

POTEMKIN'S CANDIDACY

2022 ALTERNATIVE REPORT ON BOSNIA AND HERZEGOVINA PROGRESS ON THE ROAD TO THE EUROPEAN UNION MEMBERSHIP - POLITICAL CRITERIA

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List of abbreviations

Agency for the Prevention of Corruption and Coordination of the Fight against Corruption - APIK
Bosnia and Herzegovina - BiH
Brčko District of Bosnia and Herzegovina - BD BiH
Central Bosnia Canton – CBC
Central Election Commission of Bosnia and Herzegovina – CEC BiH
Civil Society Organisations - CSOs
Council of Ministers of Bosnia and Herzegovina - CoM BiH
Directorate for European Integration – DEI
European Commission - EC
European Court of Human Rights - ECtHR
European Union - EU
Federation of Bosnia and Herzegovina - FBiH
Free Media Help Line – FMHL
Herzegovina-Neretva Canton - HNC
High Judicial and Prosecutorial Council of Bosnia and Herzegovina – HJPC BiH
Law on Amendments to the Public Procurement Law – LAPPL
Ministry of Human Rights and Refugees of Bosnia and Herzegovina - MHRR BiH
National Assembly of the Republika Srpska - NA RS
Office of the Disciplinary Counsel – ODC
Office of the High Representative - OHR
Parliament of the Federation of Bosnia and Herzegovina - PFBiH
Parliamentary Assembly of Bosnia and Herzegovina - PA BiH
Public Administration Reform - PAR
Republika Srpska - RS
Sarajevo Canton - SC
Small Hydropower Plant – SHPP
United Nations Development Program - UNDP
United States of America – USA

Introduction

Granting Bosnia and Herzegovina's (BiH) the European Union (EU) candidate status could lead the uninformed to believe that the institutions and political representatives have made progress in the reform processes and brought this country closer to the standards of the member states. The Alternative Report of the Initiative for Monitoring the EU Integration of Bosnia and Herzegovina¹ offers a review and perspective of civil society organizations on the dynamics and results of the most important political and reform processes in the past year and the fulfilment of obligations from political criteria. The Report provides an overview of the functioning of democratic institutions and public administration reform, the rule of law and fundamental rights, as well as Annexes to Chapters 19, 27 and 28.

Although it was expected that the attention that BiH received in the EU institutions after the beginning of Russian invasion of Ukraine would be used in a constructive way to accelerate European integration, there was a sharpening of rhetoric, new threatening with secessionism, non-compliance with the Constitution and laws, and new political blockades that resulted in legal uncertainty and a delay in reforms.

Too broadly formulated priorities in the Opinion of the European Commission have opened up space for free interpretation and different interpretations of political representatives on the results achieved, which makes it difficult to monitor reforms. Civil society organizations are questioning whether each adopted law and strategic document is considered a success, although decision-making processes were non-transparent, and proposals from non-institutional relevant actors were most often ignored. This and earlier reports prove that the adopted strategic documents and accompanying action plans are generally not implemented, that insufficient funds are allocated and that there is no political will and sometimes expertise to improve the situation in the given area. In legislative processes, the opinions of the competent commissions are most often not respected, so the question arises whether legal solutions are based on expert opinion or exclusively on the political will of the ruling parties.

Despite the request of the European Commission that all administrative bodies in charge of the implementation of the EU acquis be based solely on professionalism and that the right of veto in the decision-making process in accordance with the said acquis be removed, the Coordination Mechanism in BiH is based on the right of veto of all administrative units, including Cantons. The inefficiency of this mechanism is most evident in the development of the Integration Program, which was supposed to be completed at the end of 2021.

In view of all the above, it is necessary to review the current approach to European integration and the political will for progress that would be accompanied by the opening of membership negotiations. Without changing the approach and urgently stopping the current rhetoric of the highest political representatives, the December 2022 decision can be called Potemkin's candidacy. The findings of this Report prove this.

¹ The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of civil society organisations that contributes to the monitoring of reforms and oversees the application of European Union policies, laws and standards, focusing on the issues of democratisation, the rule of law, and human and minority rights. More information at: <https://eu-monitoring.ba/>

CLUSTER 1: FUNDAMENTALS OF THE ACCESSION PROCESS

Functioning of Democratic Institutions and Public Administration Reform

Elections

Priority 1: *Ensure that election is conducted in line with European standards by implementing OSCE/ODIHR and relevant Venice Commission recommendations, ensuring transparency of political party financing, and holding municipal elections in Mostar.*

The Parliamentary Assembly of BiH has not adopted amendments to the BiH Election Law with the aim of fulfilling this priority. The High Representative referred to the Opinion of the European Commission and this priority in the Decision of 27 July 2022, but the recorded electoral irregularities showed that the integrity of the elections was not significantly improved. Transparency of political party financing has not been ensured. Local elections in Mostar were held in 2020.

Political actors in Bosnia and Herzegovina (BiH) have not reached an agreement on the implementation of a comprehensive reform of electoral legislation. Interventions by the High Representative in electoral legislation have caused new political tensions and public anxiety, and have not responded to all requests of the first priority of the Opinion of the European Commission (EC)². General elections in 2022 were accompanied by irregularities accompanied by accusations of vote theft, trade with Polling Station Committees and abuse of public resources.

The year began with the collapse of the Neum negotiations on the amendment of electoral legislation facilitated by the European Union (EU) and the United States of America (USA). Key political actors from the Federation of Bosnia and Herzegovina (FBiH) Entity failed to reach an agreement, and civil society representatives criticized the non-transparency of negotiations, the exclusion of civil society from the process and the conduct of negotiations outside state institutions. Failure to reach an agreement was the announcement of new political blockades and the uncertainty of holding elections due to the failure to adopt the state budget. It is worrying that the highest officials publicly conditioned the allocation of funds for holding elections by adopting amendments to the BiH Election Law proposed by their then ruling political party. The High Representative intervened with two decisions in order to secure funding for the 2022 General Elections³, but also for all subsequent election cycles⁴.

² The Commission's Opinion on Bosnia and Herzegovina's EU membership application. May 2019, available at: <http://europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahtjevu-Bosne-i-Hercegovina-za-clanstvo-u-Evropskoj-uniji.pdf>

³ Decision on approving the allocation of funds for the purpose of covering expenditures related to the 2022 General Election in BiH, No. 02/22, 07 June 2022, Office of the High Representative <http://www.ohr.int/decision-enacting-the-decision-on-approving-the-allocation-of-funds-for-the-purpose-of-covering-expenditures-related-to-the-2022-general-elections-in-bosnia-and-herzegovina-2/>

⁴ The amendment to Article 11 stipulates that during the temporary financing, the expenditures envisaged for financing the elections conducted by the CEC of BiH, which are covered from the budget of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina in accordance with the BiH Election Law, shall be considered as current expenditures and shall be realized in accordance with the budget request of the CEC of BiH. Decision Enacting the Law on Amendments to the Law on Financing of the Institutions of Bosnia and Herzegovina, No. 04/22, 07 June 2022, Office of the High Representative: <http://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-law-on-financing-of-the-institutions-of-bosnia-and-herzegovina-2/>

The third decision⁵ on the same day aligned the previous two decisions with the BiH Election Law.

“Technical Amendments” to the BiH Election Law

Considering that no political agreement was reached on the so-called technical amendments to the BiH Election Law, the High Representative intervened in July 2022 with a new Decision⁶

and introduced into the electoral legislation provisions on hate speech⁷, abuse of public resources and prohibition of fictitious representation of political entities within Polling Station Committees.

The first sanctioning of **hate speech** in the election campaign was carried out by the Court of BiH in October 2022, when it confirmed the Decision of the CEC BiH on sanctioning of the political party Movement of Democratic Action (3,000 KM fine) and their member Elzina Pirić (5,000 KM fine). Penalties are at the lower limit of the amount stipulated by the BiH Election Law.

During the pre-election period, the CEC BiH received a total of 32 complaints related to hate speech, and the Pirić case is the only one reported to have been confirmed.⁸ However, the sanctioning of political subjects is limited by law to a 30-day election campaign period. This makes it impossible to punish subjects before the start of the campaign or after receiving a mandate, leaving room for the spread of hate speech. Amendments to the law in the field of **abuse of public resources** treated only the behaviour of public officials, without touching on a wide range of abuse of financial resources for the purpose of pre-election promotion or obtaining votes. The Transparent.ba platform⁹ has recorded over 2200 examples of abuse of public resources for the purpose of campaigning, while over 300 million KM were allocated from budgets of different levels of government with the aim of buying voter support through one-off assistance before the elections. Observers of Transparency International in BiH have also noted the trend of abuse of the promotion of candidates for the General Election at events financed and organized by public institutions, institutions and companies. 76% of the analysed 543 public events were attended by can-

⁵ Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina, No. 03/22, 07 June 2022, Office of the High Representative: <http://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-4/>

⁶ Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina, No. 05/22, 27 July 2022, Office of the High Representative: <http://www.ohr.int/odluka-kojom-se-donosi-zakon-o-izmjenama-i-dopunama-izbornog-zakona-bosne-i-hercegovine-4/>

⁷ Ibid.

The High Representative's Decision of 27 July 2022 defines 'hate speech' as 'any form of public expression or speech that provokes or encourages hatred, discrimination or violence against any person or group of persons, based on race, skin colour, nationality, sex or religion, ethnic origin or any other personal characteristic or orientation that incites to discrimination, hostility and violence.'

⁸ Complaints filed in the period of the election campaign for hate speech, CEC BiH, 2022, available at: www.izbori.ba/Documents/Izbori_2022/Prigovorilzalbe/7_Prigovori_podneseni_u_periodu_izborne_kampanje_7_3_sta_v_1_tacka_7_IZ_BiH_govor_mrnje_19_09_2022_2_1710.pdf

⁹ „Stranke na izbornu kampanju potrošile 11,5 miliona KM. TI BiH zabilježio preko 2200 primjera zloupotrebe javnih resursa za kampanju” (“The parties spent 11.5 million KM on the election campaign. TI BiH recorded over 2200 examples of abuse of public resources for the campaign”), Transparentno.ba, last modified 01 November 2022. <https://transparentno.ba/2022/11/01/stranke-na-izbornu-kampanju-potrosile-115-miliona-km-ti-bih-zabiljezio-preko-2200-primjera-zloupotrebe-javnih-resursa-za-kampanju/>

didates in the General Election. Only a few cases of abuse have been sanctioned by the CEC BiH, and these examples relate mainly to the addresses of public officials or candidates at public events.

Although presented as a package to improve the integrity of elections, the High Representative's Decision of July 2022 did not produce the desired results in terms of preventing irregularities. In their Analysis of the Transparency of the Polling Station Committees¹⁰, independent observers reported that it is suspected that over 747 (over 17%) of the 4,337 analysed members of the polling station committees are connected with the potential **trade of seats in the polling station committees**. Observers also warned of collusion between local polling station committees and political parties in order to manipulate the distribution of seats in polling station committees.

Insufficient legal framework to regulate **transparent election campaign financing** leaves room for a wide range of mechanisms to circumvent reporting of actual expenditures and revenues. Transparency International established by monitoring that the parties in the post-election financial statements reported 11.3 million KM of election campaign expenditures, while eight parties reported unrealistically low campaign expenditures, i.e., at least 1.5 million KM less than the estimate.¹¹

Interventions on Election Night

Contrary to the practice of democratic societies, the High Representative imposed amendments to the electoral legislation on the Election Day. A few minutes after the closure of the polling stations, he published amendments to the FBiH Constitution¹² and the BiH Election Law¹³. These amendments, defined without public consultations, call into question the will of voters and the representation of constituent peoples and citizens who do not fall into one of these three groups. The absence of supporting acts to remove the doubts created by these amendments leaves room for different interpretations during the implementation of election results.

Although the full effects will be seen in the process of forming the government at the FBiH level and in the next election cycle, the aforementioned decisions have caused a lot of controversy and confusion in the public space. The Office of the High Representative (OHR) said in a statement that the decisions introduce "unblocking mechanisms and strict deadlines that will safeguard the functioning of the FBiH"¹⁴

¹⁰ „Analiza transparentnosti biračkih odbora“ ("Analysis of the transparency of polling station committees") (Sarajevo: Pod lupom: Coalition for Free and Fair Elections, 2022), p. 15 <https://podlupom.org/biblioteka/analize-i-istraganja-kat/analiza-transparentnosti-birackih-odbora/>

¹¹ „Stranke prijavile 11,3 miliona KM troškova kampanje! Osam partija prikrilo najmanje 1,5 miliona KM troškova“ ("The parties reported 11.3 million KM in campaign expenses! Eight parties concealed at least 1.5 million KM in expenses"), Transparentno.ba, last modified 23 December 2022, <https://transparentno.ba/2022/12/23/stranke-prijavile-113-miliona-km-troskova-kampanje-osam-partija-prikrilo-najmanje-15-miliona-km-troskova/>

¹² Decision adopting amendments to the Constitution of the Federation of Bosnia and Herzegovina, No. 06/22, 02 October 2022, Office of the High Representative: <http://www.ohr.int/decision-enacting-amendments-to-the-constitution-of-the-federation-of-bosnia-and-herzegovina-5/>

¹³ Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina, No. 07/22, 02 October 2022, Office of the High Representative: <http://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-9/>

¹⁴ "Statement by High Representative Christian Schmidt: Functionality Package", Office of the High Representative, 02.10.2022. <http://www.ohr.int/izjava-visokog-predstavnika-christiana-schmidta-paket-funkcionalnosti-2/>

, while the analysis of the Istinomjer¹⁵ proves that this is not entirely true. It is also important to emphasize the pressures on the work of the CEC BiH through the political challenging of their decisions and powers. It will be necessary to closely monitor the pressures of the new ruling coalition, which include announcements of initiatives to dismiss the current members of the CEC, despite the fact that the reasons for dismissal are strictly prescribed by law.

Elections and Gender Equality

For the first time, BiH has women elected to top executive positions. Željka Cvijanović has been elected **a member of the BiH Presidency**, while Borjana Krišto has been elected **the Prime Minister Designate¹⁶ of the Council of Ministers of BiH (CoM BiH)**. Mirjana Marinković-Lepić has been elected **Speaker of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (PFBiH)**.¹⁷ Welcoming these positive developments, it is important to point to the decline in the number of elected women in legislative bodies at the state and entity levels. Female candidates are still less represented in election campaigns and are often exposed to verbal and even physical attacks. Sexist speech is used as the most common means of degrading and demotivating women to engage in politics.¹⁸ Out of a total of 42 representatives in the **House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (PA BiH)**, **only 8 women¹⁹** (of which 2 compensatory mandates) were elected in the new convocation. There has been a decline from the previous convocation which has 11 female representatives. In the **National Assembly of the Republika Srpska (NA RS)**, the situation is even more unfavourable because among 83 representatives, **only 12 women (7 through compensatory mandates)** were elected, compared to 18 from the previous convocation. Thus, the NA RS will have 91.16% of men in this term. In the **House of Representatives of the PFBiH** the number of female representatives has been reduced from 30 to 27.²⁰

Gender equality was not the subject of amendments to election legislation, and statistics indicate the need for better regulation of this area. Gender equality was also not a topic within the mandatory education of members of the polling station committees by municipal/city electoral commissions. The CEC BiH²¹ uses exclusively gender-neutral or masculine terms in educational materials and video clips intended for voters. Names of functions at the polling station are defined exclusively in masculine gender (president of the polling station, member, observer, voter). This practice directly affects the perception of gender equality in society because it does not empower and does not treat all participants in the electoral process equally.

¹⁵ Denis Čarkadžić, „Schmidtove nametnute odluke ne predviđaju sankcije niti sprečavaju kontinuirano ponavljanje procedura” (“Schmidt's imposed decisions do not foresee sanctions or prevent continuous repetition of procedures”), Istinomjer.ba, last modified 19 October 2022. <https://istinomjer.ba/schmidtove-nametnute-odluke-ne-predvidjaju-sankcije-niti-sprecavaju-kontinuirano-ponavljanje-procedura/>

¹⁶ Her election as Chair of the Council of Ministers of BiH was confirmed in January 2023.

¹⁷ Cvijanović was elected directly in the elections, and Krišto and Marinković-Lepić were elected to these positions by the decision of the coalition partners.

¹⁸ Information collected from the Central Election Commission of BiH

¹⁹ The official websites of the PA BiH and the CEC BiH offer different information about elected officials. These differences arose after some elected representatives took over the mandates in the executive branch, so their departure or the arrival of a new representative changed the gender balance. The PA BiH website offers updated data, so it was used as a source: <https://www.parlament.ba/representative/list>

²⁰ The situation is the same as in the previous reference. Data from the PFBiH website were used as a source: <https://predstavnickidom-pfbih.gov.ba/zastupnici>

²¹ CEC BiH <https://www.izbori.ba/Default.aspx?Lang=3&CategoryID=1247>

Parliament

The House of Representatives of the PA BiH held only 9 sessions in 2022, of which 8 regular and one emergency session. **The House of Peoples of the PA BiH** held 11 sessions during the same period, of which 6 regular and 5 emergency sessions. The constituent session of the new convocation of the House of Representatives of the PA BiH was held on 1 December 2022. Marinko Čavara, the former president of the FBiH, who was sanctioned by the USA in 2022 due to the blockade of the functioning of this Entity, was also elected to the leadership of this House.

During 2022, in the parliamentary procedure of both Houses, there were 43 proposals of laws and four amendments to the Constitution of Bosnia and Herzegovina²². **Only 7 laws were adopted**²³ under the ordinary, summary or emergency procedure.

The five laws promulgated by the High Representative on provisional grounds have not been confirmed in the PA BiH. This is, in addition to the aforementioned interventions in election legislation, the Decision Enacting the Law on Amendments to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina²⁴.

The FBiH Parliament also follows the trend of a small number of sessions held. The House of Representatives of the PFBiH held 6 regular and 3 extraordinary sessions, while the House of Peoples of the PFBiH held 5 regular and 6 extraordinary sessions. Among the legal solutions that have attracted the most attention of the public and the media is the *Law on Amendments to the Law on Allocation of Public Revenues in the FBiH*²⁵, *Law on Control and Restricted Use of Tobacco, Tobacco Products and Other Smoking Products*²⁶. The new convocation of the House of Representatives of the PFBiH was constituted on 1 December 2022.

The previous convocation of the **NA RS** held 3 regular and 11 special sessions during 2022. The new convocation was constituted on 15 November 2022 and it held 5 special sessions by the end of the year. At the last session, the Law on Immovable Property Used for Functioning of Public Authority²⁷ was adopted by urgent procedure.

²² Overview of legislative activities of the Parliamentary Assembly of BiH in the period 1 January - 30 November 2022

<https://www.parlament.ba/Publication/Read/20635?title=prikaz-zakonodavne-aktivnosti-parlamentarne-skupstine-bosne-i-hercegovine-u-razdoblju-od-1.1.2022.-do-30.11.2022.&pageId=239>

²³ Some of the adopted laws are the Law on Customs Offences of BiH, the Law on Protection of the Right to Trial before the Court of BiH within a Reasonable Time, the Law on Amendments to the Law on Excise Duties in BiH, and the Law on Amendments to the Public Procurement Law.

²⁴ Decision Enacting the Law on Amendments to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina, available at: <http://www.ohr.int/odluka-kojom-se-donosi-zakon-o-izmjenama-i-dopunama-zakona-o-privremenoj-zabrani-raspolaganja-drzavnom-imovinom-bosne-i-hercegovine/>

²⁵ The Law is available on the official website of the Government of the FBiH: <https://fbihvlada.gov.ba/hr/3-zakon-o-izmjeni-zakona-o-pripadnosti-javnih-prihoda-u-federaciji-bosne-i-hercegovine>

With this Law, the coefficient (weighting 2) for the Sarajevo Canton is reduced from 2 to 1.5 in the distribution of public revenues, and every next calendar year it would be reduced by 0.1 percent – to a value of 1.3. More at: <https://istinomjer.ba/kanton-sarajevo-ce-u-2023-godini-imati-smanjene-prihode/>

²⁶ The Law is available on the official website of the Government of the FBiH, <https://fbihvlada.gov.ba/bs/24-zakon-o-kontroli-i-ogranicenju-upotrebi-duhana-duhanskih-i-ostalih-proizvoda-za-pusenje>

²⁷ News from the Fifth Special Session of the NA RS, <https://www.narodnaskupstinars.net/?q=la/vijesti/narodna-skup%C5%A1tina-usvojila-zakon-o-nepokretnoj-imovini-koja-se-koristi-za-funkcionisanje-javne-vlasti-%E2%80%93-po-hitnom-postupku-%C5%A1erani%C4%87-i-bukejlovi%C4%87-izabrani-za-potpredsjednike-vlade-republike>

Governing

During 2022, the previous convocation of the CoM BiH held 14 regular and 25 emergency/telephone sessions.²⁸ The CoM BiH proposed four of 7 laws passed in the PA BiH²⁹. At the beginning of November 2022, the Council of Ministers of BiH, at the proposal of the Commission for Cooperation with NATO, adopted the Reform Programmes of Bosnia and Herzegovina for 2022 and 2021.

In 2022, BiH did not receive a National Programme for the Adoption of the *Acquis*, as well as the **Integration Program**, which was supposed to be completed in December 2021. The Directorate for European Integration (DEI) pointed out that the responsibility for the delay lies with the working groups for European integration that have not completed their part of the work.³⁰ It is important to note the importance of the Integration Programme for better coordination between institutions at different levels of government, as well as better monitoring of reform processes.

The results of the 2018 General Elections were not implemented in 2022 either. The Government, the President and the Vice-Presidents of the FBiH spent **the entire 2018-2022 term of office in the technical term of office**. During the previous year, the FBiH government held 54 sessions, of which 48 were regular and 6 urgent.

On June 6, 2022, the U.S. Department of the Treasury included Marinko Čavara, the president of the Federation of BiH and the newly elected chair of the House of Representatives of the PA BiH, on the list of sanctioned persons from BiH. Since 2019, Čavara has refused to appoint candidates for the Constitutional Court of the FBiH, thus blocking the function of the Council for the Vital National Interest of this court.³¹ Following an increased pressure from the High Representative to unblock this process, three of the four missing judges were appointed in October, while the fourth judge was confirmed in November 2022.

During 2022, the previous convocation of the RS Government held 49 sessions, of which 47 regular and two special sessions. In order to meet the obligation to harmonise legislation, the RS Government has adopted the *Action Plan for harmonisation of the Republic Srpska legislation with the European Union legislation for 2022*. After the RS Law on Medicinal Products and Medical Devices entered into force on 28 June 2022, former member of the BiH Presidency Šefik Džaferović sent a request to the Constitutional Court of BiH for an assessment of the constitutionality of this law, as well as of the Law on Amendments to the RS Law on the Public Administration. When this Law entered into force, OHR and EU³² reacted, and the Constitutional Court of BiH repealed the said laws at the plenary session held in early December 2022³³. Minister of Health and Social Protection of the RS in the last convocation of the RS Government, Alen Šeranić, was

²⁸ Press Releases from the sessions of the CoM BiH, https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/Archive.aspx?langTag=bs-BA&fromDate=3.1.2022&thruDate=31.12.2022&template_id=92&pageIndex=1

²⁹ The Law on Customs Offences of BiH, the Law on Protection of the Right to Trial before the Court of BiH within a Reasonable Time, the Law on Amendments to the Law on Excise Duties in BiH, and the Law on Amendments to the Public Procurement Law

³⁰ Denis Čarkadžić, „BiH još uvijek bez Programa integriranja u EU“ ("BiH is still without an EU Integration Program"), Istinomjer.ba, last modified 15 July 2022., <https://istinomjer.ba/bih-jos-uvijek-bez-programa-integriranja-u-eu/>

³¹ Neimenovanje sudija Ustavnog suda FBiH: Svjesna blokada ili nepostojanje političkog dogovora? (Non-appointment of judges of the FBiH Constitutional Court: Conscious blockade or lack of political agreement?), <https://istinomjer.ba/neimenovanje-sudija-ustavnog-suda-fbih-svjesna-blokada-ili-nepostojanje-politickog-dogovora/>

³² OHR and EU on the Law on Pharmaceuticals and Medical Devices of Republika Srpska, <http://www.ohr.int/ohr-i-eu-o-zakonu-o-lijekovima-i-medicinskim-sredstvima-republike-srpske-2/>

³³ Report from the Plenary Session of the Constitutional Court of BiH, <https://www.ustavisud.ba/bs/131-ple-narna-sjednica>

added to the US list of sanctioned persons. The new RS Government, headed by Prime Minister Radovan Višković, was elected on 21 December 2022³⁴.

Civil Society

Priority 11: *Ensuring an enabling environment for civil society, notably by upholding European standards on freedom of association and freedom of assembly.*

Although this priority has been fulfilled to a lesser extent (relatively well regulated right to freedom of association), civil society in BiH does not have an enabling environment for its work. Laws on freedom of assembly are not in line with European standards, and there is increasing pressure on activists. The imprecise definition of priorities makes it difficult to monitor its implementation, so it is necessary to further clarify what the enabling environment for civil society means.

Almost no progress has been made in ensuring an enabling environment for the development and operation of civil society in BiH. There is still no functional database of registered civil society organisations (CSOs) with qualification and updated data. The Unique e-Register of Associations and Foundations is not updated regularly and does not represent a relevant data source.³⁵

The Brčko District of Bosnia and Herzegovina (BD BiH) remains the only administrative unit in BiH with legislation on **public gathering** mostly aligned with European standards. The 2022 BiH Pride March is the public gathering that has attracted the most media and political attention, and the announcements of tightening the regulations for holding public rallies in the Sarajevo Canton (SC) are worrying.

In the RS, measures have been announced indicating an additional **restriction on civil society activities**. The Entity's president has announced the criminalisation of defamation and the adoption of the Law on Preventing the Spread of Fake News and Hate Speech. The CSOs and the media have repeatedly expressed their concern and dissatisfaction with these announcements, viewing them as attacks on free speech in this Entity.

On the basis of the *Impact Assessment of the field of financing of civil society organizations in the FBiH*³⁶, the FBiH Ministry of Justice initiated the drafting of a new text of the **Law on Financing of Civil Society in the FBiH**. The aim of the Law is, among other things, to establish an effective system of financing and monitoring the effectiveness of the activities of organizations, which in 2022 stood out as one of the important issues in the public sphere.³⁷

The FBiH Ministry of Justice and the United Nations Development Programme in BiH have established an informal working-consultative group for the drafting of this law, whose work is not recognized by the members of the Initiative for Monitoring the EU Integration of Bosnia and Herzegovina as a good practice of citizens' partic-

³⁴ Imenovana nova Vlada Republike Srpske (New Government of the Republika Srpska appointed), Istinomjer, <https://istinomjer.ba/imenovana-nova-vlada-republike-srpske/>

³⁵ The CSO Sustainability Index in BiH for 2021 lists the data from this Unique e-Register, according to which a total of 27,432 organizations were registered in BiH at the end of 2020. Full report is available at: <https://civilnodrustvo.ba/wp-content/uploads/2022/12/Izvjestaj-index-odrzivosti-za-BiH-u-2021.-godini.pdf>

³⁶ Full document is available at: <https://www.fmp.gov.ba/bs/news-reader/poziv-za-javnu-raspravu.html>

³⁷ Full text with Civilka conclusions: <https://civilnodrustvo.ba/7839-2/>

ipation in decision-making processes. The drafting of the text of this Law has not been completed by the end of 2022, nor placing this Law in the work plan of the Ministry has been initiated.

Transparency in the allocation of public funds to CSOs is not at a satisfactory level. Although the CoM BiH is still the only level of government that has the *Rulebook on Criteria for Financing and Co-financing Projects in Areas of Public Interest Implemented by Associations and Foundations*³⁸, it is questionable how much these rules are implemented in practice. The lack of harmonization of these regulations at all levels of government opens up space for irresponsible and non-transparent financing processes.

The new trend of **SLAPP suits**³⁹ has increased the pressure of representatives of the authorities and other interest groups on the representatives of civil society. Sara Tuševljak and Sunčica Kovačević are two environmental activists who have been targeted by the Green Invest/BUK doo company, which intends to build a small hydropower plant (SHPP) on the Kasindol River. The process is still ongoing and the state has done nothing to neutralize this form of pressure on civil society.

BiH has not yet started drafting the **Strategy for Creating an Enabling Environment for Civil Society Development in BiH**, despite the *Cooperation Agreement has been signed between the Council of Ministers of Bosnia and Herzegovina and non-governmental organizations in Bosnia and Herzegovina*. The BiH Ministry of Justice believes that this document should be prepared by the CoM BiH Advisory Body for cooperation with non-governmental organizations, although this body does not have any resources, nor is it able to independently carry out this process. During 2022, this Advisory Body developed the process of drafting the Strategy and sent it to the BiH Ministry of Justice. The draft said that as many associations and foundations as possible, as well as numerous institutions, must be involved in the process of drafting the Strategy. The fact that the CoM BiH did not hold a meeting with its own Advisory Body despite the calls is an indicator of poor communication and cooperation.

The involvement and participation of CSOs in the European integration process remains unsatisfactory. There is no effective systemic way of promoting the importance and role of integration in the development of BiH with the aim of bringing the process closer to the citizens. Several consultations that DEI organised with civil society had a modest response. Slight progress has been made in communication and cooperation of DEI and CSOs, but more significant efforts are expected in this direction after granting the candidate status to BiH.

Undercapacity and lack of competence to participate in the drafting of legal regulations are part of the reasons for the poor response of CSOs in **consultations** via the eConsultations platform. In the Report on the Implementation of the Rules for Consultation in the Preparation of Regulations for 2022⁴⁰ states that among the reasons for poor response is also the fact that the majority of public policies and regulations of public interest are adopted at the Entity and local level, while the eConsultation platform is used only by state institutions. In 2022, 73 out of 190 registered participants participated in public consultations. Only 9 of the 174 proposals received were accepted in full or in part. A total of 3157 legal and natural persons were registered on the platform in 2022.



³⁸ Rulebook on Criteria for Financing and Co-financing Projects in Areas of Public Interest Implemented by Associations and Foundations, Official Gazette of BiH, No. 10/20, 05 August 2019: <http://www.sluzbenilist.ba/page/akt/bNGOer2aQw4=>

³⁹ Full text available at: 2022: <https://analiziraj.ba/2022-godina-slapp-tuzbi-u-regionu/>

⁴⁰ Report is available at: <https://ekonsultacije.gov.ba/legislativeactivities/details/120509->

The consultation process at the Entity, Cantonal and municipal levels is still not sufficiently transparent, inclusive and adapted to the needs and abilities of citizens and the interested public.

Public Administration Reform

Priority 14: *Complete essential steps in public administration reform towards improving the overall functioning of the public administration by ensuring a professional and depoliticised civil service and a coordinated countrywide approach to policy making.*

Although BiH has completed its strategic framework for public administration reform, its implementation is not monitored. Accountability mechanisms exist in the legislative framework at all levels, but their implementation is absent. BiH is far from fulfilling that priority.

BiH has completed the strategic framework of public administration reform (PAR) through the adoption of the PAR Strategy and Action Plan for the whole country and four public finance management strategies for each level of government. According to the SIGMA⁴¹ report, PAR implementation is not monitored, and civil society is not formally involved in the monitoring of reforms. Although the PAR Strategy expired in 2022, there were no formal decisions to extend or develop a new strategy.

By analysing the progress of the Public Finance Management Reform Strategy, it has been established that the publication of data on the implementation of the budget is not extensive, the reports on the budget at the end of the year do not contain data on the performance of the Government, the BiH Ministry of Finance and Treasury does not implement the open data policy not publishing all budgetary data of one or more open data formats. Central public procurement bodies do not publish reports on public procurement policies, and the existing tender documents are only available to certified registered users, which does not include CSOs or the general public. Only a few Ministries at the state level have published a report on procurement for the last three years. On the issue of internal audit, there is no clear deadline for the preparation of the consolidated annual report on financial management and control. The BiH Audit Office has maintained the practice of summarising all audit reports annually. The last annual summary was published in October 2022 for audit work performed in 2021.

No progress has been made regarding the accountability of public administration in BiH during 2022. Although accountability mechanisms exist in the legislative framework at all levels, their **implementation is absent**. Official typologies of administrative bodies have been established at all levels except the BD BiH, but the regulations still do not provide clear criteria for distinguishing different types of institutions and the degree of their autonomy.⁴² Certain regulatory bodies and other institutions with executive powers which are exempt from the administrative system, resulting in ambiguities regarding the organisational set-up and the line of their responsibility, which is directed towards the legislative authorities instead to the ex-

⁴¹ SIGMA, Monitoring Report: The Principles of Public Administration, Bosnia and Herzegovina, May 2022, available at: <https://www.sigmaxweb.org/publications/Monitoring-Report-Bosnia-and-Herzegovina-May-2022.pdf>

⁴² SIGMA, Monitoring Report: The Principles of Public Administration, Bosnia and Herzegovina, May 2022, available at: <https://www.sigmaxweb.org/publications/Monitoring-Report-Bosnia-and-Herzegovina-May-2022.pdf>

ecutive authorities.⁴³ Recommendations of supervisory bodies, such as the Audit Offices of institutions at all levels, and the Human Rights Ombudsman Institution of BiH, are still almost not implemented.⁴⁴

No progress has been made in the area of access to information. The legislative framework provides access to public information, but the effective application of this legislation has not been ensured. "Exceeding the legal deadlines, failing to provide the required information in the legally prescribed form, submitting incomplete answers, etc."⁴⁵ are just some of the problems in the implementation of the law, and in addition, "arbitrary application of the law is noticeable, which leads to difficult access to information or denial of access even though it is public information"⁴⁶. One of the main reasons is the fact that there is no specialized body in charge of overseeing law enforcement⁴⁷, which is a practice in the Western Balkans region. Although certain competences have been given to the Human Rights Ombudsman Institution of BiH, this institution does not have the authority or capacity to effectively implement the role of the supervisory authority in the part of freedom of access to information. According to the survey of Transparency International in BiH for 2022, only slightly over 50% of institutions submit answers to the request for access to information within the legally stipulated deadline.⁴⁸

⁴³ Transparency International in BiH, Analitička procjena stanja provođenja reforme javne uprave u BiH (Analytical assessment of the state of public administration reform in Bosnia and Herzegovina), Banjaluka 2022, available at: <https://ti-bih.org/wp-content/uploads/2023/02/1.-Analiticka-procjena-stanja-provodjenja-RJU-u-BiH.pdf>

⁴⁴ Revizije.info, Fijasko na kraju saslušanja pred parlamentarnom komisijom odgovornom za reviziju (The fiasco at the end of the hearing before the parliamentary commission responsible for the audit), available at: <https://revizije.info/fijasko-na-kraju-saslusanja-pred-parlamentarnom-komisijom-odgovornom-za-reviziju/>; Revizije.info, Sistem ne funkcioniše – revizori su ostavljeni sami i prepušteni dobroj volji institucija, umjesto obavezi, čije se neispunjavanje sankcioniše (The system does not work - auditors are left to their own devices and left to the good will of the institutions, instead of obligations, the non-fulfilment of which is sanctioned), available at: <https://revizije.info/sistem-ne-funkcionise-revizori-su-ostavljeni-sami-i-prepusteni-dobroj-volji-institucija-umjesto-obavezi-cije-se-neispunjavanje-sankcionise/>

⁴⁵ Transparency International in BiH, Analitička procjena stanja provođenja reforme javne uprave u BiH (Analytical assessment of the state of public administration reform in BiH), Banjaluka 2022, available at: <https://ti-bih.org/wp-content/uploads/2023/02/1.-Analiticka-procjena-stanja-provodjenja-RJU-u-BiH.pdf>

⁴⁶ Ibid

⁴⁷ SIGMA, Monitoring Report: The Principles of Public Administration, Bosnia and Herzegovina, May 2022, available at: <https://www.sigmaxweb.org/publications/Monitoring-Report-Bosnia-and-Herzegovina-May-2022.pdf>

⁴⁸ Transparency International in BiH, Primjena Zakona o slobodi pristupa informacijama u BiH (Application of the Law on Freedom of Access to Information in BiH), available at: <https://ti-bih.org/publikacije/analiza-primjene-zakona-o-slobodi-pristupa-informacijama-2022/>

Rule of Law and Fundamental Rights

Chapter 23: Judiciary and Fundamental Rights

Functioning of the Judiciary

Priority 4: *Thoroughly improve the institutional framework, including at the constitutional level, in order to:*

a) *ensure legal certainty in terms of division of competences between levels of government;*

b) *introduce a replacement clause to allow the state, after accession, temporary exercising the competences of other levels of government with the aim of prevention and elimination of violations of the EU law;*

c) ***guarantee the independence of the judiciary, including its independent institution (HJPC);***

d) ***reform the Constitutional Court, including resolving the issue of international judges, and ensure the implementation of its decisions;***

e) ***guarantee legal certainty, including through the establishment of a judicial authority entrusted to ensure consistent interpretation of law throughout Bosnia and Herzegovina;***

f) *ensure equality and non-discrimination of citizens, especially treatment of the judgment*

of the European Court of Human Rights in the case Sejdić and Finci;

g) *ensure that all administrative bodies in charge of the implementation of the *acquis* are based solely on professionalism and to remove the right of veto in the decision-making process, according to *acquis*.*

Priority 6: *Improve the functioning of the judiciary through the adoption of new laws on the High Judicial and Prosecutorial Council and courts of BiH in accordance with European standards.*

None of the laws from the above two priorities were adopted in 2022. It is worrying that the draft laws that are in the procedure do not contain the mechanisms of verification and accountability of holders of judicial functions. The year was marked by scandals and pressures in the appointment of judges and prosecutors, non-transparent work of courts and prosecutors' offices, poor processing of high corruption, inefficient system of accountability of judicial office holders.

Strategic Framework

BiH still lacks a **Justice Sector Reform Strategy**. By developing and implementing this important strategic document, whose implementation was planned for the period 2021-2027, the country should respond to a large number of requests⁴⁹ of the EC. The fact that the document whose implementation was supposed to start in 2021 has not yet been adopted, speaks of the lack of political will and dysfunction of the previous convocation of the BiH Council of Ministers. The BiH Ministry of Justice did

⁴⁹ Read the Commission's Opinion on Bosnia and Herzegovina's EU membership application. Pay particular attention to Priorities 4, 6 and 7. Available at: <https://europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahhtjevu-Bosne-i-Hercegovina-za-%C4%8Dlanstvo-u-Evropskoj-uniji.pdf>

not publish the draft document⁵⁰ and thus withheld the participation of the general and professional public in the process of drafting the Strategy. The preliminary drafts of the Strategy, the accompanying Action Plan and the Review of Implementation Indicators were published by the⁵¹ Association "Vaša prava BiH".

In 2022, the BiH Ministry of Justice organized five working and consultative meetings with institutions and organizations of the justice sector and other relevant institutions and organizations, partners in the reform processes. Further efforts are needed to involve the professional public in the process.

In addition to accelerating the process of drafting and adopting the Strategy, it is necessary to ensure and prove the political will for its implementation. This is supported by the fact that most of the priorities of the previous Strategy for the period 2014-2018 have not been implemented, and that they will become (remain) part of the new Strategy.

Legislative and Institutional Framework

The Law on Courts of BiH, which was sent to the public consultations in November 2022, has not yet been adopted. Although its adoption would fulfil one of the key priorities and achieve progress through defining the jurisdiction of the Supreme Court, some items of this law may lead to doubts in the application and limitation of jurisdiction⁵² of the Court of BiH.

The House of Peoples of the PA BiH rejected the amendments to the **Law on the High Judicial and Prosecutorial Council of BiH (HJPC BiH)**. The BiH Ministry of Justice has again prepared and submitted draft amendments, but the HJPC BiH has challenged the issue of publishing property records of judicial function holders and thus resisted one of the key mechanisms of verification and accountability of these persons. Although marked as urgent, the aforementioned amendments to the Law were not adopted even after three years, so BiH still does not have an Integrity Unit within the HJPC.⁵³

In addition to the lack of progress in improving the legal framework and implementing the necessary reforms, the existing institutional mechanisms are still inadequate to ensure the required level of accountability and integrity of the judiciary. **The process of appointing judges and prosecutors** by the HJPC BiH is still accompanied by controversies due to insufficient qualifications, questionable integrity and examples of appointments of persons who were previously convicted or selected

⁵⁰ In the summer of 2020, the BiH Minister of Justice, Josip Grubeša, announced that the Ministry would publish a preliminary draft strategy on the e-consultation platform during the autumn of that year, but it only published a decision on the formation of a working group for the drafting of the Strategy and reports on the implementation of the previously adopted Strategy, but not any documents related to the new Strategy.

⁵¹ "Poziv svim zainteresovanim pojedincima i nevladinim organizacijama da pruže doprinos u izradi SRSP BiH za period 2021.-2027" ("An invitation to all interested individuals and non-governmental organizations to contribute to the preparation of SRSP BiH for the period 2021-2027"), Vaša prava BiH (pravnapomoc.app), last modified 31 March 2022, <https://pravnapomoc.app/ba/newsdetails?id=49>

⁵² The limitation of jurisdiction mainly applies to crimes in the field of terrorism, human trafficking and sexual exploitation of women and children, illegal drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, cyber and organized crime established by the laws of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina.

⁵³ 2021 Alternative Report on Bosnia and Herzegovina's Progress on the Road to the European Union Membership: Political Criteria, p. 13: https://eu-monitoring.ba/site/wp-content/uploads/2022/05/BHS_FINAL_WEB-1.pdf

from the very bottom of the list of candidates.⁵⁴ Previous results, grades or possible disciplinary procedures are still not taken as a relevant criterion when selecting office holders. Inconsistency and excessive discretion in the application of the appointment and promotion rules can still be observed.⁵⁵

There are **political pressures in the process of appointment** on key positions in the judiciary, such as appointments of chief prosecutors and court presidents. The process of appointing the Chief Prosecutor of the Prosecutor's Office of BiH raises serious doubts about the process integrity. Due to various pressures and corruption scandals, all candidates with the exception of the then acting head of this office withdrew from the candidacy. This compromises the appointment process and does not make it a credible basis for the appointment of the first person of the Prosecutor's Office of BiH. Subsequently, in the process of appointing the President of the Court of BiH, only one candidate applied and was considered. This process calls into question the openness of the procedure and ensuring competition in the process of appointment to important positions.

Appointments at lower levels of government are also disputable. The HJPC BiH appointed the Chief Prosecutor of the Posavina Canton with a criminal record during the probation period and at the time of disciplinary procedure against her, which ignored the recommendation of the EC.⁵⁶ The HJPC BiH refused to provide the Balkan Investigative Report Network BiH with a tone record of the session at which the appointment of this prosecutor was discussed.

Numerous corruption and other affairs involving high-ranking prosecutors and judges call into question the **integrity of the holders of judicial institutions**. Representatives of the Prosecutor's Office of BiH were on the US sanctions list during 2022 due to suspicions of involvement in corruption. Suspicions continued to arise in the public regarding other prosecutors, as well as their links to politics and organised crime.⁵⁷

The HJPC and judicial institutions continue to respect the principle of **transparency**. Many institutions refuse to submit final indictments or convictions in violation of the Law on Freedom of Access to Information. Transparency mechanisms such as the publication of sound records of the HJPC sessions are not applied and are sought to be abolished.⁵⁸ Judicial transparency analysis⁵⁹ shows that only slightly more than 50% of requests for access to information were answered within the legal deadline, and that all the requested information was submitted. The different treatment of ju-

⁵⁴ „Imenovanja u VSTV-u: Prvo je odbili zbog loših rezultata, pa je izabrali za predsjednicu suda“ (Appointments in the HJPC: At first she was refused because of bad results, then they chose her as the president of the court"), Žurnal.info, last modified 26 September 2022, <https://zurnal.info/clanak/prvo-je-odbili-zbog-losih-rezultata-pa-je-izabrali-za-predsjednicu-suda/25326>

⁵⁵ As stated in the conclusions of TAIEX workshop "The criteria for the appointment of judges and prosecutors should be based on quality, integrity and efficiency", the appointment system must be urgently improved, given the numerous inconsistencies and omissions recorded therein. <https://vstv.pravosudje.ba/vstvfo/B/141/article/117988>

⁵⁶ Aida Trepanić, „Tužiteljica u Posavini unaprijeđena tokom trajanja uslovne kazne“ ("Prosecutor in Posavina promoted during probation period"), Detektor.ba, last modified 20 December 2022, <https://detektor.ba/2022/12/20/tuziteljica-u-posavini-unaprijedjena-tokom-trajanja-uslovne-kazne/>

⁵⁷ Amra Vrabac, „Porodične veze, korupcija, kriminal: Kako očistiti bh. pravosuđe od kompromitiranih tužilaca i sudija“ ("Family ties, corruption, crime: How to clean the BiH judiciary from compromised prosecutors and judges"), Patria, last modified 02 September 2022, <https://nap.ba/news/97628>

⁵⁸ Nermina Kuloglija-Zolj, „Zašto se VSTV "stidi" objavljivanja tonskih snimaka sjednica?" ("Why is the HJPC "ashamed" of publishing audio recordings of sessions?"), Detektor.ba, last modified 10 August 2022, <https://detektor.ba/2022/08/10/zasto-se-vstv-stidi-objavljivanja-tonskih-snimaka-sjednica/>

⁵⁹ „Analiza nivoa transparentnosti pravosudnih institucija u Bosni i Hercegovini“ ("Analysis of the level of transparency of judicial institutions in Bosnia and Herzegovina"), Transparency International BiH (Sarajevo: Transparency International BiH, 2022), <https://ti-bih.org/wp-content/uploads/2022/12/Analiza-transparentnosti-pravosudnih-institucija-u-BiH.pdf>

dicial institutions in relation to the profile of the applicant is a worrying practice. Namely, while in the case of requests made by TI BiH, in only one case there was a “silence of administration”, at the same time “silence of administration” was recorded in 30.9% of requests sent by citizens. On the other hand, prosecutors’ offices prefer to provide the requested information to citizens rather than to CSOs, which may also be indicative and indicate a more closed attitude of prosecutors’ offices towards CSOs. In the case of proactive transparency, most courts publish annual work plans, while only half of the courts have annual activity reports published on their websites. The worst trend was recorded in financial information. As many as **73 out of 74 courts have no published annual budget** on their website, while that one published does not apply to the current year.

When it comes to information relevant to criminal cases, only 16 courts publish complete first- and second instance judgments on their websites, a quarter of courts publish short information, while more than half do not publish any information on judgments on their websites. Organisations that monitor trials such as the Balkan Investigative Reporting Network BiH and Transparency International BiH point to the practice of hiding or late publication of the trial schedule and publishing the number of cases instead of the names and surnames of the accused, which makes it difficult for the interested public and journalists to monitor the trial.

The situation is different with the proactive transparency of prosecutors’ offices. While nearly half of prosecutors’ offices publish and regularly update annual activity reports, as many as 80% of them do not publish their annual work plans. As many as 19 prosecutors’ offices do not publish any information on the budget of institutions, while one prosecutor’s office publishes it, but not in a timely manner. Most prosecutors’ offices publish information on confirmed indictments in the form of a statement with a disposition (75%), while only three prosecutors’ offices publish complete indictments.

Judicial Efficiency

There is no progress in prosecuting the most complex crimes, primarily acts of corruption and organized crime.

According to the HJPC data for 2022, the prosecutor’s offices in BiH had a total of **1810 charges for criminal acts of corruption (KTK)**, and **49 charges** in connection with the cases of so-called **high corruption (KTKV)**.

A total of **456 investigations have been initiated for corruption crimes**, of which **42 refers to high corruption**. The data on the structure of the indictments are worrying. **175 indictments** were confirmed, of which **only one** relates to cases of high corruption.

As regards the structure of judgments, the situation is of particular concern in terms of penal policy. Namely, of the 193 final convictions, **131 refers to the suspended sentence**, while imprisonment sentence was pronounced only in one case, and imprisonment sentence and fine in one case. Analysing **sentences for high corruption**, two thirds are acquittal (14), while 7 are convictions and only in four cases an imprisonment sentence was pronounced. Here, it should certainly be borne in mind that there is a mechanism for the so-called “redemption” of a prison sentence if it is less than a year, which in the end does not result in a large number of sentences

being served.⁶⁰ The results are particularly devastating when it comes to the timeliness, i.e., the length of resolving incoming charges, and so, for example, in the case of the Prosecutor's Office of BiH, **the average length of resolving charges for high corruption is 977 days, i.e., almost 3 years.** The procedural indiscipline also characterizes court proceedings, so the monitoring of the trial determined that the average number of scheduled trials before the Court was 2 times a month per case, and that the number of cases held was even lower.⁶¹

There has been a postponement of scheduled trials due to a change in the composition of the panel, frequent and unjustified absences of accused or defenders⁶² and a slow dynamics of trial scheduling. Exceeding of the legal deadline during the pre-trial phase is also noticeable. The case of Alija Delimustafić and others points to illogicalities in the judiciary in BiH. The indictment was confirmed 5 years ago, and the main hearing was postponed 10 times and this stage of the process has not yet begun. Another example of inefficient proceeding management is the case against the former director of the RS Banking Agency Slavica Injac (Bobar banka case). The indictment for the criminal offense of organized crime in connection with the abuse of office or authority committed in 2014 was confirmed in 2017, and the verdict was not issued until the end of 2022.⁶³

Monitoring trials in corruption cases in BiH has shown that many illogicalities and irregularities lead to increasing citizens' distrust in the judiciary. Cases formed under public pressure point to inefficient work of prosecutors' offices, especially in cases of high corruption. Prosecutors' offices use these cases as a means of manipulating the public with sensationalistic announcements that they do not subsequently substantiate with the evidence, creating the impression that the responsibility for acquittals lies with the courts, and not with the ability of prosecutors to prove the execution of crimes stated in the indictments.

Accountability of the Judiciary

The system of accountability of holders of judicial functions continues to face the challenges of a complex process of determining accountability, lengthy processes, and the manner of decision-making and the role of the HJPC in final decisions. The effectiveness of available sanctions has no deterrent effect on holders of judicial functions. Most of the sanctions imposed still refer to anonymised public warnings and fines in the form of a percentage deduction from the salary. Journalists and the media often cannot follow the proceedings until the end, since the HJPC insist on the publication of final decisions in an anonymized form⁶⁴, i.e., only with the initials of sentenced persons.

⁶⁰ Vladimir Kovačević, „Veliki broj otkupljenih kazni u Republici Srpskoj slabi sprečavanje korupcije“ ("The large number of redeemed sentences in the Republic of Srpska weakens the prevention of corruption"), Detektor.ba, last modified 28 September 2022, <https://detektor.ba/2022/09/28/veliki-broj-otkupljenih-kazni-u-republici-srpskoj-slabi-sprecavanje-korupcije/>

⁶¹ "Efikasnost pravosuđa: učestalost zakazivanja i održavanja suđenja" ("Judicial efficiency: the frequency of scheduling and holding trials"), (Sarajevo: Transparency International BiH, 2022), available at: <https://ti-bih.org/publikacije/efikasnost-pravosudja-ucestalost-zakazivanja-i-odrzavanja-sudjenja/>

⁶² The Presidents of the Chambers of the Courts often do not establish the justification for absenteeism and do not use mechanisms to ensure the presence of the accused, such as determining the coercive apprehension or detention of the accused and fining the defenders who do not respond to the summons of the court and do not justify absenteeism. More in the analysis "Judicial Efficiency: Frequency of Scheduling and Holding Trials".

⁶³ The first-instance acquittal in this case was rendered outside the reporting period, in January 2023, six years after the confirmation of the indictment.

⁶⁴ Emina Dizdarević, „Anonimizacija primorava novinare na selektivno praćenje disciplinskih postupaka“ ("Anonymization forces journalists to selectively follow disciplinary procedures"), Detektor.ba, last modified 04 November 2022, <https://detektor.ba/2022/11/04/anonimizacija-primorava-novinare-na-selektivno-pracenje-disciplinskih-postupaka/>



According to the data of the Office of the Disciplinary Counsel (ODC) of the HJPC, **29 disciplinary measures were imposed in 2022**. The vast majority (20) refers to the reduction of salary, one to the reduction of salary with a special measure, three public warnings, three written warnings that are not published, and two transfers from the position of Chief Prosecutor to the position of Prosecutor. It is particularly devastating that during 2022, regardless of the ODC's proposals in disciplinary actions, no sanction includes dismissal.

The focus on mild penal disciplinary policy was returned by sanctions to holders of judicial functions. The ODC had a slow or no reaction to these sanctions, further undermining public confidence in the work of judicial institutions.⁶⁵ Despite the reiteration of the recommendations of international institutions that greater independence of the body that decides on disciplinary offenses of judges and prosecutors is needed, reforms in which solutions are envisaged have been pending for years⁶⁶.

War Crimes Prosecution before the Domestic Judiciary

More and more survivors and damaged witnesses of war crimes do not receive justice, nor any form of satisfaction due to the dynamics of prosecuting war crimes cases before domestic courts. Numerous associations expressed their dissatisfaction with the ineffective work of the judiciary on this issue by peaceful protests in front of the Court and the Prosecutor's Office of BiH, stressing their fear of the loss of witnesses and those responsible for war crimes.

According to the Revised War Crimes Processing Strategy⁶⁷, the State Prosecutor's Office is obliged to work on the most complex cases, while less complex cases should be forwarded to the Entity and the Prosecutors' Offices of BD BiH.

Of the total number of indictments filed in 2022,⁶⁸ only three were lowered to the Cantonal or District level, whereby the Prosecutor's Office continued spending resources on less complex cases. Numerous domestic and international organizations have been warning of this problem for years, as well as of accusing people inaccessible to BiH judicial institutions. In addition, it is still noticeable that the Prosecutor's Office continues to chop up cases and investigations, although on a much smaller scale than in previous years.

Cases referred to lower levels most often refer to those in which the perpetrator is unknown,⁶⁹ which is why there was no increase in trials in District and Cantonal courts, as well as in the Basic Court of BD BiH. Courts, on the other hand, act on the indictments submitted to them by the prosecutor's offices. The slow running of the process is best evidenced by the data that for war crimes trials at the state level,

⁶⁵ Emina Dizdarević, „Pravosuđe zatečeno sankcijama za tužioce i sudije“ („Judiciary surprised by sanctions for prosecutors and judges“), Detektor.ba, last modified 15 April 2022, <https://detektor.ba/2022/04/15/pravosuđe-zatečeno-sankcijama-za-tuzioce-i-sudije/>

⁶⁶ Nermina Kuloglija-Zolj, „Povećanje nezavisnosti Ureda disciplinskog tužioca godinama na čekanju“ („Increasing the independence of the Office of the Disciplinary Counsel has been pending for years“), Detektor.ba, last modified 31 August 2022, <https://detektor.ba/2022/08/31/povećanje-nezavisnosti-ureda-disciplinskog-tuzioca-godinama-na-cekanju/>

⁶⁷ More on the Revised Strategy in the chapter on Reconciliation, Transitional Justice and Memorialization

⁶⁸ Haris Rovčanin, „Tužilaštvo BiH nastavilo sa trendom optuživanja nedostupnih osoba“ („BiH Prosecutor's Office continued the trend of accusing unavailable persons“), Detektor.ba, last modified on 28 December 2022, <https://detektor.ba/2022/12/28/tuzilastvo-bih-nastavilo-sa-trendom-optuzivanja-nedostupnih-osoba/>

⁶⁹ Jasmin Begić, „Na niže nivoe prebačeno najviše slučajeva sa nepoznatim počiniocima“ („Most cases with unknown perpetrators were transferred to lower levels“), Detektor.ba, last modified 9 February 2022, <https://detektor.ba/2022/02/09/na-nize-nivoe-prebaceno-najvise-slucajeva-sa-nepoznatim-pociniocima/>

hearings are scheduled once a week or in two weeks, while hearings at Cantonal or District courts are most often scheduled once every 30 days. The supreme courts in the FBiH and RS repeal the judgments several times and return the cases to the first instance courts for a retrial before making a final decision.

Numerous associations of victims have been searching for years for information about more than 800 cases from the "A" category⁷⁰ submitted by the Prosecutor's Office of the International Criminal Tribunal for the former Yugoslavia. Only in the summer of 2022, the Prosecutor's Office of BiH announced that more than 250 such investigations had been suspended.⁷¹ Regional co-operation on the prosecution of war crimes remains highly inefficient. The process of transferring cases from BiH to neighbouring countries and conducting these court proceedings takes too long. At the selection to the position, in presenting his programme, the State Chief Prosecutor Milanko Kajganić stated that he will not be burdened with the number of indictments, but with their quality and complexity,⁷² and of the most complex cases that are in the domain of the Prosecutor's Office of BiH, **a third of them refer to unavailable accused**. The Court of BiH has pronounced fewer convictions and final imprisonment sentences than in previous years, and some of the reasons for this are the accusation of unavailable persons and fewer war crimes cases in the court proceedings.

⁷⁰ Cases marked "A" are cases for which the Prosecutor's Office in The Hague has determined that there is sufficient evidence for reasonable suspicion that a person committed serious violations of international humanitarian law, after which they were forwarded to the judiciary in BiH for further work.

⁷¹ Lamija Grebo, „Tužilaštva obustavila više od 250 istraga ratnih zločina sa "A" liste" ("The Prosecutors' Offices suspended more than 250 war crimes investigations from the "A" list"), Detektor.ba, last modified 08 July 2022, <https://detektor.ba/2022/07/08/tuzilastva-obustavila-vise-od-250-istraga-ratnih-zlocina-sa-a-liste/>

⁷² Emina Dizdarević i Azra Husarić Omerović, "Milanko Kajganić izabran za glavnog državnog tužioca" ("Milanko Kajganić elected Chief State Prosecutor"), Detektor.ba, last modified 20 October 2022, <https://detektor.ba/2022/10/20/milanko-kajganic-izabran-za-glavnog-drzavnog-tuzioca/>

Fighting Corruption

Priority 7: Strengthen the prevention and fight against corruption and organised crime, including fight against money laundering and terrorism, primarily through:

- a) adoption and enforcement of regulations on conflict of interest and whistleblower protection;**
- b) ensuring the effective functioning and coordination of anti-corruption bodies;**
- c) harmonization of legislation and strengthening of capacities for public procurement;**
- d) ensuring effective cooperation between law enforcement authorities and with prosecutors' offices;**
- e) demonstrating progress in achieving the results of proactive investigations, confirmed indictments, criminal prosecutions and final convictions in organised crime and corruption cases, including high-level ones;**
- f) depoliticization and restructuring of public enterprises and ensuring the transparency of the privatisation process.**

BiH has seen a decline in the fight against corruption in the past year as well. For two years now, we have been waiting for the adoption of the Anti-Corruption Strategy. Amendments were made to the BiH Public Procurement Law (more in Chapter *Public Procurement*). The Law on Conflict of Interest of BiH was not adopted. The application of existing laws on conflict of interest is ineffective at all levels, except in BD BiH. The FBIH does not apply the Law on Conflict of Interest, the Law on Fight against Corruption and Organized Crime, and the Law on Protection of Corruption Reporters has never been adopted.

According to the Corruption Perceptions Index⁷³, BiH has regressed again and occupies the lowest place in the region and **the third worst place in Europe**. Such a poor result is expected due to the lack of key reforms, and the attempts to adopt laws inferior to the existing ones under the mask of reforms are worrying.

With a decline by 8 index points in the last decade, BiH has been singled out as an example of the biggest deterioration in terms of corruption in the Eastern Europe and Central Asia regions. It is pointed out that ethnic divisions hinder democratic institutions in the fight against corruption, which is especially evident in the case of the Prosecutor's Office of BiH, whose ability to prosecute corruption is seriously doubted. The process of appointing the Chief Prosecutor of BiH, numerous corruption scandals and resignations call into question the integrity of⁷⁴ this institution. These claims are supported by the information that in 2022, this prosecutor's office filed only one indictment in the case of high corruption.⁷⁵

Citizens have been waiting for more than two years for the CoM BiH to adopt **Anti-Corruption Strategy of BiH**. Meanwhile, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) has sent to the public debate a revised draft Strategy covering only the period 2022-2024, compared to the previous practice of creating five-year strategic documents. This calls into question the purpose of the document given that the scope of strategic objectives and measures defined in the Action Plan for the implementation of the Strategy re-

⁷³ Transparency International publishes the Corruption Perceptions Index every year. The 2022 Index is available at: <https://www.transparency.org/en/cpi/2022>

⁷⁴ „Behaviours and actions consistent with a set of moral or ethical principles and standards that is embraced by individuals as well as institutions”. Definition of integrity, Transparency International: <https://ti-bih.org/pojam/integritet/>

⁷⁵ More in chapter Functioning of the Judiciary

mains the same, and that the implementation of previous strategic documents was only slightly higher than 30%. There is also a noticeable and insufficiently effective action and the question of the independence of the APIK, i.e., the question of the integrity of the process of appointing the management of this institution. A year after the announcement of the competition for the selection of director and deputy director, the Selection and Supervision Committee of the APIK adopted a decision on the appointment of persons who were speculated in the media that they would be appointed. The new director, whose appointment was also confirmed by the House of Representatives of the PA BiH, previously served as chief of staff of Bakir Izetbegović in the BiH House of Peoples and the BiH Presidency, thus calling into question partisan impartiality. Complaints to competent institutions also dispute that the new director met the requirements of the competition.

The lack of capacity and clear competences of other anti-corruption bodies is also noticeable. There have not been established any adequate mechanisms and methods to ensure regular and continuous reporting on the implementation of work plans at lower levels, as well as integrity plans and the needs for their updating.

Adoption and Implementation of Anti-Corruption Laws

Of the envisaged anti-corruption laws, only amendments to the **Public Procurement Law** have been adopted. These amendments do not ensure adequate supervision, bearing in mind that the CoM BiH has removed provisions related to strengthening supervision and increasing sanctions from the Draft Law.

The Law on Conflict of Interest of BiH is an anti-corruption law that has been pending for years.⁷⁶ The proposal drafted by the BiH Ministry of Justice after the rejection of the previous proposal in the House of Peoples of the PA BiH degrades the mechanisms for preventing conflicts of interest in relation to the applicable law. The new proposal exempts all elected representatives and delegates in the PA BiH from the restrictions for performing duplicate functions in the administration of public companies, associations and foundations financed from the budget⁷⁷ and lifts the ban on owning private companies that do business with other levels of government. This practically means legalizing the performance of duplicate functions. The new proposal also narrows down the concept of close relatives and closely treats the concept of related parties with formulations that will be difficult to prove, while maintaining low fines in cases of violation. This proposal does not guarantee the independence of the Commission for Deciding on Conflicts of Interest, further complicates the procedure for the appointment of its members and the manner of determining conflicts of interest. In some cases, the possibility is left to an official in a conflict of interest that the imposition of the measure be carried out by the superior, which leads to an uneven practice.

Although public consultations on the draft of this law were held in November 2022, the BiH Ministry of Justice has not yet prepared a report on the conducted procedure



⁷⁶ More in the 2021 Alternative Report

⁷⁷ According to the new Law, a conflict of interest is considered to be the performance of managerial functions in associations or foundations financed from the level of BiH.

and it is not known whether the received comments will be adopted.

The application of the existing **Law on Conflict of Interest in the Institutions of BiH** is completely ineffective due to the complex decision-making process of the competent Commission. In 2022, the Commission held only one session. 8 procedures have been initiated to identify conflicts of interest, but their processing is pending the appointment of new members of the Commission. The lack of timeliness of the imposition of sanctions is also reflected in the fact that during 2022, 5 decisions on sanctions were made, of which in 3 cases, a conflict of interest was determined without the possibility of a fine due to the expiration of the mandate.

The BD BiH Law on Conflict of Interest is currently the only law of this kind in BiH that meets the minimum international standards. During 2022, the newly formed Commission for Deciding on Conflicts of Interest of the BD BiH held 22 sessions and initiated 36 procedures. In 16 cases, decisions were taken to impose sanctions or warnings. Other cases are in progress, i.e., decisions have been made to reject the application or suspend the procedure.

The RS Law on Conflict of Interest has not been amended since 2008, and the competent commission in its work shows inconsistency and arbitrary interpretations of legal provisions, especially in determining incompatibilities in relation to functions in public enterprises. During 2022, the Commission acted in 28 cases, of which only in 8 cases it determined the existence of conflicts of interest.

The FBiH Law on Conflict of Interest is still not applied in this Entity, since the formation of the body responsible for implementation has not been regulated since 2013. The FBiH Government sent the Proposal of the Law to the FBiH Parliament just before the end of the technical term of office in August 2022, which is actually a draft that has been before the same Government since 2019. The Law was not considered due to the election process, nor was it on the agenda of the new FBiH Parliament. According to the Register of Public Officials of the Transparency International BiH⁷⁸, about 140 public officials currently hold double or multiple positions, many of which are incompatible.

Citizens of the **FBiH** are still waiting for the **Law on Protection of Corruption Reporters**.⁷⁹ The FBiH House of Representatives adopted the draft of this law in 2018, and this was also done by the FBiH House of Peoples in July 2022, after a long blockade. The FBiH Government then submitted the Proposal of this Law to the parliamentary procedure in August 2022, but the Proposal was not considered until the end of the year.

Despite the fact that the level of BiH, RS and BD BiH have laws that regulate the protection of corruption reporters, it is not considered advanced due to the inefficiency and underdevelopment of support mechanisms and ways of eliminating harmful consequences due to reporting corruption. During 2022, APIK received and rejected one request for the protection of reporter of corruption in the institutions of BiH. In the same period, the Office for the Prevention of Corruption and Coordina-

⁷⁸ Register of Public Officials: <https://registar.transparentno.ba/bs-Latn-BA/public-officials?page=1&rows=10>

⁷⁹ Jasmin Begić, „Prijavitelji korupcije u Federaciji godinama bez zaštite” (“Corruption reporters in the Federation have been without protection for years”), Detektor.ba, last modified 30 November 2022, <https://detektor.ba/2022/11/30/prijavitelji-korupcije-u-federaciji-godinama-bez-zastite/>

tion of Activities to Combat Corruption of BD BiH had four requests and granted status in all four.

Even after more than 8 years since the adoption of the **FBiH Law on Combating Corruption and Organized Crime**, its implementation has not started, i.e., the necessary departments within the FBiH Prosecutor's Office have not been established and capacitated.

Fundamental Rights

Freedom of Expression

Priority 12: *Guarantee freedom of expression and media and the protection of journalists, in particular through (a) ensuring appropriate judicial prosecution of cases of threats and use of violence against journalists and media workers, and (b) ensuring the financial sustainability of the public service broadcasting system.*

Announcement of criminalization of defamation, laws on prevention of fake news and hate speech, expansion of crimes against the constitutional order in the RS, have been characterized as a serious threat to freedom of expression and the media. There has been an increase in attacks on journalists, as well as a high degree of impunity for these acts. The number of defamation lawsuits and SLAPP suits is also increasing. While public broadcasting service financing remains volatile, there have been attempts to allocate public funds from the state level to Radio-Television Herzeg Bosna. Last year, the prosecutor's office did not press any charges of denying genocide and other crimes and glorifying convicted war crimes.

The announcement of politicians from the RS⁸⁰ and FBiH⁸¹ on the **reintroduction of defamation into criminal legislation** is worrying. In addition to this change, which provoked a turbulent reaction of the media and civil society⁸², the RS President Milorad Dodik and his associates announced laws on preventing fake news and hate speech and expanding criminal offenses against the constitutional order in the RS. Activists and journalists warn that this is an attempt to completely control the public and cultural space in the RS and silence opponents and critics of the authorities. On the other hand, at the state level, there is no political will for the implementation of the initiative to amend the **Law on Protection against Defamation**, adopted in the House of Representatives of the PA BiH in 2020.⁸³ In its report⁸⁴, the Interim Com-

⁸⁰ After the announcements of the RS President Milorad Dodik, the RS Government discussed the Draft Law on Amendments to the RS Criminal Code at a session held on 2 March 2023. Ministar pravde RS Miloš Bukejlović je najavio da će "onaj ko uvrijedi ili kleveće drugoga [biti kažnjen] sa novčanom kaznom od 5.000 do čak 30.000 KM" (The RS Minister of Justice Miloš Bukejlović announced that "whoever insults or defames another [will be punished] with a fine of 5,000 to even 30,000 KM"), more at: <https://www.vladars.net/sr-SP-Cyrl/Vlada/media/vijesti/Pages/odrzana-10.-sjednica-vlade.aspx> i <https://www.klix.ba/vijesti/bih/vlada-rs-a-uvodi-ogromne-kazne-za-klevetu-i-uvredu-mnogi-sumnjaju-da-je-cilj-cenzura-novinara/230302107>

⁸¹ Bakir Izetbegović, the president of the Party of Democratic Action and the then candidate for a member of the BIH Presidency, during the election campaign, updated the topic of criminalization of defamation in the FBiH.

⁸² Vladimir Kovačević, „Prve reakcije: Zabrinutost da Dodik zakonima želi ograničiti kritične novinare i medije“ ("First reactions: Concern that Dodik wants to restrict critical journalists and media by laws"), Detektor.ba, last modified 03 November 2022, <https://ba.voanews.com/a/prve-reakcije-zabrinutost-da-dodik-zakonima-zeli-ograniciti-kriticne-novinare-i-medije/6819781.html>

⁸³ „Političari moraju prihvatiti kritiku u medijima kao dio slobode izražavanja, a ne kao klevetu“ ("Politicians must accept criticism in the media as part of freedom of expression, not as defamation"), BH Novinari, last modified 17 March 2020, <https://bhnovinari.ba/bs/2020/03/17/politiciari-moraju-prihvatiti-kritiku-u-medijima-kao-dio-slobode-izrazavanja-a-ne-kao-klevetu/>

⁸⁴ Izvještaj o radu Privremene istražne komisije PS BiH za utvrđivanje stanja u pravosudnim institucijama BiH, Sarajevo (Report on the work of the Interim Commission of Inquiry of the PA BiH for determining the situation in judicial institutions of BiH), June 2022, <https://www.parlament.ba/data/dokumenti/ad-hoc-komisije/35.%20sjednica%20PIK-a%20-%20kompletirani%20i%20spojeni%20-B.pdf>



mission of Inquiry of this House for determining the situation in the judiciary stated that defamation lawsuits, as well as prosecutions for so-called unauthorized recording, represent a clear form of pressure on the media.

In 2022, the trend of **increasing attacks on journalists**, as well as endangering media freedoms and the safety of journalists, continued. The BH Novinari Association and the Free Media Help Line (FMHL) registered 79 cases of violations of media freedoms, freedom of expression and safety of journalists,⁸⁵ as well as 35 cases of online violence against media professionals. Politicians, businessmen related to them, public and academic workers stand behind these threats and attacks in 80% of cases. During the election campaign, party trolls and bots were particularly aggressive. The media in BiH are increasingly faced with requests from public persons to remove media content mentioning them,⁸⁶ and legal experts believe that the requests are legally unfounded and are used as a means of intimidation and censorship of the media.

Political pressures and attacks on journalists and the media increased by 40% compared to 2021, while cases of verbal threats, death threats and hate speech increased by 137%.⁸⁷ This emphasizes targeted and inappropriate pressures on the media in Sarajevo, including N1 television and Face TV⁸⁸. Due to the public engagement in the protection of media freedom and the safety of journalists, the Association BH Novinari and their staff were also targeted.

There is an **extremely high degree of impunity of the attacks** on freedom of expression and the media. In 2022, 20 cases of violence against media workers were resolved in their favour, which is only **25.3% of cases**. Due to these statistics, it is important to continue to advocate for the amendment of criminal legislation with the aim of more effective legal protection of journalists, including more effective investigation of security threats to journalists ex officio and adequate sanctioning of attackers. Adopting these amendments would respond to EC requests. Green light for this initiative⁸⁹ was given by the Constitutional-Legal Committee of the House of Representatives of the

⁸⁵ In the structure of cases reported to FMHL, the largest number of these are political and verbal threats – 22, followed by cases of death threats, hate speech and incitement – 19, new defamation lawsuits – 8, denial of public information - 6 cases, violation of labour rights and mobbing in the workplace in 7 cases, damage to media assets and hacking attacks - 5 cases, and so on...

⁸⁶ These requests were received by the portals Srpska.info, Mojabanjaluka.info, Capital.ba, Zurnal.info. More at: <https://safejournalists.net/resources1/analiza-neopravdanost-zajtjeva-za-uklanjanje-sadrzaja-na-web-portalima/?lang=bs>

⁸⁷ Infographic of the Association BH Novinari on the rise of threats to journalists is available at: <https://www.facebook.com/bhnovinari/photos/a.497083003758868/2754459894687823/>

⁸⁸ FACE TV and its owner Senad Hadžifežović, along with online threats, were victims of political and institutional pressure from the Communications Regulatory Agency, whose management wanted to impose a disproportionate penalty on this medium. According to the RS public officials and media, Hadžifežović allegedly asked the interlocutor in the programme "whether Milorad Dodik should be killed". A later analysis of the audio recording could not reliably establish that this threat was pronounced in the programme, and the case was closed in such a way that the CRA stopped the procedure against Face TV. More at Al Jazeera Balkans, „RAK pokrenuo postupak protiv Face TV, žestoke reakcije na najavu rigorozne kazne“ (“CRA launches procedure against Face TV, fierce reactions to the announcement of a rigorous fine”), <https://balkans.aljazeera.net/news/balkan/2022/10/31/pokrenut-postupak-protiv-face-tv-zestoke-reakcije-na-najavu-rigorozne-kazne> i Oslobođenje, „RAK obustavio postupak protiv Face TV-a i Senada Hadžifežovića: Nemoguće je utvrditi šta je izgovorio“ (“CRA suspended the procedure against Face TV and Senad Hadžifežović: It is impossible to determine what he pronounced“), . <https://www.oslobodjenje.ba/vijesti/bih/rak-obustavio-postupak-protiv-face-tv-a-i-senada-hadzifezovica-nemoguće-je-utvrditi-sta-je-izgovorio-818662>

⁸⁹ „Usvojena inicijativa kojom će se napad na novinare/ke tretirati kao posebno krivično djelo“ (“Adopted initiative that will treat the attack on journalists as a special criminal offense”), BH Novinari, last modified 30 June 2022, <https://bhnovinari.ba/bs/2022/06/30/usvojena-inicijativa-kojom-ce-se-napad-na-novinare-ke-tretirati-kao-posebno-krivcno-djelo/>

PA BiH, but the aforementioned amendments were not prepared by the end of the year. A positive step forward with the aim of more effective legal protection of journalists has been made by the Prosecutor's Office of the SC by appointing a contact person – the prosecutor who deals with the priority processing of these criminal offenses.⁹⁰

There has also been a negative trend and an **increase in the number of defamation lawsuits and so-called SLAPP suits**, including attempts to intimidate journalists who write about crime, corruption and other negative phenomena in society. According to the estimates of the Association BH Novinari, at least **300 defamation lawsuits** are currently pending before the courts in BiH, mostly against the media and journalists, or editors. Of the 10 cases of defamation in which FMHL lawyers represented journalists, 4 cases were resolved in favour of journalists and the media.

On the other hand, journalists find it difficult to exercise their rights through defamation lawsuits against public officials or representatives of institutions that wish to discredit them. The Court in Banja Luka acquitted Milorad Dodik in a first-instance verdict after a lawsuit by political analyst and journalist Tanja Topić over claims that she “works for a foreign service” and that she is “a proven quisling”, accompanied by a series of insults about her and her family. The Court concluded that these claims “constitute opinions, that is, value judgments”, that is, that they are not defamatory. Legal experts consider this to be a **political verdict**⁹¹ in which “the court has succumbed to pressures due to the political influence of the defendant”.⁹² A rare positive step forward in this field is the decision of the Constitutional Court of BiH on a defamation lawsuit in the procedure conducted by Vladimir Kovačević, editor of the Gerila portal against Radio-Television of the Republika Srpska and its editor.⁹³

There is still the problem of **political pressures** and unstable **public broadcasting service financing** in BiH. The EC also warns of the difficult financial situation of Radio Television BiH, to which only Radio Television of the RS owes 63 million convertible marks on the basis of collecting subscriptions. While the employees of the state television fear the shutdown due to the lack of political will to solve the aforementioned problems, in 2022, there were attempts to grant assistance to Radio Television Herzeg-Bosna in addition to three public broadcasting services.⁹⁴

⁹⁰ Sabina Sarajlija i Darko Martinčević, “Novinari kao mete napada: Tužilaštvo KS prepoznalo značaj jačanja zaštite novinara” (“Journalists as targets of attacks: The Prosecutor's Office of the KS recognized the importance of strengthening the protection of journalists”), E-novinar Buletin No.80, <https://bhnovinari.ba/wp-content/uploads/2022/12/BILTEN-80-BH-novinari.pdf>

⁹¹ „Austrijski “Standard”: Napad Dodika na Tanju Topić podsjeća na napade političara u Mađarskoj i Rusiji” (“Austrian “Der Standard”: Dodik's attack on Tanja Topić is reminiscent of the attacks of politicians in Hungary and Russia”), BH Novinari, last modified 14 February 2023, <https://bhnovinari.ba/bs/2023/02/14/austrijski-standard-napad-dodika-na-tanju-topic-podsjecica-na-napade-politicara-u-madjarskoj-i-rusiji/>

⁹² Dejan Lučka, „6. Udri oklevetane – dopušteno je!” (“6. Strike the slanderers – it is allowed!”), <https://dejanlucka.com/sramota-kod-suda-ne-postoji-ali-postoje-metafore-i-strah-od-carstva/#6>

⁹³ Vladimir Kovačević is a journalist whom two assailants tried to kill in 2018, who were later sentenced to prison by the court in Banja Luka, but it was not determined in the court proceedings who ordered the attack on this journalist. More about the case at: <https://www.gerila.info/novosti/ustavni-sud-bih-presudio-da-je-rtrs-iznosio-klevetu-i-laz-na-racun-novinara-vladimira-kovacevica/>

⁹⁴ The founders of this media, which is not a public broadcasting service, are the government of the West Herzegovina Canton, the NGO Croatian Community of Herzeg-Bosna and 22 municipalities in which Croats make up the majority of the population. Television is financed from the public budgets of this Canton and municipalities.

The Coalition Agreement⁹⁵ signed between the parties that make up the government at the state level states as one of the goals “*reform of the entire public broadcasting system of BiH and FBiH in accordance with the Constitution*”. Although it has not been explained to the public what this entails, some analysts and opposition parties believe that this means fulfilling the long-standing desire of the Croatian Democratic Union of BiH to establish a channel in the Croatian language within the public broadcasting service.⁹⁶

Hate Speech Rulings

In 2022, the Court of BiH finally acquitted Fatmir Alispahić⁹⁷ of accusations of inciting national, religious and racial hatred, strife and intolerance in texts published on the Antimigrant.ba portal⁹⁸

At the end of the year, the third instance Chamber of the Court of BiH upheld the verdict⁹⁹ by which members of the Chetnik movement were sentenced to five months in prison each for provoking national, racial and religious hatred, strife or intolerance in the area of Višegrad and the surrounding area in March 2019. When pronouncing the second-instance verdict, the judge pointed out that the guaranteed right to freedom of expression is not absolute and referred to the position of the European Court of Human Rights on the need to sanction hate speech.¹⁰⁰

On the other hand, the Prosecutor's Office of BiH has not issued any indictments for denying genocide and other crimes and glorifying convicted war criminals¹⁰¹, which caused dissatisfaction of general public, but also of the victims. A series of reports received by the Prosecutor's Office ended with orders not to conduct an investigation into which the Balkan Investigative Reporting Network of BiH had access, and by analysis¹⁰² it established that the Prosecutor's Office in several cases provided an explanation that the charged persons invoked freedom of opinion and expression, despite the fact that they openly denied genocide. It is unacceptable for freedom of expression to be abused as a means of evading criminal responsibility.

⁹⁵ „Objavljujemo Sporazum Osmorke: Hitno provođenje Briselskog sporazuma” (“We announce the Agreement of the Eight: Urgent implementation of the Brussels Agreement”, Patria, last amended 21 November 2022, <https://nap.ba/news/99984>

⁹⁶ Slađan Tomić, „Osmorka najavljuje reforme RTV sistema, stručna javnost sumnja u dobre namjere” (“The Eight announces PBS system reforms, expert public suspects good intentions”), Media.ba, last modified 05 December 2022, <https://media.ba/bs/magazin-novinarstvo/osmorka-najavljuje-reforme-rtv-sistema-strucna-javnost-sumnja-u-dobre-namjere>

⁹⁷ Lamija Grebo, „Fatmir Alispahić pravosnažno oslobođen optužbi za izazivanje mržnje” (“Fatmir Alispahić finally acquitted of accusations of inciting hatred”), Detektor.ba, last modified 15 April 2022, <https://detektor.ba/2022/04/15/fatmir-alispahic-pravosnazno-oslobodjen-optuzbi-za-izazivanje-mrznje/>

⁹⁸ More in 2021 Alternative Report on Bosnia and Herzegovina's Progress on the Road to the European Union Membership:

Political Criteria, p. 25: https://eu-monitoring.ba/site/wp-content/uploads/2022/05/BHS_FINAL_WEB-1.pdf

⁹⁹ Aida Trepanić, „Potvrđena kazna od po pet mjeseci zatvora “ravnogorcima” za izazivanje mržnje” (“Confirmed sentence of five months in prison to “Ravnogorci” for inciting hatred”), Detektor.ba, last modified 20 December 2022, <https://detektor.ba/2022/12/20/potvrdjena-kazna-od-po-pet-mjeseci-zatvora-ravnogorcima-za-izazivanje-mrznje/>

¹⁰⁰ Marija Taušan, „Sladojević i ostali: Po pet mjeseci zatvora “ravnogorcima” za izazivanje mržnje”, (“Sladojević and others: Five months in prison to “Ravnogorci” for inciting hatred”), Detektor.ba, last modified 22 June 2022, <https://detektor.ba/2022/06/22/sladojevic-i-ostali-po-pet-mjeseci-zatvora-ravnogorcima-za-izazivanje-mrznje/>

¹⁰¹ Lamija Grebo and Emina Dizdarević, an analysis and TV programme „Godina bez optužnica za negiranje zločina zabrinjava žrtve” (“A year without indictments for denial of crime worries victims”), Detektor.ba, last modified 05 July 2022, <https://detektor.ba/2022/07/05/godina-bez-optuznica-za-negiranje-zlocina-zabrinjava-zrtve/>

¹⁰² Lamija Grebo, „Kako su tužiocima odbacili 27 prijava za negiranje genocida i veličanje zločinaca” (“How Prosecutors Dismissed 27 Allegations of Genocide and Glorifying of Criminals”), Detektor.ba, last modified 22 February 2023, <https://detektor.ba/2023/02/22/kako-su-tuziocima-odbacili-27-prijava-za-negiranje-genocida-i-velicanje-zlocinaca/>

After pleading guilty to two years of probation, the court also sentenced Toni Bašić¹⁰³, who in 2020 repeatedly encouraged terrorist activities, anti-Semitism, racism, nationalism, as well as threats to the LGBT population via the Internet. The offense was requalified from original incitement to terrorist activity into inciting of national, religious and racial hatred, strife and intolerance.

Freedom of Assembly and Association

Priority 11: *Ensuring an enabling environment for civil society, notably by upholding European standards on freedom of association and freedom of assembly.*

The BD BiH still has the Law on Freedom of Assembly most harmonized with European standards. The PFBiH has not yet considered the Draft Law on Public Assembly of this Entity, and there has been no progress in better regulation of this area in the SC, which has been in the focus of the public for years due to the discriminatory attitude towards the organizers of the BiH Pride March. The right to freedom of assembly throughout BiH continued to be undermined, with a special focus on restricting this right to environmental activists.

The BD BiH Law on Peaceful Assembly is still the only law of its kind in BiH that is mostly harmonized with international standards. At the proposal of the FBiH Ministry of the Interior, the FBiH Government established *the Draft Law on Public Assembly of the FBiH*,¹⁰⁴ and by the end of the year this Draft was not on the agenda of the PFBiH. The explanation submitted by the FBiH Government to the PFBiH states that the proponent could not determine the compliance of this regulation with European legislation, and the Cantonal Ministries of Interior from Livno, Mostar and Ljubuški stated that the public assembly is the exclusive competence of the Canton and that they do not agree that the FBiH adopts the said law.¹⁰⁵

There was also no improvement in the legal framework governing the area of public assembly in the SC. The process of re-creating the draft law in 2021 was completed without the participation of civil society representatives, and in 2022 there were no further steps in the adoption of this law. It is noticeable that the Ministries of the Interior and generally security structures do not have a developed awareness of the importance of cooperation with civil society, and that the initiative for cooperation mainly comes from civil society.¹⁰⁶

¹⁰³ Marija Taušan, "Toni Bašić uslovno osuđen za izazivanje nacionalne mržnje" ("Toni Bašić conditionally convicted of inciting national hatred"), Detektor.ba, last modified 30 March 2022, <https://detektor.ba/2022/03/30/toni-basic-uslovno-osudjen-za-izazivanje-nacionalne-mrznje/>

¹⁰⁴ Draft Law on Public Assembly of the FBiH <http://www.fmup.gov.ba/files/Nactr%20zakona%20o%20javnom%20okupljanju%20u%20FBiH%20B%20oktobar%202022..pdf>

¹⁰⁵ Ibid.

¹⁰⁶ During 2022, the Sarajevo Open Centre initiated cooperation with the Ministries of the Interior of the Una-Sana, Central Bosna and Zenica-Doboj Cantons in the field of regulating the right to freedom of assembly. At the meetings, the Ministries expressed their willingness to cooperate, and there were no concrete activities until the end of the year.

The Ministry of the Interior of the SC continued with a selective and discriminatory attitude towards the organizers of the **BiH Pride March**, especially when comparing the requirements that are placed in front of them and the organizers of other public gatherings. Thus, unlike the Pride March, the organizers of the protests held in July 2022 in front of the OHR building did not have to pay additional insurance and concrete partitions, nor did the guards have to keep the gathered people in one place, despite the large number of participants and the security risk. The Cabinet of the Prime Minister of the SC paid part of the costs of additional protection measures this year, while the rest of the necessary funds were collected through private donations. Amendments to the law are necessary in order to allow equal right to freedom of assembly, without any additional burden for citizens.

An example of a possible attack on the freedom of assembly is the criminal charges filed by the Public Enterprise Elektroprivreda BiH against **the Association of Citizens “Neretvica – Pusti me da tečem”** and unknown persons.¹⁰⁷ The charges were filed due to the alleged organization of resistance and autocracy (Articles 361 and 370 of the of the FBiH Criminal Code). Although it refers to a meeting organized in June 2021, the representatives of the defendant Association were informed of the charges and heard only on 21 December 2022.

The organizers of the eleventh **Eighth March in Banja Luka** have recorded some progress compared to previous years. No personal data of the guards was requested, the reported route of the gathering movement was approved, the organizers were not invited to informative conversations. The City of Banja Luka did not approve the request for the use of public surface in Krajina Square for the purpose of the performance, stating that the Square was reserved for commercial purposes. This is just one example of the commercialization of public areas and the narrowing of public space for the action of citizens.

Organizers of protests organized due to the death of the mother Azra Bećirspahić and her new-born baby at the Cantonal Hospital “Dr. Irfan Ljubijankić” in Bihać, have recorded the obstruction by the institutions of the Una-Sana Canton and the City of Bihać at the registration of the gathering. After the informal group “**Azra mi se borimo**” was refused the registration of the event and the issuance of a permit for the use of public area, the event was reported by the Association of Citizens Oštra nula from Banja Luka. Differences in the regulations governing freedom of assembly made this process more difficult. The Cantonal Ministry of the Interior approved the registration of the event, noting that the registration of the event must be submitted and approved, noting that it is important to submit the consent for the use of the public area. The City of Bihać stated in the explanation that Oštra nula does not have a legal basis for the approval of the use of public space, because they are not related to the deceased. The approval was issued only after the involvement of international organizations, and the organizers believe that the city institutions deliberately delayed the issuance of this permit in order to challenge the received application and question the legal procedures for registering the rally. The protests in Bihać ended peacefully and without incident.

¹⁰⁷ On 14 June 2021, more than 700 citizens participated in a spontaneous gathering at the bridge in Goransko Polje to express their opposition to the construction of small hydropower plants on the Neretvica River. The attendees behaved calmly, none of the present members of the Association “Neretvica – Let Me Run” called on the citizens to provide violent resistance and use force against the workers of the consortium Amitea Mostar and GPI Konjic, nor were threats made to workers and police officers on the spot.

Reconciliation, Transitional Justice and Memorialization

Priority 5: *Taking concrete steps to improve the environment conducive to reconciliation in order to overcome the legacy of war.*

This is one of the underdefined priorities whose implementation is difficult to follow. BiH still does not have a Transitional Justice Strategy. Historical revisionism is ubiquitous and visible through street naming, marking an unconstitutional holiday in the RS, ideological indoctrination of young people in the education system and difficult commemoration of victims. The denial of genocide was reduced after the amendment of the BiH Criminal Code, but there is no criminal prosecution of those who still deny genocide and other war crimes and glorify convicted war criminals. The civilian victims of the war still have unequal treatment depending on their place of residence, and the biggest shift was made by the BD BiH by adopting a new law. Recognition of the status of a victim of torture in the RS remains problematic, and many victims will be denied their rights by the imminent deadline for submitting applications and complicated procedures for granting this status.

Memorialization and Dealing with the Past

BiH still does not have a **Transitional Justice Strategy**¹⁰⁸ and the state institutional framework for dealing with inclusive dealing with the past. Political leaders continue to deepen divisions among citizens and undermine the credibility of international courts and rulings. They dispute in a revisionist manner the established facts about the events of the war, deny war crimes, including genocide, and glorify war criminals.¹⁰⁹

Ideological indoctrination of young people and revisionism in education continue through unilateral textbook policy in BiH. Primary school students in Tuzla Canton have been learning about the last war for the first time since 2022. Experts warn that the text that thematizes this area in the textbooks of history for the ninth grade is one-sided, refers to the publication of a person convicted of war crimes, does not respect the guidelines for writing textbooks and does not mention the plight of all peoples, which further deepens divisions.¹¹⁰

A group of teachers and professors with representatives of civil society developed a methodology, material and **Teaching Staff Manual**¹¹¹ focusing on the Holocaust, the culture of memory, peacebuilding and lessons from the past for the future. The Sarajevo Canton has announced the inclusion of the Manual in the curriculum since 2023.

Around **7600 people** who were killed and disappeared between 1991 and 1996 are still being sought in BiH.¹¹² In **November 2022**, a database of active cases of persons

¹⁰⁸ More on the Strategy in the 2019-2020 Alternative Report (p. 51) and in earlier alternative reports in the sections on transitional justice.

¹⁰⁹ An example of a selective approach of government and censorship in the themes dealing with the past is the ban on the screening of the world award-winning film on the Srebrenica genocide "Quo Vadis, Aida?" in cinemas in the RS. Another example is the attacks and threats against journalist Srđan Puhalo because of the text in which he questions the number of children killed in Sarajevo. The case is reminiscent of the worrying fact that BiH still does not have an officially established list of victims.

¹¹⁰ Detektor, Emina Dizdarević, 2022, "Stručnjaci upozoravaju da novi udžbenik historije u Tuzli produbljuje podjele" ("Experts warn that the new history textbook in Tuzla is deepening divisions"), <https://detektor.ba/2022/05/09/strucnjaci-upozoravaju-da-novi-udzbenik-historije-u-tuzli-produbljuje-podjele/>

¹¹¹ DwP Balkan; Michele Parente, 2021, Holokaust i mir (Holocaust and Peace), https://dwp-balkan.org/kcfinder/upload/files/Pedagoski_prirucnik_%20Holokaust_mir.pdf

¹¹² BHRT, 2022, Međunarodni dan nestalih: U Bosni i Hercegovini još se traga za oko 7.600 osoba (International Day of the Disappeared: About 7,600 people are still being sought in Bosnia and Herzegovina), <https://bhrt.ba/me%C4%91unardni-dan-nestalih-u-bosni-i-hercegovini-jo%C5%A1-se-traga-za-oko-7-600-osoba>

missing due to armed conflicts in the territory of the former Yugoslavia was launched within the Berlin Process¹¹³ and currently contains **11,370 cases of missing persons** in the region.¹¹⁴ Despite positive examples of civil society cooperation in the countries of the region, the public decorations of persons accused¹¹⁵ and convicted of committing war crimes is a practice that undermines regional cooperation.

The proposal of the Initiative “Peace with a Female Face” to proclaim 8th December as the Day of Remembrance of the Suffering of Women in War in BiH was not adopted by the official authorities, but the members of the initiative mark this day every year in their local communities.¹¹⁶

Research¹¹⁷ of the Srebrenica Memorial Centre has shown that after the imposition of amendments to the Criminal Code¹¹⁸, the **denial of genocide** in BiH was reduced. Nevertheless, the absence of indictments and the interpretation of the text of the law thus far leave room for the glorification of war criminals.¹¹⁹ The Prosecutor’s Office of BiH confirmed that it has received more than 40 different reports of violations of penal provisions of the law, but so far, no indictments have been filed.¹²⁰ The NA RS repealed the amendments to the state Criminal Code, and the BiH Constitutional Court annulled that Entity law in July 2022.

The naming of streets is still an important and controversial topic for the memory culture in BiH. The Mostar City Council adopted a decision to change the name of six streets formerly named after political and military officials of the Ustasha regime.

¹²¹ In Sarajevo, the naming of the street after the convict for war crimes¹²² and the

¹¹³ The initiative to create the database was launched by the International Commission on Missing Persons (ICMP) and the Group for Missing Persons (GNO), a body composed of domestic institutions responsible for missing persons issues in BiH, Croatia, Kosovo, Montenegro and Serbia.

¹¹⁴ ICMP, 2022, Vlade zapadnog Balkana pokrenule jedinstvenu, javnu Bazu podataka slučajeva nestalih osoba (Western Balkans Governments launched a unique public Database of Missing Persons Cases), <https://www.icmp.int/bs/news/western-balkans-governments-launch-unique-public-database-of-missing-persons-cases/>

¹¹⁵ Zoran Milanović, Predsjednik Hrvatske je 2022. godine odlikovao Đuru Matuzovića koji se na Sudu BiH tereti za progon srpskog stanovništva od aprila 1992. do jula 1993. na području Orašja; Balkans Aljazeera, 2022, Milanović odlikovao Đuru Matuzovića – optuženika za ratne zločine u BiH (Zoran Milanović, President of Croatia in 2022 awarded Đuro Matuzović, who is charged at the Court of BiH with persecution of the Serb population from April 1992 to July 1993 in the Orašje area; Balkans Aljazeera, 2022, Milanović awarded Đuro Matuzović – war crimes indictee in BiH), <https://balkans.aljazeera.net/videos/2022/7/20/milanovic-odlikovao-djuru-matuzovica-optuzenika-za-ratne-zlocine-u-bih>

¹¹⁶ RTV Slon, Edina Rizvić, 2022, 8. decembar – Dan sjećanja na stradanje žena u ratu u Bosni i Hercegovini (8th December - Day of Remembrance of the Suffering of Women in War in Bosnia and Herzegovina), <https://www.rtvslon.ba/8-decembar-dan-sjecanja-na-stradanje-zena-u-ratu-u-bosni-i-hercegovini/>

¹¹⁷ Adem Mehmedović et al., „IZVJEŠTAJ O NEGIRANJU GENOCIDA U SREBRENICI 2022”, (“SREBRENICA GENOCIDE DENIAL REPORT 2022”), ed. Senad Pećanin (Srebrenica: Srebrenica Memorial Centre, 2022), available at: https://srebrenicamemorial.org/assets/photos/editor/_mcs_izvjestaj_BOS_2022_FINAL_ko.71.pdf

¹¹⁸ More in the 2022 Alternative Report

¹¹⁹ Detektor.ba, Hate Mapping database, 2021-2022, <https://mapiranje.mrznje.detektor.ba/>

¹²⁰ DWP Balkan, Aida Trepanić - BIRN BIH, 2022, Ograničenja u Inzkoj odluci ostavljaju prostor za veličanje zločinaca (Restrictions in Inzko's decision leave room for glorification of criminals), <https://dwp-balkan.org/bs/ogranicenja-u-inzkovoj-odluci-ostavljaju-prostor-za-velicanje-zlocinaca/>

Detektor; analysis and TV programme; Lamija Grebo and Emina Dizdarević; 2022. ; “Godina bez optužnica za negiranje zločina zabrinjava žrtve” (“A Year Without Indictments for Denial of Crime Worries Victims”), <https://detektor.ba/2022/07/05/godina-bez-optuznica-za-negiranje-zlocina-zabrinjava-zrtve/>

Detektor.ba; Azra Husarić Omerović; 2023; “Milorad Dodik najveći pojedinačni izvor mrzilačkih narativa u BiH” (“Milorad Dodik is the single biggest source of hateful narratives in BiH”), <https://detektor.ba/2023/02/10/milorad-dodik-najveci-pojedinacni-izvor-mrzilackih-narativa-u-bih/>

¹²¹ Slobodnaevropa, 2022, U Mostaru ukinuti nazivi ulica po ustaškim zvaničnicima (In Mostar, the names of streets after Ustasha officials were abolished), <https://www.slobodnaevropa.org/a/mostar-izmijenjeni-nazivi-ulica-po-ustasama/31941894.html>

¹²² The street in Novi Grad (Sarajevo) is named after the general of the Army of the Republic of Bosnia and Herzegovina Mehmed Alagić, charged with war crimes in the Travnik area. Although he was not convicted on his charges, he was linked to two war crimes convicts in other cases.

memorial on Kazani¹²³ were discussed. The Partisan cemetery in Mostar was again targeted by vandals and more than 600 memorial plaques were broken.¹²⁴

The authorities in the RS continued the practice of **marking the unconstitutional Day of the RS – 9th January**. Numerous ultra-right and fan groups¹²⁵ participating in the commemoration march with photos of convicted war criminals and their messages incite hatred in returnees' communities. As in previous years, the memorial plaque¹²⁶ to war criminal Ratko Mladić on the entity line at the Vraca Memorial Park in Sarajevo was again the cause of tensions.

Local institutions in **Prijedor** denied the right to freedom of assembly to the organizers of the 30th anniversary march **International White Ribbon Day**¹²⁷

At the same time, the head of the Prijedor Police Administration issued a permit to hold a public meeting to the right-wing Youth Organization "Princip".¹²⁸

The revised strategy for processing war crimes cases expires at the end of 2023, but it is evident that the work on these cases will not be completed by the specified deadline. This is indicated by numerous international and domestic reports as well as statements of state prosecutors, the HJPC and lawyers acting in these cases.¹²⁹

An example of a trial that has been going on for years is the case against Duško Milunić and ten others accused of crimes committed in Zecovi near Prijedor. This process is ongoing for eight years, during which time two defendants have died, while one case has been separated from the other. During the presentation of the Report on the Prosecution of War Crimes Cases before Prosecutors' Offices and Courts in BiH in the period from 1 January to 31 December 2022, the HJPC pointed out that the average length of the trial was three years and six months.¹³⁰

One of the problems the judiciary is facing is the unavailability of persons accused or suspected of war crimes, so the Prosecutor's Office transferred cases to the judiciary of Serbia and Croatia last year. During the last year, it was already clear that the deadline for the completion of these cases could not be met, and many believe that it was set too ambitiously. It should also be noted that the **Supervisory Authority** to monitor the implementation of this strategy has not yet been formed.

¹²³ Families of victims of the crimes in Kazani are looking for the construction of a new monument that would be located at St. Joseph's Cemetery from where the victims were exhumed in 1998. More at: https://detektor.ba/2022/10/27/porodice-zrtava-zlocina-na-kazanima-traze-izgradnju-novog-spomenika-u-sarajevu/?fbclid=IwAR3QNVxMNhs2e6oXLrLs9RwdMxhBJzRhpbw-Nw3z1R5gbKkJI_f_7sp5GEY

¹²⁴ Jutarnji, 2022, Surovi vandalizam u Mostaru: Na Partizansko me groblju razbijeno više od 600 spomen-ploča (Cruel vandalism in Mostar: More than 600 memorial plaques were broken at Partisan Cemetery), <https://www.jutarnji.hr/vijesti/svijet/surovi-vandalizam-u-mostaru-na-partizansko-me-groblju-razbijeno-vise-od-600-spomen-ploca-15210872>

¹²⁵ In Prijedor, the fans chanted "General, we thank your mother" while passing through the city, a slogan that goes along with numerous murals to the convicted war criminal Ratko Mladić, who was sentenced to life in prison. More at: <https://detektor.ba/2022/01/28/kako-su-desnicarske-navijacke-grupe-mobilisane-za-proslavu-9-januara/>

¹²⁶ More in the earlier Alternative Reports of the Initiative for Monitoring the European Integration of BiH and on Detektor, Azra Husarić Omerović and Nejra Džaferagić, 2022: <https://detektor.ba/2022/03/08/ponovo-postavljena-ploca-ratku-mladicu-kod-sarajeva-uprkos-zakonskoj-zabrani/>

¹²⁷ <https://detektor.ba/2022/07/01/kako-su-dvije-desnicarske-organizacije-sprijecile-mirmu-setnju-povodom-dana-bijelih-traka-u-prijedoru/>

¹²⁸ Mreža Mira, 2022, Press release on the occasion of 31st May - White Ribbon Day, <https://www.mreza-mira.net/vijesti/aktivnosti-mreze/mreza-za-izgradnju-mira-saopstenje-povodom-31-maja-2022-godine-dan-bijelih-traka/>

¹²⁹ Detektor, Lamija Grebo, 2022, Rok za rješavanje predmeta ratnih zločina ponovo neće biti ispoštovan (The deadline for resolving war crimes cases will not be met again), <https://detektor.ba/2022/10/28/rok-za-rjesavanje-predmeta-ratnih-zlocina-ponovo-neece-bit-i-spostovan/>

¹³⁰ Detektor.ba; Emina Dizdarević; 2023; "VSTV: Novi članovi Nadzornog tijela za Revidiranu strategiju za rad na predmetima ratnih zločina" (HJPC: New members of the Supervisory Body for the Revised Strategy for Processing War Crimes Cases), <https://detektor.ba/2023/02/08/vstv-novi-clanovi-nadzornog-tijela-za-revidiranu-strategiju/>

Exercising the Rights of Civilian Victims of War

BiH still does not have the **Law on Civilian Victims of War** at the state level and does not provide adequate support to civilian victims of war in accordance with international standards. Victims continue to receive unequal treatment depending on their place of residence.¹³¹

The possibility of access to reparations within the framework of criminal proceedings is realized through **property law claim**. In the period from June 2015 to the moment of writing, a verdict was adopted in a total of **17 cases finally and in 2 cases in the first instance**, whereby, in addition to determining criminal responsibility and imposing the appropriate sanction, the perpetrators are also obliged to pay compensation for damages, which range from 15,000 to 95,000 KM. With these verdicts, a total of 23 perpetrators are obliged to compensate for the damage for 20 victims of sexual violence. This practice was especially established before the Court of BiH, with three more positive examples from lower instances, namely the District Court in Dobož, the Cantonal Court in Novi Travnik and the Cantonal Court in Bihać.

The practice of awarding property legal claims in criminal proceedings has proved essential for victims of sexual violence in war. Survivors who went through this experience had the feeling that they were at the centre of the process, their role transformed from the perceived role of mere passive evidence to the role of an active seeker of respect for their rights. Survivors in these circumstances feel the directing of increased attention of all involved actors, from prosecutors to providers of psychological support and legal assistance, and feel an important moment of satisfaction through the recognition of the court, as a symbolic representative of the social community, of concrete aspects of the damage they have suffered and by determining the responsibility of someone to compensate for this damage.

The BD BiH is an administrative unit that, by adopting the Law on Civilian Victims of War¹³² in 2022, made a shift in terms of status recognition of the new category within civilian victims of war. With this law, children born due to war rape for the first time after the war and many years of struggle for recognition achieved legal recognition as civilian victims of war. The fact that there are no official data on the exact number of these children in BiH also shows how much the state has ignored the existence of this group. Despite the progress achieved with the adoption of the law and the recommendations of the TRIAL International organization, the BD BiH failed to recognize additional associated rights for children born due to the war, such as priorities in education and scholarship, spa treatment and medical rehabilitation and exercising the right to health care.

The deadline for submitting an application for recognition of the status of a victim of torture in **the RS** expires in October 2023 and if amendments to the law¹³³ do not follow in a timely manner, many victims of torture will be denied this right. The procedure for proving the merits of an application for recognition of this status is very complicated and does not apply equally to all victims of war torture in relation

¹³¹ More in the 2021 Alternative Report (p. 29)

¹³² The adoption of this law answered the calls of the Secretary-General of the United Nations and several mechanisms of this organization, as well as the decision of the International Criminal Court, which established that children born as a result of rape and sexual slavery are direct victims of these crimes and that they have the right to reparation.

¹³³ The RS Law on Protection of Victims of War Torture ("Official Gazette of the RS" 90/18)

to ethnicity. Survivors continue to face reimbursement for the costs of court proceedings in which the action was dismissed due to statute of limitations.¹³⁴

In the FBiH, the Draft Law on the Protection of Civilian Victims of War was established during 2022. Although this move has made progress in improving the rights of civilian victims of war, the aforementioned Draft does not provide for spa treatment, medical rehabilitation and priority in exercising the right to health care. This Draft does not legally recognize children born of war as victims of war category. Authorities in this Entity have the opportunity in the parliamentary procedure to take into account the needs and requirements of survivors and the recommendations of experts in this field.¹³⁵

Persons who have survived sexual abuse in the FBiH are currently exercising their rights under the *Law on the Basics of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children*. Problems were recorded in the procedures before the competent centres for social work, i.e., before the Commission for the provision of expert opinion for the purpose of determining the special category of civilian victims of war. In a number of procedures, the certificate or other documents issued by the relevant citizens' association, non-governmental organization and other authorized organization engaged in the provision of assistance, confirming that the applicant has survived sexual abuse and rape, are not valued as relevant written evidence.

Non-Discrimination Policy

Priority 9: *Strengthening the protection of the rights of all citizens, in particular by ensuring the implementation of laws on non-discrimination and on gender equality.*

In the past year, the first conviction for discrimination based on sexual orientation was passed. Action plans have been adopted to improve the rights of Roma and LGBT people. There is still a discriminatory practice of segregation of pupils on ethnic grounds in two Cantons.

In April 2022, the Municipal Court in Sarajevo issued a verdict in the lawsuit of the Sarajevo Open Centre against Samra Ćosović Hajdarević, a former member of the SC Assembly. For the first time, the verdict explicitly stated discrimination based on sexual orientation, gender identity and gender characteristics of LGBTI persons. Judgment number 65 0 P 801297 19 P is important because the defendant Samra Ćosović-Hajdarević discriminated as a public person, i.e., a Cantonal representative. The Defendant's statement on the Facebook social network violated the right to equal treatment in relation to members of the LGBTI community whose rights are protected by the SOC as a plaintiff. The proceedings have not been concluded since the defendant appealed the verdict.

¹³⁴ More in 2021 Alternative Report on Bosnia and Herzegovina's Progress on the Road to the European Union Membership:

Political Criteria, p. 29-30: https://eu-monitoring.ba/site/wp-content/uploads/2022/05/BHS_FINAL_WEB-1.pdf

¹³⁵ Information on this parliamentary procedure refers to the situation ending in March 2023.

In April 2022, the CoM BiH adopted the Action Plan for Social Inclusion of Roma for the period 2021 - 2025. The implementation of the Action Plan will be monitored by the BiH Ministry of Human Rights and Refugees (MHRR BiH) and the Committee for Roma at the CoM BiH.¹³⁶

Ethnic segregation in schools, known as “two schools under one roof” is still present in the Herzegovina-Neretva Canton (HNC) and the Central Bosnia Canton (CBC). The competent authorities have still not undertaken activities to eliminate this discriminatory practice in the HNC according to the judgment of the Municipal Court in Mostar, i.e., according to the Decision on Enforcement issued by the Cantonal Court in Mostar. Neither the competent institutions of the CBC took concrete measures to enforce the judgment of the Supreme Court of the FBiH of August 2021, which established the existence of discrimination – segregation on the ethnic basis of children in the educational system of this Canton.

Gender Equality

Priority 9: *Strengthening the protection of the rights of all citizens, in particular by ensuring the implementation of laws on non-discrimination and on gender equality.*

This is another of the widely set priorities, which makes it difficult to monitor its implementation. Harmonisation of criminal laws with the Istanbul and Lanzarote Conventions is still very slow. No centres for victims of sexual violence have been established, and the state still does not collect data on femicide. Courts have an uneven practice of punishing murders of women. Only CSOs still advocate gender-responsive budgeting. Positive examples of support for women’s entrepreneurship are present. The SC was the first in BiH to start using HPV vaccines. Female journalists and editors are victims of various forms of gender-based violence.

Harmonization of criminal laws with the Istanbul Convention

In April and July 2022, both Houses of the FBiH adopted the **Draft Law on Amendments to the FBiH Criminal Code** and obliged the Proponent to conduct public consultations. CSOs and other interested parties submitted their written proposals, but the oral part of the public consultations was never held, nor did the Proponent announce on that occasion.

A working group was formed in the BD BiH to work on harmonization of the **BD BiH Criminal Code** with the provisions of the Istanbul and Lanzarote Conventions. Despite all efforts, no criminal code in BiH knows the definition of consent as a key element of the criminal offense of rape, the relationship between the victim and the perpetrator is still treated as a mitigating circumstance. Criminal codes of the FBiH and BD BiH do not know the criminal offenses of genital mutilation of women, psychological violence - except as a form of domestic violence, sexual harassment, forced sterilization, persecution and forced marriage.

¹³⁶ More about the Action Plan and already observed problems in its implementation, see in the text of Sanela Bečić, „Koliki je utjecaj Akcionog plana za društvenu inkluziju Roma i Romkinja u BiH?“ (“What is the impact of the Action Plan for the social inclusion of Roma men and women in Bosnia and Herzegovina?”), Initiative for Monitoring the European Integration of BiH (eu-monitoring.ba), <https://eu-monitoring.ba/koliki-je-utjecaj-akcionog-plana-za-drustvenu-inkluziju-roma-i-romkinja-u-bih/>

The lack of systemic support discourages victims from reporting rape. This problem would be solved by **the establishment and functioning of crisis centres for victims of sexual violence**. Although the BiH Agency for Gender Equality signed an agreement with three hospitals in Sarajevo, Tuzla and Mostar as early as 2021, these centres have not yet been opened. This time, too, it is not a systemic solution, but a pilot project funded by an international organization.

The State should adopt *the Protocol for the Treatment of Sexual Violence Cases* which will contain instructions for all actors in the process of taking care of rape victims – police, prosecutor's office and health professionals. Examples from practice indicate that health professionals generally do not call the police ex officio in cases where the patient has evidently been the victim of some form of violence and rape victims are not offered postcoital contraception.

BiH is still not collecting data on **femicide**. The role of the Committee for Monitoring the implementation of the Istanbul Convention and Femicide in BiH, established in 2019 in the prevention and monitoring of the most extreme form of violence against women is unclear, since it has not yet developed a methodology for monitoring femicide.¹³⁷

CSOs record that from the beginning of the year to mid-October 2022, **11 women were killed** in BiH. At spontaneous protests in 19 cities on the occasion of the murder of Edina Odošević in Bihać, the request for the recognition of femicide as a separate criminal offense was repeated.¹³⁸ Courts in BiH have **uneven practice** in terms of the sentence imposed in cases of murder of women. According to the analysis of case law,¹³⁹ in the period from 2017 to 2021, 36 such cases were prosecuted in BiH, and 31 perpetrators were sentenced to prison. The maximum sentence imposed was 30 years in prison, and the shortest sentence in the case of attempted femicide is one year in prison. Three perpetrators were sentenced to long-term imprisonment¹⁴⁰

¹³⁷ The reply of the Agency for Gender Equality to the inquiry of the Sarajevo Open Centre states that it is continuously working on creating the preconditions for the functioning of the Committee for Monitoring and Reporting under the Istanbul Convention and on Femicide in accordance with the competences defined in the Decision on Establishment. "There is still no analysis of individual cases because there is no system for identifying cases and collecting information from relevant entities that would enable this," the Agency said in its reply.

¹³⁸ „Protesti žena širom BiH nakon ubistva u Bihaću” (“Protests of women across BiH after the murder in Bihać”) Radio Slobodna Evropa, last modified 14 October 2022, <https://www.slobodnaevropa.org/a/protesti-zena-bosni-hercegovini-femicid-/32083412.html>

¹³⁹ Prof. Slobodanka Konstantinović Vilić, PhD, et al., „Analiza prakse sudova u procesuiranju femicida i pokušaja femicida u Bosni i Hercegovini 2017-2021.” (“Analysis of Case Law in the Processing of Femicide and Attempted Femicide in Bosnia and Herzegovina 2017-2021”), ed. Kosana Bekker, PhD, and Dalida Tanović (AIRE Centre, 2022), <https://www.airecentre.org/Handlers/Download.ashx?IDMF=77975c73-9c31-4552-9a68-3013255c0d5f>

¹⁴⁰ On average, the length of prison sentences imposed on perpetrators of women's murders is nine years and nine months. If it is known that the penalty for aggravated murder, which femicide certainly is, is from 21 to 45 years, it can be noted that the sentences imposed so far are small and will not deter possible perpetrators from their plot, according to Amila Ferhatović, a professor of criminal law at the Faculty of Law of the University of Sarajevo. See: <https://www.klix.ba/vijesti/bih/femicid-u-bih- napadi-se-najcesce-desavaju-kada-zena-zeli-napustiti-partnera/221206105>

Application of the RS Law on Protection against Harassment at Work

Pursuant to the RS Law on Protection against Harassment at Work, the procedure for protection against harassment at work ¹⁴¹ is carried out by the employer, the Agency for Peaceful Resolution of Labour Disputes, the authority competent for inspection supervision and the competent court. In 2022, the said Agency acted in 5 procedures initiated due to harassment at work in accordance with the RS Law on Protection against Harassment at Work. The agreement was reached in only one procedure, while four procedures were suspended due to the impossibility of reaching an agreement between the parties to the procedure (three of the four procedures were proposed by women).

The law obliges employers who employ 15 or more workers to adopt a general act prescribing the procedure of protection against harassment at work. Therefore, the expert team of the RS Union of Employers' Associations has prepared the Model Rulebook against Harassment at Work in order to facilitate the application of the Law. There is no data on the application of this Model, nor on the procedure of inspection on this basis.

Women's Economic Empowerment and Gender Budget

At all levels of government, mostly CSOs continue to advocate gender responsible budgeting based on recognized social needs. One of the key problems faced by people who advocate the introduction of gender-responsive budgeting is the principle of using line budgeting, rather than program budgeting, which is applied in BiH. This principle makes it difficult to analyse the budget and advocate for budget changes.

The RS Ministry of Economy and Entrepreneurship and the FBiH Ministry of Development, Entrepreneurship and Crafts continue to implement projects to support women's entrepreneurship. The main problem in the analysis of women's entrepreneurship is the **lack of gender-disaggregated data in this sector**. The Ministry of Economy and Entrepreneurship of the Republika Srpska is leading in the collection and classification of data, which is reflected in the strategies developed according to the collected data from the field, which greatly contribute to the development of women's entrepreneurship.

The RS Law on Social Entrepreneurship adopted at the end of 2021 has positively reflected on women entrepreneurs. The registration of the Cooperative "Žena" ("Woman") as a social enterprise at the end of 2022 contributed to the improvement of the position of women farmers and entrepreneurs, but also to the economic independence of women.

At the end of 2022, the vaccination of girls against **human papillomavirus (HPV)**, one of the most common causes of cervical cancer, began in the SC. Vaccination funds and vaccines themselves have been provided from the Cantonal budget.

In its program for 2023, the Audit Office of the Institutions of BiH included an audit of the performance of institutions at the state level in the field of gender equality.

¹⁴¹ "Official Gazette of the Republika Srpska" No. 90/21

Attacks on female journalists

During 2022, the Free Media Help Line received 31 reports of verbal threats, hate speech, insults, discrimination and other forms of gender-based violence against female journalists and media editors from BiH.

What stands out is the brutality of the attack on the female journalist Nataša Zubac Miljanović, a correspondent of Radio-Television RS from Trebinje, whose car was set on fire¹⁴², followed by security attacks on her and her family, as well as discrimination and mobbing in the workplace.

A senior police official of the FBiH Police Administration from Sarajevo, Zoran Čegar, insulted and verbally assaulted a journalist of the Centre for Investigative Reporting in Sarajevo, Renata Radić – Dragić,¹⁴³ whom he physically attacked in front of the Court in Dubrovnik before which the trial of Čegar for several criminal offenses took place. This is the only case of violence against female journalists in which the perpetrator was very quickly punished with a suspension from office he held.

Female journalists in BiH are most often victims of verbal violence by politicians, especially the President of the People and Justice (Elmedin Konaković), the Social Democratic Party of BiH (Nermin Nikšić), the Democratic People's Alliance (Nenad Nešić) and others. The president of the Alliance of Independent Social Democrats Milorad Dodik, whose 17 registered attacks on female journalists in the last few years have not been prosecuted or adequately condemned by party authorities and institutional gender mechanisms, was particularly noteworthy.

Online violence against female journalists was particularly intense during and after the election campaign. The party bots led by Jasmin Mulahusić have repeatedly made serious threats to Al Jazeera Balkans journalist Dalia Hasanbegović-Konaković through photomontages and social media posts.¹⁴⁴

Vanja Stokić, editor of the e-Trafika portal and her team of journalists worked and lived for months under the threats of Siniša Golub¹⁴⁵ and a life-threatening security risk.

None of these cases has been terminated by any legal sanctions, deletion of comments or other self-regulatory measures of social networks. Surveys show that one in five female journalists in BiH has experienced gender-based discrimination, and in most cases, it is in the form of sexual harassment and sexist comments.¹⁴⁶ Gender-based violence and pressures are reported by only two-thirds of female journalists, while the majority of female journalists do not report online threats.

¹⁴² "SJ: Bugarski novinari i aktivisti napadnuti u Srbiji, zapaljen automobil novinarke u BiH", (SJ: Bulgarian journalists and activists attacked in Serbia, the car of a journalist in BiH set on fire"), Association BH Novinari, last modified 15 June 2022, <https://bhnovinari.ba/bs/2022/06/15/sj-bugarski-novinari-i-aktivisti-napadnuti-u-srbiji-zapaljen-automobil-novinarke-u-bih/>

¹⁴³ „Osude prijetnji novinarima CIN-a i prijave protiv Zorana Čegara” (“Condemnation of threats to CIN journalists and charges against Zoran Čegar”, Centre for Investigative Reporting, last modified 02 November 2022, <https://cin.ba/osude-prijetnji-novinarima-cin-a-i-prijave-protiv-zorana-cegara/>

¹⁴⁴ The targets of Mulahusić's attacks were also the journalists Emela Burdžović (N1), Rubina Čengić (freelance journalist), Selma Fukelić (Mediaonline), Borka Rudić (BH Novinari), Dragana Raić (FTV). More at: <https://bhnovinari.ba/bs/2022/10/18/bh-novinari-jasmin-mulahusic-mora-bit-sankcioniran-zbog-sirenja-mrznje-premanovinarima-kama/>

¹⁴⁵ "SJ: Novinari u BiH tri mjeseca trpe prijetnje smrću" (SJ: Journalists in BiH suffer death threats for three months"), BH Novinari, <https://bhnovinari.ba/bs/2022/07/21/sj-novinari-u-bih-tri-mjeseca-trpe-prijetnje-smrcu/>

¹⁴⁶ Media.ba, „Diskriminacija novinarki u redakciji i na terenu: Neprijavlivanje iz straha od stigmatizacije" ("Discrimination of female journalists in the newsroom and in the field: Non-reporting for fear of stigmatization"), <https://www.media.ba/bs/magazin-novinarstvo/diskriminacija-novinarke-u-redakciji-i-na-terenu-neprijavlivanje-iz-straha-od>

Women in the media are also discriminated against when it comes to equal availability of managerial positions in media companies. They occupy about 37% of editorial positions in the media and about 28% of managerial positions. They are most represented as editors on radio (60%), and in news agencies (50%), while the lowest representation is in the managerial positions of television stations. When it comes to print media, women occupy about 40% of editorial positions and the same number of managerial positions.¹⁴⁷

Persons with Disabilities

Priority 13: Improve the protection and inclusion of vulnerable groups, in particular persons with disabilities, children, LGBTI persons, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees in order to close Annex VII of the Dayton Peace Agreement.

Persons with disabilities remain in an unenviable position in terms of exercising their rights, as indicated by the protests as well. A new Strategy for the Advancement of Rights and Status of Persons with Disabilities in the FBiH has not been adopted, and a large number of measures from the previous Strategy have not been implemented. There is no data on the implementation of a similar strategy in the RS. Positive progress has been made in the part of organizations of persons with disabilities in the field of gender equality and protection against sexual and gender-based violence towards persons with disabilities.

In the past period, there has been no significant progress regarding the rights and position of persons with disabilities in BiH. ***The Strategy for the Advancement of the Rights and Position of Persons with Disabilities in the FBiH (2016-2021)*** has expired, the new one has not been adopted, and the Report on the Five-Year Implementation of this Strategy¹⁴⁸ concluded that no significant progress has been made in any area in ensuring equal conditions and inclusion of persons with disabilities in society. No Ministry except the FBiH Ministry of Labour and Social Policy has planned budget funds for the implementation of the activities of the Strategy. In addition to the aforementioned Ministry, the Report praised the Gender Centre of the FBiH and several Cantonal Ministries of Education and Science.

It is alarming that the Federal Ministry of Transport and Communications has not once reported on the fulfilment of the Strategy, although the issue of access to information is within its competence as a basic prerequisite for respecting the rights of persons with disabilities. There is still no systematic approach to removing physical barriers, making most public spaces and facilities inaccessible to persons with disabilities.

¹⁴⁷ Media.ba, „Žene na samo 30 posto rukovodećih pozicija u bh. medijima” (“Women in only 30 percent of managerial positions in BiH media”), <https://media.ba/bs/magazin-novinarstvo/zene-na-samo-30-posto-rukovodećih-pozicija-u-bh-medijima>

¹⁴⁸ The Report was prepared by the FBiH Government Coordination Body for Monitoring, Directing and Reporting on the Implementation of the Activities of the Strategy for the Advancement of the Rights and Position of Persons with Disabilities in the Federation of BiH (KooTI), composed of representatives of line ministries and representatives of the organization of persons with disabilities. The Report is available at: <https://fmrsp.gov.ba/?wpdmpo=izv-jestaj-o-imeplementaciji-strategije-za-unapredjenje-prva-i-polozaja-osoba-sa-invaliditetom-u-fbih-2016-2021&wpdmdl=7305&refresh=63da10fcb38091675235580>

In the RS there are no reports available on the implementation of the *Strategy on the Advancement of the Social Position of Persons with Disabilities 2017-2026*.

The end of the year was marked by **protests** of persons with disabilities organized in front of the **FBiH Government** because of dissatisfaction with their position in society.¹⁴⁹ The most important requirements include the adoption of the *Draft Law on Uniform Principles and the Framework of Material Support for Persons with Disabilities* which will not fix the basis for calculating the amount of compensation as before, but would harmonize it with the average salary in the FBiH. Urgent elimination of systemic discrimination was also requested as equalising the rights of three categories of persons with disabilities – “non-war” persons with disabilities, civilian victims of war and disabled war veterans.¹⁵⁰ It was also requested that the Office of the Attorney General and the register for children with developmental disabilities and persons with non-war disabilities be formed within the FBiH Government.

Positive developments in the field of gender equality and protection against sexual and gender-based violence towards persons with disabilities are mainly achieved thanks to projects funded by foreign donors.¹⁵¹ In five coalitions of organizations of persons with disabilities¹⁵², Forums of Women with Disabilities were formed as informal bodies that enable women with disabilities to advocate for changes that will positively affect the implementation of their rights and contribute to gender equality and visibility both in the movement of persons with disabilities and in society. Raising awareness of sexual and gender-based violence against persons with disabilities has been recognized through the *Rulebook on Prevention of and Protection against Sexual and Gender-Based Violence*, adopted by more than 30 organizations of persons with disabilities in Bosnia and Herzegovina. Persons with disabilities were involved during the development of the new *Strategy for Prevention and Combating Domestic Violence for the period 2021-2027*. This is a significant progress, because as it is important to contribute to gender sensitivity in the movement of persons with disabilities, it is equally important to include disability as one of the characteristics in the gender equality of women, in order to more effectively prevent and reduce multiple and cross-discrimination of women with disabilities.

¹⁴⁹ „Održan protest osoba sa invaliditetom u Sarajevu” (“Protest of persons with disabilities held in Sarajevo”), Free Europe, last modified 03 December 2022, <https://www.slobodnaevropa.org/a/protest-osobe-sa-invaliditetom-sarajevo/32160260.html>;

„U Sarajevu održan protest osoba sa invaliditetom: Devet zahtjeva od kojih ne žele odustati” (A protest of persons with disabilities held in Sarajevo: Nine requests they don't want to give up”), Radio Sarajevo, last modified 03 December 2022, <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/u-sarajevu-odrzan-protest-osoba-sa-invaliditetom-devet-zahjteva-od-kojih-ne-zele-odustati/476729>

¹⁵⁰ This long-standing systemic discrimination is reflected in the fact that the basis for calculating the monthly monetary income of “non-war” persons with disabilities is 274.40 KM, while the basis for determining the monthly monetary income of persons who became disabled during the war is determined at the beginning of each year and in 2022 it amounted to 910 KM. For a long time, persons with disabilities have advocated that the compensation for participation in the war be separated from the disability allowance, and that the disability allowance should be the same for all persons with disabilities regardless of the time and cause of disability.

¹⁵¹ “I am here - visible and proud” project is funded by Sida through the Embassy of Sweden in BiH and coordinated by MyRight - Empowers people with disabilities in BiH

¹⁵² Coalitions of organizations of persons with disabilities in the regions of Bijeljina (RS), Doboj (RS and FBiH), Tuzla (FBiH), Sarajevo (FBiH) and Mostar (FBiH).



LGBTIQ Rights

Priority 13: *Improve the protection and inclusion of vulnerable groups, in particular persons with disabilities, children, **LGBTI persons**, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees in order to close Annex VII of the Dayton Peace Agreement.*

Some progress has been made in advancing the rights of LGBTI persons. After a long wait, the Action Plan for the improvement of the rights of this part of society was adopted and all Cantons in the FBiH have appointed prosecutors to work with LGBTI persons victims of hate crimes and hate speech. More concrete steps need to be taken towards legal recognition of same-sex partnerships in both Entities.

After 2 years of waiting, at the end of July 2022, the CoM BiH adopted the **Action Plan for the Promotion of Human Rights of LGBTI People in BiH for the period 2021-2024**. The document contains three general objectives: equal opportunities and non-discrimination, equal rights in all areas of life and a diversity-respecting society. In order to achieve these objectives, 17 essential activities have been envisaged, for which various state bodies are in charge within their competences. The implementation of the Action Plan is supervised by the MHRR BiH.

During 2022, the FBiH government made minor steps towards **legal recognition of same-sex partners**. In October, the Report of the Interdepartmental Working Group, which was drafted back in 2021, was received and the line ministries were tasked with organizing expert public consultations on same-sex partnerships. The consultations were held in December 2022, on which a report was submitted to the FBiH Government, which is still awaited to finalise the process.

All Cantons in the FBiH have appointed contact persons, i.e., **prosecutors to work with LGTB persons** who are victims of hate crimes and hate speech. This practice is thought to influence the growing trust of the LGBT community in BiH in the work of institutions.

At the end of June 2022, the third **BiH Pride March** was held. The organizers encountered the same problems as in previous years. More on restrictions on the right to freedom of assembly in the part of the Report *Freedom of Assembly and Association*.

During the pandemic, the need for psychosocial support for LGBT people was observed. During 2022, the CSO network provided free peer counselling and psychotherapy services to over 250 LGBT people throughout BiH. Users of these services have pointed out the tremendous importance of these activities in the prevention of mental and emotional problems.

Respect and Protection of Minorities and Cultural Rights

Priority 13: Improve the protection and inclusion of vulnerable groups, in particular persons with disabilities, children, LGBTI persons, members of the Roma community, detainees, migrants and asylum seekers, as well as displaced persons and refugees in order to close Annex VII of the Dayton Peace Agreement.

A positive step in improving the position of the Roma community is the adoption of the BiH Action Plan for Social Inclusion of Roma, but there are already problems visible in the implementation of this document. As in previous years, the state is not allocating enough funds for the implementation of the Action Plan. There are still problems and a lack of political will to improve the rights of displaced persons and refugees in order to close Annex VII of the Dayton Peace Agreement.

Roma

By accepting the so-called *Poznan Declaration*¹⁵³, BiH has undertaken to continue and intensify efforts for full equality and integration of Roma. During 2022, **the BiH Action Plan for Social Inclusion of Roma for the period 2021-2025 was adopted**¹⁵⁴. The measures provided for in this plan are in accordance with the *EU Strategic Framework for Equality, Inclusion and Participation of Roma for the period 2020-2030*.

According to the latest data from 2020, the Entity and BD BiH employment services record 3,888 unemployed Roma with a very unfavourable qualification structure. On the other hand, the regional survey¹⁵⁵ from 2017 shows that only 11% of working-age Roma in BiH are employed, and that as many as 86% of young Roma people aged 16 to 24 are outside the education, training and labour market systems.

Contrary to the Poznan Declaration, BiH institutions do not allocate sufficient funds to improve the position of Roma in BiH, which is of further concern taking into account the deepening economic crisis and the rising cost of living. The MHRR's plan was for this Ministry to allocate 600,000 KM annually for the purpose of hiring Roma. However, the budget for 2022 allocated only 200,000 KM, while a total of 1,380,000 KM was allocated for the implementation of the Action Plan. A worrying trend is the reduction of allocations for the improvement of the position of Roma from year to year, and it is already predicted that the Action Plan will not be fully implemented, among other things.

Refugees and displaced persons

By adopting *the Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement*, strategic objectives have been defined towards the implementation of the provisions of this Annex. There are still administrative, legal and political problems that prevent the successful completion of the

¹⁵³ Declaration of Western Balkans Partners on Roma Integration within the EU Enlargement Process: <https://www.rcc.int/romaintegration2020/files/admin/docs/254a1c8f78515efd8cf0a65c8d981160.pdf>

¹⁵⁴ National Action Plan for Social Inclusion of Roma in Bosnia and Herzegovina for the period 2021-2025: <http://www.sluzbenilist.ba/page/akt/uRdTuoNm8EE> =

¹⁵⁵ Regional Roma Survey 2017: Country fact sheets: <https://www.undp.org/eurasia/publications/regional-roma-survey-2017-country-fact-sheets>

return. A slight advancement has been recorded in order to close collective centres in the HNC and SC through the accommodation of displaced persons in social non-profit housing buildings for this category of population. Much more effort is still needed in this area.

Problems in the processes of return of property and tenancy rights, electrification of returnee settlements and individual housing units of returnees, reconstruction of infrastructure in places of interest for return, health and social protection, exercising the right to education, work and employment, security and demining of the area of return and the right to compensation of displaced persons, refugees and returnees need to be addressed.

Chapter 24: Justice, Freedom and Security

Fight against organised crime

Priority 7: Strengthen the prevention and fight against corruption and organised crime, including fight against money laundering and terrorism, primarily through:

- a) adoption and enforcement of regulations on conflict of interest and whistle-blower protection;**
- b) ensuring the effective functioning and coordination of anti-corruption bodies;**
- c) harmonization of legislation and strengthening of capacities for public procurement;**
- (d) ensuring effective cooperation between law enforcement authorities and with prosecutors' offices;**
- e) demonstrating progress in achieving the results of proactive investigations, confirmed indictments, criminal prosecutions and final convictions in organised crime and corruption cases, including high-level ones;**
- f) depoliticization and restructuring of public enterprises and ensuring the transparency of the privatisation process.**

BiH ranks 5th in the European crime rankings and has the lowest crime resistance on the continent. Cooperation between organised criminal groups from BiH and the region is strong. Weaknesses in the justice system directly affect the strengthening of organised crime. The state border in the east is insufficiently secured and this favours cross-border criminal cooperation. The field of organized crime is under-explored. The fragmentation of police structures affects the cooperation, operability and timely operation of police agencies.

The Strategy for the Prevention and Fight against Terrorism for the period 2021-2026 has been adopted and the adoption of accompanying Action Plans is pending. A multisectoral and multidisciplinary approach was used in the creation of the Strategy. CSOs played a key role in the enrolment of children of returnees from foreign battlefields in BiH citizenship.

Although there have been many recorded problems in political co-operation at the regional level, organised criminal groups from BiH are successfully connecting with such groups in neighbouring countries and the wider region. In recent years, connecting with organized criminal groups from Europe, South America, South Africa¹⁵⁶ and Asia has also been noticeable.

According to the Global Organized Crime Index for 2021, BiH is **ranked fifth in the European crime rankings** and has the lowest resistance rating on the entire continent, i.e., it is ranked only 138th in the world in terms of resistance to organized crime.¹⁵⁷

Organised crime poses a real threat to the normal functioning and further development of democracy, and in particular it is a threat to citizens, companies and institutions. It manifests itself in various forms and is linked to the most serious crimes, both in the world and in BiH.

Some organised criminal groups from the region, primarily from Serbia and Montenegro, cooperate with criminal groups in BiH and smuggle drugs or weapons into EU and other Western countries through them. Also, these groups in these countries often have criminals from BiH in their composition, and in some cases, they used them as paid murderers in order to liquidate leaders or members of rival groups. It is characteristic of organized criminal groups from BiH that they often change their basic criminal activity depending on global trends and needs on the black market. Cases have been reported where some groups, in addition to smuggling drugs, also deal with arms trafficking, or human trafficking.

A special feature of organized criminal groups in BiH is that criminals have found a way to bribe or blackmail members of police or security agencies, as well as individual judges and prosecutors. Several such cases have been discovered, and dozens of police officers, border guards and members of security agencies have been suspended, and court proceedings have been initiated against the majority of them. All this has further affected the efficiency of the judicial system in BiH, as pointed out by EU reports, as well as the US Embassy in BiH. **Weaknesses in the judicial system** in BiH directly affect the strengthening of organized crime and the increase in the number of organized criminal groups in BiH.

The problem that further facilitates the operation of organized criminal groups in BiH is the **insufficiently secured state border**, especially the border of BiH towards Serbia and Montenegro. This was especially evident during the migrant crisis that hit BiH in 2016, when dozens of migrants from Africa and Asia passed through the territory of BiH on their way to Western European countries. Organised crime related to migrant smuggling has been present in BiH ever since and continues to this day, depending on the number of migrants who are being transferred via the Western Balkans smuggling route.

In addition to sociological factors that favour the emergence and functioning of organized crime, an important factor is the geographical position of BiH, which makes this area especially attractive for smuggling drugs, weapons and people. BiH im-

¹⁵⁶ In cases of links between organised criminal groups and those coming or operating in South America and South Africa, this is, in most cases, in connection with drug smuggling, from those regions to the European Union, via the Western Balkans route. According to operational data and conducted interviews with police officers, an average of 20-30 percent of smuggled drugs remain in BiH, for the purposes of sale and use.

¹⁵⁷ „Balkan countries score poorly on the 2021 Global Organized Crime Index”, Global Initiative Against Transnational Organized Crime, <https://riskbulletins.globalinitiative.net/see-obs-010/01-balkan-countries-score-poorly-2021-global-organized-crime-index.html>

mediately borders with the EU, which is particularly attractive to international organised crime groups whose main market is the EU. Analysing the position of BiH in terms of smuggling potential, BiH is located between the world's largest producer of opium, Afghanistan, and the biggest market for heroin, which is Western Europe. BiH is generally recognized as a transit area for all types of drugs, although according to official police and court data it is becoming more and more recognizable as an area where mostly all types of drugs are consumed. The Western Balkans smuggling route, and thus BiH area, is becoming increasingly important as a route for smuggling cocaine into Europe. On the other hand, BiH is also becoming interesting to criminals as a place for laundering illegally acquired money, precisely because of the large corruption that is present in all institutions and at all levels.

BiH is also on the currently most active migrant route through which the people on the move from the Middle East and North Africa want to come to the EU. This situation is being used by organised criminal groups and they get involved in migrant smuggling, which is one of the major forms of organised crime in BiH.

Despite the ubiquity of organized crime in BiH, **research** on this topic is still **insufficient**. Higher quality information would enable a clearer view of the current situation and trends, in order to have more effective responses to the fight against organized crime and corruption.

At the BiH level, there is no Ministry of the Interior, which affects the **police operability**, as well as the timeliness and information exchange within 13 police agencies in BiH. This situation is most favourable to criminals and organized criminal groups, who often perform illegal activities for 20 years without being prosecuted. Even if that happens, the sentences are lenient or the suspects settle with the prosecution and resume their old job. Investigators and journalists find it very difficult to trace organised crime cases through the criminal justice system, as there are no single registers with publicly available data in one place.

The fight against organised crime has been declaratively at the top of the BiH authorities' priorities at all levels for a decade. This is also due to pressure from foreign actors, such as the EU, which underlines the need for more effective approaches to solving the problem of organised crime in the enlargement process. However, there is no political will to take a more serious approach to solving this problem, and there are political influences on law enforcement authorities. Countering the threats of criminal groups present in BiH will have to come, in part, from the outside, primarily in the form of more effective international cooperation, monitoring and confiscation of property, information exchange, especially because the perpetrators of criminal offences often use multiple identities or have dual citizenships.

It is necessary to reform and depoliticise police agencies, but also to continuously fight against corruption, so that these institutions can at least partially regain the trust of citizens, activists and researchers who contribute to the fight against organized crime and corruption. The high level of corruption and the links with organized crime of members of police and security agencies, as well as judges and prosecutors, according to decrypted messages from the Sky application¹⁵⁸, say only one thing – the fight against organized crime and corruption must take a more intensive course

¹⁵⁸ „Decryption of messaging app provides valuable insight into criminal activities in the Western Balkans and beyond“, Global Initiative Against Transnational Organized Crime, <https://riskbulletins.globalinitiative.net/see-obs-013/01-decryption-of-messaging-app-criminal-activities.html>

in our society. Civil society in BiH also plays an important role, as it can strengthen the culture of respect for the law, support resilience in communities and advocate the creation of a society free of crime and violence.

Fight against Terrorism

In November 2022, the CoM BiH adopted the *Strategy for Prevention and Fight against Terrorism, for the period 2021-2026*¹⁵⁹ The Strategy was adopted two years after the expiry of the previous one, and defines the objectives, principles and measures to be taken in this area.¹⁶⁰

In addition to responding to the challenge of foreign terrorist fighters, the new Strategy also focuses on other features of violent extremism and radicalisation that lead to terrorism. It contains a **multisectoral and multidisciplinary approach** unlike the previous one that focused on the security - repressive approach. Representatives of security institutions were involved in its development, as well as representatives of the civil sector, non-governmental and international organizations.¹⁶¹ Security reports for the previous period indicate that security policy in BiH has been significantly changed, and that BiH is faced with various security phenomena, including **ethnic/national extremism, ethno-national radicalism, right-wing movements**. The cooperation of fan groups with ultra-right organizations known for their radical appearances has been recognized.

In order to implement the Strategy, **it is necessary to prepare and adopt an action plan**. At the state level, it will be created by the working group that prepared the Strategy. At the same time, both Entities and the BD BiH should do so. The FBiH Government tasked the working group to harmonize the already existing FBiH *Action Plan for Prevention and Fight against Terrorism 2020 - 2025* with the adopted Strategy¹⁶². By the end of the year, the aforementioned action plans were not adopted. This strategy, like the previous one, includes four pillars through which the objectives and tasks to be implemented are defined.

The Pillar of Prevention pays particular attention to countering online hate speech and announces the promotion of the identification, monitoring and prevention of the dissemination of terrorist content online. The earlier strategy indicated the need to remove harmful content, but no institution was designated to implement it.¹⁶³

The Pillar of Protection will include improving the data exchange of competent institutions, and international cooperation of BiH institutions with other European institutions.

¹⁵⁹ Press Release from the 57th Session of the Council of Ministers of BiH after the adoption of the Strategy: https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=38789&langTag=bs-BA

¹⁶⁰ Official Gazette of BiH, Strategy for Prevention and Fight against Terrorism: http://www.sluzbenilist.ba/page/Pdf-Download?BrojIzdavanja=8&NivoIzdavanja_FK=1&GodinaIzdavanja=2023

¹⁶¹ Right-wing extremism included in the Draft Counter-Terrorism Strategy: <https://detektor.ba/2022/05/26/desnicarski-ekstremizam-uvrsten-u-nacrt-strategije-za-borbu-protiv-terorizma/>

¹⁶² The FBiH Government has tasked a working group to create the Action Plan: <https://fbihvlada.gov.ba/bs/informacija-za-izradu-i-provedbu-akcionog-plana-za-preveniciju-i-borbu-protiv-terorizma-u-fbih>

¹⁶³ Prevention remains the biggest challenge before the new counter-terrorism strategy: <https://detektor.ba/2020/02/07/prevenicija-ostaje-najveci-izazov-prije-nove-strategije-za-terorizam/>

The Strategy envisages the development of a crisis management methodology in order to adequately respond to a terrorist attack. It is also planned to improve judicial and police cooperation and to improve procedures for the collection, analysis, co-operation and exchange of operational, intelligence, financial intelligence, information security and criminal intelligence data on activities indicating the planning or commission of terrorist offences and related criminal offences.

Special focus of investigative and repressive activities will be placed on the following areas: terrorist propaganda and incitement to cyber-terrorism, recruitment for terrorist activities, financing of terrorism, giving any support to terrorists, and giving instructions or making available to terrorists any means that may serve to execute the sentence.

Efforts will be made to improve the capacity and legislation to combat money laundering and terrorist financing in order to comply with the relevant EU acquis. It is envisaged to improve the legal framework for the execution of criminal sanctions that directly or indirectly have an impact on the treatment of persons convicted of the criminal offence of terrorism and related offences.

Children of Returnees from Foreign Battlefields

In December 2019, 25 people were returned from the area of war-torn Syria, including 11 children born in Syria (one or both parents are BiH citizens). When regulating citizenship, the authorities in BiH prevented the registration of these children in the registers and citizenship, since they were born in a territory that was not under the effective control of the Syrian Arab Republic and that they were not registered in the registers at birth, so they do not have any documentation on birth. The authorities ordered the implementation of judicial non-contentious procedures for determining the time and place of birth, in order to create a legal basis for the registration of children in the registers. The association “Vaša prava BiH” was the proxy of mothers of children and court proceedings for all eleven children ended successfully, by granting BiH citizenship.

The proceedings before the Municipal Court in Sarajevo lasted an average of 15 months, although the legal deadline for making a decision in these proceedings is 90 days. The proxies of mothers of children whose time and place of birth are proven recognized the need to amend the FBIH Law on Non-Contentious Proceedings, i.e., the part that regulates the determination of the place and time of birth by a court expert. In addition, they are of the opinion that Article 73k¹⁶⁴ should include a provision according to which persons for whom the proceedings for determining the time and place of birth are conducted are exempted from paying the costs of the proceedings, bearing in mind the fact that they are persons who conduct the proceedings in order to obtain identification documents.

¹⁶⁴ Law on Amendments to the Law on Non-Contentious Proceedings ("Official Gazette of the Federation of BiH", No. 11/21), Article 73k.

Legal and Irregular Migration and Asylum

Priority 8: *Ensure effective coordination of border management and migration management capacities at all levels and ensure the functioning of the asylum system.*

Authorities in BiH should strive to target the identification of persons who have a need to enjoy protection through the asylum procedure. Institutions are focused on subsidiary protection, while no refugee status was granted during 2022. Further improvement of procedural safeguards is needed for effective examination of asylum applications.

The phenomenon of mixed migration is still present in BiH. Still, the biggest burden of migration is borne by the USC and the SC.

Authorities should aim to target the identification of persons who have a genuine need to enjoy protection through the asylum procedure and provide access to guaranteed rights without delay. Certificates of **stated intentions for applying for asylum** are issued to all persons on the move in temporary reception centres, regardless of whether these persons express the need for asylum. As a result, there are large differences in the number of issued certificates of intentions and submitted asylum applications before the Ministry of Security. This is an example of systemic inefficiency that leads to overload.

Insufficient state capacities and overload are clearly visible in the time period within which persons are allowed to access the asylum procedure. Although the laws require persons to apply for asylum in person upon expressing their intention, in practice this only happens upon receiving a call from the competent authority. Practice shows that this happens after a long wait. Conditioning arrival in Sarajevo for the purpose of accessing the asylum procedure puts all persons residing outside the SC at a disadvantage.

Prolonged waiting for the decision on the status of asylum seekers causes **distrust** of these persons in the institutions of BiH and departure to EU countries. On the other hand, **single men** were denied access to the asylum procedure in temporary reception centres that are not under the full jurisdiction of the domestic authorities (for example, the Blažuj Temporary Reception Centre).

Deficiencies in the conduct and coordination of domestic authorities are particularly reflected in **unaccompanied minors**. These cases require priority action, which is generally not the case. Some of them are exposed to deprivation of liberty in the Immigration Centre and the risk of expulsion to the country of origin. This practice is contrary to all international standards.

No refugee status was granted in 2022. Although the rights deriving from subsidiary protection are largely limited, the granting of this status becomes the rule and refugee status the exception. Subsidiary protection does not provide the possibility of issuing a travel document, merging with family members, or acquiring BiH citizenship. This particularly affects persons who have been staying in BiH for many years without a long-term status solution and encourages them to move illegally towards EU countries.

A positive example of a quick response from the authorities is evident in cases of **granting asylum to Ukrainian nationals**. In these cases, it is also about subsidiary protection. Unlike EU member states that have adopted decisions providing tempo-

rary protection as a mechanism of urgent character, BiH authorities have made decisions on granting temporary residence on humanitarian grounds. This puts asylum seekers at a disadvantage, since instead of unconditional admission, it requires these persons to have documents on means of subsistence (accommodation, food, health care and other costs that may arise during their stay in BiH).

Although BiH asylum legislation is significantly harmonised with the EU acquis, **further improvement** of procedural safeguards is necessary to ensure effective procedures for examining asylum applications. This includes improving interviewing techniques, evaluating evidence, protecting vulnerable groups, access to rights and legal aid. It should be reminded that the European Court of Human Rights in 2022 alone adopted five interim measures in cases for seven persons ordering BiH not to forcibly remove asylum seekers from the country before they are granted access to the asylum procedure. Effective border control and the prevention of human trafficking should undoubtedly be carried out, but not to the detriment of the *non-refoulement* principle.

Chapter 5: Public Procurement

Priority 7: *Strengthen the prevention and fight against corruption and organised crime, including fight against money laundering and terrorism, primarily through:*

- a) adoption and enforcement of regulations on conflict of interest and whistle-blower protection;*
- b) ensuring the effective functioning and coordination of anti-corruption bodies;*
- c) harmonization of legislation and strengthening of capacities for public procurement;*
- (d) ensuring effective cooperation between law enforcement authorities and with prosecutors' offices;*
- e) demonstrating progress in achieving the results of proactive investigations, confirmed indictments, criminal prosecutions and final convictions in organised crime and corruption cases, including high-level ones;*
- f) depoliticization and restructuring of public enterprises and ensuring the transparency of the privatisation process.*

This priority has been partially fulfilled by the adoption of the Law on Amendments to the BiH Public Procurement Law. However, some of the key mechanisms for preventing and combating corruption have been omitted. Further harmonization of legislation with EU directives and urgent adoption of the Public Procurement Development Strategy is required.

The Law on Amendments to the Public Procurement Law (LAPPL) was adopted at the end of August 2022. Previously, both Houses of the PA BiH adopted the Report of the Joint Commission on the achievement of the identical text of this Law. The development and adoption of a set of by-laws has also begun, with the aim of a more complete and adequate application of the LAPPL.

Despite certain improvements that the amendments bring, which relate to partial harmonization with EU directives, especially in the part of conflicts of interest and transparency, some of the key mechanisms for prevention and fight against corruption have not found their place in this regulation. The opportunity was missed to ensure

that misdemeanour provisions provide for the imposition of appropriate fines on responsible persons in the contracting authority and the bidder, as well as their timeliness and efficiency, despite the large number of abuses that occur in practice. This is not in line with the commitments of the EU public procurement directives, which insist on effective, proportionate and frightening penalties. The mechanisms of sanctioning violators of the law have not been improved in the field of criminal responsibility, and civil society has been pointing to the necessary harmonization of criminal codes with regard to criminal offenses in public procurement for years, with a special emphasis on equal responsibility of contracting authorities and bidders.

Furthermore, the possibility of protecting the public interest by the competent authorities has not been extended, the political impacts on the appointments and work of the members of the Procurement Review Board have not been eliminated, and the capacities of the institutions of the public procurement system in BiH have not been strengthened, and therefore the mechanisms of supervision over the implementation of the law either.

The public procurement development strategy expired two years ago, and its implementation was unsuccessful. Therefore, it is necessary to **adopt a new strategy** as soon as possible, as well as an accompanying action plan to support the implementation of the strategy, but also to provide regular information on the progress in implementation.

There is still a need to improve the institutional framework of the public procurement system, i.e., resources and efficiency of work of the main institutions of the public procurement system: Agency for Public Procurement and the Procurement Review Board. The Procurement Review Board adopted a medium-term work plan for the period 2023-2025 in mid-2022, which defines as a strategic goal the improvement of the process of development of a competitive economic environment, and as specific goals the provision of a more systematic and more efficient system of resolving complaints is singled out.

The Public Procurement Agency has taken a number of measures to improve information on the regulations governing the field of public procurement. Thus, in the light of the adoption of the LAPPL, the Agency published framework clarifications, which are not of a binding nature. The practice of publishing Information on bad practices of contracting authorities continued, while at the end of the year the Agency also started publishing views/opinions on individual inquiries. The positive trend in the development of the electronic Public Procurement Portal continued, which is an extremely strong element of transparency of the public procurement system. The Public Procurement Agency has started upgrading the e-Procurement system, which includes the opening of public procurement data, which is expected to be released in 2023.

Based on the request for stakeholder monitoring and acting ex officio, the Public Procurement Agency carried out the monitoring of 629 individual public procurement procedures during 2022, and 20 requests were sent for the initiation of misdemeanour proceedings before the competent courts against the contracting authorities and responsible persons in the same. 11 reports of a possible violation of the Procurement Law were also filed due to the existence of elements of a possible criminal offense. Some of the reports submitted by the Agency to the prosecutor's offices were initiated by civil society, such as a report to the Prosecutor's Office of BiH related to the urgent procurement of driving licenses worth 800,000 KM against responsible persons in IDDEEA, or a report on suspicion of embezzlement in the public procurement procedure for equipment for the "Rajska dolina" hotel, which



is owned by the Catering Service of the Government of the Republika Srpska.

Civil society monitoring continues to identify similar problems in the application of the Public Procurement Law, such as splitting of procurements, adapted technical specifications, application of negotiated procedures without publication of notices, although the conditions for the application of this type of procedure have not been met, application of the exemption although the conditions for the application of Article 10 of the Law have not been met, etc. The uneven practice of the contracting authorities in monitoring the implementation of the contracts continued, which leads to a number of weaknesses in the contract implementation phase, and they were also recognized by the supreme audit institutions. Certainly, this is the last stage in the public procurement process, and any deviation from the contractual obligations at this stage can make the entire process of public procurement meaningless.

The system of concessions and public-private partnerships remains extremely complex, fragmented at different administrative levels and inconsistent with the EU acquis, which leads to inadequate protection of the public interest, insufficient transparency and competitiveness of the award of concession contracts.

Cluster 3: Competitiveness and Inclusive Growth

Chapter 19: Social Policy and Employment

According to a survey¹⁶⁵ conducted with the aim of collecting information on the use of maternity leave by fathers, 65% of men aged 20 to 64 are employed, while for women this percentage is 40%. Family/private life is one of the obstacles to greater participation in the labour market. The question arises as to whether the women themselves chose it or whether they were forced to do it. The survey showed that more than half (57.8%) of the fathers surveyed were not aware of the right to use maternity leave. 73.4% of fathers said they would have used maternity leave if they knew there was such a possibility. 55.2% of fathers believe that the term *parental leave* is more appropriate than the term *maternity leave* which is currently used in the applicable labour laws. Based on the findings of the research, it is recommended to harmonize the applicable labour laws with the EU Directive on work-life balance of parents and carers by introducing the terms *parental and paternity leave*, explicitly prohibiting the disadvantage of fathers using maternity leave and allowing the use of leave regardless of whether the mother of the child is employed. It is also proposed to prohibit overtime and night work for fathers, that is, to allow work in these conditions only with the exclusive consent of the worker, to allow the use of leave in the event of a stillbirth.

Currently, the right to maternity benefit is regulated differently in Cantons, and it is necessary to harmonize social protection laws at the level of the Canton, which will

¹⁶⁵ Delila Hasanbegović and Amina Dizdar, Otac na porodiljskom odsustvu: Istraživanje o legislativnim i administrativnim preprekama za korištenje porodiljskog odsustva u Bosni i Hercegovini“ (“Father on maternity leave: Research on legislative and administrative barriers to the use of maternity leave in Bosnia and Herzegovina”) (Sarajevo: Sarajevo Open Centre, 2022), available at: <https://soc.ba/site/wp-content/uploads/2022/10/Otac-na-porodiljskom-web.pdf>

guarantee fathers the right to parental benefit. Due to the low percentage of fathers who are familiar with this right, it is recommended to conduct a campaign to promote the use of parental leave among fathers. Employers are advised to inform workers of their rights in accordance with the obligations under the European Social Charter, and the competent institutions should develop appropriate procedural rules for deciding on the granting of maternity benefits and amend the forms submitted by fathers to the competent institutions so that they are gender sensitive, i.e., applicable to both sexes.

The legal framework in BiH guarantees gender equality and indicates the importance and necessity of women's economic empowerment¹⁶⁶. In 2022, plans and programs in the field of employment and self-employment and development in the FBiH and Cantons of the FBiH continue the practice of observing women as a general category, do not recognize vulnerable groups of women, their needs, capacities and opportunities. Rare documents that identify vulnerable groups of women view them in the position of victims as "women victims of violence", "victims of domestic violence" and "children of victims of domestic violence", who must submit a certificate from a safe house, competent police administration, social work centre or court in order to exercise the right to economic empowerment. In the documents of this type, it is necessary to specify these vulnerable categories as "survivors of violence", "survivors of domestic violence" and "children of survivors of domestic violence" for raising awareness of the specificity of this female experience. As in previous, as well as in the calls of the employment services published in 2022, the first step of application implies the use of the Internet, possession of the necessary technical means and IT literacy. Another problem is that the FBiH still does not have an adopted Employment Strategy, as an umbrella document in this area.

The FBiH Law on Protection against Domestic Violence itself uses the term "victim of domestic violence" exclusively, which observes a woman in a victimized position, so it is necessary to introduce the term "women survivors of domestic violence", which implies that a woman has come out of the circle of violence. With this amendment, all other documents would recognize "women survivors of domestic violence" rather than "victims of domestic violence" as a gender-neutral category.¹⁶⁷

In the coming period in BiH, it is necessary: at the Entity level, to adopt strategic documents in the field of employment with a special focus on gender sensitivity and envisaged economic empowerment measures for vulnerable groups of women; FBiH Cantons must equally approach the economic empowerment of vulnerable groups of women, especially women survivors of violence; In order to encourage women survivors of domestic violence or women with disabilities to apply for economic empowerment programs, public calls and the method of application should be made even more accessible.

¹⁶⁶ Please find an overview of the legislation in the publication: *Kroz ekonomsku stabilnost do slobode: analiza aktuelnih propisa i praksi u FBiH u vezi s ekonomskim osnaživanjem žena koje su preživjele porodično nasilje i preporuke za njihovo poboljšanje* (Through economic stability to freedom: An analysis of current regulations and practices in the FBiH in relation to economic empowerment of women survivors of domestic violence and recommendations for their improvement) by Jasmina Čaušević and Maida Zagorac: <https://www.worldcat.org/title/kroz-ekonomsku-stabilnost-do-slobode-analiza-aktuelnih-propisa-i-praksi-u-fbih-u-vezi-s-ekonomskim-osnazivanjem-zena-koje-su-prezivjele-porodicno-nasilje-i-preporuke-za-njihovo-poboljsanje/oclc/1230256268>.

¹⁶⁷ *Ekonomski osnažENE (Economically empowered WOMEN)* - Research of existing policies and employment programs at the level of the Federation of BiH aimed at socially marginalized groups of women with a focus on women survivors of domestic violence, author Maida Zagorac, CURE Foundation, 2021, edit 2022.

Cluster 4: Green Agenda and Sustainable Connectivity

The Action Plan 2021-2030¹⁶⁸ for the implementation of the Green Agenda was adopted in October 2021 and includes measures for fulfilling 58 obligations (goals). As one of the signatory countries of the Sofia Declaration¹⁶⁹, BiH achieved certain results in the implementation of the measures envisaged by this Action Plan.

At the regional level, the European Commission has approved an investment package worth €3.2 billion¹⁷⁰ to support the implementation of 21 projects for the Western Balkan countries. In the clean energy sector, one of the projects relates to BiH and constitutes a continuation of the "Trans-Balkan Electricity Corridor"¹⁷¹, which aims at a functional regional market and the establishment of a corridor that will connect the transmission networks of Serbia, Montenegro, BiH with the systems of Croatia, Hungary, Romania and Italy. The €3.2 billion package includes donations of €1.1 billion from the Instrument for Pre-Accession Assistance 2021-2027 (IPA III), additional bilateral contributions from EU member states and Norway, and favourable loans from international financial institutions.

BiH has made limited progress in the process of implementing measures related to decarbonisation, as one of the areas of the Green Agenda. The Energy Community Secretariat has initiated legal actions to resolve the issue of violations of the EU Large Combustion Plants Directive¹⁷² in the case of two thermal energy units (Unit 4 of TPP Tuzla and Unit 5 of TPP Kakanj), which continued to operate despite the expiry of their limited 20,000 operating hours. In March 2022, the FBiH Parliament voted to extend the work of these two units until the end of 2027, which directly violated the obligations under the Energy Community Treaty.

Positive developments are evident in the field of renewable energy sources through the construction of solar and wind power plants. In the field of energy efficiency, the process of amending laws and strategies at the State and Entity level, related to the renovation of facilities, is underway. The aim of this process is to comply with the provisions on energy efficiency within the "Clean Energy Package". Also, the Council of Ministers of BiH adopted the National Climate Change Adaptation Plan¹⁷³, as part of the preparation and implementation of strategies for adaptation to climate change.

¹⁶⁸ Action Plan for the Implementation of the Sofia Declaration on the Green Programme for the Western Balkans 2021-2030, FBiH Ministry of Tourism and the Environment, <https://www.fmoit.gov.ba/bs/novosti/priopcenja/akcioni-plan-za-provedbu-sofijske-deklaracije-o-zelenom-programu-za-zapadni-balkan-za-period-2021-2030-godine>

¹⁶⁹ Environmental Protection, FBiH Ministry of Tourism and Environment, <https://fmoit.gov.ba/bs/okolis/zastita-okolisa>

¹⁷⁰ „European Commission launches €3.2 billion investment package to advance sustainable connectivity in the Western Balkans”, European Commission, February 2022; https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1362

¹⁷¹ Vladimir Spasić, „Srbija nominovala projekte za grantove iz Investicionog okvira za Zapadni Balkan“ ("Serbia nominated projects for grants from the Western Balkans Investment Framework"), Balkan Green Energy News, last modified 03 March 2021, <https://balkangreenenergynews.com/rs/srbija-nominovala-projekte-za-grantove-iz-investicionog-okvira-za-zapadni-balkan/>

¹⁷² „Summary of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants (the LCP Directive)”, European Commission, <https://ec.europa.eu/environment/archives/industry/stationary/lcp/legislation.htm>

¹⁷³ „Bosnia and Herzegovina National Adaptation Plan – NAP with proposed measures”, (UNDP in Bosnia and Herzegovina, Sarajevo, September 2021) <https://unfccc.int/sites/default/files/resource/NAP-Bosnia-and-Herzegovina%20.pdf>

Chapter 27: Environment and Climate Change

During 2022, BiH made some progress in the field of environmental protection, mostly thanks to the activities of CSOs, and partly, thanks to the work of the competent institutions, which were mainly driven by the activities and pressure of CSOs.

The most important results concern the adoption of a new proposal of the *FBiH Law on Electricity*, which suspends the further issuance of energy permits for small hydropower plants (SHPPs), without which these facilities cannot be legally built. Namely, the text and initiative of the adoption of this Law is a direct result of the work of the members of the Coalition for the Protection of Rivers in BiH, which resulted in almost unanimous adoption of this Law by both Houses of the PFBiH. It is also important to emphasize the launch of the initiative for the adoption of the new *Rulebook on Ecological Flow in the FBiH* by the members of the Coalition for the Protection of Rivers in BiH, which was eventually adopted in the second half of 2022. CSOs continued to work on the already launched initiatives, as well as started implementing new citizens' initiatives in order to protect rivers from SHPPs. This means that the still strong environmental message of CSOs and citizens during 2022 is that the protection of rivers and public resources in both Entities should be harmonized and placed under unambiguous legal protection.

In the meantime, at the 20th regular session of the NA RS held in February 2022, a new *RS Law on Renewable Energy Sources* was adopted, which abolishes the provision of incentives for SHPPs with a capacity exceeding 150 kW. By adopting these legal regulations, the long-standing pressure created by irrational and corruptly motivated influences has been significantly mitigated in favour of the protection of rivers and human rights to access water.

It is also important to point out that the members of the CSOs submitted comments on the drafts of the new *Law on Electricity of the FBiH*, and the new *Law on the Use of Renewable Energy Sources and Efficient Cogeneration of the FBiH*, which, in accordance with the requirements of the members of the Coalition for the Protection of Rivers in BiH, no longer contain provisions regarding subsidizing or encouraging the operation of SHPPs, but the so-called civic energy and the concept of prosumer/consumer are promoted.

There was still no progress in ratifying *the Protocol on Pollutant Release and Transfer Registers*. The "polluter pays" system is still not adequately applied, which indirectly encourages large polluters to pollute the environment even more. The largest number of CSOs' complaints is focused on the inadequate and biased work of the competent inspectorates.

Although BiH must reduce coal subsidies through gradual decarbonisation, but also consider the introduction of a carbon tax, due to the crisis and war in Ukraine, the competent institutions have again started to advocate stronger use and reliance on fossil fuels. It was also advocated for the continuation of the operation of existing thermal power plants and the establishment of new units, regardless of their economic and energy lack of justification, and a clear ecological lack of justification.

At the end of 2022, CSOs also launched an initiative for **amendments to the law on concessions** at all levels of government, since it creates irrational spatial planning based on inadequate harmonization of energy and environmental policies and by issuing concessions, initiated through own-initiative offers from investors.

In relation to the safety of activists, which certainly includes environmental activists, it is necessary to provide an adequate legal framework. Namely, environmental activists are under various pressures, which includes “SLAPP” suits (abbreviation derived from the English words: Strategic Lawsuit Against Public Participation, i.e., strategic lawsuit against public participation). Such lawsuits are directed against activists by burdening them with the cost of legal defence until they give up criticism and/or opposition and/or participation in civil initiatives, and/or expressing an opinion on a particular topic and/or organizing civil or activist activities aimed at initiating a public debate and/or debate on public interest issues, all with the aim of censorship, intimidation and silencing. For this reason, at the end of last year, the Aarhus Centre in BiH prepared the text of the *Law on Citizens' Initiative and Protection of Citizens and Activists* at the level of the SC, and launched an initiative towards the SC Assembly to include it in the work program of this legislative authority.

It is still necessary to work on the faster acting of courts competent for administrative disputes against unlawful acts of the public authorities, i.e., criminal prosecution bodies in cases of investigation of criminal offences against the environment/environmental protection. Adequate water supply to local communities and municipal waste disposal, as well as systemic waste and wastewater management, is still an unresolved issue for many municipalities in BiH. In municipalities and cities where there are some solutions for waste disposal, they are not systematically established, and adequate-circular recycling remains an elusive luxury.

Although there has been a legal-formal increase in the number of protected areas during 2022, BiH is still on the lower list of European ranking by the degree of protected areas with below 3.5% of protected areas, while the current protected areas are not effectively protected from the aspect of sustainable management and tourism. The FBiH still does not have a law on forests, and in many cities and municipalities of the FBiH, clearcutting is carried out quite with impunity. In 2022, the BiH capital again topped the list of the most polluted cities in the world in relation to air quality. The unplanned urbanization and reduction of green areas in Sarajevo are still ongoing, while the illegal construction of new housing units is flourishing in the nearby mountains. Such is the situation on the Olympic Mountain Bjelašnica, which is an important part of the geological groundwater system, so the devastation of this mountain will inevitably lead to the severe devastation of the Sarajevsko Polje complex, from which the citizens of Sarajevo are supplied with drinking water.

Chapter 28: E-commerce

During and after the coronavirus pandemic, an increasing number of BiH citizens begin to conduct electronic commerce. While e-commerce brings numerous benefits to all its participants, it is also accompanied by numerous challenges and difficulties that possibly complicate its functioning and make a high level of consumer protection more difficult to achieve. According to the latest available data from the BiH Agency for Statistics on the volume of e-commerce, it is undeniable that this type of trade is becoming more and more widespread in BiH. The results of this survey show that among people who actively use the Internet, as many as 24.2% of Internet users made a purchase/order online in the last three months, 13.4% more than three months ago, and 7.6% more than a year ago (the survey was published in 2021, and the data contained in it refer to 2019 and 2020).¹⁷⁴

The assessment of the harmonization of BiH's law with EU law on electronic commerce should be carried out in terms of two types of regulations that are crucial for the efficient functioning and further development of electronic commerce: 1) regulations on electronic commerce as a special form of trade, i.e., its forms, manner and conditions of performance; 2) consumer law regulations, due to the undeniable importance of the existence of a high degree of consumer protection as one of the basic prerequisites for the proper functioning of this type of trade.

In 2022, there were no changes to the regulations on electronic commerce at the State, Entity and BD BiH levels. Existing regulations (the State Law on Electronic Legal and Business Transactions and the RS Law on Electronic Commerce) are well aligned with the EU Directive on Electronic Commerce. Special regulations on electronic stores and platforms are also contained in the RS Law on Commerce. It is worth mentioning that at the level of the FBiH, during 2022, a new Law on Internal Commerce was prepared, which should also contain significant provisions on electronic commerce. The proposed law was not transposed into positive law during 2022.

Despite the relatively high degree of compliance with EU law regarding e-commerce regulations, it should be borne in mind that a comprehensive reform of regulations concerning e-commerce is underway in EU law, which resulted in the adoption of the so-called Law on Digital Services and the Law on Digital Markets. Further modernisation of BiH law in the field of e-commerce should therefore be based on new trends in the development of EU law.

When it comes to regulations on protection of consumers as participants in electronic commerce, the existing regulations are incomplete and inadequate on certain issues, which certainly negatively affects the legal position of consumers in BiH. According to the records of consumer associations in BiH, in 2022, a significant number of complaints related to the sale of goods or services at a distance were recorded. The largest number of complaints refers to purchases via social networks by unregistered sellers, which are out of the control of judicial and inspection bodies due to the inability to apply consumer protection rules to business transactions performed in the "grey zone". In addition to fraud on social networks, consumer complaints in 2022 also referred to the non-delivery of goods, the delivery of other goods or goods from another manufacturer, the delivery of non-compliant goods (defective goods), etc. The exist-

¹⁷⁴ Associate Professor Borko Mihajlović, PhD and Nataša Đorđić. Analiza pravnog okvira u oblasti zaštite potrošača u E-trgovini u BiH (Analysis of the legal framework in the field of consumer protection in e-commerce in BiH). Doboj: UG ToPeeR, 2021, p. 32

tence of a multitude of complaints indicates a low level of consumer protection in e-commerce in BiH and the need to modernise regulations, especially in the part related to electronic platforms, in accordance with the modern *acquis* of EU law.

ABOUT THE INITIATIVE

The Initiative for Monitoring the European Integration of Bosnia and Herzegovina is an informal coalition of civil society organisations that contributes to the monitoring of reforms and oversees the application of European Union policies, laws and standards, focusing on the issues of democratisation, the rule of law, and human and minority rights. Find out more about the Initiative at: <http://eu-monitoring.ba/o-inicijativi/>.

Active members of the Initiative are:

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Association for Democratic Initiatives, Sarajevo
Balkan Investigative Reporting Network in BiH, Sarajevo
BH novinari, Sarajevo
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