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**Committee on Economic,
Social and Cultural Rights (CESCR) Palais Wilson - 52
CH-1201 Geneva
Switzerland
E-mail: cescr@ohchr.org**

Follow-Up Report to the UN Committee on Economic, Social and Cultural Rights (CESCR)

I – Introduction

Pursuant to the Decision of the International Coordinating Committee (ICC), the Institution of Human Rights Ombudsman of Bosnia and Herzegovina (IHROBiH) is accredited with "A" status as the national mechanism for the protection of human rights in Bosnia and Herzegovina (BiH). Within its mandate, IHROBiH monitors and ensures the protection of rights of citizens in BiH, including the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights and regularly submits its observations to UN bodies.

The Department for Monitoring the Exercise of Economic, Social and Cultural Rights operates within IHROBiH, pursuant to the Law on Human Rights Ombudsman of Bosnia and Herzegovina.

In 2019, IHROBiH submitted a report drafted on the basis of information obtained from citizens' complaints filed with it and the research conducted in the period between 2014 and 2018, published in annual and special reports available on the official IHROBiH website¹. Also, in 2021, the Annex to the Report to the UN Committee for Economic, Social and Cultural Rights², based on complaints received by IHROBiH in the period 2019-2020, was submitted. This Follow-Up Report will be based on IHROBiH actions taken between 2021 and 2023.

7(a) (Obligations of state parties),

7. Committee reminds the State party that it bears the ultimate responsibility for the implementation of the Covenant at all levels of government, including cantons and municipalities. It recommends that the State party take all measures necessary to ensure the enjoyment of rights guaranteed in the Covenant regardless of place of residence in the country. In particular, the Committee recommends that the State party:

(a) Harmonize legislative and policy measures taken or envisaged;

The Constitution of Bosnia and Herzegovina stipulates in its provisions that Bosnia and Herzegovina and both entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms, and the rights and freedoms stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols are

¹ https://ombudsmen.gov.ba/documents/ombudsmen_doc2019072211565148eng.pdf

² https://ombudsmen.gov.ba/documents/ombudsmen_doc2021093015181043eng.pdf

directly applied in Bosnia and Herzegovina and have priority over all other laws. Bosnia and Herzegovina is a signatory to all international and regional human rights instruments.

Article III, paragraph 2, item c) of the Constitution of Bosnia and Herzegovina stipulates that the entities shall fulfil all requirements for legal safety and protection of persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognised standards and with respect for the internationally recognised human rights and fundamental freedoms referred to in Article II of this Constitution, and by taking such other measures as appropriate³ while coordination in the fields of healthcare, social protection and education is the responsibility of the Ministry of Civil Affairs of Bosnia and Herzegovina⁴. The monitoring and implementation of international conventions and other documents in the field human rights and fundamental freedoms and the promotion and protection of personal and collective human rights and freedoms is the responsibility of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina⁵.

IHROBiH points out that in the reporting period no major progress was made to implement this recommendation.

35(a) (Right to social insurance)

35. The Committee recommends that the State party:

(a) Reform its social protection system, with a view to alleviating regional inequalities and eliminating discriminatory effects of the system on disadvantaged and marginalized individuals and groups, including by unifying and/or harmonizing different social security benefits at the local level and ensuring that an equitable and sufficient level of public funding is allocated to the social protection system;

Certain laws have enacted from 2021 to 2023 that have had impact on improving the position of citizens of BiH, primarily social welfare beneficiaries. IHROBiH uses the opportunity to point to the need to standardise and harmonise the social welfare benefit amounts at the level of BiH, for all citizens to be able to enjoy the same level of protection and to implement Recommendation no. 7.

The field of foster care in the Federation of Bosnia and Herzegovina is governed by the FBiH Foster Care Act⁶ adopted in 2017 and the FBiH Act on Financial Support to Families with Children⁷ in 2022. The latter governs the basics for allocating on Financial Support to Families with children, it determines the basic financial rights for supporting families with children, the procedure, requirements and method for exercising this rights, funding the support for families with children, supervision and other issues of importance for the exercise of the right to financial support by families with children.

Under Article 42⁸ of the Republika Srpska Social Protection Act, foster care is a form of placing a beneficiary into a family that ensures satisfying their basic life needs, takes care of the beneficiary's personality and helps them to exercise their rights and fulfil their obligations. Foster care in the Brčko District is governed by the BDBiH Social Protection Act, which governs the principles for the protection of elderly, infirm and others persons in need of social care, the minimum entitlements to certain forms of social protection, and the requirements for exercise thereof, the core

³ [Special report on the role of CSR in the protection of children's rights](#), p. 9

⁴ Article 15 of the Law on Ministries and Others organs administration Bosnia and Herzegovina <https://www.parlament.ba > law > DownloadDocument>

⁵ Ibid, Article 12.

⁶ "Official Gazette of FBiH", no. 19/2017 and 52/2022

⁷ "Official Gazette of the Federation of Bosnia and Herzegovina", number 52/22

⁸ RS Social Protection Act (RS Official Gazette, no 37/2012, 90/2016, 94/2019, 42/2020 – second Regulation)

organisations for social protection and funding this field, and other issues of importance of enjoying social protection by BDBiH citizens.

IHROBiH is of the opinion that the capacities of social welfare centres need to be strengthened and promotion of foster care as a form of accommodating children needs to be worked on.

Supporting families with children, especially by exercising two basic rights, the right to child benefit and the right to financial assistance for unemployed new mothers, is extremely important. IHROBiH contributed to solving this issue by taking part in the Public Hearing on the Draft Act on On Financial Support to Families with Children and the Act entered into force on 1 September 2022⁹.

IHROBiH has previously commended the efforts of the competent FBiH Ministry of Labour and Social Policy to establish a more socially fair and financially more functional care system for families with children by proposing legal solutions, focusing in particular on standardisation of the rights of children throughout the FBiH.

However, there are certain problems that have occurred in practice and in relation to the application of the said Act, specifically in terms of exercise of the right of children with disabilities to child benefit. IHROBiH *ex officio* registered a complaint concerning the FBiH Act on Financial Support to Families with Children, namely the exercise of the right to child benefit by children with disabilities, specifically in Herzegovina-Neretva Canton. However, IHROBiH decided to expand the investigation to other cantons in the FBiH. The said Act introduced the means test according to which the child benefit cannot be granted if any member of the family has an income exceeding BAM 217. Although the FBiH Government made the amendment to this Act available to the cantons, this was not done in Herzegovina-Neretva Canton. The contested provision make it impossible to exercise the right to child benefit for children with disabilities if they exercise the right to disability living allowance or if the family generates an income in the above mentioned amount. IHROBiH will take the final decision in the case once it has collected information from all competent cantonal ministries.¹⁰

The new RS Family Proceedings Act was published in *The Official Gazette of the Republika Srpska*, number 17/23, on 23 February 2023. For years, IHROBiH has been pointing out that the Family Proceedings Act needs to be amendment to stipulate that the court is to decide on the divorce, entrusting the child to one of the parents and making visitation arrangements for the other parent and their obligation to contribute to child support. When lobbying for new legal solutions, IHROBiH is guided by the best interest of the child, in order to avoid situations where visitation arrangement decisions made by centres/services are not complied with or are complied with but fail to achieve their purpose. In 2020, the Initiative to Amend the RS Family Proceedings Act was sent to the RS National Assembly and IHROBiH representatives attended public hearings organised by the RS Government.

Setting up child support funds is of significance for children whose parents, child support obligors, are unable to service the child support needs, for either objective reasons such as unemployment or for avoiding to meet their statutory obligation.

For years, IHROBiH has been lobbying for child support funds to be set up in both the RS and the FBiH. In the course of 2022, IHROBiH representatives attended meetings of the working group for drafting the RS Temporary Support Bill in the capacity as observers. The Bill governs the right to temporary support, becoming eligible for temporary support and the amount of temporary support,

⁹ FBiH Official Gazette, NO 52/22

¹⁰ Ž-SA-02-1121/22

as well as the procedure for exercising this right, payment and refund of temporary support amounts...

Protection of mothers and motherhood is one of the key obligations of Bosnia and Herzegovina when it comes to international human rights standards, and especially equal rights and opportunities for women throughout BiH, without discrimination and unequal treatment on any grounds, including place of residence. The issue of exercising the right to maternity leave or the right to compensation during that period must be considered both from the perspective of protecting the rights and non-discrimination of mothers and the perspective of protecting the rights of the child, taking into account that making it impossible to exercise the rights granted on this ground in any segment directly violates Article 3 of the Convention, namely the principle of the best interest of the child.

The amount of maternity allowance in the FBiH is not uniform and thus unemployed mothers in some cantons receive BAM 1,000 per month until the child turns one and in others only BAM 100.

Sarajevo Canton, Bosnia-Podrinje Canton, Goražde Canton, Tuzla Canton and Zenica-Doboj Canton provide the largest monthly allowances. Certain cantons have introduced measures to help families with more members, for example West Herzegovina Canton pays an allowance in the amount of BAM 500 per month for the third and every next child in the family until the child turns seven.

Monetary assistance and other such benefits and allowances in the RS are governed by the RS Social Protection Act¹¹.

45 (b) (COVID-19 pandemic)

44. The Committee is concerned about the lack of effective measures taken to contain the spread of the virus, the continuously growing numbers of persons infected with the coronavirus and the very high mortality rates due to the virus, which are among the highest in the world. It is also concerned that the vaccination rate remains very low (around 12 percent) while a large quantity of vaccines are being not used and go to waste (art. 12).

45. The Committee recommends that the State party step up its efforts to prevent and contain the spread of the coronavirus, in particular that it:

(a) Strengthen its public communications as regards the epidemiological situation, information on access to COVID-19 testing, treatment and vaccination, and the response measures put in place, with a view to enhancing transparency and restoring public trust;

Due to the COVID-19 pandemic, access to healthcare services in BiH has become more complicated, and certain services, including hospital services, have been difficult to obtain and some have been suspended, which has certainly had immeasurable consequences for the health and well-being of the population. Although the COVID-19 pandemic is over, no comprehensive analyses of the response of the system to the challenges faced during the pandemic have been made. There is a need to make such analysis in case other communicable diseases emerge.

It was established by analysing complaints received by IHROBiH in 2021 that they mainly related to the impossibility to access certain medical services due to the complex circumstances caused by the COVID-19 pandemic and objections concerning vaccination against COVID-19, etc.

¹¹RS Social Protection Act (*RS Official Gazette*, no 37/2012, 90/2016, 94/2019, 42/2020 – second Regulation)

IHROBiH sent an initiative to the FBiH Ministry of Health concerning amendments of the Act on the Protection of the Population against Communicable Diseases, which in its relevant part does not foresee a possibility to appeal, i.e. there is no second-instance body and persons placed in quarantine are immediately advised to initiate an administrative dispute.

That is why it was recommended to the FBiH Ministry of Health to consider the need to amend the Act on the Protection of the Population against Communicable Diseases to allow for a second-instance procedure for persons against whom measures have been imposed. The recommendation was not implemented, i.e. no response was received.

Citizens frequently addressed IHROBiH directly in connection with COVID and their issues were successfully resolved.

There is a case registered with IHROBiH which is related to the conditions of the patient's stay at RS University Clinical Centre. The complainant addressed IHROBiH stating that a number of patients had complained to him about the poor conditions on the premises of the old Surgery Clinic and Gynaecology and Obstetrics Clinic of RS University Clinical Centre. In the complaint, he describes that the rooms in these clinics are not air-conditioned, that patients find it difficult to stay in them when outside temperatures exceed 35 degrees Celsius, especially given the fact that there are no curtains on the windows and no cooling devices in the rooms. Following the investigation procedure, IHROBiH closed the case, stating that the competent inspection bodies had taken measures falling within their competence and failed to find the deficiencies pointed out by the complainant.

IHROBiH registered two cases that related to the rights of Roma and other vulnerable groups when it comes to the right to vaccination. Namely, it was stated in the complaints that in the previous period the Sarajevo Canton Government launched an application to register for vaccination against coronavirus and that, despite the uncertainty as to when and which vaccine(s) would be available, it was necessary to draw particular attention to the fact that the mentioned registration method led to the additional marginalisation of certain social groups such as Roma men and women, persons on the move and elderly persons, especially bearing in mind that a large portion of this population has no access to the Internet/computers to register. For these reason IHROBiH sent a reply to the complainants, informing them about the activities it had taken to collect information on the vaccination of certain population categories, about it's addressing the competent bodies and about the data collected. According to the information received from the Sarajevo Canton Public Health Institute, all citizens, both insured and uninsured, would be able to register for vaccination, which is in accordance with the practice since the beginning of the COVID-19 pandemic, i.e. all insured and uninsured persons would have unconditional access to healthcare during the pandemic. The case was closed by an IHROBiH decision.

In one of the cases, IHROBiH handled a complaint indicating a human rights violation concerning the wearing of protective masks. The complainant referred to a situation where, while extending the health insurance card validity at Zenica Health Insurance Institute, he was asked to put a protective mask on, which he refused, because he believes that this violates his right to freedom of choice. In the specific case, IHROBiH pointed to the Decision of the Constitutional Court of BiH on admissibility and merits, which partially accepted the complainant's appeal, filed against the Order of the Crisis Staff of the FBiH Ministry of Health and the Order of the Crisis Staff of the Sarajevo Canton Ministry of Health.

During the COVID-19 pandemic, IHROBiH dealt with numerous issues concerning children's rights. Since the data on the number vaccinated children from the beginning of the pandemic until the end of 2021 were not available, IHROBiH asked the competent entity public health institutes

and the Department of Health and Other Services of the BDBiH Government to the requested data.¹²

The table shows the statistical data provided:

Area	Vaccine administration	Children's age	Vaccination 1st dose	Vaccination 2nd dose	Vaccination 3rd dose	Total no of vaccinated children
FBiH	not vaccinated – ages 5 to 11	ages 12 to 14	61	392	no children	453
		ages 15 to 18	577	2563	3	3143
RS	vaccinated – ages 10 to 14	ages 10 to 14	102	80	no child	182
		ages 15 to 18	2508	2226	30	4764
BDBiH	vaccinated due to document dated 16/05/2022	ages 12 to 14	1	no child	no child	1
		ages 15 to 18	48	39	1	88

Human Rights Ombudsmen of Bosnia and Herzegovina



PhD Jasminka Džumhur

Nives Jukić

PhD Nevenko Vranješ

¹²It is about data from the beginning of the pandemic until the day of the preparation of the response of the competent authorities, and the case was registered under number Ž-BL-01-836/21

