



The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

Office of the United Nations High Commissioner for Human Rights
Committee on the Elimination of Racial Discrimination
Palais des Nations, 1211 Geneva 10
Switzerland

1 May 2024

INFORMATION REGARDING THE REPORT OF BOSNIA AND HERZEGOVINA ON THE IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION AND THE CERD RECOMMENDATIONS

Introduction

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina hereby submits a parallel report to the Committee on the Elimination of Racial Discrimination, reflecting on the combined XIV and XV reports of Bosnia and Herzegovina dated 25 November 2022. IHROBiH, a national mechanism for the protection of human rights that also performs the function of an equality body, hereby presents its observations regarding the implementation of the Convention on the Elimination of Racial Discrimination in Bosnia and Herzegovina and CERD's concluding observations. Within this framework, this report addresses topics falling directly within the scope of IHROBiH work and provides an overview of certain positions expressed in the state report from the IHROBiH perspective.

Progress made in the implementation of the Prohibition of Discrimination Act

The Committee recommends that the State party expedite the adoption of the draft amendments to the Law on Prohibition of Discrimination and ensure the independence of the Institution of Human Rights Ombudsman, secure its financial autonomy and allocate the necessary financial and human resources for it to effectively carry out its mandate, including anti-discrimination activities, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee also recommends that the State party implement the recommendations issued by the Ombudsman, including those on private legal entities

IHROBiH applies the Prohibition of Discrimination Act (PDA) in Bosnia and Herzegovina in accordance with the improved legal framework for protection against discrimination, which resulted from the 2016 amendments to PDA and which includes an expanded scope of competences of IHROBiH and the Department for the Elimination of All Forms of Discrimination. This is

particularly reflected in expanding the list of prohibited grounds of discrimination¹, providing for aggravated forms of discrimination², improving the procedural aspects of PDA³, and defining the legal force of IHROBiH recommendations in evidentiary hearings before the courts⁴. Also, a substantially greater role of IHROBiH is envisaged in the promotion of anti-discrimination protection, which is in turn reflected in informing the public, raising awareness, conducting campaigns and other forms of discrimination prevention.⁵

The Prohibition of Discrimination Act in Bosnia and Herzegovina⁶ entrusts the Institution of Ombudsman for Human Rights of Bosnia and Herzegovina with the status of "a central institution responsible for protection against discrimination" and for this purpose envisages the establishment and operation of a separate department with the sole task of considering cases of discrimination committed by any legal entity or natural person in any field of life. Since the adoption of the 2016 amendments to PDA, discrimination-related complaints have become increasingly complex as IHROBiH recommendations have been granted the power of evidence in court proceedings.

This undoubtedly represents progress in the implementation of PDA, but it also raises the issue of capacity because separate institutions (equality bodies) have been established in other countries to play this role, and the issue of support for this role of IHROBiH, which is insufficiently recognised by the authorities. This is particularly reflected in the fact that the budgetary funds for this function of this body have never been secured, despite the obligation arising from Article 7 of PDA. Every year, IHROBiH submits an annex in addition to its main budget request to the Ministry of Finance and Treasury, requesting funds to perform this legal obligation. This request was also submitted within the 2024 budget and it was not accepted.

Since 2018, the IHROBiH budget has amounted to:

- 2018- BAM 2,678,000
- 2019 – BAM 2,596,000
- 2020 – BAM 2,482,000
- 2021 – BAM 2,482,000
- 2022 – BAM 2,806,500
- 2023 – BAM 3,241,000

Although it is evident from the above that there has been an increase in the IHROBiH budget since 2022, it is related to the increase in salaries and benefits of employees in the public sector. Thus, IHROBiH still faces capacity building limitations, which is reflected in insufficient funds and insufficient spatial capacities in particular.

¹ Through these amendments to the Act, sexual orientation and gender identity are terminologically correctly named as prohibited grounds of discrimination. In addition, sex characteristics, age and disability are listed as prohibited grounds of discrimination.

² Multiple discrimination (Article 4, paragraph (4)), repeated discrimination (Article 4, paragraph (5)) and prolonged discrimination (Article 4, paragraph (6)).

³ Regarding the provisions on the urgency of the procedure (Article 11), special lawsuits (Article 12), court competences, and deadlines (Article 13), prescribing security measures (Article 14), shifting the burden of proof (Article 15), participation of third parties (Article 16), possibility to file class-action lawsuits (Article 17).

⁴ Article 15, paragraph 9

⁵ Article 7, paragraph 2, item (1)

⁶ Prohibition of Discrimination Act of Bosnia and Herzegovina, *The Official Gazette of Bosnia and Herzegovina*, no 59/09 and 66/16;

As a positive development, IHROBiH stresses two new lawyers were hired in the Department for the Elimination of All Forms of Discrimination during the reporting period, which increased the total number of lawyers in this Department from three to five. At the same time, statistical indicators, as well as the structure of complaints, indicate that this area requires constant capacity building, where the focus should be more on proactive action, in order to reduce the number of complaints filed. Practice has shown the non-uniformity of court proceedings in the application of the provision under which the court is obliged to take IHROBiH recommendations into consideration, which is an indicator of the need to train judges on this issue. According to the IHROBiH assessment, there are still unreported cases of discrimination due to general mistrust in institutions as well as fear of possible negative consequences for the personal status of the victims.

The implementation of IHROBiH recommendations is not at a satisfactory level, which is why IHROBiH, for the first time since it was established in 1996, decided to draft a Special Report on the Implementation of IHROBiH Recommendations, analysing the reasons for the lack of cooperation by public bodies, indicating public bodies that do not implement IHROBiH recommendations. The Special Report will be publicly presented to legislative bodies at all government levels during 2024.

Finally, BiH enacted the Law on Amendments to the Law on Human Rights Ombudsman of BiH. Article 4a⁷ envisages the establishment of an independent preventive mechanism. The budget of the BiH institutions has not been adopted for 2024, the funds for the functioning of the preventive mechanism, although envisaged, are still not available.

Migration and asylum

The Committee recommends that the State party: Increase its reception capacity in order to accommodate all asylum seekers and ensure that they have access to basic services; Address shortcomings of its asylum procedure to guarantee that all persons intending to apply for asylum are able to do so and benefit from procedural legal safeguards, including information on their rights, and the provision of free legal aid and interpretation services; Ensure that a decision to use the accelerated procedure is well evaluated, respects all legal safeguards and does not result in a violation of the principle of non-refoulement; Provide unaccompanied minors with guardians at all stages of the asylum procedure; Consider the detention of asylum seekers as a measure of last resort; Pursue its efforts to implement the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Being aware of the importance of the issue of migration in Bosnia and Herzegovina, the Ombudsmen of Bosnia and Herzegovina prepared a Special Report on the Situation in the Area of Migration in Bosnia and Herzegovina⁸. The special report noted the migration and asylum situation in Bosnia and Herzegovina, highlighting some positive developments in the field of migration and, taking into account the situational analysis and relevant domestic and international legislation,

⁷ The Official Gazette of Bosnia and Herzegovina, no. 61/23

⁸ Report presented at the press conference in the Parliamentary Assembly of Bosnia and Herzegovina on 10 January 2019 and sent to all competent authorities for further action;
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

recommendations were issued to the competent institutional mechanisms. The ombudspersons of Bosnia and Herzegovina expressed their concern regarding the inefficient actions of the competent authorities, evident in all phases of the treatment of migrants. Following the publication of the Special Report, progress has been noted in relation to increasing the capacity for the reception of asylum seekers, which is the result of the adoption of a series of decisions by the Council of Ministers of Bosnia and Herzegovina, namely: Decisions on the Designation of Temporary Reception Centres for the Accommodation of Migrants⁹ adopted on 11 March 2019 and the Decision on the Establishment of a Temporary Reception Centre for the Accommodation of Migrants at the Lipa Site¹⁰ adopted at the 137th extraordinary session held on 21 December 2020.

A visit was made to Ušivak Temporary Reception Centre in 2019, and positive developments were noted when it comes to the legal status of migrants. On the day of the visit, all migrants found there had an Attestation of Expressed Intent to Seek Asylum. Non-governmental organisation Vaša prava BiH provides free legal aid to migrants, while psycho-social protection is provided through the Bosnia and Herzegovina Women's Initiative. The accommodation conditions were reviewed, focusing on children's accommodation, the provision of translators and cooperation with healthcare institutions.

There is an evident shift in the process of informing asylum seekers about their rights in a language they understand, with the legal framework for using the services of joint interpretation pool established by signing the Protocol on the Use of Joint Interpretation Pool in the Area of Migration and Asylum by all MARRI Member States¹¹. In the course of 2019, a new central database on foreign nationals was established, with the asylum module therein upgraded, and harmonised with the Act on Foreign Nationals and the Asylum Act.

When it comes to the assessment of the decision on the use of summary asylum application procedure, the Ministry of Security of Bosnia and Herzegovina makes it in the procedure provided for in Article 45 of the Asylum Act. Regardless of whether the decision on the application for asylum is made in regular or summary procedure, every asylum seeker enjoys all the safeguards in the procedure.

IHROBiH uses this report to highlight the problem of minors on the move in the territory of Bosnia and Herzegovina, unaccompanied by the parents or guardians. The issue of appointing *ex-officio* guardians, protection and accommodation of children, especially outside the regular working hours of social welfare centres, has not been systemically resolved. Most social welfare centres work until 16.00 hrs on a regular basis, which has significant implications in cases where rights need to be protected after the working hours. In cases of this type, IHROBiH acts in such a way as to request urgent action by the authorities in order to have the guardian for the children appointed as soon as possible and thus have the best interests of the child protected.

⁹ *The Official Gazette of BiH*, no 28/19

¹⁰ *The Official Gazette of BiH*, no 2/21

¹¹ Report on the Work of the Coordinating Body for Migration in Bosnia and Herzegovina as of 31 December 2020, <http://msb.gov.ba/PDF/19052021.pdf>

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are taken into account in the asylum procedure. The Parliament of the Federation of Bosnia and Herzegovina adopted the Act on Amendments to the Non-Contentious Proceedings Act¹², governing the status of persons who are not registered in the civil records. These amendments define the procedure for determining the time and place of birth of persons not registered in the birth register and unable to prove the place and time of birth.

A stateless person is someone not considered as a national by any state under the operation of its law. Statelessness has a real and devastating impact on the lives of individuals, their families and ultimately communities. Despite a certain level of progress achieved in the field of civil registers in Bosnia and Herzegovina in terms of their compliance with international standards, there are still various obstacles and shortcomings both in the content and in the application of regulations that must be removed in order to establish an effective prevention system and eliminate the phenomenon of statelessness. IHROBiH began a comprehensive analysis of this issue with the aim of drafting The Special Report on the State of Human Rights of Stateless Persons and Persons at Risk of Statelessness in the Territory of Bosnia and Herzegovina.

IHROBiH expresses concern over the fact that despite the establishment of the Working Group for the Development of the Migration and Asylum Strategy and Action Plan for the period 2021-2025 these documents have not yet been adopted.

The ombudspersons of Bosnia and Herzegovina met with the UN Special Rapporteur for the Human Rights of Migrants and informed him about the activities undertaken in this area.

Hate speech and hate crimes

The Committee recommends that the State party include in its Criminal Code a provision on racist motive as an aggravating circumstance.

The Committee recommends that the State party amend its criminal legislation to fully comply with the provisions of article 4 of the Convention.

Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

- (a) Take appropriate measures to strongly condemn and distance itself from racist hate speech and discriminatory statements in public discourse, including by public figures at the State and entity levels;*
- (b) Call upon those responsible to ensure that their public statements do not contribute to incitement of racial hatred;*
- (c) Effectively apply its legislation by registering, investigating, bringing to justice cases of hate speech and hate crime and sanctioning those responsible with appropriate penalties;*
- (d) Strengthen the resources of the Communications Regulatory Agency and the Press Council and intensify the sensitization of the media, including through the Plan of Action for human rights education for journalists and media professionals.*

Legislation at the entity level criminalises hate speech only when it incites national, religious and racial hatred. Also, while criminal codes exist at each of these levels, laws regulating certain matters

¹² *The Official Gazette of the FBiH*, no 11/21

in some cases prescribe certain activities as criminal acts. Criminal acts of hate speech are in principle harmonised throughout Bosnia and Herzegovina. However, criminal jurisprudence has a limited scope and is applicable only to speech that incites national, racial and religious hatred. Other grounds are not covered. In addition, the number of people who have been prosecuted for the crime of hate speech is relatively small compared to the relatively high prevalence of hate speech in public space.

Available statistics for the reporting period show as follows: in 2022, there were 42 cases of hate crimes registered, with charges pressed in eight of them and convictions in six of them. In 2021, out of the 45 registered cases, charges were pressed in seven and there were four convictions. In 2020, there were eight such cases registered, with charges pressed in all of them and with five with delivered guilty verdicts. In 2019, out of the 21 cases, charges were pressed in 13 of them and guilty verdicts were delivered in nine.¹³ The hate crime jurisprudence is not harmonised. It is not entirely clear to the police and prosecutors how to identify the hate element in these provisions, which means that a large number of reported incidents do not move beyond the initial investigation phase.

The lack of clarity regarding the terminology used in prescribing the criminal act of hate speech poses an additional problem. For example, with the exception of the Brčko District Criminal Code, none of the acts provide a definition of the term "hatred". In addition, Bosnia and Herzegovina acceded to the Council of Europe Convention on Cybercrime and its Additional Protocol and ratified it, but it is only partially implemented. Criminal acts do not prescribe any specific criminal offence related to speech prohibited online.

Unlike some European countries, BiH has no *lex specialis* laws on hate speech. All criminal acts related to hate speech are prescribed by criminal acts. In addition to these, a number of other laws regulate elements of the prohibition of hate speech, including the Prohibition of Discrimination Act, the Gender Equality Act, the Act on Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, and the Election Act.

When it comes to hate speech incidents, it can be concluded that there are manifestations of hate speech on national and religious grounds, as well as incidents directed at religious symbols, hate speech directed at LGBTI persons.

Data on online hate speech is inconsistent, but most stakeholders report that it appears to be on the rise and that online platforms are often used to incite hatred and spread fake news.

Situation of returnees

The Committee urges the State party to strengthen its measures aimed at favouring the sustainable return and reintegration of returnees. For that purpose, the Committee recommends that the State party provide sufficient funding for the full implementation of the Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement in different areas of life, such as housing, employment, and access to health care and social benefits. The Committee also

¹³ OSCE/ODIHR Hate crime reporting

recommends that the State party ensure that returnees are not disadvantaged with regard to access to their rights irrespective of where they reside in the territory of the State party.

The Agreement on Refugees and Displaced Persons envisages the obligation of the state and its entities to create the political, economic, and social conditions conducive to the voluntary return. Returnees exercise their rights in accordance with entity and cantonal laws, which are often not harmonised with each other, which is why, although they have exercised the right to health, social or other forms of protection, in the event of a change of place of residence or return to the pre-war place of living, the territory of another entity, they must undergo the reinstatement procedure again, under the Act on Displaced Persons and Returnees in the FBiH and Refugees from BiH¹⁴ and under the Act on Displaced Persons, Returnees and Refugees in the RS¹⁵ in the FBiH and the RS, respectively.

Issues of the impossibility to rebuild damaged buildings, public call procedures, rights of returnees in the fields of education and employment continue to be grounds for complaints filed with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.

The sustainability of return is generally and primarily jeopardised by the lack of employment opportunities. From the IHROBiH perspective, the lack of opportunities and systemic solutions for the employment of returnees represents ethnic discrimination, as indicated by the recommendations issued to authorities at all levels, especially in returnee communities.

Finally, during the reporting period, IHROBiH received several complaints related to the electrification of returnee settlements, which had duly paid connections to the electricity grid before the war. Following meetings with local government representatives, the IHROBiH representatives insist that returnees be connected to the electricity grid and water supply network without any conditions, without additional administrative barriers imposed currently on them in the form of financial conditions or change of residence, which would put their social status or right to healthcare in jeopardy.

There is also a concerning trend of attacks made against returnees recorded in Bosnia and Herzegovina.

Socio-economic position of Roma

The committee recommends that the State party improve the employment of ethnic minorities, in particular Roma, in the public and private sectors, through the implementation of strategies to train and qualify such persons for jobs on the labour market, give incentives to employers to employ such persons, and establish an independent mechanism at the state level to

¹⁴ Act on Displaced Persons and Returnees in the FBiH and Refugees from BiH, *The Official Gazette of the FBiH*, no 01-78/05

¹⁵ Act on Displaced Persons, Returnees and Refugees in the RS, *The Official Gazette of the RS*, no 42/05

address discrimination in employment and promotion in the public and private employment/labour sectors.

Referring in particular to General Recommendation No. 27, the Committee instructs the State party to facilitate the return of all people of different ethnic backgrounds, especially Roma, to their pre-war homes, ensure the possibility for them to legally occupy and live safely in unofficial Roma settlements, and where necessary, ensure adequate alternative accommodation or compensation for the displaced Roma, including pre-war beneficiaries who were evicted from their settlements or whose homes were destroyed.

The main problems in housing the Roma population are reflected in the poor implementation of the Action Plan, lack of funds, complicated and lengthy procedures, insufficient cooperation between Roma associations, migration of Roma families, lack of construction land, unresolved property issues, impossibility of legalisation of existing buildings, resistance of the local population, insufficient technical and hygienic conditions in which Roma live, and the lack of good will of local administration bodies.

The complex economic situation and the negative impact of the world economic crisis, along with the low level of education and work qualifications, are the main causes of the rather poor situation in the field of Roma employment, which is one of the causes of their poor integration into society and a signal to take appropriate measures. It was observed that persons of Roma ethnicity do not register with the Employment Bureau or do not declare themselves as Roma when registering. There is no information on how many Roma who were included in employment programmes actually remained employed after the co-financing period following the public call ended. The main problems are lack of vocational training, insufficient engagement of Roma, lack of education, distrust of employers, nepotism, failure to encourage the opening of sole proprietor businesses, prejudice and stereotypes.

Under the healthcare legislation, Roma citizens enjoy the right to healthcare under the same conditions as other citizens. However, what must be taken into account is the fact that healthcare is tied to health insurance status, which is usually acquired based on employment or education, where Roma are traditionally excluded. Roma associations are of the opinion that the greatest progress has been made in the field of healthcare for the Roma population, although certain problems persist, such as access to healthcare for Roma over 65 years of age who are not registered with the Employment Bureau, are not employed or retired, and children who do not attend school. The measures that contributed to Roma having access to healthcare are as follows: insurance covered via the Employment Bureau and social welfare centres, as well as via cooperation with administrative authorities.

Access to healthcare is still made difficult due to the existence of administrative barriers, prejudices, periodic healthcare, e.g. for the duration of three months, tardiness in registering with the Employment Bureau, lack of information of Roma about health insurance coverage possibilities, failure to extend the health insurance card validity.

A major issue and one of the key reasons for the poor situation in the area of Roma rights is their ignorance of the rights they are entitled to and the ways in which they can exercise and protect them. That is why it is necessary to educate the Roma population about fundamental human rights

and ways of exercising them, recognising discrimination and distinguishing it from other forms of rights violations that they encounter. Also, it is necessary to act in order to raise the awareness of other citizens in order to suppress prejudices and stereotypes that exist against Roma.

In terms of exercising the right to use the languages of national minorities, it is necessary to:

- create models of optional language learning in those situations where it is not possible to organise regular classes;
- involve the academic community and language researchers in order to comprehensively record the presence and use of the languages of national minorities in the field;
- launch an initiative to introduce content in primary schools about the language, culture and history of members of national minorities in Bosnia and Herzegovina.

Segregation in education

The Committee recommends that the State party strengthen its efforts to end all forms of segregation in the education system, including the practice of “ two schools under one roof ” and mono-ethnic schools and further develop a common basic curriculum and a more inclusive education system for all children, while respecting their own language.

On 29 August 2014, the FBiH Supreme Court delivered a verdict according to which the practice of "two schools under one roof" represents ethnic segregation of students and ordered that such practice, present in the FBiH, must be abolished¹⁴.

The Supreme Court of the Federation of BiH¹⁷ rejected the request for revision of the judgment of the Cantonal Court in Travnik, taking the position that: *"The possibility and existence of two curricula in the Bosnian and Croatian languages with a common core amounting to 70 percent is also in accordance with the Convention against Discrimination in Education, which was ratified by Bosnia and Herzegovina"*. The aforementioned judgment was abolished by the Decision of the Constitutional Court of Bosnia and Herzegovina¹⁶. The same decision *found a violation of the prohibition of discrimination referred to in Article II/4. of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the right to education from Article II/3.1) of the Constitution of Bosnia and Herzegovina and Article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and violation of Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.*

Despite the above, in some cantons in the Federation of Bosnia and Herzegovina, this practice has not been abolished to this day, and children from different ethnic groups continue to attend different curricula.

THE HUMAN RIGHTS OMBUDSPERSONS INSTITUTION OF BOSNIA AND HERZEGOVINA

¹⁶ Decision on admissibility and merits, number AP-166/18 dated 15 July 2021