions, civil society organizations also provide free legal aid to citizens. However, this practice is still not widespread in all institutions and the statistics show that the number of complaints is low, while on the other hand, citizens do not have enough

information about the results themselves, i.e. the follow up on such complaints.

## 280 ARE THERE CLEAR AND TRANSPARENT RULES ON FUNDING OF POLITICAL PARTIES, SOCIAL PARTNERS AND OTHER INTEREST GROUPS? ARE THEY SUBJECT TO EXTERNAL FINANCIAL CONTROL IN ORDER TO AVOID CONFLICTS OF INTEREST BETWEEN THEIR REPRESENTATIVES, PUBLIC OFFICIALS AND THE PRIVATE SECTOR? WHAT IS THE PRACTICAL EXPERIENCE WITH IMPLEMENTATION OF THESE RULES?

Financing of political parties is regulated by the BiH Law on Political Party Financing and partly by the BiH Election Law, in the part relating to election campaigns. The Law prescribes the obligation for political parties to submit regular annual, as well as pre-election and post-election financial reports to the Central Election Commission, which reviews these reports. However, the legal framework regulating the financing of political parties contains crucial deficiencies which prevent adequate supervision and application of the Law. Some of the key deficiencies are:

- The Law does not stimulate the use of bank accounts for all receipts and payments of political parties and provides for the possibility of using several bank accounts, which results in the use of cash and impedes financial control;
- The Law still does not prescribe the obligation to disclose complete financial reports, while at the same time reporting forms, particularly those for post-election financial reports, are outdated, and do not provide for detailed insight and proper classification of costs;
- Insufficient transparency of accounts and activities of entities that are related, directly or indirectly, to a political party or otherwise under their control;
- Inadequate resources of the Audit Service of the Central Election Commission of Bosnia and Herzegovina which supervises the financial reports of political parties;
- Lack of supervision over the costs of political parties;
- Inadequate sanctions that do not correspond to the committed violations;
- The Law does not make a clear difference between the expenditures which should be considered campaign costs and regular operational costs of political parties during the campaign, which prevents the independent verification of the campaign cost level;
- The regulations do not delimit a party function and function in public institutions and companies, which puts the heads of institutions in a privileged position, particularly in the pre-election period.

## 281 IS THERE A LEGISLATIVE FRAMEWORK ON PARTY FINANCING, AND IS THERE ANY PLAN TO REVISE IT?

The last amendments to the Law on Political Party Financing were adopted in May 2016, just before the deadline for calling the 2016 Local Elections. The work of the Interdepartmental Group was marked by disagreements in terms of necessary amendments to the Election Law and very little attention and activities were dedicated to the quality and essential implementation of GRECO recommendations through amendments to the Law on Political Party Financing. This is the reason why, five years after GRECO



recommendations, an opportunity has been missed once again to significantly improve the transparency and accountability of political parties, providing instead only an illusion of fulfilling the recommendations through the cosmetic changes to the Law. Four of the total of nine recommendations have not been addressed at all, other recommendations have been treated superficially or fulfilled partially, while no recommendation has been fully covered by the planned amendments to the Law.

The amendments did not address the need for a detailed definition of the Central Election Commission's competences in regard to the audit of costs of political parties or the promotion of the use of single bank accounts for political party transactions, which are the two most important criteria for the establishment of effective control over the financing of political parties. Although the obligation has been introduced for the parties to publish information on costs and revenues on their websites, neither the form nor the deadlines for publication are prescribed. The sanctions are partially increased for violations of certain provisions, but a monetary sanction up to BAM 10 000 still fails to motivate the parties to comply with the law, because by violating its provisions possible gains are multiple. Finally, provisions which would ensure greater independence of the Audit Service of the Central Election Commission and capacities for the effective implementation of the Law are absent. Although it was announced that the Interdepartmental Working Group that was working on amendments to these laws would continue with its work, no activities have been taken yet, and there is no indication that the laws will be improved in the coming period.

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## 282 DOES LEGISLATION ON FREE ACCESS TO INFORMATION EXIST? WHAT IS THE EXPERIENCE WITH ITS IMPLEMENTATION? IS THERE A COMMISSIONER FOR FREE ACCESS TO INFORMATION OR THE BODY IN CHARGE TO SUPERVISE IMPLEMENTATION OF LEGISLATION? WHAT IS THE ROLE AND REMIT OF THE COMMISSIONER FOR FREE ACCESS TO INFORMATION?

In BiH, there are three Freedom of Access to Information Acts (hereinafter: ZOSPI) that regulate the issue of access to information. The first Freedom of Access to Information Act was adopted in 2000 at the state level, and a year later entity laws were adopted.

In all three Acts, it was pointed out that the aim is to establish a rule that information under the control of public authorities is public resource. The public authorities to which ZOSPI relate are: 1) executive authority; 2) legislative authority; 3) judicial authority; 4) authority that holds a public office and is appointed or established in accordance with the law; 5) any other administrative authority; 6) legal entity that is owned or controlled by a public authority. Access to information in all the Acts is provided as a rule which is subject only to limitations and exemptions prescribed by the Act. Possible exemptions are the following protected and recognized values: 1) defense and security interests, and the protection of public safety; 2) crime prevention and crime detection; 3) protection of the decision-making process by a public authority insofar as it involves the expressing of opinion, advice or recommendation by a public authority, employee thereof, or any person acting for or on behalf of a public authority, and does not involve factual, statistical, scientific or technical information; 4) confidential commercial interests; 5) protection of privacy. The Acts also define that any natural or legal person shall have the right of access to information, and by the consequent interpretation of this provision, it may be concluded that it also involves natural persons who are not nationals of BiH, or legal entities that do not have headquarters in BiH.

The existing legislation in the field of access to information does not contain the so-



called proactive provisions, i.e. provisions which define the categories of information that must be disclosed in advance and made available to the public through a presentation on official websites. By prescribing a proactive disclosure of certain information held by institutions, the follow up of public authorities on a reactive basis would be reduced.

Given that access to information is stipulated as a general rule, prior to establishing one of the possible exemptions, the competent public authority deciding on the applications for access to information must examine public interest by taking into account any advantage and damage that may occur, i.e. in deciding whether the disclosure of information is justified in the public interest. The competent public authority shall consider circumstances such as but are not limited to, any failure to comply with a legal obligation, the existence of any offense, judicial error, abuse of authority or negligence in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual, the public or the environment. Prior to determining an exemption in disclosing information, the so-called public interest test must be conducted, which on the basis of the abovementioned guidelines should indicate whether the public interest prevails over the protected values envisaged as exemptions. The procedure of access to information is a special administrative procedure provided for in the special Law (ZOSPI) which has the character of *lex specialis*, while the provisions regulating the general administrative procedure apply to it subsidiary. By applying ZOSPI, all public authorities are obliged to appoint an information officer who decides in the first instance proceedings on the request for access to information.

The appeal proceedings is not regulated in detail in all three Acts. Thus, the RS ZOSPI does not contain a provision on appeal, while at the state level, recent amendments added a provision which explicitly within the legal text of the BiH ZOSPI regulates the appeal proceedings before second instance authorities. The RS ZOSPI, unlike the acts at BiH and FBiH levels, has not changed yet the provision establishing that the decision to reject the request for access to information is made in the form of a letter. This is an aggravating circumstance because the party is left to arbitrary interpretations of authorities regarding the choice of form, who might use the form of the letter as a reason for not following up on the appeal. The 2009 amendments to the BiH ZOSPI introduced penal provisions that apply both to the public authorities and to responsible persons in cases when, for instance, a public authority/officer does not issue a decision rejecting the request for access to information, but also in other cases provided for by law. Four years later, these penal provisions were given their true purpose, because by amending the Act, the Administrative Inspectorate was designated as the body to perform inspections and which may accordingly issue a misdemeanor order. This means that the penal provisions could not be applied prior to these amendments. The 2013 amendments introduced more severe penalties relating to the responsible person, which is desirable, but the range of fine (from BAM 1 000 to BAM 10 000 for the responsible person) seems too high, leaving disproportionately large discretionary powers. The mentioned amendments were made exclusively at the state level.

The competence of the Institution of Human Rights Ombudsman, in accordance with applicable laws on access to information at all levels, is to follow up on received complaints and carry out investigations *ex officio*, and also to give general recommendations relating to the implementation and application of laws in this field. However, the Institution of Human Rights Ombudsman does not have available mechanisms to oblige the authorities to follow up on its recommendations.

Civil society, journalists and the media most often emphasize the following deficiencies regarding access to information of public importance:

- failure of public authorities to follow up on the submitted requests for access to information within the prescribed legal deadlines;
- lack of proactive legal provisions regulating the mandatory disclosure of certain categories of information;
- failure of public authorities to follow up on the recommendations of the Ombudsperson or the court rulings ordering the authorities to provide requested information;
- lack of adequate legal protection because a two-stage decision-making is not ensured in the process of exercising the right of access to information;
- the inability to access certain categories of information that are considered delicate even after the use of all available legal means;
- non-existence of penal provisions in all applicable ZOSPIs;
- too extensive use of the exemptions stipulated by the Act despite the existence of public interest that required information be disclosed.

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## 290 ARE ALL ALLEGATIONS OF CORRUPTION SYSTEMATICALLY INVESTIGATED, INDEPENDENTLY OF THE STATUS OF THE SUSPECT/ACCUSED (NO IMPUNITY)?

The results of monitoring the processing of corruption cases before courts and prosecutions in BiH, published by Transparency International BiH, show that cases under the jurisdiction of lower courts are predominantly processed, while final judgements for the biggest corruption cases are still absent. Analysis of final judgements for corruption-related offenses before six courts in BiH for 2009-2014, done by Transparency International BiH, shows that in 276 analyzed court cases a first instance proceedings was conducted against 347 persons. Out of this number, 241 persons were convicted (64%), 126 persons were released, while verdict of abandonment was rendered against seven persons. It is a concerning fact that out of a total of 38 processed high-ranking officials only nine of them (19%) were convicted for corruption offenses. When it comes to persons who are in the capacity of a manager, the results are not any better – 53% of them have been released, which brings into question the ability and efficiency of the BiH judiciary in processing corruption offenses at higher levels.

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## 291 HOW EFFICIENT PROSECUTORS AND COURTS ARE IN PROSECUTING CORRUPTION-RELATED OFFENCES AND ECONOMIC CRIME, COMPARING TO ALL OTHER OFFENCES? WERE THE ANTI-CORRUPTION SANCTIONS, BOTH CRIMINAL AND ADMINISTRATIVE EFFECTIVE, PROPORTIONATE AND DISSUASIVE, AND IF NOT, WHAT CORRECTIVE MEASURES HAVE BEEN TAKEN? ARE THERE ADDITIONAL CONSEQUENCES OF CONVICTIONS FOR CORRUPTION-RELATED OFFENCES SUCH AS EXCLUSION FROM A PUBLIC OFFICE, PREVENTION FROM FURTHER CAREER ADVANCEMENT, CONFISCATION OF PROFITS ETC.?

The results of monitoring the processing of corruption cases before courts and prosecutions in BiH have been demonstrating for years the inefficiency of the BiH judiciary in the processing of corruption cases.

In 2016, there was a reduction in the number of investigations for corruption-related offenses compared to 2015. In 2016, a total of 616 investigations for corruption offenses were launched, while in 2015 this number was 634.

As in the case of investigations, the number of indictments for corruption offenses was reduced in 2016 (193 indictments) compared to 2015 (239 indictments). The percentage of indictments for corruption offenses in relation to the total number of indictments was 1.5% in 2016 and 1.4% in 2015.

When it comes to the number of verdicts for corruption offenses, in 2016, there was an increase in the total number of verdicts (174) compared to 2015 (104 verdicts). Out of the total number of verdicts for corruption offenses in 2016, there were 148 convictions, 22 verdicts of release and 4 verdicts of abandonment. When it comes to data for 2015, a total of 104 verdicts for corruption offenses were rendered, of which 89 were convictions, 13 verdicts of release and 2 verdicts of abandonment.

Analyzing the structure of criminal offenses on a sample of 276 cases before six courts in BiH for 2009-2014, done by Transparency International in BiH, 211 cases (73%) constitute criminal offenses: abuse of office or authority and embezzlement in office, while only 27% goes to all other corruption-related offenses. Accepting gifts or other forms of benefits, as a basic corruption offense was processed in only 6% of cases, while giving gifts or other forms of benefits is represented by only 5%.

Based on the analyzed data, it is evident that persons who are processed for corruption offenses are employed in the public sector (205 persons or 55%) and in the private sector (141 persons or 38%), leaving 28 persons (7%) who belong to neither of the two sectors.

In 276 analyzed court cases a first instance proceedings was conducted against 347 persons. Out of this number, 241 persons were convicted (64%), 126 persons were released, while verdict of abandonment was rendered against seven persons. It is a concerning fact that out of a total of 38 processed high-ranking officials only nine of them (19%) were convicted for corruption offenses. When it comes to persons who are in the capacity of a manager, the results are not any better – 53% of them have been released, which brings into question the ability and efficiency of the BiH judiciary in processing corruption offenses at higher levels.

The analysis of first instance court cases evidently shows that the penal policy for corruption offenses is mild and inadequate. Only 47 persons (19.5%), against whom a court proceedings for corruption offenses was conducted, were imprisoned, whereas 187 persons were sentenced to probation. Also, in the 18 analyzed first instance court cases, the imposed sanctions were below the legal minimum, while for 10 persons the imposed sanctions were below the legal minimum even when the criminal code explicitly prohibits it.

An additional problem is the correlation between the prescribed penalties and imposed penalties, both in cases of imprisonment and cases of probation, because the severity of imposed penalties for the four classic corruption offenses (accepting a bribe, giving a bribe, abuse of office and embezzlement in office) is inadequate. The courts in BiH had pronounced a prison sentence for 34 persons for these four criminal offenses. In 18 cases, the prison sentence was below the legal minimum, while in 10 cases the imposed sentence was below the legal minimum even when the criminal code explicitly prohibits it. When it comes to imposing a probation sentence, out of 161 verdicts, in 118 cases (73%) the imposed probation sentence was closer to the legal minimum. A probation sentence was imposed in 7 cases, even when the criminal code explicitly prohibits it.

Criminal codes in the event of a final conviction stipulate measures prohibiting the performance of certain activities. The seizure of unlawful property gain is imposed very sporadically, as well as security measures of prohibiting the performance of duties, functions or activities.

# FUNDAMENTAL RIGHTS (QUESTIONS COVERING ALSO CHAPTER 23)

(questions 292-494)

## I SUBSTANTIAL RIGHTS

**293** PROVIDE A LIST OF ALL HUMAN RIGHTS INSTRUMENTS AND RELATED PROTOCOLS RATIFIED BY BOSNIA AND HERZEGOVINA ALONG WITH THE DATE OF SIGNATURE AND RATIFICATION. INCLUDE DETAILS OF ANY RESERVATIONS WHICH HAVE BEEN MADE TO THOSE TREATIES AND ANY DECLARATIONS RECOGNISING THE RIGHT OF INDIVIDUALS TO PETITION COMMITTEES ESTABLISHED BY THE CONVENTIONS. IN ADDITION, PLEASE SPECIFY WHAT LEGISLATION AND PROVISIONS HAVE BEEN ADOPTED TO ENSURE COMPLIANCE WITH THE OBLIGATIONS STEMMING FROM THESE CONVENTIONS. HOW ARE THESE IMPLEMENTED AND MONITORED? PLEASE INDICATE WHICH DEPARTMENT(S) IS (ARE) IN CHARGE OF FOLLOWING UP ON REPORTING TO INTERNATIONAL MONITORING BODIES ESTABLISHED UNDER THE DIFFERENT CONVENTIONS RATIFIED.

Annex I to the Constitution of BiH (Annex IV to the General Framework Agreement for Peace in Bosnia and Herzegovina) contains a list of 15 additional international human rights treaties which should directly apply in BiH.

**295** WHAT STEPS HAVE BEEN TAKEN TO COOPERATE WITH UN BODIES DEALING WITH HUMAN RIGHTS ISSUES, INCLUDING VISITS BY UN SPECIAL MECHANISMS (SUCH AS SPECIAL RAPPORTEURS), REPORTING TO TREATY BODIES AND RESPONDING TO TREATY BODY RECOMMENDATIONS?

When it comes to cooperation with UN bodies, the core problem lies within the implementation of the recommendations of the UN Treaty bodies/committees.

For instance, since March 2013, the United Nations Human Rights Committee (HRC) has adopted 11 views on communications concerning the victims of enforced disappearance and their relatives (Prutina et al. being the first one, followed by other cases). The HRC has found violations of various articles of the International Covenant on Civil and Political Rights and imposed various measures to be implemented by BiH. In particular, the HRC has requested BiH to continue its efforts in revealing the fate and whereabouts of missing persons; to continue its efforts to bring to justice those responsible for the crimes concerned by the end of 2015, as required in the National Strategy for Processing of War Crimes Cases; to abolish the obligation for family members to declare their missing relatives dead in order to obtain welfare benefits or any other form of remuneration; and to ensure adequate compensation. Furthermore, the HRC has requested BiH to ensure that investigations into allegations of enforced disappearances are accessible to the families of missing persons, and to publish its views and have them widely disseminated in local languages. The views of the HRC are of particular importance for the relatives of missing persons in BiH, bearing in mind that this is the only international mechanism for investigating human rights or a procedure for human rights or settlement that has thoroughly analysed the violation of their rights by the State and requested the adoption

of a set of concrete measures. For this reason, it is even more regrettable that, to date, the only measure that BiH has implemented is the translation of the HRC's view in the local language and its publication on the website of the Ministry of Human Rights and Refugees of BiH. While this is certainly a positive step, it is far from being sufficient and shows a blatant neglect by BiH vis-à-vis its international obligations and, in particular, the HRC's requests.

One of the international agreements, which is also an integral part of Annex I to the Constitution of BiH, is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). BiH ratified the Convention in 1993, whereas the Optional Protocol to the Convention was ratified in 2002. So far, BiH has submitted reports to the CEDAW Committee twice. The Initial, Second and Third Reports were submitted in 2006, whereas the Fourth and Fifth Periodic Reports were submitted in July 2013.

Apart from BiH, i.e. the Gender Equality Agency and entity Gender Centers that prepare these reports, civil society organizations also submit their alternative or shadow reports to the CEDAW Committee. The last, i.e. fourth Alternative CEDAW Report, which was prepared by 24 civil society organizations, evidently shows that BiH continues to systematically marginalize the role of women in social, economic and political development, meaning that the CEDAW Committee recommendations are poorly applied in practice or are not applied at all.

For instance, the CEDAW Committee has recommended to the State to „specifically incorporate into its new Constitution a definition of equality between women and men and a prohibition of direct and indirect discrimination against women in the public and private spheres”. This recommendation has not been implemented to date. The Committee has also called upon the State to take effective measures to eliminate discrimination against Roma women, internally displaced women and minority returnee women, rural women, elderly women and women with disabilities, particularly in the fields of education, health care and employment, as well as in political and public life, by developing targeted strategies, including temporary special measures in order to increase equality in these fields.

However, these groups of women continue to face multiple discrimination, unequal and inaccessible health care which is closely linked to poor transportation infrastructure, abolition of rural clinics, expensive private examinations, transportation costs and architectural barriers, and they are not recognized in strategies and development policies. One of the common characteristics of these vulnerable groups lies in the fact that these women almost never participate in legislative and/or executive bodies at any level of governance in BiH.

Due to the limited implementation of these decisions, it is necessary that BiH develop a mechanism for monitoring the HRC's views, as well as the views and recommendations of other UN treaty bodies. So far, the role of the Ministry of Human Rights and Refugees of BiH has proved to be limited to collecting responses of different institutions and forwarding them to the relevant UN body. A much more dedicated and focused effort is required to ensure the implementation of various recommendations and standards, and the establishment of an effective monitoring system with regard to the implementation of the recommendations of international monitoring bodies, including monitoring the implementation of the European Court of Human Rights' judgements. The latter is being effectively monitored by the Office of the Council of Ministers Agent before the European Court of Human Rights.



## 296 WHAT ARE THE COMPETENCES OF THE OMBUDSMAN IN THE FIELD OF HUMAN RIGHTS, THE RIGHTS OF WOMEN, RIGHTS OF CHILDREN, RIGHTS OF PERSONS WITH DISABILITIES AND PROTECTION OF MINORITIES? DOES THE OMBUDSMAN HAVE INVESTIGATION POWER? DOES THE OMBUDSMAN'S MANDATE ALSO EXTEND FOR CERTAIN ASPECTS TO THE PRIVATE SECTOR? HOW IS THE FINANCING OF THE OMBUDSMAN INSTITUTION REGULATED?

The Institution of Human Rights Ombudsman of BiH handles cases relating to human rights violations committed by any authority of BiH, its Entities and Brčko District. Cases are formed on the basis of individual complaints by legal persons or natural persons or *ex officio*.

If it finds that there has been a violation of rights, the Ombudsman Institution issues recommendations to the authorities to take measures to remedy human rights violations or poor functioning of administration. Recommendations issued by the Ombudsman Institution do not have executive power. Following the entry into force of the Law on the Prohibition of Discrimination in 2009, the Institution of Human Rights Ombudsman of BiH has been assigned the role of a central institution for the protection against discrimination.

The Ombudsman Institution in its annual reports provides an overview of all received complaints, including those based on discrimination. Nevertheless, even eight years after the adoption of the BiH Law on the Prohibition of Discrimination, a central database for cases of discrimination at the Ministry of Human Rights and Refugees of BiH has not been established, although the Law explicitly prescribes this obligation.

Within the Institution of Ombudsman there are following special departments: the Department for Following the Rights of a Child, Department for Elimination of All Forms of Discrimination, Department for Following of National, Religious and Other Minorities Rights, Department for Following Economic, Social and Cultural Rights, Department for Following of Persons with Disabilities Rights, Department for Following of Detainees/ Prisoners Rights and the Department for Following of Civil and Political Rights.

There is not a special department for following of women's rights. The Department for Elimination of All Forms of Discrimination has competence in following human rights violations based on sexual and gender affiliation. Due to the inefficient and different practice of judicial institutions in cases of discrimination, the Institution of Ombudsman has independently developed standards and modalities for dealing with cases/complaints based on discrimination. Particularly, in regards to the protection of women's rights, the Institution of Ombudsman prepared a Special report on the protection of mothers and maternity in the Federation of BiH, at the Initiative of the House of Representatives of the FBiH Parliament (2014).

Due to the insufficient resources, both financial and material, the Institution of Ombudsman only periodically monitors the application of the rights of persons with disabilities and publishes reports. As for all other citizens, the Institution of Ombudsman receives complaints and gives recommendations to the competent authorities on the basis of complaints received. However, the Institution of Ombudsman does not work enough on promoting its work among organizations of persons with disabilities, so that persons with disabilities are ignorant of how the Institution of Ombudsman can help them protect their human rights. This is the only institution in the country that can perform independent monitoring of the human rights of persons with disabilities, but nobody in the country has committed themselves to fulfilling this obligation arising from the ratification of the



UN Convention on the Rights of Persons with Disabilities.

Periodic or regular monitoring of the application of anti-discrimination laws is not carried out in institutions and companies.

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### 302 DO POLICE, PRISON AND BORDER GUARDS AND OTHER OFFICERS RECEIVE TRAINING ON HUMAN RIGHTS, INCLUDING TRAINING ON THE RIGHTS OF WOMEN, RIGHTS OF PERSONS WITH DISABILITIES, PERSONS BELONGING TO MINORITIES, LGBTI PERSONS?

Police officers, prosecutors and judges receive training on the human rights of LGBTI, but it seldom has institutional character. In fact, these are sporadic awareness trainings initiated and organized by civil society representatives and are voluntary. The exception is the training organized in 2016 by the Ministry of Internal Affairs of Republika Srpska, following the recommendation of the Institution of Human Rights Ombudsman of BiH.

Border police, prison guards and other officials so far have not been involved in trainings on the human rights of LGBTI persons.

So far, the aforesaid civil servants have not been involved in trainings on the rights of persons with disabilities or the specifics of communication and conduct towards this group of citizens.

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### 325 WHAT ARE THE LEGAL PROVISIONS ON MARRIAGE OR LEGAL PARTNERSHIP, IF ANY, INCLUDING FOR SAME-SEX COUPLES?

The legislation of BiH exclusively regulates marital and extramarital union as a union of couples of different sexes. The same-sex partnerships are not regulated in any way. Marital and extramarital unions in BiH are regulated by laws at the entity and Brčko District levels.

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### 362 WHAT ARE THE LEGISLATIVE AND POLICY INSTRUMENTS IN PLACE TO PREVENT DISCRIMINATION BASED ON MEMBERSHIP OF A NATIONAL MINORITY, ETHNIC OR SOCIAL ORIGIN, SEX, RACE, COLOUR, GENETIC FEATURES, LANGUAGE, RELIGION OR BELIEF, POLITICAL OR ANY OTHER OPINION, PROPERTY, BIRTH, DISABILITY, AGE OR SEXUAL ORIENTATION? HAS A GENERAL ANTI-DISCRIMINATION LAW BEEN ADOPTED AND WHEN? IS THERE AN OVERALL ANTI-DISCRIMINATION STRATEGY IN PLACE?

There is legislation and policies in BiH to combat discrimination, but they are either insufficiently implemented or not implemented at all.

The BiH Law on Prohibition of Discrimination was adopted in 2009, while its amendments were adopted in mid-2016. The Ministry of Human Rights and Refugees of BiH has commenced the process of drafting a Human Rights Strategy of BiH and an Anti-Discrimination Strategy that cover all the abovementioned fundamentals regarding this issue. According to the Ministry's work plan, all these strategies should be adopted by the end of 2017.

Gender-based discrimination: the BiH Law on Gender Equality was adopted in 2003,

amended in 2010, while the second Gender Action Plan of BiH (GAP) for 2013-2017 is currently being implemented through operational plans at the state and entity levels. A major problem for the implementation of GAP is the lack of implementation plans at the cantonal level.

Discrimination against LGBTI people: There are no specific public policies aimed at preventing and eliminating discrimination against these persons.

Discrimination against persons with disabilities: Amendments to the 2016 Law on Prohibition of Discrimination introduced disability as a basis for the prohibition of discrimination. There is still no strategy or any other by-law that deals with the prohibition of discrimination against persons with disabilities. The State and its institutions do not carry out promotional or information campaigns on anti-discrimination legislation, so that persons with disabilities, as well as other vulnerable groups, are not familiar with the rights prescribed by this Law.

Also, the Law on Prohibition of Discrimination refers to reasonable adjustments only in the context of employment, which is insufficient, whereas refusal to provide reasonable adjustments is not considered discrimination.

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## 363 WHAT MEASURES HAVE BEEN UNDERTAKEN IN ORDER TO ENSURE FULL IMPLEMENTATION OF THE EUROPEAN COURT OF HUMAN RIGHTS RULINGS ON NON-DISCRIMINATION, INCLUDING THE SEJDIĆ-FINCI CASE AND OTHERS?

In October 2011, a Joint Interim Commission of both Houses of the Parliamentary Assembly of BiH was formed to implement the European Court of Human Rights rulings in the *Sejdić-Finci v. Bosnia and Herzegovina* case. The Commission had sessions until March 2012, when several proposals of constitutional amendments were submitted to it by representatives of political parties and civil society. At its last session (on 12 March 2012), the conclusions were adopted that the Commission „did not reach a degree of consensus required for proposing amendments to the Constitution of BiH“, and that the Commission considered that „it is necessary to continue working on finding the solutions required for the implementation of the ruling, in accordance with suggestions and decisions of both Houses of the Parliamentary Assembly of BiH.“ The Commission has not been officially disbanded, but *de facto* ceased to operate in 2012. After that, until the end of the 2010-2014 mandate, discussions on the implementation of the ruling were carried out between the heads of political parties and without the participation of legislative bodies or institutions.

The Council of Ministers of BiH, at its 22nd session held on 8 September 2015, at the proposal of the Ministry of Justice of BiH, considered and adopted the Action Plan for the execution of the EHCR rulings in the case „*Sejdić-Finci v. BiH*“ and „*Zornić v. BiH*“. In order to implement the measures from the Action Plan, it was provided for the formation of a Working Group for the preparation of proposals for amendments to the Constitution of BiH and harmonization of the BiH Election Law. However, the Working Group was not formed because most caucuses of both Houses of the Parliamentary Assembly failed to submit the names of their representatives to the Ministry of Justice of BiH. Meanwhile, the EHCR ruling in the case „*Pilav v. BiH*“ became binding in September 2016, thereby BiH had an obligation to remedy the violation of the rights that the Court had established in this case. The Ministry of BiH then sent to the Council of Ministers for adoption a new Action Plan proposal which included the „*Pilav v. BiH*“ case. So far, the Ministry of Justice of BiH has urged twice (on 18 January 2017 and 1 February

2017) to include on the agenda of the Council of Ministers's sessions consideration of the Action Plan proposal for the execution of the EHCR rulings in cases „Sejdić-Finci v. BiH“, „Zornić v. BiH“ and „Pilav v. BiH“, but by the date of submitting of this report, the proposal has not been on the agenda of the Council of Ministers' sessions.

Also, the House of Representatives of the Parliamentary Assembly of BiH, at its 38th session held on 2 December 2016, adopted a decision on the deadlines and stakeholders in the implementation of the „Sejdić-Finci v. BiH“ ruling. The deadline of 90 days which the Parliamentary Assembly has given to the Council of Ministers of BiH to prepare and refer into the parliamentary procedure the proposal for amendments to the Constitution of BiH, which ensures the implementation of the EHCR ruling in the „Sejdić-Finci“ case, has not been met.

## 366 DOES SPECIFIC LEGISLATIVE PROTECTION FOR THE RIGHTS OF PERSONS WITH DISABILITIES EXIST? ARE THERE MEASURES DESIGNED TO ENSURE THEIR INDEPENDENCE AND SOCIAL AND OCCUPATIONAL INCLUSION? PLEASE EXPLAIN.

A uniform law on the protection of the rights of persons with disabilities at state level does not exist. BiH still has not adopted a single definition of persons with disabilities, nor does it take any action to define it. Even in more recent regulations, the medical approach in defining persons with disabilities is retained, which is related to the field that certain regulations govern or to the cause and circumstances of the occurrence of disability. This practice does not provide for equal status of different groups of persons with disabilities and places certain groups in a discriminatory position, thus hampering the exercise of rights and support in society.

Namely, laws in BiH differently regard disabled war veterans and civilian victims of war and persons with disabilities that are not caused by war. These two groups of citizens have different rights, both in the legal framework and in practice, so one cannot speak of a uniform legal framework for all persons with disabilities. The amount of compensation and benefits depends directly on the cause of disability, whereby additional differences arise in relation to the place of residence, given that these rights are determined by the regulations of the entities and cantons and are not uniform throughout the country. Compensation for disabled war veterans is treated as a priority in relation to other budget users at all levels of governance, and there are special employment incentives<sup>15</sup> and education incentives for this category of persons with disabilities. There is a set of regulations, at all administrative levels, which provide priority for this category of persons when using public services

As regards to the legislation relating to civilian persons with disabilities, both entities have adopted the Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities, and these are the only laws dealing exclusively with the rights of persons with disabilities. However, since their adoption, these laws have failed to significantly increase the employment rate of persons with disabilities and their more prominent inclusion in society. The employment rate of persons with disabilities is extremely low, which is also illustrated by the data from the Association of Organizations for Support to Persons

15 As an illustration, in 2016, the Public Institution Employment Bureau of Republika Srpska implemented a project „Zajedno do posla“ for the purpose of employment and self-employment of children of fallen soldiers of the Army of Republika Srpska, disabled war veterans and unemployed demobilized soldiers of the Army of Republika Srpska in the amount of BAM 2 630 000, URL: [http://www.zzzrs.net/index.php/projekat/projekat\\_podrske\\_zaposljavanju\\_i\\_samozaposljavanju\\_ratnih\\_vojnih\\_inval/](http://www.zzzrs.net/index.php/projekat/projekat_podrske_zaposljavanju_i_samozaposljavanju_ratnih_vojnih_inval/)

with Intellectual Impairments of Republika Srpska (MeNeRaLi) that only 1% of their 3 000 members are employed. Persons with reduced intellectual abilities are particularly marginalized and their socialization largely depends on the work of association and civil society organizations.

Laws on social protection provide for financial resources intended for providing care and assistance of another person, which should cover the costs of assistance through which persons with disabilities would gain independence. However, due to the bad economic situation in the country, persons with disabilities, and often their whole families, depend on the means they receive for care and assistance of another person.

## 367 HAS BOSNIA AND HERZEGOVINA RATIFIED RELEVANT INTERNATIONAL CONVENTIONS AND AGREEMENTS REGARDING THE RIGHTS OF PERSONS WITH DISABILITIES NAMELY THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND ITS OPTIONAL PROTOCOL?

BiH has ratified the Convention on the Rights of Persons with Disabilities and Optional Protocol thereto, which entered into force in April 2010. Since then, there has not been any significant progress in terms of changing the paradigm of the medical model into the social model of human rights.

By signing and ratifying the UN Convention on the Rights of Persons with Disabilities, BiH has assumed the obligation to align all domestic laws with this Convention.

However, the analysis of the alignment of domestic legislation with the UN Convention on the Rights of Persons with Disabilities, done in 2015, showed that 97% of laws and other by-laws is not aligned with the Convention. The analysis included 231 official documents at all levels in BiH in the fields of education, culture and sports, social protection, employment and health care<sup>16</sup>.

The analysis, among other things, showed that the BiH legislation still does not have a single definition of disability, nor a single registry of persons with disabilities, which would include data on gender and age structure, type of disability, socioeconomic status and other relevant data. All this hinders the realization of independence, as well as social and professional integration of persons with disabilities in BiH.

368. How does Bosnia and Herzegovina ensure legally and in practice the respect of the principle of non-discrimination on the basis of sexual orientation? Has the Freedom of Assembly been exercised freely and without problems for instance in the organisation of gay prides or similar events?

Respect for the principle of non-discrimination in BiH is provided by the BiH Law on Prohibition of Discrimination, whose implementation in practice is one of the biggest problems in the fight against discrimination in BiH.

The freedom of assembly in BiH is regulated differently in the entities, and in the Federation of BiH also on the level of individual cantons. LGBTI events have repeatedly been the target of attacks, to which the police and the judiciary did not react adequately, nor sanctioned the perpetrators of the criminal offense (attacks on the Queer Sarajevo Festival

16 Protić, Mladen, ur. (2015), "Compliance of Laws in Bosnia and Herzegovina with the UN Convention on the Rights of Persons with Disabilities: Main Results of the Analysis and Recommendations", Banja Luka: Helsinki Citizens' Assembly

(2008) and „Merlinka“ Festival (2014)). Given the response of institutions in both cases, it is evident that, although the freedom of assembly is guaranteed in theory, in practice, the State inadequately protects the freedom of minority and marginalized groups.

## 369 IS DISCRIMINATION ON THE BASIS OF GENDER IDENTITY PROHIBITED IN THE LEGAL FRAMEWORK?

Prohibition of discrimination on the basis of gender is prescribed by the Constitution of BiH (Article II 4), constitutions of entities and cantonal constitutions; the BiH Law on Gender Equality, the BiH Law on Prohibition of Discrimination, as well as other laws that regulate specific fields (labor laws, laws on social protection, laws on primary education, etc.). Amendments to the Law on Prohibition of Discrimination from 2016 explicitly stated gender identity as a prohibited basis of discrimination.

## 371 HOW ARE HATE-MOTIVATED CRIMES ADDRESSED IN THE CRIMINAL CODE? DO HATE CRIMES CONSTITUTE STAND-ALONE OFFENCES OR AN AGGRAVATING CIRCUMSTANCE? WHAT PENALTIES ARE APPLIED FOR CASES OF HATE CRIMES? WHAT GROUNDS ARE COVERED BY THE LEGISLATION AND HOW IS IT IMPLEMENTED?

Hate-motivated crimes are regulated by the criminal codes of the Entities and Brčko District. In the entity laws, hate crimes are prescribed as individually qualified forms of aggravated criminal offenses and are taken as aggravating circumstances in the case of minor offenses. In Brčko District, hatred or prejudice as a motiv for the commission of a criminal offense is taken as an aggravating circumstance.

All three criminal codes prescribe more severe penalties if a criminal offense is motivated by hatred or prejudice. Nevertheless, due to the mild penal policy of the courts in BiH, in practice, minor penalties are imposed than the prescribed.

The FBiH Criminal Code covers the following grounds: race, skin color, religious belief, national and ethnic background, language, disability, sex, sexual orientation or gender identity.

The RS Criminal Code and the Brčko District Criminal Code cover the following grounds: ethnic or national background, language or alphabet, religious belief, race, skin color, sex, sexual orientation, political or other opinion, social origin, social status, age, health status or other characteristics.

## 374 PLEASE PROVIDE INFORMATION ON MEASURES TO PREVENT ETHNICITY-BASED FORMS OF DISCRIMINATION AND SEGREGATION IN THE EDUCATION SYSTEM. ARE THERE ANY RELEVANT COURT JUDGMENTS AND ARE THEY IMPLEMENTED?

The main unresolved issue regarding ethnicity-based discrimination in the education system remains a phenomenon called “two schools under one roof”, which separates Bosniak and Croat students who attend the same school. Children in the so-called “mixed cantons” are segregated on the grounds of their ethnicity, in order to study the Bosniak or Croat national curriculum. Many stakeholders have been pointing out to this issue for more than a decade, but the system still remains in place in several cantons in the Federation of BiH.



In 2003, the Peace Implementation Council called on the FBiH Ministry of Education to implement the unification of “two schools under one roof” until the beginning of the next school year, which never happened. The issue was brought to court by the Association „Vaša prava u BiH“ (Your Rights in BiH) in a lawsuit against Herzegovina-Neretva Canton; its Ministry of Education, Science, Culture and Sport; and primary schools in Stolac and Čapljina. In 2012, the Municipal Court in Mostar ruled that the phenomenon of “two schools under one roof” does represent ethnic segregation and discrimination of children. The judgement was then overturned by the Cantonal Court of Herzegovina-Neretva Canton and the appeal was filed to the Supreme Court of FBiH. In August 2014, the Supreme Court of FBiH confirmed the first instance judgement of the Municipal Court (which refers to the practice of primary schools in Stolac and Čapljina)<sup>17</sup> that the system of “two schools under one roof” represents ethnic segregation of students. The Court established that this practice should be abolished and the divided schools should be unified. To this day, no efforts have been made towards abolishing “two schools under one roof” and the judgement remains unimplemented.

Students in Jajce (Central Bosnia Canton) have also rebelled against the „two schools under one roof“. In the course of 2016 and early 2017, they engaged in various protests opposing the decision of the cantonal Ministry of Education to form a new secondary school that would operate on the principle of „two schools under one roof“. The establishment of the new school was supported by 21 representatives in the cantonal assembly, four were against and five abstained. Minister of Education of the Central Bosnia Canton, Katica Čerkez, said that the establishment of a secondary school in Jajce with a Bosniak curriculum was requested by parents and that final decision was made by delegates in the Central Bosnia Cantonal Assembly. However, the students’ council continued to oppose the decision, protesting and addressing the media and politicians, and finally threatened to boycott classes. In the latest developments, they managed to stop the establishment of a new school, at least for the time being.<sup>18</sup>

In addition to the segregation problem, there are other forms of discrimination in education. In the entity of Republika Srpska, non-Serb students, particularly returnees, are often not provided with the option to study the national curriculum in the schools they attend. This is particularly manifested in cases of children returnees in Konjević Polje and Kotor Varoš and their right to study Bosniak or Croat language, which also led to protests by children and parents.<sup>19</sup> Official languages in BiH are Bosnian, Croatian and Serbian, however, Article 7 of the RS Constitution defines the official language as “the language of the Serb people, the language of the Bosniak people and the language of the Croat people.” This left space for different interpretations and allowed the RS Government to deny the existence of the Bosnian language by calling it “Bosniak language” or “language of the Bosniak people”, denying the Bosniak community the right to decide how they will call the language they speak.

Discrimination is also reflected in the policy of naming and constructing the symbolic identity of educational institutions, which sometimes reaches a point where it can be interpreted as threatening to members of a community who are not an ethnic majority in a given administrative/territorial unit. Naming schools or other institutions in the educational system after military commanders, politicians or contested historical figures

17 Verdict is available at: [http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-%C5%A1kole-pod-jednim-krovom\\_01.pdf](http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-%C5%A1kole-pod-jednim-krovom_01.pdf)

18 Bosnian Students Keep Up their Protest against Segregated Schools, Daria Sito-Sucic, REUTERS, 20 June 2017, URL: <https://www.reuters.com/article/us-bosnia-protests-students-idUSKBN19B26P>

19 Alternative Progress Report 2015: Political Criteria, Initiative for Monitoring of European Union Integration of Bosnia and Herzegovina, Sarajevo, July 2015, URL: [http://eu-monitoring.ba/site/wp-content/uploads/2015/07/Prelom-alternativnog-izvjestaja\\_ENG\\_finalna-verzija-za-web.pdf](http://eu-monitoring.ba/site/wp-content/uploads/2015/07/Prelom-alternativnog-izvjestaja_ENG_finalna-verzija-za-web.pdf)



amplifies ethnic differences and serves to mark the dominance of one ethnic group in a given territory, rather than to provide an inclusive environment for students regardless of their ethnicity. The most radical case of such nature occurred in the municipality of Pale, Republika Srpska, where the new student dorm was named after Radovan Karadžić. The dorm was ceremonially opened by RS President Milorad Dodik in March 2016, just weeks before the Hague Tribunal's verdict, which found Karadžić guilty of genocide, war crimes and crimes against humanity.

## 375 PLEASE PROVIDE INFORMATION ON THE IMPLEMENTATION OF COMMON CURRICULA SUBJECTS.

In terms of methodology, the education system in BiH is unified throughout the country. However, the content of the curriculum is not the same for the entire country, particularly in what is called a „group of national subjects“ (history, literature, culture, language and the like). This group of subjects is defined in three „national“ curricula, which corresponds to the three constituent ethnic groups. Each national curriculum usually focuses exclusively on history, tradition, etc. of one ethnic group, while the common history, tradition and culture of all three groups are either ignored or portrayed in a negative manner. Thus, the education system stresses the differences between the groups, sometimes in a discriminatory and antagonistic manner. In this respect, education in BiH is highly divided and *de facto* tailored to maintain and deepen the ethnic distance between the “constituent peoples”.

## 381 PLEASE PROVIDE DETAILS ON CONSTITUTIONAL PROVISIONS AND LEGISLATIVE MEASURES WHICH ENSURE EQUALITY BETWEEN WOMEN AND MEN, COMMENTING PARTICULARLY ON EQUALITY IN AREAS SUCH AS EMPLOYMENT, WORKING CONDITIONS AND PAY, AS WELL AS IN THE ACCESS TO AND SUPPLY OF GOODS AND SERVICES. IS GENDER REASSIGNMENT COVERED BY THESE MEASURES AS A GROUND FOR DISCRIMINATION?

The Constitution of BiH does not recognize explicitly equality between women and men, but in Article II states that „the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.“

The Constitution itself in its catalogue of rights is limited to human rights, without tackling upon the set of civil rights (employment, health and reproductive rights, working conditions and pays, as well as access to the supply of goods and services). Prohibition of discrimination on the grounds of gender in these fields is provided for by the BiH Law on Prohibition of Discrimination and the BiH Law on Gender Equality.

Gender identity is recognized as the basis for the prohibition of discrimination, while gender reassignment is not explicitly mentioned in these documents.

Labor laws in both entities, adopted in 2016, prohibit discrimination on the basis of gender in workplace and employment, and prescribe the principle of equal pay for equal work or work of equal value.

Thus, Article 77 of the Labor Law of the Federation of BiH (Official Gazette of Bosnia and Herzegovina, 26/16) clearly states: „(1) The employer shall pay workers equal pays for work of equal value regardless of their national, religious, political and trade union affiliation, as well as other discriminatory grounds in Article 8 (1) of this Law.“ Prohibition of discrimination and the principle of equal pay for equal work or work of equal value are prescribed by the Labor Law of Republika Srpska (Official Gazette of Republika Srpska, 1/2016) from Article 19 to Article 25 and in Article 120 (2).

However, in practice, this principle is not implemented (see more detailed answers to questions 295 and 296).

Also, the statutory regulation of maternity leave differs from canton to canton, consequently new mothers from one canton have different rights in comparison to new mothers from another canton.

Prohibition of discrimination on the basis of gender reassignment is not regulated by any law in BiH, whereby members of this minority are discriminated in relation to other genders. Persons who underwent gender reassignment in BiH have been enabled to change their documents in line with the new gender: the FBiH Law on Registration Books and the RS Law on Registration Books expressly stipulate that gender reassignment is entered in the registration books, while the Brčko District Law on Registration Books still does not provide for this, whereby gender reassignment could possibly be treated and entered in the registration books as a subsequent correction of errors.

Changing the personal identification number in accordance with the new gender is provided by the BiH Law on Personal Identification Number. In addition, the change of the personal name, or only the name, or only the surname, is permitted to every individual and is changed at the request of an adult or a legal representative of the minor, which is regulated by the Laws on Personal Name of Republika Srpska, the Federation of BiH and Brčko District. The change of the identity card data is provided by the Law on the Identity Card of Citizens of BiH for the purpose of changing the data and/or personal appearance that no longer correspond to the data and the photograph in the identity card.

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## 382 HAS BOSNIA AND HERZEGOVINA RATIFIED THE RELEVANT INTERNATIONAL CONVENTIONS? PLEASE INDICATE WHEN, FOR EACH CONVENTION.

- Charter of Fundamental Rights of the European Union, 2000
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2013
- Convention for the Protection of Human Rights and Fundamental Freedoms, 2002
- Optional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 2002
- UN Security Council Resolution 1325 (2000) „Women, Peace and Security“
- Beijing Declaration and Platform for Action
- Convention on the Elimination of All Forms of Discrimination against Women
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized

Crime, entered into force in the international and internal sense on 25 December 2013, published in the Official Gazette of Bosnia and Herzegovina, 03/2002.

- Council of Europe Recommendation CM/Rec (2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms

### 383 ARE THERE ANY OTHER PRACTICAL MEASURES AND INSTITUTIONAL MECHANISMS SUPPORTING GENDER EQUALITY? DESCRIBE THE PARTICIPATION OF CIVIL SOCIETY IN THE WORK OF INSTITUTIONAL GENDER MECHANISM, IF ANY.

There is the BiH Law on Gender Equality and Gender Action Plan BiH (GAP) for 2013-2017.

Institutional mechanisms for gender equality in BiH include the Gender Equality Agency at the state level, and Gender Center of Republika Srpska and Gender Center of the Federation of BiH at entity levels. Gender centers were established as advisory bodies of governments, whose purpose is to give recommendations aimed at the implementation of the BiH Law on Gender Equality, GAP and other international documents promoting gender equality, and monitoring their implementation.

The cantonal governments have assumed the obligation, through GAP, to form coordination committees for gender equality, which have been formed in two out of ten cantons and still have not started active engagement. Commissions for gender equality have also been formed at offices of municipal mayors. Unfortunately, it cannot be said that all established commissions work adequately and continuously.

Commissions/committees for gender equality have been established within the legislative authority at all levels. There is a Committee for Gender Equality of the Parliamentary Assembly of BiH at the state level, while at entity levels there is a Commission for Gender Equality of the House of Peoples and Commission for Gender Equality of the House of Representatives of the FBiH Parliament, and an Equal Opportunities Committee of the National Assembly of Republika Srpska.

The commissions for gender equality of cantonal assemblies in the Federation of BiH have also been established. At the local level, there are commissions within municipal councils/assemblies in almost all municipalities in BiH. Certain commissions at the cantonal and municipal levels are not functional, and it is necessary to strengthen the capacities of the said commissions in order to carry out activities of their mandates.

So far, institutional gender mechanisms have shown openness for cooperation with civil society in terms of partnership in certain fields of human rights. However, this cooperation is sometimes only declarative. For instance, at the proposal of the Gender Equality Agency of BiH, in October 2013, a Coordination Group of 16 non-governmental organizations working on the implementation of UNSCR 1325 was established, which signed the Memorandum of Cooperation with the Coordination Committee for monitoring the implementation of UNSCR 1325. However, by September 2016, not a single meeting has been held with the Coordination Group, indicating that the purpose of this memorandum was „solely to satisfy the form arising from the recommendations of an independent audit“<sup>20</sup>

20 Report of Civil Society Organizations on the Implementation of the Concluding Observations and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013-2017, URL: <http://hcabl.org/wp-content/uploads/2016/11/CEDaW-WEB-final-novembar-2016.pdf>

## 384 PLEASE PROVIDE STATISTICS ON WOMEN'S REPRESENTATION IN POLITICAL LIFE, JUDICIARY, LAW ENFORCEMENT BODIES AND PUBLIC ADMINISTRATION, ESPECIALLY CONCERNING MANAGEMENT POSITIONS, AS WELL AS IN EMPLOYMENT.

The Law on Gender Equality prescribes a 40% quota for the underrepresented gender in all branches of government, whereas the Election Law prescribes the same representation percentage on the candidate lists, as well as in the election bodies (polling boards and commissions). Meanwhile, the system of quotas only applies in the process of candidacy and does not have any real impact in achieving equal representation of women in the legislative, and certainly not in the executive branch.

Overall, the provisions of the Law on Gender Equality on equal representation of both genders are not observed in practice. There is evidently a disproportionate higher representation of men over women in executive and legislative bodies, while the percentage of women in governing bodies of political parties is between 10% and 20%.<sup>21</sup> Representation of women in parliamentary bodies is below 20%.

As regards to the executive power, the situation is even worse, bearing in mind that the electoral lists do not affect the formation of the executive power bodies. There are 152 ministerial positions at all levels of governance in BiH, of which only 23 (14,8%) are women, while at the cantonal level there are governments without a single woman in its composition. At the state level, of the nine ministerial positions in the Council of Ministers of BiH, two (22,2%) are held by women; in the FBiH Government there are 4 out of 16 (25%); in the RS Government there are 3 out of 16 (18,8%). So far, there have not been any women as heads of the executive power at the state level, including the Presidency of BiH and the chairmanship in the Council of Ministers of BiH. The office of the FBiH prime minister has not been held by a woman yet, while only one woman was the president of the Federation of BiH (2007-2011), the president of Republika Srpska (1996-1998) and the RS prime minister (from 2013 onwards). In the Council of Ministers of BiH, from 1996 to the beginning of the current mandate, there was a total of five women in ministerial positions (some of them in more than one mandate), while in this period there were five compositions of the Council of Ministers without any women in ministerial positions.

An overview of the systematized and filled positions of judges and prosecutors by gender on 31 December 2015 shows 542 men and 806 women. An overview of the gender structure of the heads of judicial institutions in BiH shows 55 men and 39 women.<sup>22</sup>

Women are more represented in administrative bodies, but much less represented in managerial positions. Gender-based discrimination in the field of labor is particularly evident in the process of career advancement and in the appointment of managerial positions in enterprises and institutions. Although statistics show that a large number of employees in health care, social and education institutions are women, the composition of managing boards of these institutions do not reflect this. In most public companies and institutions there is the so-called glass ceiling in the professional advancement of women. A survey conducted on a sample of 45 institutions and enterprises has shown that internal rules for the protection against discrimination and ensuring gender equality have not been set up anywhere, which are prescribed by the BiH Law on Gender Equality. This practice is also not sanctioned. The same survey indicates that women are markedly

21 BiH Alternative Report 2016: Political Criteria, Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina, 2016, URL: [http://eu-monitoring.ba/site/wp-content/uploads/2016/07/HRP\\_alternativni-izvjestaj\\_BOS\\_12.07.2016.-web.pdf](http://eu-monitoring.ba/site/wp-content/uploads/2016/07/HRP_alternativni-izvjestaj_BOS_12.07.2016.-web.pdf)

22 High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Annual Report for 2015

underrepresented in the structure of managing boards.<sup>23</sup>

The Gender Equality Agency conducted a survey in 100 public companies which showed that women in managing boards account for 20% and in supervisory boards 15%.<sup>24</sup> Based on this, the Agency has concluded that there is still a „glass ceiling“ which prevents the full equality of women in the labor market.

Women in BiH are also discriminated in access to economic and social rights, particularly in the employment and management of public enterprises, access to the right to maternity leave and benefits. Although, according to the 2013 census, women account for 51% of the total population,<sup>25</sup> with 42% of the total number of employed persons, while at the same time 53% of them are unemployed.<sup>26</sup>

Although a large number of municipalities and towns have local action plans for gender equality (in the period 2012-2015, 47 plans were drafted and adopted in the Federation of BiH, while in Republika Srpska 22 plans were adopted by 2015), the situation in practice looks completely different. The 2015 survey, which covered more than 50% of municipalities and towns in BiH, showed that there are almost no municipalities/towns that understand their competence and, therefore, do not take any measures in the field of gender equality.<sup>27</sup> Surveys and public debates are not conducted, local priorities are not set, and gender equality issues and specific needs of women are not taken into account when planning and executing programmes and budgets.

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## 386 GIVE AN OVERVIEW OF POSSIBLE SANCTIONS WHICH EXIST FOR BOTH THE PUBLIC AND PRIVATE SECTORS IN CASE OF DISCRIMINATORY EMPLOYMENT PRACTICES.

Sanctions are not prescribed for perpetrators of discrimination in employment, except those provided by the BiH Law on Prohibition of Discrimination in case of initiating private lawsuits and administrative proceedings for investigating discrimination.

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## 387 HAVE PERMANENT GENDER EQUALITY BODIES BEEN ESTABLISHED? HAS BOSNIA AND HERZEGOVINA ESTABLISHED SPECIALISED SERVICES TO COMBAT DISCRIMINATION BASED ON SEX? IF SO, WHICH LEGISLATIVE FRAMEWORK, INSTITUTIONAL CONTEXT, COMPOSITION, FUNCTIONS AND POWERS PERTAIN TO THESE SERVICES?

Permanent gender equality bodies have been established by the Law on Gender Equality and these include the Gender Equality Agency of BiH and entity Gender Centers. According to the Law on Prohibition of Discrimination, the only specialized body in this field is the Institution of Human Rights Ombudsman, more specifically the Department

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- 23 Report “The Response of Public Institutions, Institutions and Companies in Preventing Discrimination against Women in Bosnia and Herzegovina” (2014), Initiative and Civil Action(ICVA)/Association “Land of Children” (Zemlja djece)
  - 24 Gender Equality Agency of Bosnia and Herzegovina: Glass Ceiling in the Labor Market in Bosnia and Herzegovina, 2014, URL: <http://arsbih.gov.ba/?p=2544>
  - 25 2013 Census of Population, Households and Dwellings in Bosnia and Herzegovina, Census Results, Agency for Statistics of Bosnia and Herzegovina URL:<http://www.popis2013.ba/popis2013/doc/Popis-2013prvoIzdanje.pdf>
  - 26 Persons in Paid Employment by Activity in March 2017, Agency for Statistics of Bosnia and Herzegovina, 2017, URL: [http://www.bhas.ba/saopstenja/2017/ZAP\\_2017M03\\_001\\_01\\_BS.pdf](http://www.bhas.ba/saopstenja/2017/ZAP_2017M03_001_01_BS.pdf)
  - 27 [http://soc.ba/site/wp-content/uploads/2015/08/RAVNOPRAVNOST-SPOLOVA-U-OPSTINAMA\\_bhs.pdf](http://soc.ba/site/wp-content/uploads/2015/08/RAVNOPRAVNOST-SPOLOVA-U-OPSTINAMA_bhs.pdf)



for Elimination of All Forms of Discrimination within this Institution.

Natural and legal persons may address these institutions/mechanisms with complaints for violations of the BiH Law on Prohibition of Discrimination, i.e. the request for examining violations of the BiH Law on Gender Equality. Electronic forms for examining violations of the Law on Gender Equality are available on websites of the Gender Equality Agency of BiH and FBiH Gender Center, while on the website of the RS Gender Center this electronic form is unavailable.

These institutions can give recommendations in specific cases of violation of rights, but their recommendations do not have executory force, i.e. they are not binding. This furthermore aggravates the exercise of rights guaranteed by law for persons who complain about discrimination and violation of rights on gender/sex identity.

## 388 HOW IS GENDER-BASED VIOLENCE AND DOMESTIC VIOLENCE TREATED IN THE LEGISLATION AND IN JUDICIAL PRACTICE IN TERMS OF PREVENTION, VICTIM SUPPORT AND PROSECUTION? HOW MANY CASES HAVE BEEN INVESTIGATED BY THE PROSECUTORIAL OFFICE?

BiH has ratified most of the conventions on the prevention of violence against women and children. Gender-based violence in BiH is regulated by the criminal codes of the Entities and Brčko District within hate crimes. Domestic violence is regulated by the criminal codes and family laws of the Entities and Brčko District, as well as entity laws on the protection from domestic violence. The effective implementation of this legal framework lacks a number of by-laws which would further improve the existing legislation, as well as the change in the established negative practices of investigative and judicial authorities in dealing with domestic violence, which lead to a high level of impunity of such crimes.

A 2015 survey on the implementation of the legal framework for the protection against domestic violence indicates a number of problems in terms of the prevention, processing and support of victims of domestic violence that occur in practice.<sup>28</sup> Reports of domestic violence are not always processed in accordance with the law, but police officers treat them as „marital disputes“, and identical misdemeanor complaints are filed against the victim and the perpetrator. This is in line with the widespread practice of registering domestic violence cases as a threat to security or breach of the peace, and not as a criminal offense. If the reported offense is treated in accordance with the law, only a protective measure is imposed by which the perpetrator is held in custody 24 hours, after which he is released, exposing the victim to violence again. Other protective measures are rarely used or are not filed within the legal deadline. Centers for social work rarely issue a decision on the accommodation of the victim of violence in a safe house. There were even cases where such decision was refused at the explicit request of the victim of domestic violence. In cases when victims of violence are accommodated in a safe house, it is usually for a period of few days, which significantly reduces the effectiveness of this protective measure. Centers for social work continue to treat domestic violence as „marital disputes“, and in such cases put emphasis on preserving the family and not on the protection of victims.

Victims of violence are inadequately informed about available protective measures, such as accommodation in a safe house. The awareness of victims of violence on their rights after reporting an act violence is equally poor. Domestic violence reports are often not treated seriously, if the violence is not repeated and not reported multiple times.

28 Protection of Women and Children Victims of Domestic Violence at the Local Level – From the Law to the Actual Implementation, United Women, 2015, URL: <http://unitedwomenbl.org/wp-content/uploads/2016/06/570e5cbd960988e884aecffd4149c11b.pdf>



Court processing of domestic violence is also unsatisfactory. Although the urgency of such proceedings is prescribed, it is not observed in practice and the proceedings last several years, which further puts victims at risk. The penalties prescribed are mild and the victims are not adequately protected during the proceedings. In addition, adequate legal aid for victims in poor financial situation is not provided, who are particularly vulnerable in such cases.

The general treatment of victims of violence in the system is poor and reaffirms the social stigma directed towards victims of domestic violence, which only further demotivates the victims of violence to report perpetrators.

### 389 HAS BOSNIA AND HERZEGOVINA RATIFIED THE COUNCIL OF EUROPE ISTANBUL CONVENTION?

In 2013, BiH signed and ratified the Council of Europe Istanbul Convention, as a sixth member of Council of Europe. By signing the Convention, BiH has assumed the obligation to take legislative and other measures for the purpose of ensuring the legal, institutional and organizational framework for the prevention of violence against women, protection of victims of violence and punishment of perpetrators of violence. These obligations are generally not observed in practice.

### 390 IS THERE AN EFFECTIVE DATA COLLECTION MECHANISM FOR MONITORING DOMESTIC VIOLENCE CASES?

Such mechanism is not established in BiH. There are no uniform criteria and forms for keeping statistics on the number of victims of violence, and adequate records on monitoring the protective measures prescribed in cases of domestic violence are not kept by all institutions (centers for social work).

### 391 WHAT SERVICES ARE AVAILABLE FOR VICTIMS OF GENDER-BASED VIOLENCE AND DOMESTIC VIOLENCE? ARE THERE SHELTERS/SAFE HOUSES FINANCED BY PUBLIC FUNDS? ARE PROTECTION ORDERS AVAILABLE? ARE VICTIMS SUPPORTED BY SOCIAL SERVICES TO ENABLE THEM TO HAVE THE MEANS TO LEAVE THE ABUSIVE RELATIONSHIP? DO VICTIMS HAVE ACCESS TO FREE LEGAL AID AND COURT REPRESENTATION?

There are nine safe houses in BiH (six in the Federation of BiH and three in Republika Srpska). Safe houses are recognized and legally regulated as a protection mechanism for domestic violence victims at entity and cantonal levels, but the authorities do not observe the legal obligations they have towards them. Financing of safe houses is a major issue throughout BiH, given that they are mostly run by civil society organizations which must find additional donations to maintain these houses.

This issue is particularly prominent in the Federation of BiH, where the prescribed amount of public funds for the financing of safe houses is not observed. The FBiH Law on Protection from Domestic Violence provides for the obligation of the Federation of BiH and cantons to finance safe houses in the ratio of 70% to 30%, which has not been observed so far and has brought the operation of safe houses into question. Two safe houses were closed due to financing problems in 2016. In addition, prescribed by-laws

were not adopted which would precisely define the relationship between public institutions and safe houses. In Republika Srpska, safe houses have the status of an association or foundation and are registered in the Register of Safe Houses of the Government of Republika Srpska, which finances their work in the ratio of 70%.

Security measures for victims of domestic violence are prescribed solely on the basis of a court decision and are often inadequate in domestic violence cases. Centers for social work are bodies to which victims of violence are referred, where they receive certain information and are then referred to safe houses. However, they are not treated professionally and are not provided with any material means to quit violent relationships.

Access to free legal aid is provided by civil society organizations and institutes for providing free legal aid (which depends on the financial situation of the person requesting aid), but it is hampered by the disproportionate territorial presence of providers of this aid.

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### 398 PLEASE ELABORATE ON LEGISLATIVE AND NON-LEGISLATIVE ACTIONS TAKEN TO ADDRESS DISCRIMINATION AGAINST CHILDREN FROM ETHNIC MINORITIES, (INCLUDING THE ROMA MINORITY), CHILDREN WITH DISABILITIES, CHILDREN LIVING IN REMOTE AREAS AS WELL AS ON GROUNDS SUCH AS SEX, BIRTH STATUS (MARRIED/UNMARRIED PARENTS) OR OTHERS. ARE ALL CHILDREN COVERED BY COMPULSORY HEALTH INSURANCE?

The legislator has regulated this field with a whole set of different laws, strategies and action plans. Nevertheless, despite the existence of a significant number of laws and strategies, which partially recognize the category of children with disabilities, the protection of children with disabilities is unsatisfactory in practice and no progress has been achieved.

The reason for the poor implementation of laws and strategies primarily lies in the fact that there are no clearly defined funds within budgets of all levels of governance.

In addition to inadequate financial support, the application is further complicated by the complex organizational structure of the country, resulting in uneven practice and a high percentage of non-realization of the rights of children with disabilities, i.e. territorial discrimination of the same population within BiH.

Not all children are covered by compulsory health insurance. The new FBiH Law on Health Protection, which should provide the right to compulsory health insurance for children under 15, is in the process of adoption.

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### 399 PLEASE ELABORATE ON THE MEASURES IN PLACE TO ENSURE EDUCATION OF CHILDREN WITH DISABILITIES. IS SUPPORT TO CHILDREN WITH DISABILITIES MADE AVAILABLE IN REGULAR SCHOOLS?

In BiH, the issue of education of children with disabilities is regulated by a framework law and laws at lower levels of governance, as well as entity strategies. The same laws and strategies provide for the possibility of education of children with disabilities in regular and special schools, as well as support through mobile professional teams and teaching assistants.

The abovementioned legislative framework does not reflect commitment to including children in regular schools, but provides for the possibility of excluding and segregating

children, through a model which is exclusively medical. Human rights based model promoted by the Conventions (on the rights of the child and on the rights of persons with disabilities) and signed by BiH, has not taken hold within its institutions.

Within budgets at all levels of governance, funds are not planned for the inclusion of children with disabilities in regular schools, for support in teaching process, for architectural and information and communication accessibility of schools, and for adequate assistive and other technology that would provide quality education. Furthermore, curricula at universities for teaching do not prepare future teaching staff for work with children with disabilities, resulting in continuous unpreparedness of teaching staff for quality work, which is a prerequisite for good support to children with disabilities in regular schools.

The process of supporting the inclusion of children with disabilities in regular schools through the regular education system in BiH is entirely inadequate and does not provide quality education of children with disabilities.

There is no adequate preparation of children with disabilities before they start school and there are no early support programmes for strengthening competences, as well as support for parents of children with disabilities.

## 401 PLEASE DESCRIBE THE PROCEDURE FOR TAKING CARE OF CHILDREN WITHOUT PARENTAL CARE. ARE CHILDREN SEPARATED FROM THEIR PARENTS HOUSED IN INSTITUTIONS, IF SO, WHAT TYPE AND IS A FOSTER CARE SYSTEM IN PLACE? WHAT IS THE PERCENTAGE OF CHILDREN WITH DISABILITIES AND HOUSED IN INSTITUTIONS AND WHAT IS THE AVERAGE AGE?

Foster care as a concept is not enough precisely defined in the legislation of the Federation of BiH. The Law on the Fundamentals of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children only frivolously defines this possibility and further complicates it by the provision that a parental consent is required in order to place a child in a foster family, which is not the case with institutional placement. Apart from this, there is no compensation for foster parents, although there are resources for the child's needs (but not in case of the child's relatives). The breakthrough was made with the adoption of the FBiH Law on Foster Care in February 2017, which shall enter into force in January 2018. This Law encourages the placement of babies in foster care due to the detrimental consequences that institutions have on small children, and provides for a symbolic monetary compensation for foster parents.

Republika Srpska has a Rulebook on Foster Care (2014) which more specifically regulates foster care, from family assessment, education, compensation for foster parents, to supervision. The Rulebook defines regular, specialized and urgent foster care, while in the Federation of BiH, according to the current regulations, there is no division into categories. The new FBiH Law on Foster Care recognizes regular, specialized, urgent and respite foster care.

Children are removed from their parents based on the expert opinion of centers for social work, which also decide on the type of future protection, i.e. where the child will be placed. If kinship family is unable to take care of the child, the child is almost always put in institutional placement.

According to the analysis of the FBiH Ministry of Labor and Social Policy<sup>29</sup>, out of the 202 children who were removed from their families in 2014, 73,8% of them are placed

29 Situational Analysis of Children without Parental Care and Families at Risk of Separation in the Federation of Bosnia and Herzegovina, FBiH Ministry of Labor and Social Policy and Hope and Homes for Children in Bosnia and Herzegovina, Sarajevo, 2016.

in institutions. The number of those who are placed in non-kinship foster families is the lowest (2,2%). The results of previous analyses also indicate the practice of placing children removed from their families predominantly in some form of institutional placement. Very few children are placed in foster families, especially if they are children with disabilities and Roma children. The United Nations Guidelines for the Alternative Care of Children emphasize that a family environment should be provided for the placement of young children, especially children aged up to three years, however, children of this age are still more often placed in institutions rather than in families. Out of the total number of children who were separated from biological families in the Federation of BiH in 2014, out of 73 children aged up to six years, 63 children were placed in institutions, and only nine children in extended and foster families. Comparisons with previous research show that these trends are unchanged and that no progress has been made in regards to the placement of children in families instead of institutions.

Revision of placement is done rarely or is not done at all, whereby institutional placement becomes a long-term solution. According to the data from the *Situational Analysis of Children without Parental Care and Families at Risk of Separation*<sup>30</sup>, children who were returned to their biological families had been previously placed in institutions in the period from one month to six years. Children who were adopted from an institution, previously had been placed in the institution in an interval from two months to three and a half years. Out of the 64 children who became adults in 2014, 35 of them stayed in the institution for ten years and more.

With children who have been placed in an institutional setting since birth and who show visible effects of institutionalization, there is an additional risk of them being characterized as children with developmental disabilities and transferred in an another specialized institution, or being enrolled in education institutions for children with developmental disabilities, rather than being engaged in regular classes.

In general, foster care is insufficiently promoted by state institutions and still largely depends on the work of non-governmental organizations and their cooperation with centers for social work, through trainings for future foster care providers and promoting the concept of foster care as an alternative to institutional placement.

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## 422 IS A SYSTEM OF FREE LEGAL AID AVAILABLE AND WHICH ENSURES EQUAL ACCESS TO JUSTICE INCLUDING TO THE MOST VULNERABLE GROUPS? IF SO, PLEASE EXPLAIN THE SCOPE AND RESOURCES OF THE LEGAL AID SERVICE. IS IT AVAILABLE IN CRIMINAL CASES? CAN FREE LEGAL AID ALSO BE OBTAINED IN CIVIL AND ADMINISTRATIVE CASES? PLEASE GIVE DETAILS ON THE CRITERIA FOR RECEIVING LEGAL AID.

In October 2016, the Parliamentary Assembly of BiH finally adopted the Law on Free Legal Aid in regard to victims' requests for compensation in criminal proceedings. However, the Law is limited at the state level, which means that the changes affect the Prosecutor's Office of BiH and the Court of BiH, as well as other state-level institutions, and still does not ensure harmonization of the provision of legal aid for victims throughout BiH before different institutions. It has introduced the possibility of access to legal aid in criminal proceedings as well. Only victims who meet certain conditions (victims who are poor, or victims of gender-based violence) will be entitled to free legal aid.

The Ministry of Justice of BiH now must implement new legal aid laws by adopting the necessary by-laws and ensure that victims can access legal aid and legal remedies in practice.

When it comes to legal aid in criminal proceedings, however, additional harmonization steps throughout the entities and between cantons need to be taken, and it remains to be ensured that victims of crime can access legal aid provided by the state, which has never happened to date.

In this respect, the European Commission has already emphasized that the lack of a harmonized free legal aid system increases the risk of discrimination. This particularly affects vulnerable groups, including relatives of missing persons, former prisoners of war camps, victims of wartime sexual violence, etc. who are exposed to further marginalization, hampers their access to justice and diminishes their trust in institutions.

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## 428 PLEASE PROVIDE DETAILS ON HOW THE RIGHTS OF VICTIMS OF CRIME ARE ENSURED IN CRIMINAL PROCEEDINGS. IS THERE LEGISLATION IN PLACE CONCERNING THE FAIR AND APPROPRIATE COMPENSATION FOR THE INJURIES THAT CRIME VICTIMS HAVE SUFFERED?

Relevant legislation that enables courts to award compensation to injured parties in criminal proceedings, or to refer them to civil proceedings, has been put in place. However, there is a consistent practice of referring victims to civil proceedings. This practice hinders access to compensation for most victims, given that legal representation is necessary for civil proceedings. Since free legal aid is still not effectively guaranteed by the state, in majority of cases the victims cannot afford to initiate such proceedings.

An additional problem in relation to filing of compensation claims in civil proceedings is the necessary disclosure of the identity of the protected witness. Witnesses who had identity protective measures ordered during criminal proceedings do not have guarantees of equal protective measures during subsequent civil proceedings.

Beginning in 2015, the judicial system in Bosnia and Herzegovina has finally begun to fulfill its legal obligations in regard to the awarding of damages to victims in criminal proceedings. The milestone ruling was rendered in June 2015, after TRIAL International had filed the first compensation claim for non-pecuniary damages suffered by a victim of wartime rape in criminal proceedings before the Court of BiH. The court ruled that the two defendants pay the amount of BAM 26 500 (approximately EUR 13 500) to the victim as compensation for non-pecuniary damages, together with a prison sentence. After this precedent, compensation was granted to victims in 4 other cases. However, the same practice is not taking roots in judicial institutions at other administrative levels (only one case before the court in Doboј in September 2016 included a successful compensation claim).

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## 430 IS A COMPREHENSIVE LEGAL AND POLICY FRAMEWORK IN PLACE TO ALLOW VICTIMS OF TORTURE TO OBTAIN CIVIL REDRESS IN THE FORM OF A FAIR AND ADEQUATE COMPENSATION, INCLUDING FULL REHABILITATION AS POSSIBLE, IN LINE WITH UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT? IF YES, PLEASE PROVIDE INFORMATION ON ITS FUNCTIONING.

The terms “reparation” and “welfare benefit” are still being unjustifiably confused throughout the country. A comprehensive programme that ensures the right to reparation and compensation for damage caused during the war was not adopted in 2017.



Despite the fact that it has been 20 years since the end of the war and that various international human rights bodies, including the Human Rights Committee, have recommended BiH to adopt a national programme on reparation measures for victims of gross human rights violations during the war, at the time of writing of this document no such programme has been adopted.

Since 2006, BiH has been affirming before international human rights mechanisms that the adoption of a Law on the Rights of Victims of Torture is “inevitable”.

In 2013, the CEDAW recommended BiH to “expedite the adoption of pending draft laws and programmes designed to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims”.

Among others, the European Commission has noted that “legislation on the rights of victims of torture remains to be adopted”. During the second cycle of the Universal Periodic Review, BiH was once more recommended to “adopt a law on reparation and compensation for victims of torture during the war”. This recommendation was only partially accepted and the State declared that “BiH is trying to reach an agreement on a legal solution for the rights of victims of torture in BiH, in which the proposal for reparation/compensation for victims of torture should be regulated in a uniform way for all victims of torture in BiH.” Considering that entity governments still have different views on this issue, in the coming period we expect reconciliation of the opinions of the entity governments and competent authorities in BiH in terms of finding legal solutions that will respond to the needs of BiH and regulate the rights of victims of torture and the right to reparation/compensation”.

No law on the rights of victims of torture was adopted in 2017. The insensible inactivity of the BiH authorities to the acute suffering of victims of torture, including relatives of missing persons, former camp-detainees, women victims of rape or other forms of wartime sexual violence, who have been waiting for a law to finally realize their fundamental rights, is not only a flagrant violation of BiH’s international obligations, but discloses an obstinate disregard of recommendations repeatedly put forward by international human rights mechanisms, and is perceived by thousands of victims as a mockery.

An even bigger issue is the recent unsettling developments in the field of case-law in BiH, which has led to the general adoption of the courts’ position that victims’ compensation claims against the State/Entities are subject to statute of limitation.

Namely, the judgements of the Constitutional Court of BiH (for instance, AP-3955/15) state, although with differently introduced international standards, including those of the UN Convention against Torture, that statute of limitations shall apply to the compensation claims for non-material damage filed against the entities or the state and that such claims may be filed only against the perpetrators, thereby abolishing the subsidiary liability of the State and Entities for the damage suffered. Adding to the already low likelihood of collecting the awarded compensation from the perpetrators, the given position of the Constitutional Court may only further limit the ability of victims to effectively claim and obtain compensation as a means of redress for the violence suffered.

While Republika Srpska has traditionally rejected compensation claims against the entity for years by applying the statute of limitations, the Supreme Court of the Federation of BiH ruled in 2011 that the statute of limitations could not be applied to such claims. Following the adoption of the Constitutional Court’s decisions, the said FBiH court had also altered its interpretation of the application of the statute of limitations to claims for war reparations filed against the entities, ruling that the statute of limitations must be



applied and, thus, such claims must be rejected.

With this new change in case-law, victims' rights to compensation have become unprotected, because currently, and due to the lack of a law which would ensure such right, they do not have another option which enforces this internationally guaranteed right. These changes in case-law and the lack of harmonization have created an unacceptable legal uncertainty, which strongly undermines the rule of law in BiH.

As a result of this case-law, civil litigation before local courts in BiH now regularly results in the dismissal of compensation claims based on the statute of limitations, thus forcing survivors to pay high court costs and face distraint of property, which is highly traumatic, especially for victims of torture who are living on the edge of poverty.

This negative surprise in regards to the change of case-law ultimately gives the impression that, not only have their claims been rejected, which is one of many disappointments they have faced in the previous 20 years, but that, in addition, they themselves have to pay high amounts of money to the entities they deem responsible for the grave losses they suffered during the war.

## 431 IS A COMPREHENSIVE LEGAL AND POLICY FRAMEWORK IN PLACE TO SAFEGUARD THE STATUS OF VICTIMS OF WAR CRIMES INVOLVING SEXUAL VIOLENCE IN A NON-DISCRIMINATORY FASHION THROUGHOUT THE COUNTRY? IF YES, PLEASE PROVIDE DETAILS OF ITS SCOPE AND FUNCTIONING.

It is worth mentioning that the terms reparation and welfare benefits for victims of gross human rights violations during the war are still being unjustifiably confused and overlapped. Victims of torture also experience significant difficulties in accessing the abovesaid welfare benefits.

With regard to welfare benefits, no state law has been adopted since 2012 nor does it seem to be forthcoming. In the case of relatives of missing persons, the only state-level institution envisaged in this field (i.e. the Fund for the Support of Families of Missing Persons) has not been established. On the whole, this issue remains regulated at the entity level which fosters discrepancies and instances of discrimination. Victims of gross human rights violations during the war are treated differently depending on their place of residence, given the fact that welfare benefit is not the same in both entities.

Furthermore, it must be pointed out that the RS Law on Protection of Civilian Victims of War sets strict deadlines for those who wish to apply for welfare benefit. More specifically, the final deadline expired on 31 January 2007. This resulted in the exclusion of many victims from the possibility to obtain benefit they would be entitled to. This is particularly the case with people who have temporary residence outside BiH, who were not informed about the existence of this law and, therefore, failed to file their compensation claims in due time, and with victims of sexual violence, who needed more time to decide to come forward and apply for such benefits, due to trauma and stigma. In this regard, the Special Rapporteur for the Sub-Commission on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, Mr. Theo van Boven, noted that under the existing international law, civil claims relating to compensation for gross violations of human rights and humanitarian law shall not be subject to statute of limitations in any event.

Another problem is related to some provisions of the RS Law on Protection of Civilian

Victims of War and their interpretation by local authorities. Article 2 of the Law under civilian victim of war considers: “1) A person who has sustained bodily harm due to abuse, rape or deprivation of liberty (jail, concentration camp, internment, forced labor etc.) or who in an attempt to escape from the enemy has sustained injuries or wounds and who has sustained at least 60% bodily harm, as well as a persons who has been killed, died or gone missing under the mentioned circumstances; 2) A person who has sustained at least 60% bodily harm due to wounding or injuries caused by warfare such as: bombing, street fighting, stray bullets, mortar or cannon grenades and similar; 3) A person who has sustained at least 60% bodily harm due to wounding or injuries caused by residual military materials or as a consequence of enemy sabotage actions.” Article 4 of the Law stipulates that “persons who were members of enemy formations, i.e. enemy aiders, cannot realize the right under this Law.”

Given the peculiarities of the conflict in BiH, the terms “enemy” or “enemy formations” are misinterpreted and are certainly vague. So far, local authorities have interpreted these terms as referring to any army or soldiers other than the Republika Srpska army.

The provisions of theaforesaid law and the practice of local authorities impose a disproportionate burden of proving kinship on relatives of missing persons. They are often requested to demonstrate the circumstances in which their loved ones died, but are unable to do so because of the nature of enforced disappearance. Many relatives of missing persons thus remain excluded from access to welfare benefits. On the one hand, the authorities do not disclose the fate and whereabouts of their loved ones, while, on the other hand, they impose an unbearable burden of proving kinship in order to allow the latter access to meagre monthly pensions.

In Republika Srpska, victims of rape are not recognized as a separate category of victims and this falls short of acknowledging the specificity of the damage they have sustained and its consequences. In general, it seems unclear if, due to the 60 % bodily damage definition, all those who sustained psychological, not physical impairment as a consequence of war, would be considered victims under this law and have access to welfare benefits.

In the Federation of BiH, there is also a substantial and unjustified discrimination between civilian victims and veterans. Article 59 of the FBiH Law on the Fundamentals of Social Welfare, Protection of Civilian Victims of War and Families with Children prescribes that the maximum monthly monetary compensation for civilian victims of war should equal 70% of the maximum monetary compensation available to disabled war veterans. Also, this Law has established short deadlines to apply for the civilian victim of war status, thereby excluding many civilian victims of war.

Former camp-detainees are not recognized as a separate category of victims of war which particularly hinders the exercise of their fundamental rights.

In the Federation of BiH, amendments to the Law adopted in June 2016 have introduced an independent expert commission with a mandate to issue certificates to surviving members of families. At the time of writing of this document, the Rulebook establishing the commission has not been adopted yet by the FBiH Government and the body has not started working, consequently delaying the assessment of applications and, therefore, access to benefits to new applicants who have been put on a waiting list until this issue is resolved.

## REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS – REGIONAL COOPERATION AND GOOD NEIGHBOURLY RELATIONS

(questions 495-516)

**496** PLEASE PROVIDE AN OVERVIEW OF THE COUNTRY RELATIONS WITH NEIGHBOURING COUNTRIES, AND COUNTRIES OF THE WESTERN BALKAN REGION, INCLUDING WITH KOSOVO\*. EXPLAIN OUTSTANDING BILATERAL ISSUES, INCLUDING BORDER ISSUES, AND PROSPECTS FOR SOLUTIONS.

BiH has a political dialogue with neighbouring countries, with emphasis on cooperation with the Republic of Croatia, the Republic of Montenegro and the Republic of Serbia.<sup>31</sup> BiH has diplomatic and consular missions in all neighbouring countries, except in Kosovo. Apart from several bilateral agreements, BiH does not have any significant dialogue with the Former Yugoslav Republic of Macedonia, whereas there are certain economic ties with the Republic of Albania. The problem of demarcation between BiH and Montenegro was successfully resolved through a political dialogue in 2016. An Agreement on Cooperation in the European Union Accession Process was signed between BiH and Montenegro in March 2017.

Relations between BiH and neighbouring countries are continuous, but also complex; diplomatic relations are maintained, but are often disrupted by political crises that are most frequently related to the issues of transitional justice, i.e. official state policies and positions towards war and war crimes. Signing of the 'Declaration On The Role Of The State In Addressing The Issue Of Persons Missing As A Consequence Of Armed Conflict And Human Rights Abuses' in Bosnia and Herzegovina in 2014 by President of Serbia Tomislav Nikolić, President of Montenegro Filip Vujanović, President of Croatia Ivo Josipović and BiH Presidency Chairman Bakir Izetbegović is an example that there is a certain dialogue even in issues related to building long-term peace.<sup>32</sup> Another positive example is the establishment of the Regional Youth Cooperation Office (RYCO), whose member is BiH. Members of RYCO are Albania, Serbia, Kosovo, FYR Macedonia, Montenegro and BiH.

On the other hand, political tensions are still present and usually intensify on issues related to the wartime „legacy“. In 2015, several important dates were marked in BiH, such as the 20th anniversary of the Srebrenica genocide and the 20th anniversary of the Dayton Peace Agreement. Marking of the 20th anniversary of the Srebrenica genocide was accompanied by considerable tensions between BiH and Serbia. In early 2017, relations were exacerbated once again due to the resurgence of the issue of the revision of BiH's lawsuit against Serbia for genocide. Relations and cooperation between Croatia and BiH were weakened following the arrest of ten former members of the Croatian Defence Council (HVO) and the HVO Military Police on charges for war crimes in late October 2016,<sup>33</sup> to which the state institution of the Republic of Croatia responded, despite the

31 See: BiH Presidency, <http://www.predsjednistvobih.ba/vanj/default.aspx?id=13612&langTag=bs-BA>, last accessed 17/2/2017.

32 Bosnia and Herzegovina, Croatia, Montenegro and Serbia sign ICMP's Declaration on Missing Persons, <https://www.icmp.int/press-releases/bosnia-and-herzegovina-croatia-montenegro-and-serbia-sign-icmps-declaration-on-missing-persons/?lang=bs>, last accessed 20/2/2017.

33 See: <http://balkans.aljazeera.net/vijesti/hapsenja-zbog-ratnih-zlocina-nad-srbima-u-orasju>

fact that it is a procedure conducted on the territory of BiH.<sup>34</sup> The problem is, with regard to the organization of BiH, that these situations automatically turn into internal political crises in BiH.

In addition to these situations, the issues of the internal organization of BiH also occasionally rise to the level of regional and political disagreements. In 2016, this was the case with a referendum which was held in Republika Srpska on the decision of the Constitutional Court of BiH in regards to marking of 9 January as the Day of Republika Srpska. The status of Republika Srpska and the issue of the „federalization of the Federation of BiH“, which has become a part of the Resolution of the European Parliament on BiH thanks to the efforts of representatives of the Republic of Croatia in the EU, are some of the internal issues of BiH that neighbouring countries intensively interfere with. Serb and Croat political parties in BiH in such situations rely on their ties with Serbia and Croatia, which only further contributes to the deepening divisions within BiH. What was particularly worrying in the past two years, and especially during the crisis caused by the referendum in Republika Srpska, was the return of openly hostile rhetoric and „overload“ of the public space with the topic of possible new armed conflicts, that some officials from BiH and neighbouring countries tackled upon.

BiH still has not recognized the independence of Kosovo, because Republika Srpska has not given its consent. Diplomatic relations with Kosovo do not exist, so that cooperation is implied through the cooperation with Serbia. Due to this situation, the citizens of BiH and Kosovo require a visa to enter these countries, whereby the visa regime between BiH and Kosovo is extremely rigid and poses an enormous obstacle for the free movement of citizens of both countries. Considering that there are neither direct diplomatic relations nor diplomatic missions of Kosovo in BiH, visa applications must be submitted in Zagreb or Skopje, and citizens of BiH who want to go to Kosovo have to travel twice to Croatia or Macedonia in order to apply for a visa, and then take the visa to enter Kosovo. Civil society, including artists and the academic community, is trying to maintain communication through various activities and persistently advocate for urgent resolution of this issue and opening of the borders of these two countries. In early 2016, representatives of civil society, media and artists from BiH, Serbia and Kosovo discussed the visa issue and on that occasion adopted a joint Declaration in Priština calling on the governments of Kosovo and BiH to urgently find a solution for abolishing the visa regime between the two countries.

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## 501 PLEASE PROVIDE AN OVERVIEW OF THE COUNTRY'S CONTRIBUTION TO THE IMPLEMENTATION OF PEACE AGREEMENTS AND TO THE PROMOTION OF RECONCILIATION IN THE REGION.

The creation of permanent structures for regional cooperation as well as the International Criminal Tribunal for the Former Yugoslavia (ICTY) have played a significant, but politically controversial role in terms of reconciliation. Beginning in 2000, the perspective of integration into the European Union has become a central factor of influence in internal reforms of the Western Balkans countries. A variety of factors hamper progress such as lasting tensions caused by ethnopolitical and/or territorial issues and differently perceived “truths” in relation to previous wars by regional stakeholders, which still pose enormous challenges in the process of conflict transformation.

BiH exists and functions as a state based on the Dayton Peace Agreement.

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34 See: <http://bportal.ba/hrvatska-reagirala-zbog-hapsenja-u-orasju-traze-razgovor-sa-uhapsenim-pripadnicima-hvo-a/>

## 511 DO THE BOSNIA AND HERZEGOVINA AUTHORITIES ASSUME FULL OWNERSHIP OF THE ACCOUNTING FOR THE MISSING PERSONS? PLEASE ELABORATE.

On 1 January 2011, the Prosecutor's Office of BiH adopted a decision according to which all exhumation and re-exhumation cases are to be handled at the Prosecutor's Office of BiH and the Court of BiH, thus complying with the BiH Criminal Procedure Code on subject matter jurisdiction and local jurisdiction for dealing with cases of exhumation of victims of war crimes. However, these processes are faced with obstacles such as personnel problems in the Prosecutor's Office, defining a place where all evidence and documentation related to exhumations would be archived, and the lack of medical examiners who must verify each identification.

An additional issue is the work of the Missing Persons Institute of BiH itself. The Steering Board of the Missing Persons Institute had worked in an incomplete composition and beyond the mandate, which was indicated by the 2014 and 2015 audit reports. The same is applied to the Board of Directors, who worked as acting directors after the expiry of the mandate. Although the audit reports pointed out to the situation on termination of the mandate and arguable 'legality' of further work of members of the Steering Board, Supervisory Board and the Board of Directors, constant political pressures have maintained such state. Employees of the Missing Persons Institute who worked as investigators had their technical resources cut which are required for their research work on finding the remains and identifying potential locations of mass graves, while the Institute's governing structures were regularly serviced. This approach has led to a decline in the number of found and exhumed graves. Only at the end of 2016, the Council of Ministers of BiH appointed an interim steering board.

In December 2015, the competent authorities were sent information on amendments to the Agreement on Assuming the Role of Co-Founders of the BiH Missing Persons Institute, with the opinion of the Ministry of Human Rights and Refugees regarding the said initiative. The aim of this initiative was to finally resolve the status of the governing structure of the Missing Persons Institute and that BiH takes over the responsibility for governing this institution.

The initiative to resolve the governing structure was launched by the International Commission on Missing Persons in BiH as the co-founder of the Missing Persons Institute, in order that BiH fully assume the responsibility for resolving the issue of missing persons. The House of Peoples of the Parliamentary Assembly of BiH, at its session held on 19 May 2015, adopted a conclusion on the initiative of the International Commission on Missing Persons (ICMP), according to which the Council of Ministers of BiH would assume the ICMP's responsibilities, which until then had the role of the co-founder. The Council of Ministers of BiH, at its session held on 5 April 2016, adopted an opinion on the ICMP's initiative that the Council of Ministers of BiH take over the competences together with the conclusions prepared by the Ministry of Human Rights and Refugees of BiH in cooperation with the Missing Persons Institute of BiH. The Council of Ministers of BiH has tasked the Ministry of Human Rights of BiH to initiate the process of negotiations for amending the Agreement on Assuming the Role of Co-Founders of the BiH Missing Persons Institute with the International Commission on Missing Persons. Given that the situation is politicised, this process has not been completed yet, and as a result BiH has not fully assumed the responsibility for resolving the issue of missing persons.



## 512 IS THERE A LEGAL FRAMEWORK REGULATING THE ISSUE OF MISSING PERSONS FROM THE PREVIOUS CONFLICT AND, IF SO, HOW IS IT IMPLEMENTED?

The Law on Missing Persons (LMP) entered into force on 17 November 2004. This piece of legislation defines the status of a missing person and aims at establishing a comprehensive regime to deal with persons whose disappearance occurred in the armed conflict on the territory of the former Socialist Federal Republic of Yugoslavia from April 1991 to February 1996. The Law contains provisions that, among other things, recognize the right to know the fate of missing persons (Article 3) and the obligation to obtain information (Article 4). Despite reiterated recommendations by international human rights mechanisms, including the UN Human Rights Committee, several provisions of the Law have not been implemented to date.

Furthermore, representatives of associations of relatives of missing persons have expressed concerns because of the alleged presence of people who have political affiliations with the governing bodies of the Missing Persons Institute (MPI), and have stressed that this undermines the overall credibility of the institution.

Article 21 of the LMP provides for the set up of the Central Records of Missing Persons (CEN), intended to include all records that were or are kept at local or entity levels by associations of families of missing persons and other citizens' associations, the Tracing Office of the Red Cross Organisations in BiH, as well as international organizations. Article 22 paragraph 4 of the LMP prescribes that "the verification and entry of previously collected data on missing persons in the CEN BiH should be completed by the competent authority within a year of the date of the establishment of the Missing Persons Institute". This means that the process of verifying and entering data in the CEN should have been completed by 1 January 2009, which was not the case.

The 2014 International Commission on Missing Persons (ICMP) report states that out of the estimated 31 500 missing persons, 25 000 have been located in illegal mass graves and other clandestine locations, out of which 14 792 have been identified using DNA-assisted methods. At the time, there were still 3 000 unidentified bodies in 11 mortuaries.<sup>35</sup>

The status of 20 667 missing persons has been verified since 2009. More than 13 000 cases remain to be verified. Despite the deadlines clearly set by the LMP, representatives of the Missing Persons Institute allege that "it is impossible to predict the date of finalization of the verification". This situation is a source of deep distress for the relatives of missing persons.

The most worrying aspect of the non-implementation of the LMP relates to its Article 15. This Article prescribes the establishment of the Fund for Support to the Families of Missing Persons, intended to be a means of support for the families of missing persons in BiH. Paragraph 2 of the provision indicates that a decision on the establishment of the Fund shall be issued by the Council of Ministers of BiH within 30 days from the date of entry into force of the Law. The same was provided for the organization of issues related to the work of the Fund. Considering the date when the LMP entered into force, the decision on the establishment of the Fund should have been issued by the Council of Ministers of BiH by 17 December 2004. Despite reiterated recommendations made by international human rights bodies and the fact that the Constitutional Court of BiH has issued 13 decisions so far requiring that the Fund be established in 2017, the Fund has not been established yet. The authorities in BiH still do not show any will or intent to address this issue.

35 Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking, International Commission on Missing Persons, ICMP, Sarajevo, 2014

## 513 DO ALL VICTIMS AND FAMILIES OF MISSING PERSONS ENJOY EQUAL TREATMENT THROUGHOUT BOSNIA AND HERZEGOVINA?

This issue remains regulated at the entity level, which fosters discrepancies and shows instances of discrimination. Victims of gross human rights violations during the war are treated differently depending on the place of residence, given that there are different legal frameworks regulating their status and rights. In addition to this, the amount of monthly allowances based on the status of civilian victims of war vary between the two entities and cantons in the Federation of BiH.

The provisions of the the RS Law on Protection of Civilian Victims of War and the practice of local authorities impose a disproportionate burden of proving kinship on relatives of missing persons. They are often requested to demonstrate the circumstances in which their loved ones have died, but are unable to do so because of the nature of enforced disappearance. Many relatives of missing persons thus remain excluded from access to welfare benefits. On the one hand, the authorities do not disclose the fate and whereabouts of their loved ones, while, on the other hand, they impose an unbearable burden of proving kinship in order to allow the latter access to meagre monthly pensions.

Another problem is related to some provisions of the RS Law on Protection of Civilian Victims of War and their interpretation by local authorities. Some provisions of Article 2 of the Law define a civilian victim of war in relation to the actions of “the enemy”, while Article 4 of the Law establishes that “persons who were members of enemy formations, i.e. enemy aiders, cannot realize the right under this Law.”

Given the peculiarities of the conflict in BiH, the terms “enemy” or “enemy formations” are misinterpreted and are certainly vague. So far, local authorities have interpreted these terms as referring to any army or soldiers other than the Republika Srpska army. This directly excludes the civilian victims of war from crimes committed by the Army of RS, from the rights prescribed by this Law.

There is also a substantial and unjustified discrimination between civilian victims and veterans. Article 19 of the FBiH Law on the Fundamentals of Social Welfare, Protection of Civilian Victims of War and Families with Children prescribes that the maximum monetary compensation for civilian victims of war should equal 70% of the maximum monetary compensation available to war veterans with disabilities resulting from the war. Another issue is that this Law has established short deadlines to apply for the civilian victim of war status, resulting in the exclusion of many civilian victims from the rights prescribed by this Law.

According to representatives of the ICMP, although the institution has moved its headquarters in the Hague, it will nonetheless continue to provide technical assistance to the BiH authorities in relation to the process of identification of mortal remains. At the same time, the ICMP intends to withdraw from the agreement as co-founder of the Missing Persons Institute and to leave the corresponding responsibilities with the Council of Ministers of BiH.

Furthermore, the source of concern is that the Prosecutor’s Office of BiH has been allocated meagre resources for carrying out exhumations. For instance, in 2014, only BAM 500 000 (i.e. approximately EUR 250 000) was allocated for this purpose for the year. This amount is clearly insufficient.

As of 1 January 2011, all exhumations and identifications of mortal remains fall under the jurisdiction of the Prosecutor’s Office of BiH. However, it was not until March 2012 that a prosecutorial team comprised of prosecutors, lawyers and investigators started to

operate in full capacity. On the whole, associations of relatives of missing persons are concerned with the current pace of exhumations, and particularly with the identification process. Furthermore, associations and families of missing persons have expressed concern regarding the reported large number of false identifications conducted in the past, and the increasing difficulties in obtaining information on gravesites.

As already stated, in September 2013, a mass grave was discovered in Tomašica near Prijedor. Having in mind the age and precarious health condition of many relatives of missing persons, it is clear that they fear dying without having buried, honoured, and mourned their loved ones. The remains of 393 victims were exhumed from Tomašica. Forensic experts had confirmed that part of the mortal remains originally buried in Tomašica was transferred to the secondary grave of Jakarina kosa, where 325 remains were exhumed in 2001. It is noteworthy that mortal remains were already located in Tomašica back in 2004, but it took until 2013 to conduct exhumations. Similarly, the work on exhumations resumed in Jakarina kosa only in 2015, although the first remains were already located in 2001. In the view of the associations of relatives of missing persons who worked in the area, these delays are a clear example of the lack of effectiveness of several BiH authorities and institutions, including the Cantonal Court in Bihać, the Cantonal Prosecutor's Office in Bihać, the Prosecutor's Office of BiH, the Federal Commission for Missing Persons, and the Missing Persons Institute.

Associations of relatives of missing persons emphasize that the process of exhumation is slow. In many cases, although the Missing Persons Institute has filed a request to conduct exhumations to the Prosecutor's Office of BiH, the latter takes months to decide. A review of 11 mortuaries in the country was launched in 2014. The aim is to establish why almost 3 000 bone samples do not match the genetic profiles of almost 9 000 complete sets of reference provided by family members.

In the course of 2016, mortal remains of 114 victims were exhumed, two mass graves were found in the areas of Bosanski Novi and Zvornik, from which 22 victims were exhumed. Also, 270 missing persons were identified, while the review process is ongoing in regard to mortal remains which have been identified prior to DNA testing. There are still 7 000 people missing in BiH.

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## 515 IS THERE AN INSTITUTION IN CHARGE OF SEARCHING FOR THE MISSING PERSONS, SPEEDING UP THE PROCESS OF UNCOVERING THE TRUTH ABOUT THE DESTINY OF MISSING PERSONS, KEEPING RECORD OF MISSING PERSONS IN BOSNIA AND HERZEGOVINA AS WELL AS FOSTERING THE COOPERATION AND COORDINATION WITH OTHER GOVERNMENT INSTITUTIONS WITH THE AIM OF RECOVERING MISSING PERSONS? PLEASE ELABORATE.

Article 7 of the Law on Missing Persons provides for the establishment of the Missing Persons Institute (MPI), mandated to improve the process of searching for missing persons and expedite identifications of mortal remains of missing persons. The MPI only became fully operational in January 2008. Despite the recommendations from international mechanisms, including the Working Group on Enforced or Involuntary Disappearances (WGEID), the MPI has a problem with regard to the appointment of members of various governing bodies. A considerable number of positions in the governing bodies of the MPI have formally been vacant or held *ad interim* for years, obstructing the proper functioning of the institution and the overall perception of trust when it comes to public scrutiny.

In its 2012 concluding observations, the Human Rights Committee recommended BiH that it should “take all necessary measures to ensure that the Missing Persons Institute is adequately funded and able to fully implement its mandate with a view to completing the resolution of these cases as soon as possible”.

In its 2014 follow-up report, the WGEID noted with concern that “the budget of the MPI has been reduced”. The Group reiterates its recommendation for strengthening the MPI as the central institution for searching for missing persons. It also stresses the need for the MPI to remain open and transparent to the families of victims and civil society and to keep on improving its structure and functioning, including proposing amendments to the Law”.

The MPI is composed of three governing bodies: a six-member Steering Board, a three-member Supervisory Board and a three-member Board of Directors. The staff reports to the Board of Directors, which reports to the Steering Board, which reports to the founders; while the Supervisory Board is a reviewing body that reports to the two other governing boards and to the founders. There is also an Advisory Board, composed of representatives of associations of relatives of missing persons (so far composed of two Bosniak, two Serb and two Croat members). The members of these associations also participate in the work of the Steering Board, but without the right to vote.

The mandate of the members of the Board of Directors expired on 30 June 2012, and those currently holding the positions are doing so ad interim pursuant to a technical mandate. In October 2016, the Council of Ministers of BiH appointed a new interim six-member Board of Directors with the aim that this body in turn appoint a new Steering Board.

(for more details see the answer to question 511)

# ABILITY TO ASSUME THE OBLIGATIONS OF EU MEMBERSHIP - CHAPTERS OF THE EU ACQUIS

## CHAPTER 7: INTELLECTUAL PROPERTY LAW

1

PLEASE DESCRIBE THE DOMESTIC LEGISLATION IN BOSNIA AND HERZEGOVINA CONCERNING COPYRIGHT AND NEIGHBOURING RIGHTS. TO WHAT EXTENT IS IT ALIGNED WITH THE EU ACQUIS? PLEASE INDICATE THE RELEVANT LEGISLATION AND PROVIDE THE CONCORDANCE TABLE, IF AVAILABLE. WHAT ARE THE MAJOR DISCREPANCIES, IF ANY? WHAT ARE THE REASONS FOR THESE DISCREPANCIES? IF DOMESTIC LEGISLATION IS NOT YET ALIGNED WITH THE DIRECTIVE, ARE THERE PLANS TO THAT EXTENT?

The field of copyright and related rights in BiH is regulated by two laws: the Law on Copyright and Related Rights (Official Gazette of Bosnia and Herzegovina, 63/10) and the Law on the Collective Management of Copyright and Related Rights (Official Gazette of Bosnia and Herzegovina, 63/10).

The Law on the Establishment of Intellectual Property Institute (Official Gazette of Bosnia and Herzegovina 43/04) establishes the competences and powers of this institution. By-laws which regulate this field include: Rulebook on the Procedure for Recognising Integrated Circuit Topography, Rulebook on Amendments to the Rulebook on the Procedure for Recognising Integrated Circuit Topography, Rulebook on the Manner and Form of Depositing Copyright Works and Subject Matters of Related Rights and their Entry in the Records of Works, Rulebook on Amendments to the Rulebook on the Manner and Form of Depositing Copyright Works and Subject Matter of Related Rights and their Entry in the Records of Works, Rulebook on the Manner and Form of Fulfilling the Conditions for Granting Licenses to Legal Entities to Perform Tasks Related to Collective Management of Copyright and Related Rights, Rulebook on Amendments to the Rulebook on the Manner and Form of Fulfilling the Conditions for Granting Licenses to Legal Entities to Perform Tasks Related to Collective Management of Copyright and Related Rights, Decision on the Amounts of Remuneration for Reproduction for Private and Other Internal Use of Copyright Works and Subject Matter of Related Rights, Rulebook on Mediation for the Conclusion of the Collective Agreement on the Cable Retransmission of Broadcast Works, Decision on Determining the Identification Number for Registration in the Records of Copyright Works and Subject Matter of Related Rights, Decision on Implementation of Customs Measures for the Protection of the Copyright and Related Rights Holder.

The Law on Copyright and Related Rights has established the primacy of international agreements, i.e. that the provisions of international agreements in connection with copyright and related rights to which BiH has acceded, apply in the event of a conflict with the provisions of this Law.



## 3

DOES THE LEGISLATION IN BOSNIA AND HERZEGOVINA PROVIDE FOR A RENTAL RIGHT, LENDING RIGHT AND THE PROVISIONS ON CERTAIN RELATED RIGHTS SET OUT IN DIRECTIVE 2006/115/EC (THE CODIFIED VERSION OF ORIGINAL DIRECTIVE 92/100/EEC)?

a) If yes, please give full references and the principal contents of the legislation. Does the legislation notably provide for a right to equitable remuneration for rental where an author or performer has transferred or assigned his rental right concerning a phonogram or an original copy of a film to a phonogram or film producer? Does the legislation provide that at least authors obtain remuneration for public lending? Does it provide for derogation from the exclusive public lending right and if so, would this be in line with the Directive? Does the legislation provide that a single equitable remuneration is paid by the user to the relevant performers and phonogram producers every time a phonogram published for commercial purposes is used for broadcasting by wireless means or for any communication to the public?

b) If no, is there any plan to adopt legislation on the protection of rental rights, lending rights and related rights? Please give details and dates.

The legislation regulates rental rights (Article 23 of the Law on Copyright and Related Rights) and lending rights (Article 34 of the Law on Copyright and Related Rights - right to remuneration for public lending).

a) **The right of rental** shall be the exclusive right to rent for use the original or a copy of a work for a limited period of time and for direct or indirect economic advantage.

The right of rental shall not apply to the use of: architectural structures, original or a copy of the work of applied art and industrial design, original or a copy of the work for the purpose of communication to the public, original or a copy of the work for on-the-spot reference, within the scope of employment if the use is limited exclusively to the execution of work-related duties under such employment. The right of the rental of a computer program shall not apply to the rental of a computer program where the program itself is not the essential object of the rental.

When transferring the right of rental of phonograms or videograms on which a work is fixed, the author retains the right to equitable remuneration for each rental. The author may not waive the right under this paragraph. The author of the original work shall retain the right to adequate remuneration from a film producer for each rental of the copy of the audiovisually adapted work. The co-authors shall retain the right to an equitable remuneration from a film producer for each rental of the copies of an audiovisual work.

A performer who transfers his right of renting a fixation of his performance to a phonogram or film producer shall retain the right to equitable remuneration.

### **Right to Remuneration for Public Lending**

The author shall have the right to equitable remuneration if the original or a copy of his work is lent by the libraries or other institutions performing such activity. Public lending, within the meaning of this Law, shall mean allowing the use for a limited period of time, without direct or indirect economic advantage.

The lending right shall not apply to the use of: originals or copies of library material in national libraries, libraries at public educational institutions and public specialized libraries, architectural structures, originals or copies of the works of applied art and industrial design, originals or copies of the works for the purpose of communication to the public, originals or

copies of the works for on-the-spot reference or lending thereof among public institutions, within the scope of employment if the use is limited exclusively to the execution of the work related duties under such employment. Lending of the originals or copies of the computer programs and databases shall be the exclusive right of their author.

If a phonogram published for commercial purposes is used for broadcasting or another form of communication to the public, the user shall pay to the producer of the phonogram a single equitable remuneration for each single use. Also, a performer shall have the right to a portion of the remuneration which the producer of a phonogram is entitled to for public communication of a phonogram in which his performance is fixed. The producer of a phonogram shall pay a half of the remuneration to the performers whose performance is fixed on the phonogram used, unless different share amounts are stipulated by the contract between them.

4

IS THE TERM OF PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN BOSNIA AND HERZEGOVINA IN CONFORMITY WITH DIRECTIVE 2011/77/EU AND DIRECTIVE 2006/116/EC (THE CODIFIED VERSION OF ORIGINAL DIRECTIVE 93/98/EEC)? IF NO, HOW AND BY WHEN IS IT PLANNED TO ALIGN THE LEGISLATION WITH THIS DIRECTIVE?

The term of protection of copyright is in conformity with Directive 2011/77/EU and Directive 2006/116/EC.

The term of protection of related rights, in particular the rights of performers and the rights of the phonogram producers, is not aligned. The BiH Law on Copyright and related Rights stipulates a shorter term of protection (50 years) compared to the precisely prescribed conditions and term of protection stipulated by Directive 2011/77/EU (70 years).

7

DOES THE COPYRIGHT LEGISLATION PROVIDE FOR THE LEGAL PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN CONFORMITY WITH DIRECTIVE 2001/29/EC? IF YES, IS IT FULLY COMPATIBLE WITH THE LISTED EXCLUSIVE RIGHTS OF AUTHORS AND CERTAIN NEIGHBOURING RIGHT HOLDERS?

Legal protection of copyright and related rights is in conformity with Directive 2001/29/EC. The legislation is fully compatible with the provisions on the exclusive rights of authors and certain related right holders.

9

DOES THE LEGISLATION IN BOSNIA AND HERZEGOVINA PROVIDE FOR A SYSTEM OF FAIR COMPENSATION TO RIGHT HOLDERS FOR THE FOLLOWING: REPROGRAPHY, REPRODUCTIONS MADE BY A NATURAL PERSON FOR PRIVATE USE, REPRODUCTIONS OF BROADCASTS MADE BY SOCIAL INSTITUTIONS PURSUING NON-COMMERCIAL PURPOSES?

The Law on Copyright and Related Rights prescribes the obligation of remuneration for private and other internal use, in particular when a work may be reproduced without author's consent, the author of the works which, due to their nature, may be expected to be reproduced by photocopying or recording them on sound, video or text recording media for private or other internal use shall have the right to remuneration for such use. Equal to photocopying shall be considered all other reproduction techniques, and

equal to sound and visual recording devices shall be considered all other devices allowing for the achievement of the same effect. The amounts of individual remunerations for private and other internal reproduction, belonging collectively to all right holders under this Law, shall be fixed by the Council of Ministers of Bosnia and Herzegovina (Decision on the Amounts of Remuneration for Reproduction for Private and Other Internal Use of Copyright Works and Objects of Related Rights, Official Gazette of Bosnia and Herzegovina, 77/11). The remuneration stipulated by the Law (and the Decision) shall be paid by the manufacturers of sound and visual recording devices, manufacturers of photocopying devices and manufacturers of blank audio and video recording media, the importers, and natural persons and legal entities rendering photocopying services against payment.

The exercise of this right is stipulated through compulsory collective management (Law on the Collective Management of Copyright and Related Rights), but it still has not been put into practice (there is no collective organization).

A natural person may reproduce a work freely on paper or similar medium, by means of photocopying or other photography technique making similar effect, or on any other media, provided that the copies are not intended for or accessible by the public and provided that such reproduction is not aimed at gaining direct or indirect economic advantage.

## 10

### DOES THE LEGISLATION PROVIDE FOR THE LEGAL PROTECTION OF TECHNOLOGICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION?

The Law on Copyright and Related Rights in Article 152 prescribes what is considered a violation of the exclusive rights and defines technological measures („Technological measures, for the purposes of this Law, shall mean any technology, device, medium, product, a component or a computer program which are intended, in the normal course of their application, to prevent or restrict acts which are not permitted by the rightholder under this Law... such as encryption, deformation or other transformation of a copyright work or a subject matter of related rights or by a reproduction control mechanism, ensuring the achievement of the protection objective“).

Article 153 of the same Law prescribes for the protection of rights management information – what is considered a violation of the exclusive rights and defines rights management information („a work or the subject matter of the protection of a related right, the author or another right holder, the conditions for the use of the work, as well as numbers or codes representing such information if they are indicated on the copy of the work or the subject matter of a related right or if they appear in connection with the communication thereof to the public“).

Detailed arrangement of the obligation to use indications and the exercise of substantive limitations on rights is regulated by Articles 154 and 155 of the Law.

## 11

## WHAT SANCTIONS AND REMEDIES DOES THE LEGISLATION PROVIDE IN RESPECT OF INFRINGEMENTS OF THE RIGHTS AND OBLIGATIONS SET OUT IN DIRECTIVE 2001/29/EC?

The Law on Copyright and Related Rights stipulates:

Judicial Protection

„If an exclusive right under this Law has been infringed, the holder of such right may demand:

- a) establishment of the infringement committed,
- b) prohibition of the continuation of infringement and of future similar infringements by means of cessation or refraining from the acts infringing such right,
- c) remedying the situation caused by infringement,
- d) withdrawal of the objects of infringement from the channels of commerce, respecting the interests of third conscientious parties,
- e) complete withdrawal of the objects of infringement from the channels of commerce,
- f) destruction of the objects of infringement,
- g) destruction of the means which are exclusively or predominantly intended or used for infringing acts and which are owned by the infringer,
- h) surrender of the objects of infringement to the right holder against the payment of production costs,
- i) publication of the judgement.“

These include: indemnification, penalties, equitable monetary satisfaction for mental anguish suffered as a result of the infringement of moral rights, provisional measures, preservation of evidence, obligation to furnish information.

- *Penal provisions:* fines for a legal entity, fines for an entrepreneur, fines for the responsible person of a legal entity or an entrepreneur, fines for a natural person; destruction of material objects created in perpetration of misdemeanors; protective measure involving the prohibition of business activities

Measures for securing the protection of rights are also provided: deposit and register of copyright works and customs measures.

## 12

## DOES THE COPYRIGHT LAW PROVIDE FOR A RESALE RIGHT FOR THE BENEFIT OF THE AUTHOR OF AN ORIGINAL WORK OF ART?

- a) If yes, is it fully compatible with Directive 2001/84/EC?
- b) If no, is there any plan to adopt any legislation in this field? Please give details and dates.

The Law on Copyright and Related Rights has provided for a resale right for the benefit of the author of an original work of art. The Law on the Collective Management of Copyright and Related Rights, on the other hand, provides for a resale right as the right

which is exercised through compulsory collective management.

The existing legislation is not fully compatible with Directive 2001/84/EC. For example, the lowest selling price above which the circulation of the work of art is subject to the resale right has not been established (this is not specified, presumably, the amount would be BAM 1 000 pursuant to Article 35 of the Law on Copyright and Related Rights). It is necessary to further specify the right to obtain information (the current Law on the Collective Management of Copyright and Related Rights only specifies the provision on the obligation to provide information within 30 days, while it does not specify the deadline in which the information necessary to exercise this right can be requested).

In BiH, the resale right has not been put into practice yet, i.e. there is no collective organization for the exercise of this right.

## 15

### DOES THE COPYRIGHT LAW PROVIDE FOR THE PROTECTION OF CABLE RETRANSMISSION?

- a) If yes, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular in relation to the following: principle of mandatory collective management extended to non-members of a collecting society; principle of good faith in the negotiations for cable retransmission and principle of mediation?
- b) If no, is there any plan to adopt any legislation in this field? Please, give details and dates.

Article 30 of the Law on Copyright and Related Rights, within Section C: Economic Rights of the Authors, defines broadcasting and cable retransmission, which implies its protection through the „authority to prohibit or allow exploitation of the work or a copy of the work“, with the permission of the author, and the right to remuneration for any exploitation of the work („The right of rebroadcasting or cable retransmission shall be the exclusive right to a simultaneous, unaltered and unabridged communication to the public of the broadcast of a work when:

- a) such communication is made by a broadcasting organization other than the one which initially broadcasted the work or b) the communication is made by another entity by cable or microwave system which involves more than 100 cable connections or when the work is initially broadcasted from another state (cable retransmission).
- b) Compliance with Directive 93/83/EEC has been achieved and taken into consideration when drafting the Law on Copyright and Related Rights and the Law on the Collective Management of Copyright and Related Rights. Thus, the Law on the Collective Management of Copyright and Related Rights stipulates mandatory collective management for cable retransmission of the copyright works, which the competent collective organization exercises without a contract with the author (i.e. on the basis of the Law itself). The principle of good faith in the negotiations is defined in general terms (for collective organizations and users), while in the section on mediation (collective organization and representative association of users), the possibility of engaging a mediator for the purpose of conclusion of the collective agreement on the cable retransmission of broadcast works is stipulated.



16

DOES THE LEGISLATION IN BOSNIA AND HERZEGOVINA PROVIDE FOR RULES ON THE DIGITISATION AND ONLINE DISPLAY OF SO-CALLED ORPHAN WORKS, I.E. THE WORKS THAT ARE STILL PROTECTED BY COPYRIGHT BUT WHOSE AUTHORS OR OTHER RIGHTHOLDERS ARE NOT KNOWN OR CANNOT BE LOCATED OR CONTACTED TO OBTAIN COPYRIGHT PERMISSIONS?

a) If yes, is it fully compatible with Directive 2012/28/EU?

b) If no, is there any plan to adopt any legislation in this field? Please give details and dates.

BiH legislation does not regulate orphan works as such, and accordingly, nor the rules for digitising and displaying them online.

The Law on Copyright and Related Rights deals with ‘anonymous works’ and ‘unpublished works of which the author is unknown’ in the section ‘Unknown Author’ (Article 11) for the purpose of identifying authorship and transferring/managing of rights in those cases (when transferring single economic rights to third parties the prescribed conditions are „customary for the regular use of a particular kind of work“). These legal provisions are not provisions on ‘orphan works’, and it is necessary to incorporate a legal framework for this field into the Law on Copyright and Related Rights.

17

IS THE FUNCTIONING OF COLLECTIVE MANAGEMENT ORGANISATIONS IN BOSNIA AND HERZEGOVINA IN CONFORMITY WITH DIRECTIVE 2014/26/EU? DOES THE LEGISLATION PROVIDE THE RULES ENABLING THE MULTI-TERRITORIAL LICENSING BY COLLECTIVE MANAGEMENT ORGANISATIONS OF AUTHORS’ RIGHTS IN MUSICAL WORKS FOR ONLINE USE SET OUT IN THIS DIRECTIVE? IF NO, IS THERE PLAN TO ADOPT ANY LEGISLATION IN THIS FIELD? PLEASE, GIVE DETAILS AND DATES.

The collective management of copyrights is regulated by the 2010 Law on Collective Management of Copyright and Related Rights. The Law is not in conformity with Directive 2014/26/EU on several different grounds. The Law contains provisions that are contrary to the provisions of the Directive, for instance, legal form of organizations for collective management of copyright; the assumption of collective management of copyright; and in general it does not provide for certain aspects (e.g. integration of repertoire). Legislative amendments are required to bring the Law in line with the Directive (e.g. distribution of remunerations to rightholders; transparency principle – annual report on transparency).

The legislation does not provide for the rules enabling the multi-territorial licensing by collective management organizations of authors’ rights in musical works for online use and it is necessary to bring it in line with Directive 2014/26/EU (particularly having in mind the existence and work of collective organizations in BiH in the field of collective management of copyright musical works).

## CHAPTER 14: TRANSPORT POLICY

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39

IS THERE LEGISLATION ON RAIL PASSENGERS' RIGHTS EQUIVALENT TO REGULATION (EC) NO. 1371/2007?

- a) What are the rules on minimum requirements for the information to be provided to passengers before and during the journey, including the availability of information in accessible formats for persons with disabilities?
- d) What are the rules on transport conditions (including accessibility, assistance and information to be provided) for persons with disabilities or reduced mobility?

We are not familiar with the existence of a legal obligation of providing such information in an accessible format for persons with disabilities. From personal experiences of persons with disabilities, it is known that rail-related information is transmitted orally to a person with disabilities or his/her companion by a conductor or other employees of a railway transport company. Persons in wheelchair are also assisted by a conductor or other employees of a railway transport company, who are obliged to provide necessary assistance to all passengers who require assistance, including persons with disabilities.

## CHAPTER 19: SOCIAL POLICY AND EMPLOYMENT

### 21 ARE EMPLOYERS FREE TO TAKE ON WHATEVER WORKERS THEY WISH? ARE THERE SPECIFIC ANTI-DISCRIMINATION PROVISIONS (RACIAL ETHNIC ORIGIN, RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION)?

The right to work and employment is guaranteed by the FBiH Constitution and the RS Constitution equally for all citizens and is exercised in accordance with the laws.

The new labor laws adopted at entity levels contain a general provision prohibiting discrimination on all grounds, however, this provision is not observed in practice, which leads to discrimination in the field of labor and employment.

The BiH Law on Prohibition of Discrimination also prohibits discrimination in the field of labor and employment, and all laws in BiH should be interpreted in accordance with this Law, which is also not the case in practice.

There are no effective institutional mechanisms to combat discrimination in labor or in employment, and there is an ever increasing number of lawsuits for employment discrimination before courts.

The Laws on Professional Rehabilitation, Training and Employment of Persons with Disabilities, which are adopted in both entities, provide persons with disabilities with access to general technical and vocational guidance programmes, job search services, and professional and continuous training. Employers are free to decide which workers they want to employ.

### 207 HOW DO LABOUR MARKET POLICY DELIVERY SYSTEMS FUNCTION? WHAT ARE THE REGISTRATION RATES OF THE UNEMPLOYED? WHAT IS THE REGISTRATION SHARE OF MEN AND WOMEN? WHAT IS THE ROLE OF THE OFFICIAL INFORMATION SERVICES?

Labor market policy delivery systems are almost non-existent. BiH has a high unemployment rate. It is estimated that BiH waives 16% of GDP due to gender-based differences in labor force participation.

Although, according to the 2013 census, women account for 51% of the total population<sup>36</sup>, in the total number of employed persons they account for 42%, while at the same time 53% of them are unemployed.<sup>37</sup>

216. If possible, provide data or proxy allowing for time comparisons on people whose living conditions are severely constrained by a lack of resources (experiencing at least 3 out of 9 deprivations: people who cannot afford i) to pay their rent, utility bills, loans etc. ii) to keep their home adequately warm, iii) to face unexpected expenses, iv) to eat a meal with meat, chicken, fish, or vegetarian equivalent every second day, v) a week's holiday

36 2013 Census of Population, Households and Dwellings in Bosnia and Herzegovina, Census Results, Agency for Statistics of Bosnia and Herzegovina, URL: <http://www.popis2013.ba/popis2013/doc/Popis-2013prvoIzdanie.pdf>

37 Persons in Paid Employment by Activity in March 2017, Agency for Statistics of Bosnia and Herzegovina, 2017, URL: [http://www.bhas.ba/saopstenja/2017/ZAP\\_2017M03\\_001\\_01\\_BS.pdf](http://www.bhas.ba/saopstenja/2017/ZAP_2017M03_001_01_BS.pdf)

away from home once a year, vi) a car, vii) a washing machine, viii) a colour TV or ix), a telephone.

BiH does not have a uniform registry of persons with disabilities which would also include data on gender and age structure, type of disability, socio-economic status and other relevant data.

Nonetheless, some associations and unions keep records on their members and their needs.

According to the data of the Association of Organizations for Support to Persons with Intellectual Impairments of Republika Srpska (MeNeRaLi), and based on the data they collect and charts that are filled out in their database, out of 3 000 persons with reduced intellectual abilities, 60% of them cannot regularly pay the rent, utility bills and loans; 50% cannot afford to keep their home adequately warm; 80% cannot cover for unexpected expenses; 60% cannot afford to have a meal with meat, chicken, fish or vegetarian equivalent every second day; 85% cannot afford a week's holiday away from home once a year; 60% cannot afford a car; 5% cannot afford a colour TV and 5% a telephone. According to MeNeRaLi data, in about 60% of such families nobody has employment, while in 30% only one parent has employment.

220. Identify vulnerable groups and present data/estimates about their size (e.g. persons with disabilities, unemployed, those in the informal sector/subsistence agriculture, ethnic/cultural communities (please specify), families, children and young people, women, elderly, single parent families etc.) and describe the underlying processes that cause vulnerability. What are the policy responses with regard to the individual groups?

According to the available analyzes and reports, persons with disabilities are one of the most marginalized groups in BiH that are exposed to discrimination in all spheres of life. Persons with reduced intellectual abilities (or persons with special needs or persons with mental disabilities), especially those with the most severe forms of intellectual disability living in rural areas, are at a particular disadvantage. They completely depend on the care of their family members, usually mothers.

Mothers of children with reduced intellectual abilities are dedicated to those children 24 hours a day, they cannot work, they do not have any income, they will never have a pension, they do not have free time, time for entertainment, or an opportunity to go have coffee or see a movie.

Only a few manage to get employment, but only if another family member can look after the child, and that family member are most often grandmothers. Banja Luka is the only city in Republika Srpska that has a kindergarden for children with the most severe forms of disability.

Furthermore, children with reduced intellectual abilities after completing their education are faced with sudden isolation and „exclusion from society“, because going to school and socializing with peers was the main form of socialization. After this they are „condemned“ mostly to the family and the immediate environment and, as a result, quickly lose their remaining abilities. The inability to self-representation puts persons with reduced intellectual disabilities in a particularly difficult group of citizens, given that they are unable to protect themselves against all forms of abuse or protect their property. A particularly sensitive issue is what happens when they lose their parents or guardians, because due to the lack of supported housing services these persons usually end up in an institution. Also, the law does not define the disposal of their property after the death of their parents, and especially after the death of persons with reduced intellectual abilities themselves.

Families in which persons with reduced intellectual abilities live are a special category, because the specifics of life and care for a child with reduced intellectual abilities have special weight – in 80% of cases persons with reduced intellectual abilities are entirely dependent on others all day, 15% are partially independent, while only 5% of them are independent. The family as a whole suffers, other siblings are deprived of many things that other parents afford their peers. Often after the death of parents, siblings assume the role of „parenting“, which the law also requires them. As a result, siblings often remain antisocial because they care after a person with reduced intellectual abilities, do not marry, do not have offspring or are unable to find employment.

About 99% of persons with reduced intellectual abilities never have their own families or offspring!

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## 226 HAS BOSNIA AND HERZEGOVINA ADOPTED ANY POLICY DOCUMENT CONTAINING THE MAIN PRINCIPLES OF DISABILITY POLICY? IS THERE ANY CORRESPONDING ACTION PLAN (STAKING OUT THE WAY HOW THE ACTIONS DESCRIBED IN THE POLICY DOCUMENT WILL BE IMPLEMENTED)? IS THERE A SPECIFIC COORDINATION BODY OVERSEEING THE IMPLEMENTATION OF THE DISABILITY POLICY?

The Council of Ministers of BiH adopted a Uniform Disability Policy in Bosnia and Herzegovina in 2008, therefore, even before acceding to the UN Convention on the Rights of Persons with Disabilities, BiH had created a political framework for full respect for the principles and provisions of the said Convention. This is the only document which regulates the rights of persons with disabilities at the state level. As part of this process and action plans for the implementation of the said Policies, the entity strategies were adopted: 2011-2015 Strategy for the Equalization of Opportunities for Persons with Disabilities in the Federation of BiH and 2010-2015 Strategy for the Improvement of the Social Status of Persons with Disabilities in Republika Srpska. Both strategies have been implemented only on a small scale and have made an insignificant impact.

A new Strategy for Advancement of the Rights and Status of Persons with Disabilities 2016-2021 was adopted in the Federation of BiH. The new strategy for Republika Srpska is being drafted and it should cover the period to 2026. The FBiH Strategy 2016-2021 provides that within six months after the adoption of the strategy at the entity level, cantons adopt their action plans for its implementation, taking into consideration the priority issues and needs of persons with disabilities in their local communities. The deadline of six months expires at the end of June and action plans have not been adopted in all cantons. However, the coordination body for monitoring the implementation of the Strategy at the entity level has not been established yet, although it should have been established three months after the adoption of the Strategy.

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## 227 HAS THE EUROPEAN DISABILITY STRATEGY 2010-2020 BEEN TAKEN INTO ACCOUNT WHEN DRAFTING AND DESIGNING THE DISABILITY POLICY? IF YES, PLEASE HIGHLIGHT ANY CONCRETE MEASURES WHERE THE EUROPEAN DISABILITY STRATEGY 2010-2020 HAS BEEN OF HELP OR INSPIRED POLICY MAKERS TO DEVELOP CERTAIN ACTIONS.

The FBiH Strategy for the Equalization of Opportunities for Persons with Disabilities 2016-2021, among other documents, refers to the European Disability Strategy 2010-2020. The new 2016-2021 Strategy defines nine objectives and many activities on specific



issues that should improve the position of persons with disabilities in society, which also coincide with the eight key fields from the European Disability Strategy: 1. improve the status of persons with disabilities through the improvement of the legislative framework and ensure legal support and protection of the rights of persons with disabilities; 2. improve the accessibility for persons with disabilities through the removal of architectural and information and communication barriers as a crucial step towards their full inclusion in society; 3. include persons with disabilities in all spheres of life on an equal basis, especially in the field of education, culture, sport, public and political engagement; 4. improve disability prevention programmes and early detection and intervention programmes; 5. improve the quality and availability of services and introduce new services in line with the needs of persons with disabilities; 6. strengthen employment and self-employment opportunities of persons with disabilities; 7. prevent any form of exploitation, abuse and violence against persons with disabilities; 8. raise public awareness on disability issues with a view to eliminate prejudice, cultural and psychological barriers; 9. strengthen the capacities of organizations of persons with disabilities and guarantee their participation in all social processes.

## 228 DOES THE DISABILITY POLICY OPERATE ON THE BASIS OF THE MAINSTREAMING CONCEPT? IF YES, PLEASE GIVE ANY EXAMPLES OF WHERE AND HOW THE MAINSTREAMING APPROACH WAS USED AND WORKED SUCCESSFULLY. HOW IS THE APPLICATION AND IMPLEMENTATION OF THE MAINSTREAMING CONCEPT ENSURED ACROSS VARIOUS POLICY AREAS?

The Disability Policy of BiH and the Strategies for its implementation in both entities proclaim the equal participation of persons with disabilities in all spheres of life and social activities under equal conditions with other citizens. Several laws in the field of labor, education, health care and social protection have been adopted recently in both entities, where much more attention is given to the issues of inclusion of persons with disabilities, but in practice, due to the lack of implementing acts, the expected results are not achieved.

Laws in the field of education that prescribe equal and inclusive education for all, including children and youth with disabilities, are not implemented in practice, because no preconditions have been made for legal solutions to be implemented. By-laws have not provided for: an accessible environment, measures of reasonable adjustment such as providing appropriate orthopedic, typhological and other aids, teaching materials and textbooks adapted for children with different disabilities, teaching assistants, budgetary resources for these purposes. On the contrary, special funds for financing the work of special schools for persons with disabilities are planned in the budgets of both entities, which is the best illustration how the authorities see inclusive education. The largest number of individual legal solutions, which relate to persons with disabilities, are based on a medical approach to disability, which means that they do not provide for mechanisms for full inclusion of persons with disabilities and active participation in creating an environment in which they live, but are intended to provide basic preconditions for meeting the essential needs of persons with disabilities. Medical approach to persons with disabilities excludes the possibility of their full inclusion into all spheres of social activity, so that they still remain on the margins.

**229** IN MOST EU MEMBER STATES, NATIONAL DISABILITY COUNCILS (COMPRISING NGOS, ORGANISATIONS REPRESENTING THE PERSONS WITH DISABILITIES, DISABILITY EXPERTS, CIVIL SERVANTS AND OTHER STAKEHOLDERS) HAVE BEEN ESTABLISHED. HAVE SIMILAR BODIES BEEN ESTABLISHED IN BOSNIA AND HERZEGOVINA? IF YES, ARE THESE BODIES ACTIVELY INVOLVED IN THE DECISION-MAKING PROCESS RELATED TO PERSONS WITH DISABILITIES? IF NO, IS THERE ANY PLAN TO CONTRIBUTE TO THE CREATION OF SUCH BODIES?

In 2011, the Council of Ministers of BiH established the Council for Persons with Disabilities as a consultative, interdepartmental and coordinating body, whose task is to improve, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities. The Council consists of 20 members, of which 10 are representatives of relevant ministries, while the other 10 representatives are appointed by organizations of persons with disabilities. Representatives of the Council for Persons with Disabilities are consulted when adopting new laws.

However, after almost six years of existence of this body, persons with disabilities in BiH have not experienced any significant impact of its work. Starting with the unresolved financing of this body, to the limited participation of persons with disabilities in its work (which does not include representatives of associations of parents of children with disabilities, deaf persons, persons with psychosocial disabilities...), this body is not an adequate mechanism for the inclusion of persons with disabilities in the promotion and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities, as well as in decision-making processes, analyzing the situation and developing strategies and action plans.

Since 2005, Republika Srpska has an interdepartmental body for dealing with disability issues within the RS Government, which is managed by the Ministry of Health and which also includes representatives of persons with disabilities. It meets four times a year or as necessary, however, its action is not recognized as efficient by persons with disabilities.

230. At which level of governance are disability issues administered and dealt with? If at the central level, are there decentralised bodies? If at the local level, is there country-wide coordination of disability policies?

There is no coordination of policy management concerning the rights of persons with disabilities at the state level. Most of the rights in the field of social protection are under the competence of the entities, as well as the cantons in the Federation of BiH. Health care and education are also regulated by the BiH Constitution, the FBiH Constitution, the RS Constitution, the Statute of the Brčko District, but the rights are implemented at the level of entities or municipalities in Republika Srpska, i.e. the cantons in the Federation of BiH. Unfortunately, there is no efficient coordination between the different levels of governance that regulate the rights of persons with disabilities, so that lower levels of governance do not align necessary laws with those on higher levels. In the practical exercise of individual rights from different fields, persons with disabilities are exposed to various forms of discrimination such as the territorial principle (rights are different, their scope and manners of their exercise depending on where a person resides) between the entities, but also between the cantons in the Federation of BiH.

## 231 ARE THERE ANY INITIATIVES TO RAISE AWARENESS OF DISABILITY ISSUES AMONG THE GENERAL POPULATION AND TO FOSTER GREATER KNOWLEDGE AMONG PEOPLE WITH DISABILITIES OF THEIR RIGHTS AND OF HOW TO EXERCISE THEM?

There were no significant campaigns aimed at raising public awareness of the rights of persons with disabilities. In 2012, the FBiH Ministry of Labor and Social Policy conducted a campaign that could be learned about from several billboards set up at several locations in the Federation of BiH. Mass media channels such as TV or radio, which have the largest reach, especially to those living in rural areas of BiH, were not used. Non-governmental organizations and UNICEF have conducted several campaigns on the rights of children and persons with disabilities, but insufficiently, given the importance of topics. Representatives of the authorities at all levels did not launch any campaigns with a view to raise public awareness on the rights of persons with disabilities. The activity of non-governmental organizations, which through their activities and results of projects have initiated significant changes related to reporting on persons with disabilities, is limited by modest donor funds, but without sustained education, significant results cannot be expected.

## 232 IS THE PROTECTION OF PERSONS WITH DISABILITIES AS A SPECIFIC SEGMENT OF VULNERABLE POPULATION PROVIDED FOR IN THE CONSTITUTION OR DOES A SPECIFIC "DISABILITY LAW" EXIST IN THE LEGISLATION? DOES THE LABOUR LEGISLATION EXPLICITLY PROHIBIT DISCRIMINATION IN HIRING AND EMPLOYMENT ON THE BASIS OF DISABILITY?

A uniform law on the protection of the rights of persons with disabilities at the state level does not exist, nor is their protection prescribed by the Constitution. Amendments to the Law on Prohibition of Discrimination in 2016 introduced prohibition of discrimination on the basis of disability and defined the provision of reasonable adjustments in the context of employment. However, this Law does not mention that refusal to provide reasonable adjustments is discrimination.

Labor legislation explicitly prohibits discrimination on the basis of disability. In both entities there are laws on vocational rehabilitation and employment of persons with disabilities which prescribe in detail the employment of persons with disabilities, and these are the only laws that regulate a field only for persons with disabilities. Entity laws also provide for the establishment of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities in the Federation of BiH and the Fund for Professional Rehabilitation and Employment of Disabled Persons of Republika Srpska as institutions that carry out various activities aimed at integrating persons with disabilities into the labor market.

## 233 VARIATIONS IN TERMINOLOGY AND DEFINITIONS OF DISABILITY USED IN DIFFERENT SECTORS OF LAW AND POLICY CAN LEAD TO INCONSISTENT APPLICATION OF THE LAW AND SOMETIMES EVEN RESULT IN DENIAL OF BENEFITS. PLEASE BRIEFLY DESCRIBE THE DIFFERENT DEFINITIONS OF DISABILITY THAT THE LEGISLATION OPERATES WITH. TO WHAT EXTENT ARE SUCH LEGISLATIVE DEFINITIONS UNIFORM AND COHERENT?

The issue of defining the concept of disability in the legislative system of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska is

recognized as an issue that needs to be addressed in a uniform way in order to equalize the rights of persons with disabilities throughout BiH. The issue of disability is not defined in State and Entity constitutions, whereas certain laws (in the fields of labor, employment, social and health protection, education, pension and disability insurance, veterans protection) define disability in different ways.

The current definitions generally do not take into consideration the impact of environmental factors in defining disability. Disability and reduced working capacity are determined by a number of competent authorities, which depends on the type and cause of disability and the time of its occurrence, and a medical model of access to disability is generally applied.

In such system, in relation to the definition of the concept of disability, persons with disabilities are put in a position in which their rights are determined in a significantly different way, the exercise of rights is hindered, thereby undermining their dignity, preconditions for equal opportunities and participation are not created, various forms of discrimination are carried out (on the basis of cause and circumstances of occurrence, territorial principle, type of disability).

Persons with reduced intellectual abilities are at a particular disadvantage, who are defined as „mentally challenged“, „retarded“, „underdeveloped“, „persons with special needs“, etc. Many rights are defined in the legislation in accordance with the disability rating, while for persons with reduced intellectual abilities the category of disability is defined narratively or descriptively, without percentages, according to a „functional state“. As a result, this category cannot exercise certain rights.

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## 234 THE LACK OF RELIABLE STATISTICAL INFORMATION IS A SERIOUS OBSTACLE TO EFFECTIVE POLICYMAKING IN THE DISABILITY AREA. HAS A CENTRALISED DATA COLLECTIONS SYSTEM, CONTAINING THE RELEVANT DATA, BEEN DEVELOPED IN BOSNIA AND HERZEGOVINA? WHAT ARE THE ARRANGEMENTS FOR CONVERGENCE WITH THE DATA GATHERING EXERCISES, WHICH THE EU CONDUCTS IN THE AREA OF DISABILITY?

In Bosnia and Herzegovina, there is neither a single registry of persons with disabilities, nor there are aggregate data related to persons with disabilities in one place.

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## 235 IN MOST OF THE EU COUNTRIES, SOCIAL PROTECTION AVAILABLE TO PEOPLE WITH DISABILITIES INCLUDES RIGHT TO HEALTH AND PENSION INSURANCE, THE RIGHT TO EMPLOYMENT AND OCCUPATIONAL REHABILITATION, CHILD ALLOWANCES AND SOCIAL WELFARE RIGHTS. PLEASE BRIEFLY DESCRIBE WHICH DIFFERENT FORMS OF SOCIAL PROTECTION ARE AVAILABLE FOR PERSONS WITH DISABILITIES. IS AN EFFORT MADE TO ASSURE DECENT LIVING CONDITIONS FOR PEOPLE WITH DISABILITIES? HOW ARE DECENT LIVING CONDITIONS DEFINED?

Persons with disabilities in BiH exercise different rights and benefits depending on two key factors:

- place of residence, given that these rights are regulated by the entity and cantonal laws, which determine the rights and needs within the framework of social protection in dif-

ferent ways;

- cause of disability, given that the rights are defined based on the manner of occurrence of disability and are drastically different for persons who have acquired disabilities during the war as members of military formations; during the war as civilians or unrelated to the war, by birth or by acquiring disability in peace.

When comparing the protection provided to disabled war veterans with the protection of persons whose disability is not a result of the war, but is a result of accident, illness or congenital defect (an inconvenient term „persons with non-war related disabilities“ is used in the BiH legislation), there is a distinct discrimination against civilian persons with disabilities.

Financial assistance for „persons with non-war related disabilities“ are almost five times less than the financial assistance for disabled war veterans with the same disability rating. Civilian victims of war are the third group of persons with disabilities legally recognized that are in somewhat better position compared to „persons with non-war related disabilities“, however, these persons still have lower benefits in relation to disabled war veterans.

The benefits received by disabled war veterans with a high disability rate in both entities exceed the average salary, while the amounts of benefits received by persons with the same disability rating are below the minimal statutory salary. In the Federation of BiH, „persons with non-war related disabilities“ with 100% disability rating can receive a maximum of BAM 396 per month and BAM 160 per month in Republika Srpska. Disabled war veterans with the same disability rating can receive BAM 1 845 per month in the FBiH and BAM 1 825 in the RS.

When it comes to the scope of rights, differences in favor of disabled war veterans and civilian victims of war, in relation to other persons with disabilities, are unreasonably huge, which directly violates Article 28 of the Convention on the Rights of Persons with Disabilities. There are also considerable differences in the criteria for receiving assistance for different groups of persons with disabilities. Since 2009, „persons with non-war related disabilities“ can exercise the right to financial assistance only if their disability rating is 90% or higher; the prescribed threshold for civilian victims of war is 60%, while the threshold for disabled war veterans is only 20%. Thus, any kind of assistance is denied to all persons with a disability rating lower than 90% which is not caused by war. Here is an example of the mentioned differences in the exercise of basic rights of persons with disabilities in terms of the disability rating in the Federation of BiH (the right to an orthopedic allowance or allowance for care and assistance is limited only to persons with higher level disabilities and to civilian victims of war and disabled war veterans).

The rights exercised by „persons with non-war related disabilities“ if their disability rating is 90% or higher:

- personal disability benefit – up to BAM 109 per month
- allowance for care and assistance of another person – up to BAM 274 per month
- orthopedic allowance – up to BAM 19 per month
- The rights exercised by civilian victims of war if their disability rating is 60% or higher:
- personal disability benefit – up to BAM 574 per month



- allowance for care and assistance of another person – up to BAM 574 per month
- orthopedic allowance – up to BAM 166 per month
- The rights exercised by disabled war veterans if their disability rating is 20% and higher:
- personal disability benefit – up to BAM 805 per month
- allowance for care and assistance of another person – up to BAM 805 per month
- orthopedic allowance – up to BAM 292 per month

In addition to the distinct difference in the level of disability which is prescribed as a condition to exercise the right to financial assistance, disabled war veterans also enjoy benefits that are unavailable to other categories of persons with disabilities, such as one-time financial assistance, spa rehabilitation and housing programmes for disabled war veterans and families of fallen soldiers.

Furthermore, due to unequal legal regulations within the state, all persons are not covered by compulsory health insurance. It is mostly guaranteed for persons whose disability is rated between 90% and 100%, while the rights of other persons with disabilities are not equal in all cantons in the Federation of BiH.

The rights under social protection are:

- 1) financial and other material assistance (personal disability benefit, care and assistance of another person and an orthopedic appliance; child benefit),
- 2) training for living and work,
- 3) placement in different family/household,
- 4) placement in social protection institutions,
- 5) social and other professional services,
- 6) home care and domestic assistance.

The Federation of BiH is obliged to provide the budgetary resources and services for some of the listed rights, as well as cantonal governments. The funds for financial assistance from point 1) are ensured at the F BiH level for persons with a disability rating from 90% to 100%, while funds for other persons with disabilities are allocated at the cantonal level. Most cantons did not adopt policies and decisions which would provide support to these persons, which directly causes dual discrimination based on disability and on the place of residence. A particular problem is that the same type of disability is rated differently in different cantons. One such example are persons with Down syndrome, for whom there is no uniform rating throughout the Federation of BiH, which leads to uneven financial and other forms of support, depending on the canton in which the person lives. To date, cantonal governments have not established mechanisms which would ensure equality in the exercise of the rights of persons with disabilities throughout the Federation of BiH.

The amount of assistance that a person with disabilities receives is not determined on the basis of explicit parameters which would determine the real needs of each person and which would ensure that the amount of funds is adequate for the dignified life of persons with disabilities. Due to this situation, the majority of persons with disabilities is below the poverty line or at constant risk of finding themselves in such a situation.

**236** SOCIAL BENEFIT SYSTEM CAN SOMETIMES HAVE DE-MOTIVATING EFFECTS IN THE SENSE THAT A DISABLED PERSON WHO IS ABLE TO WORK STILL CHOOSES TO GO ON SOCIAL BENEFITS INSTEAD OF WORKING. DIFFERENT MEANS CAN BE APPLIED TO BOOST THE EFFICIENCY OF THE SYSTEM AND TO PREVENT A SITUATION LIKE THIS. PLEASE BRIEFLY DESCRIBE WHAT MEASURES HAVE BEEN TAKEN IN ORDER TO INCREASE FLEXIBILITY OF THE SYSTEM AND STIMULATE PERSONS WITH DISABILITIES CAPABLE OF WORKING TO TAKE UP WORK?

As mentioned above, the rights of disabled war veterans and persons with disabilities are not equal, including benefits and types of disability assistance. The assistance available to persons with disabilities is insufficient to ensure a dignified life, and certainly cannot be the reason for them to get demotivated for inclusion in the labor market.

Laws on professional rehabilitation, training and employment of persons with disabilities have been adopted in both entities, but have not significantly contributed to a higher employment rate of persons with disabilities. For details on the mechanisms prescribed by these laws, see the answer to question 237.

**237** DESCRIBE SHORTLY THE DIFFERENT MEANS BY WHICH ACTIVE PARTICIPATION AND INCLUSION OF PEOPLE WITH DISABILITIES IN THE LABOUR MARKET ARE PROMOTED. TO WHAT EXTENT IS THE QUOTA SYSTEM APPLIED AND WHICH ARE THE OTHER INCENTIVES AND MEASURES AIMED AT ENCOURAGING DISABLED PERSONS' ENTRY INTO THE LABOUR MARKET?

In both entities, special laws have been adopted only in the field of labor and employment, which in detail regulate the vocational rehabilitation, training and employment of persons with disabilities, incentive measures for employers who employ persons with disabilities, including the provision of funds for their implementation.

Under these laws, persons with disabilities can be employed in the open labor market under general conditions and under special conditions in enterprises that are specifically established for these purposes.

In both entities, there is a quota system for the employment of persons with disabilities in the open labor market, but there are certain differences regarding its comprehensiveness. In Republika Srpska, the obligations under the quota system refer only to public institutions and state-owned enterprises, while in the Federation of BiH, the quota system also refers to all other business entities, including the private sector which employs more than 16 workers. It is also stipulated that by not complying with this obligation, the employer shall pay financial resources in the funds for vocational rehabilitation for the purpose of encouraging rehabilitation and employment of persons with disabilities. However, a monitoring mechanism is not put in place in order to monitor the compliance with this obligation by employers. There are certain problems arising out of the implementation of these measures and which are reflected in the lack of a clear definition of persons with disabilities, precise records of employed persons with disabilities, as well as the lack of a clear obligation which state institution should supervise the fulfillment of the prescribed quotas or the payment of prescribed obligations by employers.

The Laws provide incentive measures for employers who employ persons with disabilities, which are differently designed in entity laws, but have the same goal of increasing the employment of persons with disabilities.

Certain results in the employment of persons with disabilities have been achieved by employing persons with disabilities in enterprises for employment of persons with disabilities. However, the number of these enterprises is still insufficient and most of them operate only in larger urban centers, which results in reduced employment opportunities for persons with disabilities from smaller or rural areas. Due to the insufficient promotion of the possibility of using incentive measures, a small number of employers decide to start a company for the employment of persons with disabilities.

Self-employment is provided as one of the forms of employment, but this form of work engagement of persons with disabilities still has not been adequately regulated by by-laws.

Funds for vocational rehabilitation and employment of persons with disabilities have been established in both entities as part of the measures to ensure employment of such persons, whose function is fundraising and support to employment programmes and implementation of stimulative measures for the employment of persons with disabilities.

Certain difficulties in the employment of persons with disabilities in the Federation of BiH may arise from the prescribed determining of medical fitness as one of the conditions for employment, which allows medical staff and employers to make different interpretations.

Although both entity laws on vocational rehabilitation and employment of persons with disabilities contain general provisions that give priority to employment of persons with the most severe disabilities, but which should be regulated more thoroughly by by-laws, there is, however, no significant employment of persons with the most severe disabilities.

The purpose of these laws is to encourage employment of persons with disabilities, primarily in the open labor market, especially in the public sector, and with the aim of greater integration of persons with disabilities in society. However, due to the low awareness of employers about the working capabilities of persons with disabilities and the lack of opportunities for the refund of taxes and contributions to employers, which is largely related to the Federation of BiH, the expected results have not been accomplished.

There has been a number of significant changes in the reporting period given that new labor laws have been adopted in both entities. These laws are reform laws and are aimed at resolving the relationship between workers and employers with a view to increase the efficiency of labor market functioning. The position of persons with disabilities has not been improved with the adoption of these laws. Moreover, it can be said that in certain segments their position has been degraded.

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## 238 DESCRIBE SHORTLY THE SYSTEM OF VOCATIONAL TRAINING AVAILABLE TO PERSONS WITH DISABILITIES. HOW IS IT ENSURED THAT THE TRAINING IS ADJUSTED TO THE NEEDS OF THE MARKET?

The Framework Law on Secondary Vocational Education and Training in Bosnia and Herzegovina defines that students with disabilities can attend regular vocational schools. However, in practice, there are cases when school management often finds excuses and justifications and refuses to enroll children/youth with disabilities in schools, thereby leaving them with a narrow choice of professions.

The FBiH Law on Professional Rehabilitation, Training and Employment of Persons with Disabilities and the RS Law on Professional Rehabilitation, Training and Employment of Disabled Persons also define the right to vocational training. However, centers for vocational rehabilitation have not been established yet, aimed at increasing competitiveness

of persons with disabilities in the open labor market. Also, the right to lifelong learning is regulated by law only in Sarajevo Canton, which speaks volumes about the importance of this activity to the authorities in other cantons. The practice of additional training of persons with disabilities exists as a project activity mainly implemented by non-governmental organizations (organizations of persons with disabilities/parents' associations) without insured sustainability, because employers are not interested and opened to them.

## 239 DESCRIBE HOW BOSNIA AND HERZEGOVINA IS PROMOTING INCLUSIVE EDUCATION AND LIFELONG LEARNING FOR PUPILS AND STUDENTS WITH DISABILITIES. WHAT ARE THE PLANS FOR THE NEXT 5 AND 10 YEARS?

The Strategic Adult Education Development Platform in the Context of Lifelong Learning for the Period 2014-2020, as well as the Principles and Standards of Adult Education in Bosnia and Herzegovina have been adopted at the state level. A number of international and European documents, development strategies and legislative regulations at different levels of governance in BiH, including the Strategy for the Equalization of Opportunities for Persons with Disabilities in the Federation of BiH for 2011-2015 have been used as a starting point for the development of the Strategic Platform.

Only the draft law on adult education has been established in the Federation of BiH, while the Law on Adult Education which includes persons with disabilities has been adopted in only one canton, namely, Sarajevo Canton (10% of FBiH). However, it still has not been implemented in practice, given that it is required to register such education institutions or programmes. The field of adult education in Republika Srpska is defined by the Law on Adult Education and the accompanying by-laws. The percentage of students studying at regular universities still remains very low. It is safe to say that even when there is a legal framework and many rights are defined, there are no measures and mechanisms that will ensure their implementation.

## 240 THE TRANSITION PERIOD BETWEEN THE SCHOOL AND THE FIRST JOB POSES A CHALLENGE AND IS CRUCIAL IN ENSURING SUCCESSFUL INTEGRATION OF PERSONS WITH DISABILITIES INTO THE LABOUR MARKET. IS THERE ANY SPECIFIC PROGRAMME IN PLACE TARGETING THIS CHALLENGE? DOES SOME KIND OF FOLLOW-UP GUIDANCE PROGRAMME FOR THE VOCATIONAL TRAINING OF THE GRADUATES EXIST?

There are neither open and free programmes for continuing education of persons with disabilities, nor there are agencies that would work as a mediator in their employment. There are no services that would provide support of working assistants/agents, who would exclusively work on preparing them for working socialization, finding them suitable and accessible jobs etc. This problem is still being solved in the short-term at the level of projects of associations of persons with disabilities that are not sustainable in the long-term. It is safe to conclude that the BiH state system has not ensured any mechanisms through its measures which would ultimately mean sustainable employment of persons with disabilities. Most of them, after finishing secondary school, stay closed in their homes, without the possibility of greater social participation. As part of the measures to ensure the employment of persons with disabilities, funds for vocational rehabilitation and employment have been established in both entities, whose function is fundraising and support for employment programmes and implementation of stimulative measures

for the employment of persons with disabilities. However, these do not play any specific role in the transition period. Also, centers for vocational rehabilitation have not been established in both entities yet.

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## 241 HAS A LEGAL BASIS FOR SUPPORTED EMPLOYMENT BEEN ESTABLISHED IN BOSNIA AND HERZEGOVINA? DESCRIBE BRIEFLY THE SUPPORTED EMPLOYMENT SERVICES SYSTEM. ELABORATE ON ANY PROVISIONS FOR FACILITATING THE TRANSITION FROM PROTECTED EMPLOYMENT INTO THE OPEN LABOUR MARKET.

There is no system for supported employment of persons with disabilities in BiH.

The transition from a protected system of employment into the open labor market could be somewhat possible if the Law on Professional Rehabilitation and Employment of Persons with Disabilities would apply to a greater extent in both entities.

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## 242 TO WHAT EXTENT IS DE-INSTITUTIONALISATION CONSIDERED TO BE A PRIORITY FOR BOSNIA AND HERZEGOVINA? WHICH MEASURES AIMED AT PROMOTING DE-INSTITUTIONALISATION AND COMMUNITY-BASED ALTERNATIVES HAVE BEEN CARRIED OUT?

There is a Strategy for Deinstitutionalisation and Transformation of Social Protection Institutions for 2014-2020 in the Federation of BiH. Although the Strategy was adopted in 2013, an action plan for its implementation has not been developed yet. In practice, we also have a different interpretation of the existing FBiH Law on the Fundamentals of Social Welfare, Protection of Civil Victims of War and Protection of Families with Children, so that even positive activities that could contribute to the independent life of persons with disabilities in the community cannot be implemented because they depend on interpretations of those who work in centers for social work in different cantons and municipalities. A deinstitutionalisation strategy still does not exist in Republika Srpska.

Deinstitutionalisation is poorly implemented in practice and is far from becoming a priority. Professionals in the social protection sector traditionally rely on institutionalisation in the care of children without parental care, despite numerous research and indicators of the detrimental impact of institutional care of children. Deinstitutionalisation projects are mainly the result of the activities of the non-governmental sector in cooperation with public institutions. Their implementation in the Federation of BiH is further complicated by the fact that institutions providing care for children are established at the local level and their founders are the municipality, city or canton. The policies adopted by the Federation represent only a recommendation, while arrangements regarding the process of deinstitutionalisation must be made with each institution individually.

Most institutions for children without parental care are in the territory of the Federation of BiH (15 of them), while Republika Srpska has one institution and a centralized system. In addition to institutions for children without parental care, both entities have special institutions for children and adults with developmental disabilities. There are eight such institutions in the Federation of BiH, and four in Republika Srpska. In some of these institutions, children are accommodated together with adults.

Only in 2014, through the efforts of the non-governmental sector, deinstitutionalisation was included as a priority field in the Action Plan, which emerged from the Indicative



Strategic Paper for Bosnia and Herzegovina 2014-2017 for IPA. For the first time funds for deinstitutionalisation in the amount of one million euros were allocated, however, they are insufficient to achieve any significant result. Furthermore, when preparing the sector planning document for the sector „Employment with Education and Social Policy“ for IPA II, this field has been completely left out, bringing into question the sustainability of those results achieved with the 2014 IPA funds.

As for alternative measures and prevention of separation, such measures were mainly initiated, promoted and developed by non-governmental organizations. Preventive work with families at risk of separation exist only in places where the model was developed by non-governmental organizations, while their sustainability is questionable once the project activities are completed. When it comes to foster care as an alternative, the main driving force are once again non-governmental organizations, and it is somewhat developed only in areas where they are active or used to be active (in the Federation of BiH, these are Sarajevo, Tuzla and Central Bosnia Cantons). Similar situation is with other services, such as day centers.

The situation is similar when it comes to youth without parental care and their training for independent living outside the institution. Both entities in their strategic documents<sup>38</sup> emphasize the importance of preparation/education for independent living, however, timely and systematic preparation is not a rule, but an exception in institutions for children without parental care.

## 243 IS THERE ANY FORM OF TRAINING FOR INDEPENDENT LIVING PROGRAMMES?

The State does not organize or implement trainings for independent living programmes that include a variety of educational programmes aimed at training of persons with disabilities for independent living. These are the results of monitoring the respect for the rights of persons with disabilities on the basis of which an Alternative Report on the Application of the Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina was made by five coalitions of organizations of persons with disabilities from the programme MyRight. All trainings of persons with disabilities, from mobility to the use of Braille alphabet, are carried out in the framework of activities of non-governmental organizations.

The situation is similar when it comes to youth without parental care and their training for independent living outside the institution. The RS Strategy for Improving the Social Position of Persons with Disabilities 2010-2015 and the FBiH Strategy for Improving the Social Position of Persons with Disabilities 2016-2021 emphasize the importance of preparation/education for independent living, but timely and systematic preparation is rarely conducted in institutions for children without parental care. The activities in this field also mainly depend on the work of non-governmental organizations.

38 Strategy of Deinstitutionalisation and Transformation of Social Protection Institutions in the Federation of Bosnia and Herzegovina (2014-2020), URL: <http://fmrsp.gov.ba/s/images/stories/Strategija%20deinstitutionalizacije%20i%20transformacije%20ustanova%20socijalne%20zastite%20u%20Federaciji%20BiH.pdf>; Strategy for Improving Social Protection of Children without Parental Care (2015-2020), URL: <http://www.csrbl.org/STRATEGIJA%20UNAPREDJENJA%20SOCIJALNE%20ZASTITE%20DJECE%20BEZ%20RODITELJSKOG%20STARANJA.pdf>

## 244 WHICH ARE THE MEASURES IN PLACE OR FORESEEN TO ENSURE ACCESSIBILITY TO GOODS AND SERVICES (INCLUDING PUBLIC SERVICES) AND TO ENSURE THAT ASSISTIVE DEVICES FOR PEOPLE WITH DISABILITIES ARE AVAILABLE AND AFFORDABLE? HOW WELL DOES THE MARKET IN THE ASSISTIVE TECHNOLOGY FUNCTION IN BOSNIA AND HERZEGOVINA?

The process of obtaining assistive devices allocated to persons with disabilities is similar in both entities and involves complicated procedures, long waiting (2-3 months) and unnecessary pressure for persons going through the process. The process begins with a visit to the family doctor, given that medical diagnosis is required for the allocation of an assistive device. One usually has to wait for several days for these examinations, considering that there is not enough of these doctors and they are overburdened (for instance, in the Tuzla region, the average is two doctors per 10 000 inhabitants). The family doctor then issues a letter of referral to a medical specialist, which is a new examination one has to wait for again. Visits to the medical specialist and family doctor are a mandatory part of any such process, even when it is repeated and in the meantime there has been no change in the condition of person with disabilities. Findings of the medical specialist is taken to the Institute for Social Insurance, which, on the basis of the findings, approves the request for assistive devices. Waiting for the approval of a request sometimes takes longer than a month. Once the approval is issued, a person with disabilities returns to the medical specialist to obtain the approved assistive device. In practice, it often happens that the medical institution does not have necessary materials at the given moment and cannot provide the required assistive device (in that case, the person is generally referred to a private orthopedic device company which has a contract with the Institute for Social Insurance to make orthopedic devices). On the other hand, a person with disabilities has to take the approved assistive device within three months, otherwise she/he loses the right to it.

The entire process also requires traveling expenses in the case of persons who travel from rural areas to the cities where these procedures are performed. Bearing in mind that there is no accessible public transport, this is a particularly big problem.

Furthermore, the prescribed duration periods for orthopedic devices are often too long and unadjusted to the needs of users. For instance, the law prescribes four years for orthopedic shoes and 2-4 years for a below-knee prosthesis, which are unrealistically long periods for active users of these devices who use them in a lot shorter period. Warranty that orthopedic device companies provide for devices is usually shorter than the legal period for their replacement. If the repair of an orthopedic device is provided, the user is not provided with a replacement during the repair, which may take several months in case of a major repair.

The market of orthopedic and other devices is not diverse and generally only one type of device is offered. There is a possibility of choosing between the orthopedic device companies, however, their choice is limited given that persons with disabilities are forced to choose the one which has material for producing an orthopedic device.

Persons with disabilities are not entitled to assistive technologies that would enable them to live independently and actively and have equal participation in society unless they are indicated by a medical diagnosis. This is the reason why the market in assistive technology is not developed either.

## 245 WHICH ARE THE MEASURES IN PLACE OR FORESEEN TO IMPROVE THE ACCESSIBILITY OF SPORTS, LEISURE, CULTURAL AND RECREATIONAL ORGANISATIONS, ACTIVITIES, EVENTS, VENUES, GOODS AND SERVICES (INCLUDING AUDIOVISUAL MEDIA SERVICES); WHAT IS BEING DONE TO PROMOTE PARTICIPATION OF PERSONS WITH DISABILITIES IN SPORTS EVENTS AND TO ORGANISE DISABILITY- SPECIFIC SPORTS EVENTS?

Laws and policies formally provide for the participation of persons with disabilities in sports activities at all levels and prohibit any form of discrimination against persons with disabilities on the grounds of disability. The laws provide for the possibility of establishing sports associations and clubs for persons with disabilities, prescribe the provision of physical access for persons with disabilities to sports facilities, recreational areas and sports and recreational events. However, no clear procedures and programmes have been provided that would ensure efficient application of legal norms in practice and genuinely enable persons with disabilities to engage in sports and recreational activities. The Paralympic Committee of Bosnia and Herzegovina has been established as an umbrella organization, which enables participation in the most significant international sports competitions. However, it has not been done enough to make the existing sports and cultural facilities accessible to persons with disabilities and there is no sufficient funds to encourage and enable persons with disabilities to engage in recreational sports.

## 246 HOW IS ACCESSIBILITY TO VOTING LOCALS AND ELECTORAL MATERIAL ASSURED? WHAT IS BEING DONE TO FACILITATE THE USE OF SIGN LANGUAGE AND BRAILLE IN DEALING WITH THE OFFICIAL INSTITUTIONS? WHAT ARE THE CORRESPONDING PLANS FOR ACTION?

Legal regulations formally guarantee equal participation in public and political spheres for person with disabilities, but adequate mechanisms and support which they require in order to have the same opportunities as other persons are not provided.

The lack of application of legal regulations results in the inability to use the related rights or difficulty in exercising them.

One such example is the right of persons with disabilities to participate in electoral processes. Instead of creating the preconditions to exercise their electoral right on equal terms as other citizens, existing legislation provide for the exercise of this right in their homes and with the engagement of mobile teams. Public institutions do not use the Braille alphabet to make important information available to blind persons. Thus, persons with disabilities who are blind are not guaranteed the right to secrecy of voting because they do not have an accessible voting ballot that they could fill out independently. The use of sign language is also not regulated by necessary by-laws and there is no registry of sign language interpreters.

## 285 WHICH BODIES (SUCH AS “EQUALITY BODIES”) EXIST TO PROMOTE THE FIGHT AGAINST RACIAL AND ETHNIC-BASED DISCRIMINATION, AND DISCRIMINATION ON OTHER GROUNDS? WHAT ARE THEIR POWERS? WHAT ARE THE GUARANTEES FOR EFFECTIVE AND INDEPENDENT PERFORMANCE OF THEIR POWERS?

The Institution of Human Rights Ombudsman of BiH is the institution for the fight against discrimination on all grounds in BiH. Gender-based discrimination is covered

by the Gender Equality Agency and entity Gender Centers. Complaints and requests for examination of human rights violations may be submitted to these institutions, however, their recommendations are non-binding. There are no bodies that are specifically focused on the fight against discrimination on racial or ethnic grounds.

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## 287 DOES THE LEGISLATION IMPOSE ON AN EMPLOYER A DUTY OF REASONABLE ACCOMMODATION OF DISABLED PERSONS, TO ENABLE THEM TO HAVE ACCESS TO, PARTICIPATE IN, AND ADVANCE IN EMPLOYMENT?

The Law on Prohibition of Discrimination prescribes the employer's duty to provide reasonable adjustments for a person with disabilities, if such adjustments would not be disproportionate in terms of the correlation between the benefit and investment. Employers are not too interested to employ persons with disabilities in the open labor market, therefore, we do not have information whether and to what extent this measure is being implemented. Funds for vocational rehabilitation in both entities, among other things, are responsible to provide funds for reasonable adjustments of the workplace.

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## 294 DO INSTITUTIONAL STRUCTURES EXIST FOR THE PROMOTION OF GENDER EQUALITY? IF SO, PLEASE INDICATE THEIR ADMINISTRATIVE CAPACITY AND THE GUARANTEES FOR INDEPENDENT PERFORMANCE OF THEIR POWERS.

Institutional mechanisms for gender equality in BiH include the Gender Equality Agency at the state level, and RS Gender Center and FBiH Gender Center at entity levels. Gender centers are established as advisory bodies to governments, whose purpose is to make recommendations for the implementation of the BiH Law on Gender Equality, Gender Action Plan (GAP) and other international documents that promote gender equality, and to monitor their implementation.

The cantonal governments have assumed the obligation, through GAP, to form gender equality coordination committees, which have been formed in two out of ten cantons and still have not started active engagement. Commissions for gender equality have also been formed at offices of municipal mayors. Unfortunately, it cannot be said that all established commissions work adequately and continuously.

Commissions/committees for gender equality have been established within the legislative authority at all levels. There is a Committee for Gender Equality of the Parliamentary Assembly of BiH at the state level, while at entity levels there is a Commission for Gender Equality of the House of Peoples and Commission for Gender Equality of the House of Representatives of the FBiH Parliament, and an Equal Opportunities Committee of the National Assembly of Republika Srpska.

The commissions for gender equality of cantonal assemblies in the Federation of BiH have also been established. At the local level, there are commissions within municipal councils/assemblies in almost all municipalities in BiH. Certain commissions at the cantonal and municipal levels are not functional, and it is necessary to strengthen the capacities of the said commissions in order to carry out activities of their mandates.

## 295 IS THE PRINCIPLE OF EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE FOR MEN AND WOMEN GUARANTEED BY THE CONSTITUTION, BY LAW, AND/OR BY COLLECTIVE AGREEMENT?

Labor laws of both entities, which were adopted in 2016, prescribe the principle of equal pay for equal work or work of equal value.

Thus, Article 77 of the FBiH Labor Law (Official Gazette of the Federation of Bosnia and Herzegovina, 26/16) clearly states that „the employer shall pay workers equal pay for work of equal value regardless of their national, religious, gender, political and trade union affiliation, as well as other discriminatory grounds in Article 8 (1) of this Law.“ The prohibition of discrimination and the principle of equal pay for equal work or work of equal value are prescribed by the RS Labor Law (Official Gazette of Republika Srpska, 1/2016) from Article 19 to Article 25 and in Article 120 (2): „Workers shall be guaranteed equal pay for equal work or work of equal value they make at the employer.“

## 296 DO PAY GAPS EXIST BETWEEN WOMEN AND MEN? HOW IS THE GENDER PAY GAP DEFINED AND MEASURED?

Although there are no clearly defined indicators for systematic monitoring of gender pay gap, the available analyzes and research unquestionably show that there is a noticeable pay gap between men and women in BiH.

Thus, in the *BiH Employment Strategy 2010-2014*<sup>39</sup> adopted by the Council of Ministers of BiH, it is stated: „The majority of employed women in BiH earns between BAM 200-400 per month, while men earn between BAM 300-500. The gender pay gap is greatest in the non-industrial sector, and the lowest among officers. Moreover, among persons who work for salaries (those who are ‘employees’, not self-employed or paid family members, etc.), there are 28% of men more than women.“

In this Strategy, the gender pay gap is defined as „the difference between the average monthly income of employed women and employed men that is expressed as a percentage of the monthly income of men. Monthly gross income refers to the amount, mostly in cash, that is paid to full-time employees and should be calculated in gross amount.“

The findings published in the Alternative CEDAW Report for Bosnia and Herzegovina 2013-2017 state that „gender differences in the amount of compensation for hourly earnings in favor of men are visible and noticeable at all levels of education, in all age groups, professions and industries“ and that „women more frequently work short or part-time compared to men.“

„Taking into account the population working for salary or daily allowance, aged 15-64 years, gender gaps in hourly rate are estimated at 9% in favor of male employees (BAM 3.9 for men and BAM 3.5 for women). When taking into account all able-bodied men and women, the pay gap increases to the detriment of women“. These are the results of research published in a study „Bosnia and Herzegovina: Gender Disparities in Endowments, Access to Economic Opportunities and Agency“<sup>40</sup>, conducted jointly by the World Bank, the Agency for Statistics of Bosnia and Herzegovina, the FBiH Statistics

39 [http://www.mcp.gov.ba/zakoni\\_akti/strategije/Archive.aspx?pageIndex=1&langTag=bs-BA](http://www.mcp.gov.ba/zakoni_akti/strategije/Archive.aspx?pageIndex=1&langTag=bs-BA)

40 Bosnia and Herzegovina – Gender Disparities in Endowments, Access to Economic Opportunities and Agency, 2015, Cancho, Cesar A.; Elwan, Nihal; URL: <http://documents.worldbank.org/curated/en/435061468180551008/Bosna-i-Hercegovina-Rodne-razlike-u-iskori%C5%A1tavanju-prava-i-mogu%C4%87nosti-koje-nudi-dru%C5%A1tvo-pristupu-ekonomskim-mogu%C4%87nostima-i-zastupanju>



Institute and the RS Statistics Institute.

The phenomenon of gender differences in BiH is not dealt with methodically, but so far sporadic research have shown that pay gaps are closely related to the level of education, type of occupation one performs, i.e. economic branch, and the opportunities for career advancement.

In the last few years, the number of girls and boys studying in BiH has equalized, but the number of girls who drop out of secondary education is still higher than the number of boys. According to the report made by the organization „Initiative and Civil Action“, predominantly girls from rural areas and families in a state of social need do not continue further secondary education or drop out of it earlier, thus limiting their further options in life.

Also, the choice of school and study greatly determines further professional career and the amount of income. In BiH, women are prevalent in branches such as textile industry, education, health care and social protection, administration and service activities, which, in general, are lower paid jobs. Men are dominant in the sectors of construction, agriculture, mining, manufacturing, information technology and telecommunications.

Furthermore, women in BiH have less access to managerial and other highly paid positions in the BiH labor market. The 2014 findings of the Gender Equality Agency show that women are represented with 15,7% in managing structures of companies, of which 12,5% are board presidents, while over 50% of boards do not include a single woman.

The 2015 study conducted by the Association for Democratic Initiatives Sarajevo, published under the title „Discrimination in the Field of Labor in Bosnia and Herzegovina“, confirmed that „women are employed in sectors that are already gender-segregated, that are regularly paid less and where reaching managerial positions is more difficult“.

Based on interviews and surveys of 81 trade unions and 288 workers, it is concluded that „women are twice as likely to be discriminated against in the workplace than men“.

In addition, women are often exposed to double burden and invest less time in permanent education in their profession, which is why they rarely get promoted. Gender pay gap increases when women have children and when they work part-time.

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## 297 IS DIRECT DISCRIMINATION FORBIDDEN BY LAW IN THE FIELD OF ACCESS TO EMPLOYMENT, TRAINING, PROMOTION AND WORKING CONDITIONS?

In addition to the BiH Law on Gender Equality which prohibits direct and indirect discrimination in all spheres of life, labor laws of both entities contain special articles prohibiting direct and indirect gender-based discrimination. The FBiH Labor Law prescribes prohibition of discrimination in Articles 8-13, while the RS Labor Law prescribes prohibition of discrimination in Articles 19-25.

## 298 IS THERE A RULE ESTABLISHED EITHER BY LAW OR JURISPRUDENCE THAT THERE IS NO JUSTIFICATION WHATSOEVER TO ASK A WOMAN ABOUT PREGNANCY WHEN APPLYING FOR A JOB OF WHATEVER KIND?

This issue is treated differently in laws at different levels of governance. The FBiH Labor Law stipulates that an employee cannot be requested to provide data unrelated to employment, but there is not a provision which directly prohibits a question about pregnancy. The RS Labor Law explicitly states that the employer cannot request data on family/marital status and cannot condition employment with a pregnancy test, except in the case of activities for which there is a significant risk for the mother and the child. In Brčko District, according to the Labor Law, the employer cannot refuse to employ a woman because she is pregnant, and cannot terminate her employment contract because she is pregnant or on maternity leave.

Studies conducted in this field show that in practice women are often asked this question. The 2015 study, based on a survey of 288 workers, shows that questions regarding marital status, pregnancy and family planning are asked at job interviews, both in the private and public sectors.<sup>41</sup> Interlocutors in the interviews said that these questions were asked in a majority of cases, particularly when it comes to younger women. In addition, it is not unusual for women to get dismissed after they become pregnant, despite the illegality of such practices.

## 300 IS THERE A GENERAL PROHIBITION OF NIGHT WORK FOR PREGNANT WOMEN, OR MEASURES ENSURING THEY ARE NOT OBLIGED TO PERFORM NIGHT WORK?

Legal treatment of night work for pregnant women is unequal throughout BiH. The FBiH Labor Law prohibits night work for pregnant women (starting from the sixth month of pregnancy), mothers and adoptive parents, as well as persons who, on the basis of the decision issued by the competent authority, have been given custody of a child, until the child is two years of age.

The RS Labor Law prohibits night work for pregnant women, starting from the sixth month of pregnancy, and mothers with a child up to two years of age.

This provision is not explicitly stated in the Labor Law of Brčko District.

## 301 ARE PREGNANT WORKERS PROTECTED AGAINST DISMISSAL DURING THE TIME OF PREGNANCY AND MATERNITY LEAVE?

Article 60 of the FBiH Labor Law in paragraph 1 clearly states that the employer cannot refuse to employ a woman because of her pregnancy or terminate her employment contract during pregnancy and maternity leave. Article 105 of the RS Labor Law prescribes the same prohibition provision.

However, the situation is different in practice. A large number of women lose their jobs when they become pregnant or when they go on maternity leave.

41 Discrimination in the Field of Labor in Bosnia and Herzegovina, Elma Demir, Association for Democratic Initiatives, 2015

## 302 DO THE LAW OR COLLECTIVE AGREEMENTS FORBID THE EXPOSURE OF PREGNANT OR BREASTFEEDING WOMEN TO AGENTS AND WORKING CONDITIONS WHICH WOULD JEOPARDISE THEIR SAFETY OR HEALTH?

All three labor laws prohibit the exposure of pregnant women and breastfeeding women to agents and working conditions which would jeopardize their safety or health.

## 304 DOES THE LEGISLATION PROVIDE FOR A CONTINUOUS PERIOD OF MATERNITY LEAVE OF AT LEAST 14 WEEKS ALLOCATED BEFORE AND/OR AFTER CONFINEMENT, AND INCLUDES COMPULSORY MATERNITY LEAVE OF AT LEAST TWO WEEKS ALLOCATED BEFORE AND/OR AFTER CONFINEMENT? ARE THE RIGHTS CONNECTED WITH THE EMPLOYMENT CONTRACT AND A PAYMENT OR ADEQUATE ALLOWANCE ENSURED?

The labor laws of both entities provide for a continuous period of maternity leave of 12 months for women, and that women may begin to use their maternity leave 28 days before the expected date of delivery.

However, when it comes to allowances for women on maternity leave, different standards are applied throughout BiH. There are differences in the amount of allowance between entities and between cantons in the Federation of BiH, because maternity rights are regulated by legislation at the level of entities, cantons and Brčko District.

In some cantons, the minimal allowance of 66% of earned salary is not provided, while in other cantons, this allowance is not paid at all. In addition, the amount of allowance is unevenly calculated. In some cantons, the average net salary that the new mother made in the last 6 or 12 months before going on maternity leave is taken as the basis for calculation of allowance, while in other cantons, the average salary for that canton or municipality is taken as the basis for calculation.

This was assessed as a violation of women's human rights in the 2014 Special Report on the Protection of Mothers and Maternity in the Federation of Bosnia and Herzegovina prepared by the Institution of Human Rights Ombudsman of BiH. In April 2016, the FBiH Government established a Working Group for drafting solution proposals for employed mothers, made up of representatives of FBiH and cantonal ministries. However, at the time of writing of this report (March 2017), the proposal has not been drafted yet.

Differences in the amount and regularity of allowances for new mothers exist not only in relation to the place of residence, but also in relation to the labor sector – state or real/private.

Women employed in private enterprises are at an even grater disadvantage. There is a practice that employers demand from women on maternity leave to pay their own taxes and contributions from their net salary, which is reimbursed by the state. At the same time, services for children of employed parents are still insufficiently accessible. In 2012, BiH had almost the lowest percentage of coverage of preschool education in Europe (according to UNICEF<sup>42</sup>, „it is estimated that access to preschool education is currently between 6 and 13%, which is the lowest rate in comparison to Croatia and Serbia with about 45%, Macedonia with 25% and way below the OECD average of 77%“).

42 UNICEF Bosnia and Herzegovina “Support for 12 Selected Programmes for Improving Access to Pre-school Education”, URL: [https://www.unicef.org/bih/ba/media\\_20011.htm](https://www.unicef.org/bih/ba/media_20011.htm)

## 305 DO THE LAW OR COLLECTIVE AGREEMENTS GIVE AN INDIVIDUAL RIGHT TO PARENTAL LEAVE OF AT LEAST 4 MONTHS? IS AT LEAST ONE MONTH OF PARENTAL LEAVE GRANTED ON AN INDIVIDUAL NON-TRANSFERABLE BASIS TO BOTH PARENTS? HOW IS THIS TREATED/IMPLEMENTED IN BOTH PUBLIC AND PRIVATE SECTOR?

Fathers may use paternity leave, but this right is non-transferable. According to the applicable labor laws in both entities, this is a matter of consensual agreement of parents.

The FBiH Labor Law (Article 62 (4)) stipulates that 42 days after the childbirth, the father may take paternity leave „if the parents so agree“. Article 62 (5) provides for the possibility of using paternity leave in case of mother's death, if the mother abandons the child or if the mother cannot use maternity leave for other justified reasons.

The RS Labor Law (Article 107 (3)) also stipulates that parents may agree that the father may take paternity leave instead of the mother after the expiration of 60 days from the date of birth of the child.

## 308 WHAT MEASURES ARE PUT IN PLACE TO ENCOURAGE THE RECONCILIATION BETWEEN PROFESSIONAL AND PRIVATE/FAMILY LIFE OF BOTH WOMEN AND MEN?

The 2013-2017 Gender Action Plan of Bosnia and Herzegovina states the reconciliation between professional and private life of women and men as one of the strategic objectives. GAP notes that unequal division of domestic and family obligations is one of the main reasons for discrimination against women in the labor market, which restricts their political and social participation, and is, therefore, necessary to „encourage measures to reconcile private and professional life such as, among other things, the development of a business practice that respects family life and is equally accessible to women and men.“

As stated in the previous answer, the Labor Law, both in the FBiH and RS, regulates parental leave that provides fathers (after 42 days in the FBiH and 60 days in the RS) with an opportunity to spend time with the child after its birth, but not as a non-transferable right. The number of fathers who exercise the right to parental leave and so participate in the care for the child is extremely small.

In the absence of official statistical data, we are providing data from media research, according to which, in 2014, the RS Public Fund for Child Protection issued 3 500 decisions for the use of parental leave, of which only 18 (0,5%) were related to fathers.<sup>43</sup> There is no data how many men exercise this right in the Federation of BiH, but it can be assumed that there are no major differences in relation to Republika Srpska. Except for the policy of parental leave, there are no other official measures or policies designed to provide equal opportunities for women and men to be employed and socially engaged parents, i.e. to reconcile private, professional and social life.

The preschool system functions in such a way that children are provided with accommodation and education (nurseries and kindergartens) through public and private institutions, but this system is not equally available in every local community. **According to statistical data, every seventh child in Bosnia and Herzegovina has access to preschool education.** Babysitting at night for the purpose of night work, work in shifts, work over the weekend or social engagement of parents is not regulated at all. In addition to the

43 In Bosnia and Herzegovina Small Number of Men Take Paternity Leave, Klix.ba, 19 April 2015. URL: <https://www.klix.ba/lifestyle/bebe/u-bih-jos-uvijek-mali-broj-muskaraca-uzima-porodiljsko-odsustvo/150419046>

care for children, women are also disproportionately burdened by the care for elderly and/or ill family members.

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### 309 WHAT MEASURES ARE PUT IN PLACE TO ENCOURAGE A BALANCED PARTICIPATION OF WOMEN AND MEN IN ECONOMIC AND POLITICAL DECISION-MAKING?

The Law on Gender Equality stipulates 40% representation of the underrepresented gender in all branches of government, which is not observed in practice. This quota was also confirmed by the BiH Election Law, which requires that the underrepresented gender make up a minimum of 40% of the candidates on the lists.

It is not known whether any tangible measures have been taken in order to encourage equal participation of women and men in economic decision-making.

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### 310 WHAT MEASURES ARE PUT IN PLACE TO ENCOURAGE LABOUR MARKET PARTICIPATION OF PARTICULAR GROUPS OF WOMEN SUCH AS DISABLED WOMEN, SINGLE MOTHERS, OLDER WOMEN, WOMEN LIVING IN RURAL AREAS ETC.?

The position of women living in rural areas is still difficult. In 2015, the RS Government implemented the Action Plan for Improving the Situation of Rural Women in Republika Srpska by 2015. The objectives of the Action Plan include: improvement of economic situation of rural women, improvement of living conditions, improvement of access to public services for rural women, strengthening their social position and increasing the awareness of the population about their role, significance and contribution. The FBiH Government has not had any specific policies for improving the situation of women living in rural areas yet, but this issue is covered by the 2016 Annual Operating Plan, developed on the basis of the Gender Action Plan. Employment of women with disabilities remains a major challenge.

The FBiH Employment Bureau initiated the development of the Social Entrepreneurship Platform, where the importance of integrating persons with disabilities was emphasized, in particular, women with disabilities, as a multiple marginalized social group with distinctive characteristics. The adoption of legislation on vocational rehabilitation and employment of persons with disabilities in both entities has created preconditions for the establishment of non-budget funds intended to support the exercise of labor and employment rights of persons with disabilities, but there are no special incentives for the employment of women with disabilities. However, it is evident that there is very little progress in terms of tangible incentives for the implementation and employment of women with disabilities.

Although there is a legal framework that prescribes the obligation of employment of persons with disabilities, in its (already insufficient) application, women with disabilities are further discriminated against in relation to men, given that employers give preference to the category of war disabled veterans consisting of men only. Entity funds for vocational rehabilitation and employment of persons with disabilities do not keep gender-sensitive records on persons with disabilities who used their legally defined services.

Based on the available data, it is evident that women with disabilities are underrepresented in the use of employment programmes. Thus, a total of 248 persons with disabilities was employed in the FBiH in 2015, of which 66 (26,6%) were women. In the period



2013-2016, a total of 547 persons with disabilities, of which 34 (6,2%) were women, was employed in Republika Srpska through the Fund for Professional Rehabilitation and Employment of Persons with Disabilities.<sup>44</sup> It is also noted that women with a higher degree of functional disability, regardless of qualifications, experience most difficulties in finding employment.

At a particularly disadvantaged position are displaced women and returnee women who have returned to their former places of residence, where pre-war jobs no longer exist and where infrastructure is not restored. Incentives for sustainable return of women throughout BiH, mostly in agriculture and small businesses, are negligible in comparison to the number of men returnees who are beneficiaries. Namely, according to the 2016 Decision on establishing the ranking list of potential beneficiaries under the Sustainable Return Assistance Programme in order to support employment/self-employment of returnees in agriculture in FBiH municipalities, out of a total of 1 562 beneficiaries, 1 414 were men and 148 were women. The Decision on establishing the ranking list of beneficiaries under the Sustainable Return Assistance Programme in order to support employment/self-employment of returnees in agriculture in RS and Brčko District municipalities shows that out of a total of 466 beneficiaries, 59 were women and 409 were men.

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44 Alternative CEDAW Report - Report of Civil Society Organizations on Implementation of the Concluding Observations and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013-2017: <http://hcabl.org/wp-content/uploads/2016/11/CEDAW-ENG-web.pdf>

## CHAPTER 24: JUSTICE, FREEDOM AND SECURITY

### 99 IS COMPENSATION TO VICTIMS OF CRIME I.E. INJURED PERSONS AVAILABLE? IF SO, HOW IS IT ORGANISED?

Relevant legislation that enables courts to award compensation to injured parties in criminal proceedings, or to refer them to civil proceedings, has been put in place. However, there is a consistent practice of referring victims to civil proceedings. This practice hinders access to compensation for most victims, given that legal representation is necessary for civil proceedings. Since free legal aid is still not effectively guaranteed by the state, in majority of cases the victims cannot afford to initiate such proceedings. An additional problem in relation to filing of compensation claims in civil proceedings is the necessary disclosure of the identity of the protected witness. Witnesses who had identity protection measures ordered during criminal proceedings do not have guarantees of equal protection measures during subsequent civil proceedings.

Beginning in 2015, the judicial system in BiH has finally begun to fulfill its legal obligations in regard to the awarding of damages to victims in criminal proceedings. The milestone ruling was rendered in June 2015, after TRIAL International had filed the first compensation claim for non-pecuniary damages suffered by a victim of wartime rape in criminal proceedings before the Court of BiH. The court ruled that the two defendants pay the amount of BAM 26 500 (approximately EUR 13 500) to the victim as compensation for non-pecuniary damages, together with a prison sentence. After this precedent, compensation was granted to victims in 4 other cases. However, the same practice is not taking roots in judicial institutions at other administrative levels (only one case before the court in Doboј in September 2016 included a successful compensation claim).

### 182 HOW ARE VICTIMS PROTECTED FROM THEIR TRAFFICKER AND WHAT RIGHTS DO THEY ENJOY?

Victims of trafficking in human beings enjoy rights based on the general postulates of the criminal procedure code which protect the rights of the injured parties, as well as the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. Special forms of protection of victims of trafficking in human beings are prescribed in two rulebooks adopted by the Council of Ministers of BiH (**Rulebook on the Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH; Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings**).

These rulebooks are particularly significant for the protection of victims of trafficking in human beings considering that the general postulates of the criminal procedure code in BiH provide very few rights for the injured parties, do not recognize the victims of aggravated crimes as a separate category in the procedure and do not provide special protection for them. The basic forms of protection of victims and victim-witnesses of trafficking in human beings that these rulebooks prescribe relate to: physical protection, protection of privacy and identity, legal assistance, social (education and resocialization) and health protection, special protection of children and vulnerable categories, as well as providing adequate individual protection and assistance to victims and victim-witnesses.

Although the rulebooks determine which institutions are obliged to provide assistance

and protection to victims, most of these rights are exercised through authorized non-governmental organizations which have a contract on providing free legal aid with the Ministry of Human Rights of BiH (Association 'Your Rights' – Vaša prava) and run safe houses for victims of trafficking (International Forum of Solidarity – Emmaus).

In practice, only half of the identified victims of trafficking in human beings use these protection possibilities, due to poor information in the process of detection and inadequate distribution of assistance providers throughout BiH, given that they are all located in Sarajevo and its surroundings. Victims of internal trafficking in human beings (BiH nationals) are at a particular disadvantage, considering that the latest legislative amendments have consigned this type of trafficking in human beings to the jurisdiction of lower police structures and prosecutions, which are not qualified enough to conduct these criminal investigations. In addition, social protection institutions have never been fully involved in the protection of victims of trafficking in human beings.

The protection system for victims of trafficking in human beings was established in 2007 (by the aforementioned Rulebooks), and at the time proved to be functional due to interconnectedness of overall referral mechanisms, good coordination and involvement of a large number of non-governmental organizations, in particular women's organizations working in the field of human rights protection.

This system has not been adapted to later legislative changes and institutional development, which is why, in practice, the protection of victims depends on the personal capacities of individuals (police officers, prosecutors, social workers, judges) involved in the investigation.

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## 183 IS THERE A FRAMEWORK IN PLACE FOR THE PROVISION OF INFORMATION ON THE RIGHTS OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS?

Except for the legal and by-laws provided in the previous reply, other instruments for providing information to victims of trafficking in human beings do not exist.

## CHAPTER 26:

# EDUCATION AND CULTURE

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EQUAL ACCESS: DESCRIBE ARRANGEMENTS TO ENSURE EQUAL ACCESS TO EDUCATION AND TRAINING REGARDLESS OF GENDER, ETHNIC ORIGIN, RELIGION OR DISABILITIES.

The Constitution of BiH and entity constitutions guarantee the right to education for all citizens under equal conditions, compulsory and free primary education, and secondary and higher education is accessible to everyone under equal conditions. In general, this principle applies to the right to education for persons with disabilities. The legislation, which relates to the field of education, at the state level, the level of Republika Srpska, and in the Federation of BiH at the level of cantons, formally prohibits any form of discrimination, even on the basis of disability, which is explicitly stated. It is also defined that education is accessible to all citizens under equal conditions, but clear forms of support for people with disabilities are not defined in order to create equal opportunities for equal participation in education processes. The laws provide for individualized programmes adapted to the abilities of individuals with disabilities, but due to the lack of by-laws and inconsistent application of laws and the lack of funds, there is no practical realization thereof. Although inclusive education is advocated, at the same time, laws provide for the establishment of special schools for persons with disabilities. In the absence of clear inclusion programmes this is the most common practice. There are not clear legal definitions obliging the authorities to ensure physical accessibility of educational institutions, necessary textbooks and teaching aids in adequate techniques and formats (Braille alphabet and enlarged print, simplified text), various *typhlotechnical* and other aids, as well as teaching assistants, sign language interpreters and the like, which results in the significant exclusion of persons with disabilities from the education process at all levels, undermines their dignity and achieving equal opportunities.

## CHAPTER 27: ENVIRONMENT AND CLIMATE CHANGE

### 18 PLEASE EXPLAIN WHAT MEASURES ARE TAKEN TO REDUCE DISEASES CAUSED BY ENVIRONMENTAL FACTORS IN BOSNIA AND HERZEGOVINA.

Measures that should be taken in the given field are completely absent or inadequately implemented. Thus, the results are lacking. There are not even official studies on air pollution impact on diseases and mortality rate, although increased air pollution episodes are quite frequent.

There is neither preventive action on causes of pollution, nor plans for its reduction. Households regularly use coal with high sulphur content. Article 16 of the FBiH Law on Air Protection stipulates that the FBiH minister „shall specify the rules for approving the type of product, the rules on the emission of pollutants, and in particular the rules on the incineration of small-scale biomass“. Although there is an obligation to regulate this issue at the FBiH level, at least for those cities for which air quality indicators show a major problem with concentrations of sulphur dioxide and PM particles, this obligation has not been fulfilled so far, despite the fact that the FBiH minister must implement it urgently in order to protect citizens in vulnerable areas.

Even where there are restrictions on types of coal that can be burned, the implementation and monitoring of compliance with this provision is questionable in practice, as that is the case with Sarajevo Canton. At the same time, despite the alarming problem of air pollution, Tuzla Canton is unwilling to introduce restrictions on what can be burned in households, which is why underprivileged citizens burn coal with high sulphur content, plastic, rubber, various types of waste, without any restrictions and sanctions.

The abovementioned was particularly evident in the days of air pollution episodes which pose a direct threat to the lives and health of our citizens. The lack of information and public awareness on adequate protection and prevention which they should apply in everyday life in order to protect themselves from negative environmental factors, with emphasis on alarming air pollution in Tuzla, Zenica, Sarajevo and other cities, results in an increased mortality rate and more patients.

Protective measures are absent in situations of alarming air pollution, such as school suspension, which was applied either untimely and insufficiently (in Tuzla, which had been excessively polluted for months, school was only suspended for a day), or was completely absent (for instance, in very polluted town of Živinice). This way the lives and health of thousands of school-age children were consciously put at risk. Another example would certainly be the complete lack of formal address by the competent institutions in the media with precise and accurate instructions on health protection in acute moments of danger, which would facilitate everyday life for citizens and prevent the emergence of new diseases and mortality.

### 34 DO AIR QUALITY LIMIT VALUES OR TARGET VALUES EXIST FOR SPECIFIC ATMOSPHERIC POLLUTANTS? IF SO, WHAT ARE THESE VALUES?

The competent institutions at the entity and cantonal level did not set hourly and daily limit values for PM<sub>2.5</sub>. Therefore, there is no obligation to take any measures in situations



of continually high concentrations of these particles, which, according to the World Health Organization standards, are detrimental to the health of citizens. Considering that limit values have not been defined, there are no indicators of exceeding of hourly and daily limit values in conditions when appropriate emergency alerts should be issued and necessary measures taken, aimed at addressing the problem of pollution which is particularly prominent in the winter period.

Due to the lack of daily limit values, even in cases of extremely high concentrations of dust particles, the competent institutions inform the public through the media that the air is clean, which does not correspond to the actual situation. As a result, citizens are uninformed about the measures they should take in such situations to protect their health by reducing their exposure to such pollution. The average annual value for  $PM_{2.5}$  is almost three times exceeded, but the authorities do nothing to reduce these concentrations to a sustainable level.

The role of the Federation and Cantons regarding the implementation of their joint competences is that they, in accordance with Article 3 (2) of the FBiH Constitution in terms of these competences „shall agree on a permanent basis“, that in accordance with Article 3 (3) of the FBiH Constitution, „the FBiH government shall have the right to determine policies and adopt laws concerning each of these competences,“ and that the Federation of BiH must take the coordination role in performing such competences from the cantons, in order to provide equal protection of the population from harmful pollution effects in all cantons. None of the aforesaid is put to practice.

In 2016, Grupa za čist zrak (Group for Clean Air) wrote to the FBiH ministry responsible for environmental protection issues with a request to have the limit values for  $PM_{2.5}$  defined. The response stated that this value was not specified and that the cantons could and should define them. Following this, Group for Clean Air addressed Tuzla Canton, which, however, had never responded to these letters or defined the limit value. Moreover, in statements to the media, the Ministry of Spatial Planning and Environmental Protection of Tuzla Canton claimed that these values had not been specified because there are no thresholds defined by EU directives. This, however, did not stop Member States of the European Union from fulfilling this obligation. They use the lack of adequate legislation in this field of the EU to justify the status quo, to take no measures and to create the impression that the situation is better than it is.

The FBiH Constitution provided for the shared competence of the Federation of BiH and the cantons in the field of environmental protection, which is abused in such a way that one level constantly points out to the competence of the other level, while all along the health of citizens is put at stake. An example of this is the definition of hourly values for  $PM_{2.5}$  particles, which have remained undefined for years, although they are enormously exceeded every winter. Another example is the definition of what can be burned and supervision of the implementation of regulations in this respect. In practice, it often happens that citizens' complaints are not followed up on, because inspections at all levels claim not to be responsible for the complaints and refer citizens to other inspections. Due to this situation, citizens no longer have confidence in institutions and the rule of law, rarely report incidents they perceive on daily basis and air pollution problems remain unsolved.

The Law on Local Self-Government Units also provides for the competence to determine an environmental protection policy, but cities usually distance themselves from their responsibility pointing out to the text of the FBiH Constitution. The cities claim that they do not have the competence to define what can be burned, although they would like to do that, like the City of Tuzla, for example. The FBiH level that could define it, but would also have to do it in accordance with Article 16 of the Law on Air Protection, failed to do

so. Sarajevo Canton has restricted what can be burned, while Tuzla Canton has not done it and does not intend to do so, whereby the FBiH level does not provide coordinated access of cantons to these issues and an equal level of protection of citizens' health from air pollution.

For instance, the City of Tuzla has launched an initiative to return the environmental inspector under its jurisdiction, who is claimed to be under the jurisdiction of the Canton. However, this initiative has not been implemented in practice yet.

Given the alarming situation in which Bosnia and Herzegovina is considered one of the most polluted countries in Europe, the entity level should take on the role in regulating and coordinating those issues that can contribute to solving problems and setting up standards that will apply equally in all cantons, especially in all imperiled environments such as Tuzla Canton, Zenica-Doboj Canton and Sarajevo Canton.

## 35

### WHAT IS THE RELATIONSHIP OF THE ABOVE WITH THE WHO STANDARDS/GUIDELINES?

The permissible concentrations of pollutants in BiH generally exceed the WHO guidelines, which considerably conceals the problem of air pollution to which the citizens are exposed. The WHO guidelines for SO<sub>2</sub> are 20 µg/m<sup>3</sup> (daily average) and 500 µg/m<sup>3</sup> (10 minutes average), while in the Federation of BiH, this limit is six times higher and amounts to 125 µg/m<sup>3</sup> (daily average).<sup>45</sup> The Decree on Air Quality Values<sup>46</sup>, which was adopted in 2012, is in force in Republika Srpska. The limit value for SO<sub>2</sub> is the same as in the Federation of BiH, 125 µg/m<sup>3</sup> (may not be exceeded more than 24 times in one calendar year).

In practice, even these defined and highly set limit values are often exceeded. In accordance with the regulations of the Federation of BiH, the limit values may not be exceeded more than three times per year, whereas at one monitoring station in Tuzla, the limit value was exceeded 26 times in December 2016 alone. The hourly limit value is 350 µg/m<sup>3</sup>, which may be exceeded more than 24 times per year, according to the data from the BKC Tuzla monitoring station, this value was exceeded:

143 times in 2012,

351 times in 2013,

260 times in 2014,

517 times in 2015,

704 times in 2016.

Similar situation is in other cities which have a long-standing and well-known air pollution problem. For example, according to the records kept by 'Eko forum' (Eco Forum) from Zenica, the daily average of SO<sub>2</sub> concentration in the amount of 125 µg/m<sup>3</sup>, which may not be exceeded more than three days in the entire calendar year, at the monitoring station Tetovo was exceeded:

179 times in 2011,

45 Rulebook on the Manner of Performing Air Quality Monitoring and Defining the Types of Pollutants, Limit Values and Other Air Quality Standards, URL: <http://www.ekoforumzenica.ba/pdf/br1-12%20sl%20novine%20FBiH%20Pravilnik%20o%20nacinu%20vršenja%20monitoringa%20kvaliteta%20zraka.pdf>

46 <http://www.hidrometeo.ba/regulations/rs/uredba-o-vrijednostima-kvalitete-zraka.pdf>

194 times in 2012,  
 173 times in 2013,  
 252 times in 2014,  
 177 times in 2015,  
 156 times in 2016.

The WHO guidelines for  $PM_{2.5}$  limit values are  $10 \mu g/m^3$  per year, and for  $PM_{10}$   $20 \mu g/m^3$  per year. In BiH they are twice as high, thus the limit values for  $PM_{2.5}$  are  $25 \mu g/m^3$  per year and for  $PM_{10}$   $40 \mu g/m^3$  per year. Although the WHO provides for the daily limit values for  $PM_{2.5}$  in the amount of  $25 \mu g/m^3$ , these are not defined in BiH. An additional problem is that for these particles there is not a prescribed threshold for issuing an emergency air quality alert. The Rulebook on the Manner of Performing Air Quality Monitoring and Defining the Types of Pollutants, Limit Values and Other Air Quality Standards, which has been in force since 2012 in the Federation of BiH, defines only alert thresholds for sulphur dioxide, nitrogen dioxide and terrestrial ozone, but not for  $PM_{2.5}$  i  $PM_{10}$ . In Sarajevo Canton, where the problem with floating particles is deteriorating each year, this issue was regulated only in 2015, following the adoption of changes to the cantonal Plan of Emergency Measures in cases of excessive air pollution in Sarajevo Canton, which finally prescribed the alert threshold for  $PM_{10}$  ( $400 \mu g/m^3$  when values are exceeded as a 24-hour average for the previous day).

Concentrations of  $PM_{2.5}$  measured in January 2017 at five monitoring stations in Tuzla were below the prescribed limit value only for three days, while for the major part of the month the measured values exceeded limit values four times. Values 10 to 14 times higher than the limit values had been recorded as well. Due to the lack of alert thresholds for  $PM_{2.5}$  values, such air was continually marked as clean air, so that an emergency air quality alert was not issued and other measures were not taken. The emergency alert was issued when the sulphur dioxide value was exceeded, given that the limit value for this pollutant is defined. In Republika Srpska, the Decree on Quality Air Values prescribes limit and maximum permissible values, but it does not prescribe issuing of an emergency alert for any pollutants, but only undertaking measures aimed at „informing the public through the means of public information.“

## 36

IS THERE A NATIONAL PROGRAMME FOR MONITORING AIR QUALITY OR NATIONAL/REGIONAL/LOCAL PLANS ON AIR QUALITY? IF YES, IS INFORMATION MADE AVAILABLE TO THE PUBLIC AND HAS PUBLIC BEEN CONSULTED ON THE PROGRAMME/PLANS? WHICH IS THE COMPETENT AUTHORITY DEALING WITH AIR QUALITY PROBLEMS AND WHICH RESPONSIBLE FOR THE DEVELOPMENT OF AIR QUALITY STRATEGIES? WHAT IS THE STATE OF PLAY REGARDING: THE MONITORING SYSTEM, ITS MAINTENANCE AND CALIBRATION, DATA COLLECTION, PROCESSING AND REPORTING?

A national programme for monitoring air quality does not exist, given that the competence in the field of air quality have entity ministries (FBiH Ministry of Environment and Tourism and RS Ministry of Spatial Planning, Construction and Ecology), which are responsible for the development of air quality strategies. There is not a comprehensive overview of air quality throughout the country.

In the Federation of BiH there is a network of monitoring stations for monitoring air quality, but the measurements are incomparable, because some monitoring stations monitor PM<sub>10</sub> and some PM<sub>2.5</sub>. Monitoring equipment in the Federation of BiH has been procured and installed without a plan or a strategy, so that the equipment is managed by municipalities, operators or the FBiH Hydrometeorological Institute. There is not an accredited body to carry out the calibration of the equipment in the Federation of BiH, so that the measurement results are unreliable. Calibration of monitoring stations for air quality monitoring in some cantons (Tuzla Canton) is not performed on regular basis, and measuring instruments are not validated. When these two conditions are met i.e. calibration and validation, the data indicated by a monitoring station may be considered relevant. Data processing from the monitoring system and reporting is provided at the competent cantonal ministries. However, not all parameters whose monitoring is prescribed are monitored (benzene, PCDD/F, etc.).

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### ARE THERE ESTIMATES OF EMISSIONS OF THE MAJOR ATMOSPHERIC POLLUTANTS?

There are no estimates of emissions of the major atmospheric pollutants. Polluters are obliged to periodically measure emissions, and some of them have had a continuous measuring system installed. An annual emission calculation is made based on the performed measurements. Some polluters have made their annual emissions data available to the public.

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### ARE THERE NATIONAL PROGRAMMES OR STRATEGIES FOR REDUCING EMISSIONS OF ATMOSPHERIC POLLUTANTS? WHAT ARE THE RESOURCES, METHODS AND PROCEDURES EMPLOYED FOR EMISSION MONITORING?

There is no national programme or strategy. The Rulebook on the Manner of Performing Air Quality Monitoring and Defining the Types of Pollutants, Limit Values and Other Air Quality Standards (Official Gazette of the Federation of Bosnia and Herzegovina, 1/12), which defines limit quality values and target values, is in effect in the Federation of BiH. Emission reduction programmes or strategies do not exist. The services of accredited testing laboratories are used for emission monitoring (accredited to ISO 17025:2006). Stationary and mobile monitoring stations are used to monitor emission concentrations. There are no written procedures for emission monitoring.

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### ARE THERE NATIONAL, REGIONAL OR LOCAL PLANS OR PROGRAMMES SPECIFICALLY ADDRESSING IMPROVEMENT OF AIR QUALITY (I.E. CONCENTRATION LEVELS OF CERTAIN POLLUTANTS) IN THE RESPECTIVE AREAS?

The Rulebook on the Manner of Performing Air Quality Monitoring and Defining the Types of Pollutants, Limit Values and Other Air Quality Standards (Official Gazette of the Federation of Bosnia and Herzegovina, 1/12) which defines, i.e. stipulates reduction of ambient concentrations and deadlines for reaching target values is used in the territory of the Federation of BiH. There are no plans and programmes which would address the improvement of air quality.

85

WHAT ARE THE MAIN FEATURES OF THE LEGISLATION CONCERNING THE PERMITTING OF INDUSTRIAL INSTALLATIONS WITH REGARD TO EMISSIONS OF POLLUTANTS INTO THE AIR, WATER AND SOIL? IS THERE A PERMITTING SYSTEM IN PLACE BASED ON THE USE OF BEST AVAILABLE TECHNIQUES FOR INTEGRATED POLLUTION PREVENTION AND CONTROL (IED)? HOW MANY IED INSTALLATIONS EXIST? WHAT ARE THE MONITORING, ENFORCEMENT AND REPORTING ACTIVITIES IN RELATION TO THE LEGISLATION?

A business entity (industrial facility, factory) should provide the measurement results of pollutant emissions into the air, water and land in the study for granting of environmental permits. Pollutant emissions must comply with the maximum permissible concentrations (MPCs) of pollutants listed in the Rulebooks. If emissions are not in accordance with the Rulebooks, then the best available techniques (BAT) are implemented.

The regulations define the use of best available techniques for integrated pollution prevention and control, however, in practice they are not used or are interpreted arbitrarily.

Although BiH is committed through the National Energy Plan to the European Energy Community to implement desulphurization of the most critical parts of thermal power plants, which would significantly reduce the emission of sulphur dioxide in 2018, it is evident that this obligation will not be implemented. For instance, when it comes to the Tuzla Thermal Power Plant, the preparation process of this project is just starting, therefore, it is already clear that the obligation of reaching the reduced limit values in 2018 will be breached. The question remains as to how many consecutive years will it stay breached, which depends on the urgent realization of this investment and the recent beginning of the desulphurisation process.

87

IS THERE A SYSTEM IN PLACE TO PROVIDE FOR A POLLUTANT RELEASE AND TRANSFER REGISTER REGARDING INDUSTRIAL FACILITIES?

There is not a pollutant release and transfer register regarding industrial facilities.

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HOW IS THE ISSUE OF INDUSTRIAL RISKS AND ACCIDENTS DEALT WITH AND CONTROLLED BY PUBLIC AUTHORITIES? IS THERE A SYSTEM IN PLACE TO CONTROL MAJOR ACCIDENTAL HAZARDS (E.G. SEVESO)?

A Plan for the Prevention of Large-Scale Disasters is being developed for precisely defined facilities that store or produce substances which may cause large-scale disasters. Industrial risks and disasters are covered by the said Plan, but insufficiently.



## ABOUT THE INITIATIVE

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

### Active members:

Asocijacija za demokratske inicijative, Sarajevo  
 Balkan Investigative Reporting Network BiH  
 BH novinari, Sarajevo  
 Centar za istraživačko novinarstvo, Sarajevo  
 Centar za ljudska prava Univerziteta u Sarajevu  
 Centar za političke studije, Sarajevo  
 Centar za mlade Kwart, Prijedor  
 Fondacija Cure, Sarajevo  
 Fondacija 787, Sarajevo  
 Forum ZFD BiH  
 Helsinski parlament građana, Banja Luka  
 Hope and Homes for Children BiH  
 MyRight  
 Oštra nula  
 Kali – Sara Romski informativni centar  
 Sarajevski otvoreni centar  
 Transparency International BiH  
 Zemlja djece, Tuzla  
 Udruženje Tranzicijska pravda, odgovornost i sjećanje  
 TRIAL International - ured u BiH  
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**More about Initiative:**  
[www.eu-monitoring.ba](http://www.eu-monitoring.ba)