



The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

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**United Nations Office of the High Commissioner for Human Rights
Committee for Elimination of Racial Discrimination**

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

Introduction

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is hereby submitting a parallel report to the Committee on the Elimination of Racial Discrimination reflecting on the state of Bosnia and Herzegovina's report of 20 July 2017. In this way, the Human Rights Ombudsman, as a national mechanism for the protection and promotion of human rights, which is also carrying out the function of the equality body and the central body for dealing with freedom of access to information presents its observations regarding the implementation of the Convention on the Elimination of Racial Discrimination in Bosnia and Herzegovina and the Concluding Observations of the Committee. Within this framework, this report addresses topics which directly fall within the scope of work of the Human Rights Ombudsman presenting its comments to the opinions expressed in the state report from the perspective of the Ombudsman Institution.

Progress made in the implementation of Law on Prohibition of Discrimination

Law on Prohibition of Discrimination in Bosnia and Herzegovina¹ entrusts the Institution of Human Rights Ombudsman of Bosnia and Herzegovina with the status of a “central institution with the mandate to provide protection from discrimination” and for this purpose provides for the establishment and operation of a special department exclusively mandated to consider the cases of discrimination committed by any legal or natural person in any area of life, including the private sector. In addition to the Department for elimination of all forms of discrimination, in the framework of the Ombudsman Institution implementation of the Convention is ensured by the Department for the protection of the rights of national, religious and other minorities.

¹The Law on Prohibition of Discrimination in Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina”, no.. 59/09 and 66/16

Although the total number of complaints² follows the trends from previous years, it is noteworthy that complaints in the area of discrimination have more grounds, that the complainants often address the Ombudsman through a proxy, and that the recommendations of the Ombudsman are increasingly used as evidence in court proceedings. These trends indicate to the greater trust the citizens in the Ombudsman and the power of the decisions they make but at the same time the impossibility or inadequacy of the protection of the rights of citizens before other public bodies.

While entering a case into its database the Ombudsman always takes over the qualification of the grounds for complaint from the complainant. It happens that investigation does not corroborate such qualification. This is important when it comes to discrimination and the difficulties in determining discrimination, because it is necessary to prove that someone else has been mistreated in the exercise of one's own right only because of his/her national membership, which is prescribed as the basis of discrimination. The fact is that the Law on Prohibition of Discrimination prescribes that the burden of proof lays on the alleged violator, but in practice lack of familiarity with the power entailed in provision diminishes its implementation, so that the Ombudsman often receives partial and generic answers, which slows down the complaint processing.

According to the estimates of the Ombudsman, under-reporting is still present, due to the general lack of trust in the institutions, and because of the fear of possible negative consequences for the personal status of victims.

Situation of refugees

The Committee, recalling its general recommendation No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, recommends that the State party intensify its efforts to ensure the sustainable reintegration of returnees and to combat direct and indirect discrimination against minority returnees, inter alia by accelerating the implementation of the Revised Strategy for the Implementation of Annex 7 of the Dayton Agreement, through a more coordinated approach at all levels. The Committee recommends that the State party:

- a) Improve access to adequate infrastructure by returnees, as well as remove all legal and practical barriers hampering their full access to social services, and ensure non-discriminatory allocation of return-assistance;*
- b) Consider offering extra-judicial settlements to temporary users of occupied properties for investments made to those, and ensure that settlements reached are in line with the Principles on Housing and Property Restitution, Principle 17 on secondary occupants; and*
- c) Adopt the draft revised law on displaced people and returnees, and the draft law on anti-mine action.*

The Agreement on Refugees and Displaced Persons provides for the obligation of the state and its entities to create political, economic and social conditions suitable for voluntary return, which implies employment and a stable source of income to the extent enabled to the other population, as well as the exercise of rights to social and health care.

² In 2017 registered was 174 cases involving discrimination, while in the previous years it was as follows: 2016 (152); 2015 (159); 2014 (230); 2013 (198); 2012 (257); 2011 (191); 2010 (135); 2009 (156)

Department for the protection of the rights of national, religious and other minorities has significantly less complaints: 2017 (8); 2016 (9); 2015 (10); 2014 (16); 2013 (13); 2012 (17); 2011 (9); 2010 (8); 2009 (5). It should be noted here that a number of complaints lodged by the ethnic minority members which are registered within Department for the protection of the rights of national, religious and other minorities, then there is a number of complaints registered by the Department for the protection of economic, social and cultural rights or Department for the protection of civil and political rights

Complaints lodged to the Ombudsman show that the enjoyment of the rights of returnees regarding education, employment, property rights, health care and social protection is still questionable, in addition to the presence of hate speech and inefficiency of public administration, which all affects sustainability of return process.

Ombudspersons of Bosnia and Herzegovina have indicated to the competent authorities the duty to take measures to enable every child in any part of Bosnia and Herzegovina equal access to education, as well as the use of language and script, especially in regions with larger returnee population in both entities, and reminded them that their failure to do it, in accordance with the provisions of the Law on Prohibition of Discrimination in Bosnia and Herzegovina, raises the issue of misdemeanour and civil liability.³

Returnees exercise their rights in accordance with entity and cantonal laws which are usually not harmonized, which leads to a situation that, although they have the right to health care, social or other protection, with every change of residence or their return to the pre-war homes in the other entity, they have to claim their right from the beginning.

The system of one-off social assistance within the local community funds is characterized by the absence of systemic solutions. These occasional allowances allow users to attain current life needs but it cannot solve their existential problems. Such allowances are financially unstable and depend on the subjective estimation of the providing party.

Sustainability of return is generally and primarily jeopardized due to the lack of employment opportunities, as stated, among other things, in the 2017 Report of the Ministry of Human Rights and Refugees in their Revised Strategy for the Implementation of Annex 7.⁴ From the perspective of the Ombudsman, the lack of opportunities and systemic solutions for the employment of the returnees constitutes discrimination on ethnic origin grounds, as indicated by recommendations addressed to the authorities at all levels, especially in returnee environments.

The Ombudsmen also note that, in some cases, judicial and administrative proceedings last considerably longer when parties or applicants are returnees seeking to exercise their right. Although discriminatory motives cannot be established with certainty, primarily because of the fact that in urban areas judicial and administrative bodies deal with a large number of cases, thereby reducing their effectiveness, the Ombudsmen have in such cases started from the assumption that the discriminatory motive cannot be excluded and issued recommendations that merits of the cases should be decided upon.

In its reporting period the Ombudsman received a couple of complaints related to connection of electricity into the returnee settlements, which was denied although they had duly paid connection before the war. Having met representatives of the local authorities involved in this issue and the Ombudsman insisted on unconditional connection of these settlements without any additional administrative impediments such as the change of the place of residence or else, which would jeopardize the social status or the right to health care of the returnees.

³ Special report on the use of the official language and script in Bosnia and Herzegovina, 2017:

http://ombudsmen.gov.ba/documents/ombudsmen_doc2017051211015795cro.pdf

⁴ http://static.parlament.ba/doc/103477_01.02.03-37-2251_17%20-%20Izvje%20c4%b9%cb%87taj%20o%20realizaciji%20Revidirane%20strategije%20Bosne%20i%20Hercegovine%20za%20sprovo%20c3%84%e2%80%98enje%20Aneksa%20VII%20Dejtonskog%20mirovnog%20sporazuma%20za%202016%20g..pdf

Provision of adequate independence and autonomy to the Ombudsman Institution pursuant to Paris Principles

In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party allocate to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina all the necessary human, technical and financial resources to efficiently carry out its mandate, and eliminate references to the ethnicity of the Ombudsmen in the law on the Ombudsman for Human Rights, taking into account the principle of neutrality of such institutions and their mission to protect human rights for all.

In 2017, the Ombudspersons applied the Law on the Prohibition of Discrimination in Bosnia and Herzegovina in accordance with the amendments from 2016, which improved the legal framework for the protection against discrimination, but also increased the scope of competencies of the Ombudsman Institution and the Department for the Elimination of All Forms of Discrimination. This is particularly reflected in the broadening of the list of grounds for prohibiting discrimination⁵ prescribing more serious forms of discrimination,⁶ improving the procedural aspects of the Law⁷ and defining the legal force of the recommendations of the Ombudsman in the evidentiary proceedings before the courts.⁸ In addition, the Draft Amendments to the Anti-Discrimination Law envisage a much larger role of the Ombudsperson in the activities of promoting anti-discrimination protection, which is reflected in informing the public, raising awareness, conducting campaigns and other forms of prevention of discrimination.⁹

Although the Law on Prohibition of Discrimination in BiH in 2009 has foreseen the obligation of the existence of a special budget line for the work of the Department for the Elimination of All Forms of Discrimination, it did not happen till the date, 6 years after this statutory obligation has been passed.

This legal obligation has not been implemented yet although the Ombudsman regularly submitted requests for these funds. On contrary, the budget of the Ombudsman is reduced every year since 2010 as it could be seen from the following overview:

- In 2010 the budget was 2,721,000 BAM,
- In 2011 the budget was 2,473,397 BAM,
- In 2012 the budget was 2,388,000 BAM
- In 2013 the budget was 2,374,000 BAM.
- In 2014 the budget was 2,387,447 BAM
- In 2015 the budget was 2,460,000 BAM
- In 2016 the budget was 2,368,000 BAM
- In 2017 the budget was 2,439,990 BAM
- Adopted budget for 2018 is 2,678,000 BAM

⁵ Through these changes in the law, sexual orientation and gender identity are terminologically correctly named as the grounds for non-discrimination. In addition, sexual characteristics, age and disability are listed as the prohibited basis of discrimination.

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

⁷ Regarding the provisions on the urgency of the procedure (Article 11), special complaints (Article 12), jurisdiction of courts and deadlines (Article 13), prescribing insurance measures (Article 14), redistribution of burden of proof (Article 15), participation of third parties (Article 16), the possibility of filing collective complaints (Article 17).

⁸ Article 15, para 9

⁹ Article 7, para 2, item (l)

Although the budget amount, compared to the previous years, is increased, it is still less than the amount allocated to the Ombudsman in 2010 when the mandate of the Institution was extended following the adoption of Law on Prohibition of Discrimination.

Restriction the financial and human resources of the Department has not had a major impact on processing the individual complaints of citizens, but has limited the exercise of other legally entrusted competencies (primarily the conduct of research and legislative proposals), which would increase the capacity of the Ombudsman to combat all forms of discrimination and the activities on human rights promotion and anti-discrimination.

Adoption of the amendments to the Law on Ombudsman was not followed by the increase in capacity of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina in the area of the protection of discrimination, which raises the issue of the real will of the authorities to raise the level of protection of the human rights of citizens. It is also indicated in by the United Nations in a letter addressing the Ombudsman Institution related to a decision of the Global Alliance of Human Rights Institutions Sub-Committee on Accreditation (SCA GANHRI) dated 24 November 2017, which, *inter alia*, reads as follows: „The existing Law does not specify the process by which this budget allocation is made,“ and that in order „to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities.“¹⁰

The same conclusion could be drawn from the 2017. recommendation made by the European Commission against Racism and Intolerance:

„ECRI recommends that the authorities strengthen the institutional capacity of the Ombudsman Institution in order to empower it to carry out its anti-discrimination mandate effectively. This should include, *inter alia*, streamlined decision-making processes and an adequate increase in funding to provide for sufficient human resources and awareness-raising campaigns. The authorities should also ensure that in the context of planned amendments to the Ombudsman Law, the Ombudsman Institution maintains its full financial independence from the government. Furthermore, the authorities should intensify their efforts to promote compliance with the recommendations of the Ombudsman Institution.“

The Ombudsman points to the need to amend the Law on Ombudsman Institution in sense to extend the mandate of the Institution to act as a national preventive mechanism, define a clear role in promoting human rights and provide a greater degree of financial independence, which is now fully subject to decision-making by the executive authorities. The proposal of the Law was adopted by the Council of Ministers of Bosnia and Herzegovina back on 23 December 2015. However, by the date of submission of present Report, it did not get the consent of the Parliamentary Assembly of Bosnia and Herzegovina.

The passivity of the authorities of Bosnia and Herzegovina in the process of ensuring the conditions for the effective functioning of the Ombudsman is also indicated by the working paper of the European Commission "Report on Bosnia and Herzegovina for 2018", published on April 17, year, which, among other things, emphasizes:

¹⁰ Paragraph 4, pages-3-4

*"The financial independence of the Ombudsperson remains extremely worrying and implementation of his recommendations **remains weak, which affects the right of citizens to good administration.** It is necessary to adopt as soon as possible the draft amendments to the Law on Ombudsman in order to ensure compliance with the Paris Principles. It is also necessary to allocate adequate resources and ensure the proper functioning of the Ombudsperson Institution."¹¹*

Socio-economic status of Roma

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party continue to endeavour to improve the situation of Roma, inter alia by strengthening the implementation of its national strategy and other action plans for Roma and removing all barriers which may hamper their enjoyment of human rights. The Committee further recommends that the State party:

- (a) Facilitate access to mainstream education for Roma children, inter alia by providing support including school meals, books, clothing and transportation;*
- (b) Refrain from forcibly evicting individuals, and, in cases where eviction or relocation is considered to be justified, ensure that it is carried out in strict compliance with the relevant provisions of international human rights law;*
- (c) Increase access of Roma to health care, by inter alia removing registration barriers in accessing health insurance and ensuring that laws and regulations providing for access to free health care are always and fully implemented; and*
- (d) Increase the number of shelters for women and establish programmes on ending violence against women and girls as well as place a particular focus on adopting gender-responsive budgets and policies.*

In 2013, the Ombudsmen with support of the OSCE Mission to BiH/Office for Democratic Institutions and Human Rights¹², and in the framework of the project "Best Practices for Roma Inclusion" (BPRI) funded by the European Union and supported by the OSCE participating States, conducted a survey on the actual state of the members of the Roma national minority in BiH. In addition, in 2014, the "Report on the Implementation of the Ombudsman's Recommendations from the Special Report on the Status of Roma in Bosnia and Herzegovina" was made, when it was noted that it is necessary to continue the implementation of the measures established in accordance with the obligations of Bosnia and Herzegovina towards the Roma Decade revision of these measures in relation to the latest recommendations of the UN reporting body.

Finally, thanks to the cooperation of the OSCE Mission to Bosnia and Herzegovina and the institutions of the Ombudsman for Human Rights of Bosnia and Herzegovina, at the end of November 2017, a project activity was launched aimed at monitoring the implementation of the recommendations of the Ombudsman institution for human rights of Bosnia and Herzegovina contained in "Report on the Implementation of the Ombudsman's Recommendations from the Special Report on the Status of Roma in Bosnia and Herzegovina"

¹¹ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-bosnia-and-herzegovina-report.pdf>

¹² ODIHR – English abbreviation: Office for Democratic Institutions and Human Rights

In Roma communities, a major problem and one of the key reasons for a bad state in the field of Roma rights is their lack of knowledge of the rights they belong to and the ways in which they can achieve and protect them. Therefore, it is necessary to educate the Roma population about basic human rights and ways of their realization, recognizing discrimination and distinguishing it from other forms of violation of the rights they encounter, as well as the ways of reacting to the experienced discrimination. Also, it is necessary to act towards the awareness of other citizens in order to suppress prejudices and stereotypes that exist towards Roma. From associations with which the Ombudsman contacted the local communities, they stress that individuals to address the problems they face are appealing for help to associations, but in spite of the existence of associations it is also necessary to set up Day Centres at local community levels and to introduce mediators. Therefore, it is necessary to improve the flow of information and support the Roma in their active involvement in resolving their own problems, through self-organization, and by selecting a certain representative for each Roma community, who, working with existing associations and communication with the authorities, will work to improve the living conditions.

In the area of housing, there is a positive shift in Roma communities, since a large number of housing units have been built for the care of Roma, however, settlements that were built earlier and in which a large number of Roma families live for many years are of numerous shortcomings. These shortcomings are reflected in the fact that these housing units are already old, dormant and many of them are muddy or do not have bathrooms and do not provide basic hygiene conditions. On the other hand, the implementation of the CEB 2 project is under way, within which the construction of new housing units is planned, in which the beneficiaries of the collective centres will be relocated. It is necessary to follow the realization of this project.

In the area of employment, the situation in local communities did not change significantly, i.e. most members of the Roma national minority are still unemployed and in the daily struggle with the inability to get involved in the labour market. Programs for co-financing the employment of Roma in employment offices still do not give positive results in the long run. It is necessary to create new programs, but also to tighten the measures for banning begging.

Regarding Roma education, it has been established that the number of Roma children enrolled in primary education has increased, but there are still few in secondary and higher education institutions. A positive example is the establishments of day care centers that help children overcome the fear of school obligations and that both children and their parents understand the importance of education. What the participants of this project especially emphasize is that it is important for these children to be provided with transportation to school, because without it there are common obstacles to going to school. Also, the influence on teaching staff, in terms of freeing from prejudice against Roma children and the establishment of equal treatment, is of paramount importance. One way to solve the problems present in Roma communities is really education, which is why they need to raise their awareness of the importance of learning, giving them positive examples of young successful Roma.

In the area of health care, progress has also been noted in terms of an increasing number of Roma who have acquired the status of health insured persons, but what has emerged during direct communication with Roma is that they no longer pose a problem for the achievement of health care, because in time, thanks to the efforts of the authorities of Local communities who learned Roma how to get a health booklet and how to certify it. The problem is that they do not have the money to buy the necessary medicines, which they cannot get "on the recipe", which is why they cannot be treated and why their agony deepens. Therefore, it is necessary to make it easier for patients to come to the necessary drugs, primarily in terms of paying them.

Ombudsmen continue to monitor the realization of all the goals set in the mentioned Reports and give further guidance to authorities, Roma associations, coordinators, mediators, Roma communities, families and individuals how to protect and exercise their rights and improve the quality of life.

In 2017, Ombudsmen and **Save the Children** co-operated in the framework of the **LYRA** project funded by the European Union. Joint cooperation was aimed at promoting and participation of young Roma leaders in the improvement of human rights and changing discriminatory attitudes. Partners in the implementation of this project were also Association for the Promotion of Roma Education "Otaharin" Bijeljina and Association "Altruist" Mostar. The ombudspersons point to the significance of the project, as it supported the work of the informal network of young Roma and non-Roma people from Banja Luka, Sarajevo, Tuzla, Mostar and Bijeljina.¹³ The activities of the Ombudsperson and non-governmental organizations aimed, inter alia, on the promotion of the Ombudsperson Institution, especially in the field of protection against discrimination.

Awareness of the prohibition of discrimination

The Committee recommends that the State party ensure proper initial and regular professional training of judges, prosecutors, lawyers and law enforcement officials regarding the provisions of the Anti-Discrimination Law, and to present the evaluation of this training in the next Report. Furthermore, the Committee recommends that the State party implement awareness-raising campaigns at all levels on the Law on the Prohibition of Discrimination and how to report cases of racial discrimination to Ombudsmen and other competent bodies, and how to bring such cases before the courts.

Trainings on the Law on the Prohibition of Discrimination are organized through the Judges and Prosecutors' Training Centers of the Federation of Bosnia and Herzegovina and the Republika Srpska, but the underdevelopment of court practice in the implementation of this Law is still evident.

Awareness raising campaigns are not carried out by the state but within the work of international organizations, most often the OSCE Mission to Bosnia and Herzegovina and the Council of Europe.

The state should take the initiative for these trainings to a greater degree, and international organizations will eventually take a different path. The education process must be continuous and in line with the development of mechanisms for the protection of human rights, especially in relation to the issue of discrimination. The Ombudsman sent recommendations to the High Judicial and Prosecutorial Council of BiH to continuously work on the training of judges and prosecutors with a special focus on human rights issues.

Also, from the perspective of the Ombudsman Institution for Human Rights, the state authorities failed to fulfil their obligation to report on cases of discrimination. The last such report was submitted by the Ministry of Human Rights in 2016 for 2015, and after that no reports were made for 2016 and 2017. The Ombudsman Institution's report is compiled regularly up to the 3rd month for the previous year, but cannot replace the state report as it relates solely to complaints addressed to the Ombudsman Institution for Human Rights. According to information received from the OSCE Mission, the state did not adopt a human rights strategy, or a program to combat discrimination, which is the obligation springing from 2016 Progress Report (EU).

¹³ In these cities, workshops with children in schools were held (each city - one primary and one secondary school), as well as with adult Roma in Roma settlements

Segregation in education

The Committee recommends that the State party take all necessary measures to ensure that the system of "two schools under one roof" does not lead to segregation in education, and increase the number of administratively and physically unified schools where students learn together on the basis of the same basic curriculum, respecting their linguistic and cultural specifics. The Committee further recommends that the freedom of religion and conscience be fully ensured, including at school as well, and that no child be disadvantaged in any way because he/she is not attending religious education.

In some cantons of the Federation of Bosnia and Herzegovina, there is a practice where children from different ethnic groups attend different curricula. The primary goal of introducing this way of functioning of schools is the affirmation of the return of displaced persons to pre-war addresses and the provision of security and access to the right to education of children of returnees who had attended classes in uninhabited facilities by then.

The Municipal Court in Mostar in 2012 issued a judgment stating that the practice of dividing pupils and students in an ethno-national basis in schools in the Herzegovina-Neretva Canton violates the Anti-Discrimination Law and the European Convention on Human Rights and Fundamental Freedoms. The judgment states that unified integrated multicultural educational institutions - schools for established enrollment areas with a uniform scientific curricula - should be established, with full respect for the rights of children to education in their native tongue, and (school) integration to create the basis of multicultural schools and education of children, regardless of ethnicity, according to a uniform curricula in the native tongue.

The Supreme Court of the Federation of BiH on 29.08.2014 in the same year, issued a judgment according to which the practice of "2 schools under 1 roof" represents ethnic segregation of students and ordered that such practice be abolished¹⁴.

However, in another case, the Municipal Court in Travnik¹⁵ refused a claim to determine that the respondent Central Bosnia Canton, the Ministry of Education, Science, Culture and Sports, by granting consent and organizing schools on an ethnic principle, and by adopting and implementing school curricula on an ethnic principle, allowed the segregation of pupils in elementary and secondary schools in the Canton area, which was envisaged by the judgment of the Cantonal Court in Novi Travnik¹⁶

In this case, the Supreme Court of the Federation of BiH¹⁷ rejected the request for revision of the Cantonal Court's judgment in Travnik, taking the view that: *"The possibility and existence of two curricula in Bosnian and Croatian with a common core of 70 per cent is in line with the Convention against discrimination in education, ratified by BiH"*

¹⁴ Supreme Court of FBiH, Judgment No. 58 0 Ps 085653 13 rev, 29.8.2014

¹⁵ Judgment of the Municipal Court in Travnik, number: 51 0 P 054 522 13 P 3 of 04.03.2015

¹⁶ Judgment of the Cantonal Court in Novi Travnik No. 51 0 P 054522 15 Gž 3 of 31.12.2015.

¹⁷ Judgment of the Supreme Court of the Federation of BiH No. 51 0 P 054522 16 Rev of 03.10.2017.

Although the prosecutor¹⁸ called for the same factual and legal basis, suggesting that there is already an earlier decision of courts where the practice of dividing pupils in ethno-national schools was considered discriminatory, in this case the courts pointed out the difference in terms of passive legitimacy, i.e. the respondent and the difference in curricula. In the first case discrimination in schools in the Herzegovina-Neretva Canton was established, while in the second case, in the area of the Central Bosnia Canton the schools were not prosecuted but the Central Bosnia Canton, the Ministry of Education, Science, Culture and Sports.

Different practices of the courts in Bosnia and Herzegovina, who have dealt with "two schools under one roof", make it more difficult to implement the Committee's recommendation.

Hate Speech and Hate Crimes

The Committee recommends that the State party ensure that existing criminal provisions on hate speech and hate crimes are applied in an appropriate manner in accordance with the General Recommendation of the Committee no. 35 on the fight against racist hate speech and to continue to raise awareness campaigns at all levels with the aim of promoting national unity, understanding and tolerance and peaceful coexistence of members of various nationalities and religious groups.

Hate crimes require special treatment because they create a sense of insecurity and mistrust within different communities in Bosnia and Herzegovina. Amendments to the provisions of the Criminal Code of the Republika Srpska and the Criminal Code of the Brčko District of BiH were adopted in 2010, and the adoption of the same amendments to the Criminal Code of the FBiH came in 2016 at the initiative of the Ombudsman for Human Rights of Bosnia and Herzegovina, preconditions throughout the territory of BiH for the effective fight against hate crimes.

The Ombudsman Institution met in its work with examples of hate speech and these are mostly inadequate terms that are called members of certain vulnerable groups, inappropriate public statements by individuals and legal entities about the personal and moral characteristics of individuals in public functions, texts that are followed by pictures and comments of offensive content and as such available to the general public, publications on blogs of certain politicians whose contents are false, insulting, disparaging, compromising, because of which people who are the target of such attacks feel fear for themselves and their family and nationalistic statements that spread hatred between the constituent peoples to individual returnee communities.¹⁹

In their recommendations, the Ombudsmen demanded the immediate cessation of the publication of offensive content in which people are called abusive and inappropriate names, the removal of an offensive content from the Internet portal publishing new articles containing public apology to members of minority groups, undertaking of the necessary measures in the future work, writing and publishing articles fully respecting the Law on the Prohibition of Discrimination, as well as the education of employees in order to prevent the writing of the same or similar articles.

¹⁸ Association Vaša prava BiH Sarajevo

¹⁹ According to data collected by the OSCE Mission, the number of incidents potentially motivated by prejudice reported to the police in Bosnia and Herzegovina is at least 175, which fits the average of previous years of about 150. Reported incidents are most often seen in verbal attacks and threats, damage to property and damage to religious buildings and cemeteries. 90% of reported incidents are motivated by ethnic and religious prejudices against the three largest ethnic groups (Bosniaks, Croats, Serbs). Incidents involving Roma and sexual minorities are reported to a much lesser extent. <https://www.osce.org/hatemonitorbih>

On this day, the ombudsmen note that there is a low level of compliance with the recommendations, which is also hampered by the fact that in most cases the responsible party is a private legal entity, that hate speech is present on the Internet, which, as a virtual space, is largely unregulated, through social networks come the multiplication of hate speech where the promotion of personal attitudes takes place under the veil of anonymity.

In the field of judicial processing of hate speech, statistics show that there are very few reports related to the crimes of provoking racial, ethnic or religious hatred, strife or intolerance, and this situation is present throughout the whole Bosnia and Herzegovina.

Treatment of asylum seekers, refugees and persons who have been granted subsidiary protection

Assessment of the situation in the field of migration in Bosnia and Herzegovina, based on visits to the Asylum Center, interviews with migrants and staff in these institutions, as well as interviews with representatives of competent police and security agencies, indicates that there is a need for urgent action due to increased influx of migrants, which requires the obligation of additional mobilization of material, financial and human resources.

The Ombudsmen of Bosnia and Herzegovina are expressing their concern over the inefficiency of the actions of the competent authorities, which is evident in all phases of treatment of migrants.

At the stage of the first contact of migrants with the competent authorities in Bosnia and Herzegovina, the informing of migrants about their rights was noticed, among other things, the right to seek asylum, in an understandable language; not ensured transportation of migrants, especially in cases of groups, family with children, which creates space for the activities of various intermediaries, including smugglers.

At the stage of the asylum procedure, it was noted that the deadline for accession to the registration envisaged for exceptional occasions of 14 days became a regular deadline, instead of 8 days, even before the massive influx of migrants occurred; failure to provide timely registration of all persons who have indicated their intention to seek asylum, so at the date of submission of this Report for the registration of persons who expressed this intention at the end of 2017; that out of 2,762 persons who indicated their intention to seek asylum and who were issued a Certificate of this intention for the first 4 months of 2017, only 383 were registered; that there are weaknesses in organizing interviews with asylum seekers, with a view to reaching a final court decision; that even before the increased inflow of migrants there was a backlog in this process, and that the interview is often conducted even after the expiration of the deadline of 6 months without the existence of special conditions.

Furthermore, the sluggishness of procedures open space in which certain migrants who are in different stages of the asylum procedure are not adequately taken care of, and are located in the streets of cities, due to which international organizations (UNHCR, IOM) have intervened, as well as some non-governmental organizations, informal groups and individuals. It is noticeable that the care of children without parental escort lacks and that a certain number of children in the territory of Bosnia and Herzegovina have been registered, for whom the guardian has not been appointed in accordance with the law, and it is unclear who represents the interest of these children in the procedure. It happens that there is an interview for registration with a child without the presence of a guardian, even a guardian for a special case is not even appointed. No adequate primary health care has been provided for persons who have indicated their intention to seek asylum, and who are not accommodated in the Asylum Center. For these persons, health care is

provided by IOM and UNHCR on an *ad hoc* basis. It is not adequately resolved how to deal with cases of need for secondary and tertiary protection of migrants.

Ombudsmen of Bosnia and Herzegovina find that the institutional mechanisms in charge of migration issues in Bosnia and Herzegovina have not adequately responded to the complexity of the problem of increased inflow of migrants into Bosnia and Herzegovina, in accordance with law and international standards.

Human Rights Ombudsmen
of Bosnia and Herzegovina:



Nives Jukić

PhD Ljubinko Mitrović

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