

The role and the importance of the independent institutions

THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN/OMBUDSMEN OF BOSNIA AND HERZEGOVINA



Sarajevo, 2020.

The role and the importance of the independent institutions

THE INSTITUTION OF HUMAN RIGHTS OMBUDSMAN/OMBUDSMEN OF BOSNIA AND HERZEGOVINA



Sarajevo, 2020.

Impressum

Publisher:

The Institution of Human Rights Ombudsman/Ombudsmen of BiH

Headquarters: Banja Luka

Akademika Jovana Surutke br.13

78000 Banja Luka, Bosna i Hercegovina

Tel/Fax: +387 51 303 992

Email: bl.ombudsmen@ombudsmen.gov.ba

www.ombudsmen.gov.ba



**Institucija ombudsmena/ombudsmena
za ljudska prava Bosne i Hercegovine**

**Институција омбудсмена/омбудсмана
за људска права Босне и Херцеговине**

Prepared by:

Selim Kulić

Prof. Dr. Nino Serdarević

Implementation:

INNOVA Management Consulting

**Design i DTP:**

Ferida Abdagić

Support to this publication was provided within the Programme for Strengthening of Public Institutions in BiH as part of the support for public administration reform in BiH.

The Programme for Strengthening of Public Institutions is implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH on behalf of the Federal Ministry for Economic Cooperation and Development of the German Federal Government in cooperation with the Government of the United Kingdom. The views and opinions expressed in this publication do not reflect the views or official policies of the Governments of Germany and the United Kingdom.

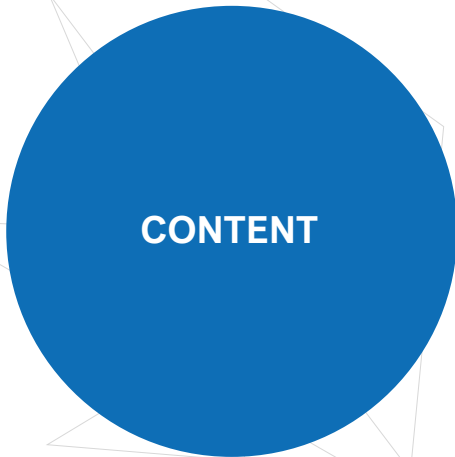


Implemented by



In cooperation with:





Introduction	6
1. Ombudsmen Institutions as independent oversight institutions	7
1.1. Definition of independent (oversight) institutions	7
1.2. Competencies of the institutions of ombudsmen	8
1.3. Independency imperative	9
2. Regulatory framework of functioning of The Institution of Human Rights Ombudsman of BiH.....	10
2.1. Constitutional and legislative framework	10
2.2. Special competencies of The Institution of Human Rights Ombudsman of BiH	14
2.3. Rules of procedure of The Institution of Human Rights Ombudsman of BiH	18
2.4. Annual report of The Institution of Human Rights Ombudsman of BiH for 2019.	21
3. The right to free access to information	30
3.1. The Law on free access to information in BiH	30
3.2 Certain aspects of the current application of the Law on Freedom of Access to Information	35
Bibliography	42

Introduction

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution established to promote good governance and the rule of law, as well as to protect the rights and freedoms of individuals and legal entities, in accordance with the Constitution of BiH and international agreements annexed to the Constitution of BiH. In this regard, the Institution of Human Rights Ombudsman of BiH monitors the activities of government bodies throughout the territory of BiH and no person or public authority in BiH is allowed to interfere with or influence the work and activities of the Ombudsman Institution. Ombudsmen have broad investigative powers, including access to all information, documents and public authorities' premises.

Governmental institutions are obliged to implement the recommendations within a certain time limit or respond to them. However, despite the legal obligation of the institutions to act upon the recommendations of the Ombudsman Institution, the number of implemented recommendations has been decreasing in recent years.

A large number of citizens' complaints relate to the work of the judiciary, ineffective enforcement of judicial decisions and inadequate length of judicial proceedings, to the silence of administration on various requests, and that the competent administrative bodies do not act in accordance with judicial instructions and decisions made in administrative disputes. These facts are a sufficient indicator for ombudsmen to remind government officials of their key obligation regarding the justice system, which is to organize it in a more efficient and effective manner.

Improving the mechanisms for the protection of the rights of individuals to good governance and public interest is directly linked to increasing the implementation of the Ombudsman's recommendations, which has been proven to contribute to a more responsible, transparent, efficient and effective public administration. It is an indisputable fact that the Institution of Ombudsman contributes to increasing the responsibility of public administration. The quality of services and the work of public administration bodies for citizens are a tangible indicator of the functionality of any democratic state. Good public administration should be at the service of the community and promote public confidence in the executive branch of government, contribute to political stability and encourage economic growth and development and social well-being, to which the Institution of Ombudsman contributes significantly.

This Brochure aims to acquaint civil servants in the institutions of BiH with basic principles and principles of work of the Institution of Ombudsman, in accordance with which ombudsmen carry out their mandate. In particular, the Brochure promotes responsible compliance with the issued recommendations and clarifies the direct link between acting on the issued recommendations and strengthening the accountability, transparency and efficiency of the competent authorities.

The brochure is designed in such a way to present to readers::

- The role and importance of the Institution of Ombudsman in the segment of strengthening the accountability, transparency and efficiency of public administration;
- Present the constitutional and legislative framework that defines the establishment and functioning of the Institution of Human Rights Ombudsman of BiH, as well as the special competencies of the Institution of Ombudsman in terms of promotion and protection of certain specific human rights and freedoms.

1. Ombudsmen Institutions as independent oversight institutions

1.1. Definition of independent (oversight) institutions

Literature does not offer a unified definition of independent supervisory institutions and their mandate, while the process of their establishment and competencies considerably differ across national jurisdictions. De Vrieze (2019) argues that there are certain common characteristics in the oeuvre of the activities of independent supervisory institutions, enshrined in the supervision of democratic functioning and integrity of the executive branch and public administration. There is also a distinction between the authorities primarily in charge of supervision and regulatory authorities.

Regulatory authorities draw their competence in regulating and overseeing a specific policy sector and regulatory framework.

Independent supervisory institutions, on the other hand, have a much broader mandate, which includes good governance (efficiency and efficiency) in public administration, as well as protection of citizens' rights. Thus, the independence of the supervisory authority, as opposed to independence in the work of the regulatory authority, implies the discretion of the supervisory institution to decide on entities whose operations need to be assessed.

The institutions of the judiciary also have a supervisory function under their jurisdiction, embodied either in the assessment of public administration conduct, aligned with the relevant legal framework, or the constitutionality of the proposed laws, but primarily they are not classified as independent supervisory institutions by their jurisdiction.

In particular, independent supervisory institutions encompass human rights institutions, ombudsman for human rights institution, public defenders, ethics commissions, anti-corruption agencies, state auditors as well as specific mechanisms for filing and prosecuting citizens' complaints.

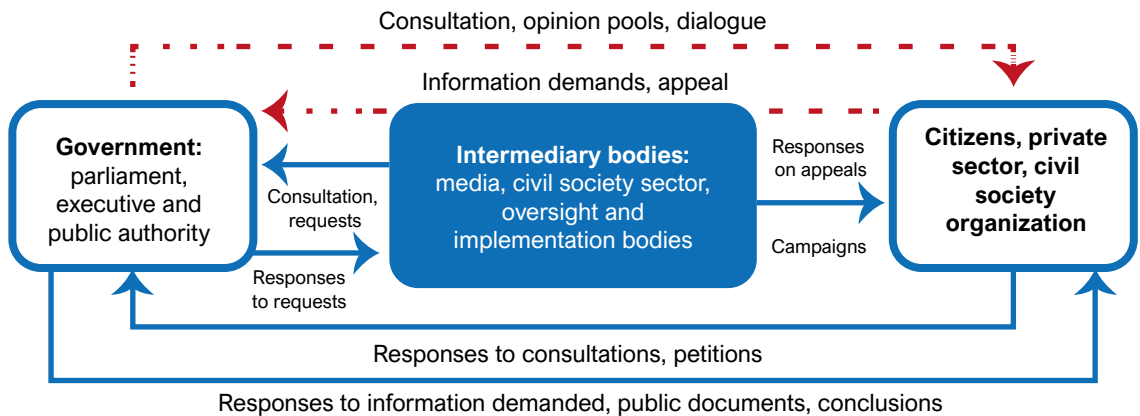
WFD (2020) classify independent supervisory institutions in four categories:

- a. Supervisory institutions in the field of human rights, including ombudsmen for human rights;
- b. Supreme audit institutions (hereinafter: SAI), that in most countries represent the oldest independent institutions;
- c. Supervisory institutions in charge of combating corruption, including the subject of a recommendation to establish them enshrined in the UN Convention against Corruption;
- d. Independent institutions in charge of overseeing the organisation and conduct of elections, as the most significant aspect of democratic administration.

Independent supervisory institutions are to be positioned in a way that ensures a balance between the executive and the legislature, enabling parliament to use the institutional capacity and expertise of independent supervisory institutions to effectively assess the government operations.

Their role concerning oversight of the public administration operations may be in carrying independent investigations, issuing binding or non-binding findings and recommendations on matters of accountability and integrity of public administration, assessing the implementation of the legislative framework and public policies, but also consolidating data on the appeals submitted. Fundamentally, the independence of institutions is absolutely necessary to ensure the accountability of public administration and build the trust of interested parties and provide a substantive basis for dialogue and cooperation.

Illustration 1. Information flow in the ideal open government system



Source: Involve (2009)

The institutions of ombudsmen and state auditors represent democratic mechanisms by which the executive part of the government is examined, as well as governance mechanisms in the part of their advisory function in the segment of customer relations, civil rights, efficiency and efficiency of public administration (Kostadinova, 2015).

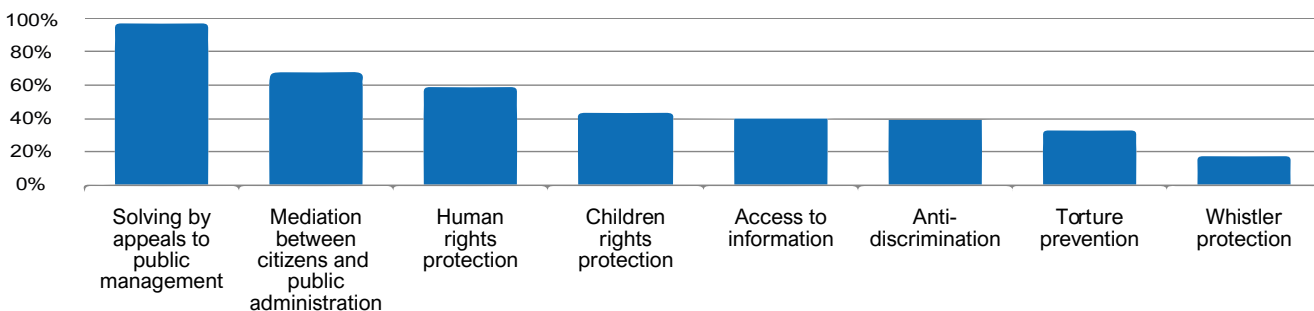
1.2. Competencies of the institutions of ombudsmen

In a narrower sense, ombudsmen institutions are expected to act more responsibly and transparently and to involve participants to ensure more effective exercise of their mandate and to strengthen citizens' trust in their mission. However, in a broader sense, the ombudsmen institution at the national or sub-national level, like few other institutions, communicates directly with citizens and supervises the exercise of human rights guaranteed to citizens.

The OECD (2018) in the report of the European Ombudsman on the role of the ombudsman institution in open government states that the role of the ombudsman is not widely recognized or studied and that given their privileged contact with citizens and government, ombudsmen institutions can be key actors in promoting transparency, integrity, accountability and participation of actors so as to strengthen their role in open government and place them at the center of the open state. By resolving complaints and conducting investigations on their own initiative (where applicable) and through reports of ombudsmen institutions submitted to institutions (parliament, councils of ministers), institutions collect numerous information on the functioning and non-functioning of public administration.

Ombuds institutions have different mandates ranging from accepting and resolving complaints about the work of public administration to the protection of human rights, which largely determines with which interest groups the institution establishes interaction.

Illustration 1. Fields of activity of institutions of ombudsmen according to their mandate - Source: OECD (2018)



Ombuds institutions that deal exclusively with mediation in misunderstandings can only issue recommendations, but not press for the adoption of recommendations. Their advisory function in the remits of open government is reflected exclusively through the presentation of the annual report to parliament and to drawing attention to certain complaints referring to the work of public administration or the inability to exercise and enjoy human rights.

Ombuds institutions that include human rights and the protection of children's rights in their mandate can take an active part in informing the public about human rights, reporting on the general state of human rights (based on research and analysis of human rights).

The ombudsman's recommendations do not only serve to solve the specific problem that citizens are faced with, but they also point to multi-system problems that indicate the need to improve public administration. In this area, ombuds institutions are key actors in policy-making and public sector reform management, as they can provide indicators based on their cases in interaction with citizens.

It is quite clear that the information base and expertise found within ombuds institutions can be used more effectively if governments involve ombuds institutions in the policy development consultation process, rather than solely drawing upon information from their annual reports to parliament.

The extremely important role of the ombudsman institution is certainly reflected in the development or changes of legislative norms, especially in the part referring to the provision of public services, access to information and the fight against corruption.

1.3. *Independency imperative*

In 1993, the United Nations General Assembly strongly supported the establishment and strengthening of independent human rights institutions in accordance with the principles relating to the status of national institutions, which also have a universal reference to the Paris Principles¹. The Paris Principles are the minimum international standards for the establishment of state human rights institutions and require that these institutions have "the widest possible mandate", which should be set out in a constitutional or legal text and should include both the promotion and protection of human rights, including specification of specific responsibilities that the institution should have.

The position of the ombudsman institution partly depends on the act which provides for its existence, understandably if the ombudsman institution is provided by the constitution of a state, the position of the ombudsman is long-term protected in comparison to the position defined by law, which can be changed and further interpreted by various bylaws. Furthermore, the independence of the ombudsman institution is certainly largely guaranteed in cases where the appointment is not influenced by elected officials or representatives of those bodies whose work is a possible subject of ombudsman oversight.

Certain provisions may also affect the insurance of independence, such as the provision of a long-term mandate to ombudsman without the possibility of early dismissal except in special cases, the possibility of reappointment, relatively high guaranteed income, sufficient financial resources necessary for the institution, giving the ombudsman discretion to manage appointments and dismissals of staff in the institution, granting immunity from prosecution, as well as giving the ombudsman a mandate to lodge appeals to judicial bodies to exercise the institution's powers.

There is no unified model of organizing the ombudsman institution, as well as standards of action. However, certain guidelines, such as those by the Association of Ombudsmen, create a framework mode. Accordingly, the ombudsman is considered to be independent:

- when is clearly independent of the bodies over which it has the competence to supervise,
- if/when elected by persons independent of the supervised bodies;
- the one who has been elected for a sufficiently long period not to undermine his independence (recommended for a minimum period of five years with the possibility of re-election) without the possibility of early termination, except in case of incompetence or misconduct
- who cannot be denied income in the form of salaries and bonuses by persons who are subject to supervision;
- who has an absolute discretion on decisions whether or not a particular appeal is within the competence of the institution, whereas the final decision should be possible to terminate only through court proceedings;

¹ United Nations General Assembly Resolution, 48/134 of 20 December 1993
www.ombudsmen.gov.ba/documents/obmudsmen_doc2014012212054704cro.pdf

- who is obliged to submit a report on the work to the body that is independent of the bodies that are subject to supervision and which is at the same time responsible for protecting the independence of the ombudsman institution.

2. Regulatory framework of the functioning of the Institution of Human Rights Ombudsman of BiH

2.1. Constitutional and legislative framework

2.1.1 Annex 4. of the General Framework Agreement for Peace in BiH – the Constitution of BiH

The rights of every individual in Bosnia and Herzegovina are enshrined by the Constitution of Bosnia and Herzegovina (BiH), international treaties or conventions signed by BiH, as well as by laws in BiH.

The Preamble of the BiH Constitution of BiH sets forth a determination to fully respect international humanitarian law in BiH, as well as the Universal Declaration of Human Rights, International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and other human rights instruments.

Article II of the BiH Constitution stipulates that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. It is also stipulated that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina and shall have priority over all other law.

Article II also sets forth the list of human rights and proclaims that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms without discrimination on any ground such as sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.

Chapter II of the Constitution of Bosnia and Herzegovina is dedicated to the protection of human rights through the Human Rights Commission, the **Ombudsman Office**, and the Human Rights Council.

2.1.2 Annex 6. of the General Framework Agreement for Peace in BiH – the Human Rights Agreement

Annex 6 of the Constitution of BiH refers to the Agreement on Human Rights, which guarantees to all persons in BiH the highest level of internationally recognized human rights and fundamental freedoms² including the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. and other international agreements specifically enlisted in Appendix I to Annex 6.

The enjoyment of the rights and freedoms set forth in Annex 6 or the international agreements listed in Annex I of the Constitution shall be ensured for all persons in BiH, without discrimination on any ground.

² These rights and freedoms include: the right to life; the right not to be subjected to torture, inhuman or degrading treatment or punishment; the right of a person not to be held in slavery or servitude, or to perform forced or compulsory labor; the right to liberty and security of person; the right to a fair trial in civil and criminal cases, and other rights related to criminal proceedings; the right to private and family life, inviolability of home and correspondence; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and freedom of association with others; the right to marry and to found a family; the right to property; the right to education; the right to freedom of movement and residence.

such as sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.

The Office of the Human Rights Ombudsman of BiH is established by Article IV. of Annex 6. It also sets out the criteria to be met by the members of the Office of the Human Rights Ombudsman, and explicitly states that the ombudsman institution is independent in its work and that no person or authority can affect its functions.

Article V of Annex 6 defines the competencies of the Ombudsman, whereas Article VI of Annex 6 defines the powers of the Ombudsman.

In Appendix I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina are set out international agreements for the protection of human rights and fundamental freedoms that have direct application in BiH:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide;
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto;
3. 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto;
4. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto;
5. 1957 Convention on the Nationality of Married Women;
6. 1961 Convention on the Reduction of Statelessness;
7. 1965 International Convention on the Elimination of All Forms of Racial Discrimination;
8. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto;
9. 1966 Covenant on Economic, Social and Cultural Rights;
10. 1979 Convention on the Elimination of All Forms of Discrimination against Women;
11. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
12. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
13. 1989 Convention on the Rights of the Child;
14. 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
15. 1992 European Charter for Regional or Minority Languages;
16. 1994 Framework Convention for the Protection of National Minorities.

2.1.3 The Law on the Ombudsman for Human Rights of BiH

The Law on the Ombudsman for Human Rights of Bosnia and Herzegovina ("Official Gazette of BiH" no. 32/00, 19/02, 35/04 and 32/06) stipulates that the Ombudsman for Human Rights of Bosnia and Herzegovina is an independent institution established with the aim to promote good administration and rule of law, protection of rights and freedoms of individuals and legal entities, as guaranteed in particular by the Constitution of Bosnia and Herzegovina and international agreements, which are annexed to the Constitution, which will monitor the activities of institutions of Bosnia and Herzegovina, its entities and Brcko District, in accordance with the provisions of this law.

The institution of the Ombudsman for Human Rights of BiH is the basic guarantor of the rule of law and protection of human rights and fundamental freedoms throughout BiH and in that sense acts on the basis of individual complaints from individuals or legal entities or ex officio.

The Institution of the Human Rights Ombudsman of BiH is responsible for:

- consideration of cases related to poor functioning or violations of human rights and freedoms committed by any governmental body;

- acting upon receipt of a complaint or ex officio;
- undertaking a general investigation and making individual or general recommendations;
- conducting an investigation about all complaints concerning violations of rights and freedoms allegedly committed by the military authorities;
- conducting investigations about all complaints related to the poor functioning of the court system or improper processing of individual cases and making recommendations for appropriate individual or general measures, provided that the Institution may not interfere in the court decision-making process, but may initiate court proceedings or intervene un the course of the ongoing proceedings, whenever it finds that such activity is necessary in the performance of its duties;
- ensuring equality of citizens and elimination of all forms of discrimination;
- informing the public about human rights through the media and education;
- publishing notices, opinions, recommendations, proposals and its reports;
- initiating amendments and enactments of laws and bylaws with the aim of their harmonization with international human rights standards, and ensuring the promotion of human rights and fundamental freedoms;
- preparation of annual, periodic, special and other information and reports on the state of human rights and fundamental freedoms;
- cooperation, in accordance with the Constitution of BiH and existing legislation, with all domestic and international authorities and institutions dealing with the protection of human rights and fundamental freedoms.

Furthermore, the Law determines the composition, method of appointment and cases of the resignation of the Ombudsman, as well as the issues of immunity and incompatibility in performing the functions of the Ombudsman. To that effect, the Law sets forth that Ombudsmen are appointed from the three constituent peoples (Bosniak, Croat and Serb), which does not exclude the possibility of appointments from the ranks of others. Coordination of work of the Ombuds Institution is led by one of the ombudsmen for a period of two years, who performs the function of the chairman in that period.

Ombudsmen are appointed and dismissed by the House of Representatives and the House of Peoples of the Parliamentary Assembly of BiH by a majority vote, in accordance with the Rules of Procedure of each House. To that end, the Parliamentary Assembly of BiH establishes a special ad hoc commission, which publishes a public call and, after the procedure, determines the list of candidates who meet the requirements set by law.

The BiH Parliamentary Assembly simultaneously appoints three ombudsmen to the Institution of Ombudsman, for a term of six years, and they may be re-elected.

The salary of the ombudsman is determined in the amount of the salary of a judge of the Constitutional Court of BiH.

Citizens of Bosnia and Herzegovina, law graduates, who have passed the bar exam and have at least 10 years of work experience in the legal profession, in which they have distinguished themselves, who have proven experience in the field of protection of human rights and freedoms, and possess the high moral reputation may be appointed as ombudsmen.

The duty of the ombudsman may be terminated for any of the following reasons:

- a. resignation;
- b. the expiration of the term of office;
- c. obvious inability to perform his duties;
- d. failure to leave office which is incompatible with the mandate of the ombudsman,
- e. a conviction, and a final sentence for an intentionally committed offense punishable by imprisonment for more than five years and only after both the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina have made a decision to that effect. Only a court at the level of Bosnia and Herzegovina is competent to try the ombudsman.

Persons in the service or those appointed by the Ombudsman Institution cannot be prosecuted, investigated, arrested, detained, or tried for any action, opinion or decision made in the performance of their duties as directed by the Ombudsman. In all other circumstances, this may be the case and it is necessary to immediately inform the Institution of Ombudsman thereof.

The position of the Ombudsman is incompatible:

- by performing any representative function;
- with any political activity or duty or responsibility for propaganda;
- continuation of service in the authorities in BiH;
- membership in a political party or leadership of a political party, trade union, association, foundation, or religious organization or work in any of them;
- performing the duties of a judge; as well as
- with any activity as an occupation or profession, in the economic sector or employment.

Part V of the Law regulates the investigation procedure, including the right to access to files or administrative or other documents concerning the activity under investigation, including access to confidential and secret files and documents for which the ombudsman is obliged to exercise all necessary discretion and is not allowed to make them available to the public.

Part VI of the Law establishes the obligation of the authorities in BiH to cooperate and provide appropriate assistance to the Institution of Ombudsman in conducting investigations and controls.

Part VII of the Law refers to the right of the Ombudsman to access confidential and secret information with the obligation of discretion and non-disclosure of such information to the public.

Part VIII of the Law regulates the issue of responsibility of BiH authorities and their officials in cases when the Ombudsman's investigation shows that the abuse, arbitrary procedure, discrimination, error, negligence or omission, which is subject of the complaint, was committed by officers in the public authority in BiH. It also establishes a procedure in case of refusal to cooperate, neglect of data submission or jeopardizing the investigation, whereby the ombudsman may, if the competent authority in BiH fails to do so, conduct disciplinary proceedings against the official or, where necessary, initiate criminal proceedings before the court.

Part IX of the Law establishes the right of the Ombudsman to issue recommendations to the BiH authorities in order to adopt new measures as well as the obligation of BiH authorities who receive such recommendations to respond in writing and inform the Ombudsman about the effect of the recommendation within the deadline set by the Ombudsman.

Furthermore, a procedure has been established in the event that the relevant authority in BiH does not take appropriate measures within the deadline set by the ombudsman or if the ombudsmen are not informed of the reasons for their failure to take action.

If the relevant government body does not take appropriate measures within the deadline set by the Ombudsman, or if it does not inform the Ombudsman of the reasons for not taking them, the Ombudsman may notify the minister responsible for that body or the highest body of government about the case and recommendations thereof.

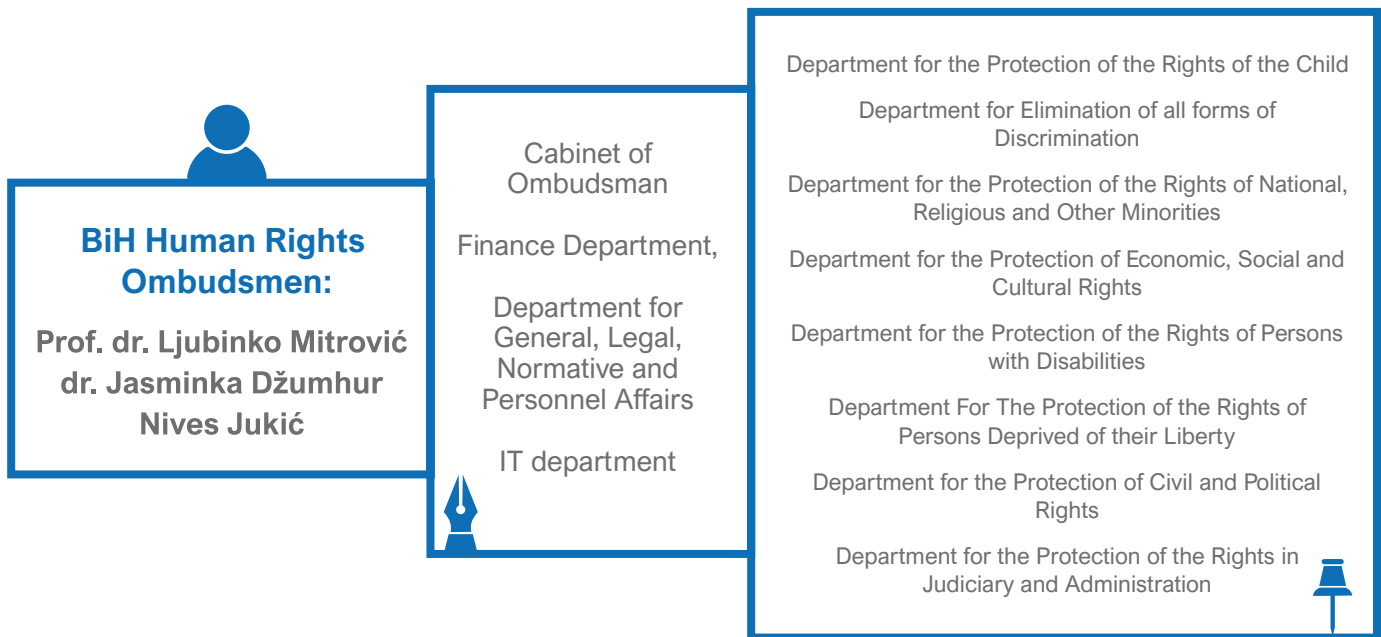
If the Ombudsman subsequently fails to reach a solution in a case in which s/he considers that it was possible to find a positive solution, the problem shall be included in the annual or special report, mentioning the names of the authorities or officials who have taken such a standpoint.

Ultimately, neither the Ombudsman nor the Institution has the authority to amend or repeal government measures or decisions, but can make a proposal to amend the criteria used in the process of their adoption.

Diagram 1. Organizational structure of the Institution of Human Rights Ombudsman of BiH pursuant to the territorial and functional principle:



Diagram 2. Internal organization of the Institution of Human Rights Ombudsman of BiH pursuant to the functional principle by the areas of human rights:



2.2. Special competencies of the Institution of Human Rights Ombudsman of BiH

2.2.1 Law on ministerial appointments, appointments of the council of ministers and other appointments of Bosnia and Herzegovina

In accordance with the Law on Ministerial Appointments, Appointments of the Council of Ministers and Other Appointments of Bosnia and Herzegovina (“Official Gazette of BiH”, No. 07/03 and 37/03), Ombudsmen have the authority to review the appointment process conducted in accordance with the provisions of the aforementioned Law. In addition, this Law also applies to Brčko District of BiH.

In accordance with the Law, in case that there is evidence that the principles or procedures for appointment to public office under this Law have not been complied with, any member of the public may object to the final appointment.

The complaint is submitted to the responsible public official (head of the institution – e.g. minister, director of the administrative body, etc.), and a copy is submitted to the Institution of Human Rights Ombudsman of BiH. The responsible public official is obliged to inform the appellant about the role of the ombudsman within seven days from the day of receiving the complaint.

The Ombudsman may take all measures necessary to examine the complaint. In this regard, the Ombudsman may raise issues related to the appointment procedure to which the complaint relates and may request that the responsible public official submits to his/her office all documents and files related to the aforementioned appointment.

The responsible public official must submit a written response to the complaint to the Ombudsman’s Office within 14 days from the day when the complaint was submitted.

In case that the collected evidence indicates that the final appointment was made in violation of the Law, the Ombudsman is obliged to inform the competent public official in writing about all irregularities that have arisen from the appointment process.

In that case, the Ombudsman is obliged to prepare findings and conclusions regarding the complaint.

Conclusions may contain a recommendation where the evidence indicates a violation of the principles of the Law as well as the appointment procedures established by the Law³. The Ombudsman may, without disclosing confidential information (including candidates' personal data), publish findings and conclusions, including recommendations. Also, the Ombudsman is obliged to submit his/her findings and conclusions to the appellant.

Acting upon the recommendation of the Ombudsman

When the Ombudsman's finding is final on the issue that the appointment procedure has not been conducted in accordance with the provisions of the Law, the Ombudsman may recommend to the responsible public official that the final appointment be revoked and that a new appointment procedure be initiated.

If the ombudsman makes recommendations to the responsible public official with the aim of adopting new measures, the responsible public official is obliged to submit a written response within a certain period of time informing the ombudsman about the procedures and deadlines for conducting these procedures based on the above recommendations.

If the responsible public official does not respond, or if the ombudsman is not satisfied with the stated response, or a proposal of measures based on his recommendations, the ombudsman shall send his/her findings and recommendations regarding the appointment to the Parliamentary Assembly of BiH, in case the appointment refers to a public body of BiH or Assembly of Brcko District, in case the appointment in question refers to a public body in Brcko District.

EXAMPLE No.1 – RECOMMENDATION OF the OMBUDSMAN:

The BiH Human Rights Ombudsmen received a complaint from the appellant, alleging irregularities in the process of electing and appointing four members of the University of Sarajevo's Board of Directors appointed by the Sarajevo Canton Government, and violations of the Sarajevo Canton Law on Higher Education. Following the procedure, the Ombudsmen issued a recommendation to the Government of Sarajevo Canton to consider amending the Law on the Civil Service of Sarajevo Canton in terms of clearly defining the conditions under which a civil servant may be a member of the board, supervisory board, assembly, administration or management, or, in the capacity of an authorized person taking into account the statements from the recommendation.

This recommendation has not been implemented.

EXAMPLE No.2 – RECOMMENDATION OF the OMBUDSMAN:

Ombudsmen received an objection to the Decision on the appointment of the director of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities, stating that the Law on Ministerial, Governmental and Other Appointments of the Federation of BiH was incorrectly applied during the selection and appointment procedure. The Ombudsmen reviewed the entire documentation from the case file and concluded that the disputed Decision on the appointment of the Fund's director was made in 2015, while the appellant filed a complaint against it with the Ombudsman Institution in 2017. Although the Law on Government, Ministerial and Other Appointments of the Federation of Bosnia and Herzegovina does not prescribe a deadline for filing complaints, Ombudsmen of Bosnia and Herzegovina stated that when filing a complaint, interested parties must adhere to a certain deadline. In relation to the key appellate allegations from the complaint, which referred to the fact that the appointed candidate did not meet the conditions prescribed by the public tender, ie the inconsistency of the information in the Certificate of Work

³ All appointment procedures shall be conducted in a manner that ensures compliance with and application of the following principles:

(A) Legality: The responsible public official shall ensure that all public appointments are made in a lawful manner and in accordance with all applicable rules, regulations, and laws.

(B) Quality: The main principle governing all appointments is the principle of selection on the basis of quality, through a well-informed selection of persons who, in their abilities, experience, and qualities, meet the needs of the regulated body concerned.

(C) Independent Verifications: All appointments are made in a manner that allows them to be verified by an independent third party (including bodies and organizations) that has not participated in the appointment process.

(D) Openness and transparency: The principles of public governance apply to the appointment process. The functioning of the process must be transparent and, unless the information is confidential, details of appointments in regulated bodies must be made public.

(E) Employment Representation: The responsible public official shall endeavor to ensure that the composition of the people and citizens of Bosnia and Herzegovina is generally reflected in the appointment to a public position..

Experience issued by the Director of Securitas BH d.o.o. Sarajevo and the act of the Tax Administration of the Federation of Bosnia and Herzegovina on the work experience of the nominated candidate, Ombudsmen stated that it is indisputable that there is a discrepancy, at the same time emphasizing that they cannot assess whether such discrepancy arose as a result of data falsification or other actions, especially due to the fact that criminal proceedings are being conducted at the Cantonal Prosecutor's Office in Sarajevo. Regarding the allegations in the complaint indicating that the appellant must have had priority in employment due to the fact that he was a person with a disability, Ombudsmen had previously commented on the violation of the Law on Prohibition of Discrimination in Bosnia and Herzegovina in the selection process of appointment of the Director of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities, by which the Government of the Federation of Bosnia and Herzegovina was recommended to reconsider the Decision on giving consent to the appointment of the Director of the Fund.

The stated recommendation has not been implemented.

2.2.2 Law on prohibition of discrimination

Discrimination, as an extremely negative social phenomenon, is prohibited by all domestic and international legal documents (and human rights standards in them) that are in force in Bosnia and Herzegovina. Namely, discrimination is prohibited by the provisions of the Constitution of Bosnia and Herzegovina, but also by the constitutions of the entities, the Statute of Brcko District of BiH and the constitutions of the cantons, as well as all laws governing certain areas of life and work of man and citizens (employment, social protection, rights to education, children's rights, family rights, judiciary and administration - equality of all persons on courts and tribunals, membership in professional organizations, public communications and media, etc.).

The Law on Prohibition of Discrimination ("Official Gazette of BiH" No. 59/09 and No. 66/16) introduced a revolution into the legal system of Bosnia and Herzegovina defining forms of discrimination (direct and indirect discrimination, harassment, sexual harassment, mobbing, segregation, issuing orders to others to discriminate and aid others in discrimination, incitement to discrimination, multiple, repeated and prolonged discrimination) and established protection mechanisms, in which the central role is entrusted to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina. In line with the Law, a special Department for the elimination of all forms of discrimination was established. This created the organizational preconditions for receiving and acting on complaints regarding discrimination.

The Law establishes the broad competencies of the Ombudsman Institution as the central mechanism for protection against discrimination in BiH. In that sense, the Ombudsman Institution is competent to:

- a. receive individual and group complaints regarding discrimination;
- b. provide individual and legal entity who have filed a complaint against discrimination with the necessary information on their rights and obligations, as well as the possibilities of judicial and other protection;
- c. regarding the complaint, the Ombudsman of BiH may decide not to accept the complaint, or to initiate an investigation procedure in accordance with special regulations;
- d. proposes the initiation of mediation proceedings in accordance with the provisions of the Law on Mediation;
- e. collect and analyze statistics on cases of discrimination;
- f. submits annual, and if necessary extraordinary reports, on the occurrence of discrimination in the parliaments of BiH, entities and Brcko District BiH
- g. inform the public about the phenomena of discrimination;
- h. on its own initiative, conducts research in the field of discrimination;
- i. gives opinions and recommendations with the aim of preventing and combating discrimination, and proposes appropriate legal and other solutions to the competent institutions in BiH;
- j. has the right to initiate and participate in the procedure for protection against discrimination for misdemeanors prescribed by this Law;
- k. monitors legislation and provides advice to legislative and executive bodies;
- l. works on the promotion of this law, informs the public, raises awareness, conducts campaigns and in other ways actively promotes the fight against discrimination for the purpose of its prevention;
- m. promotes policies and practices aimed at ensuring equal treatment

When preparing regular reports, statements and recommendations on discrimination, the Ombudsman of Bosnia and Herzegovina cooperates with the civil society organizations dealing with the protection and promotion of human rights and organizations dealing with the protection of the rights of groups at high risk of discrimination.

The Ombudsman of Bosnia and Herzegovina provides assistance to persons or groups of persons who apply to international bodies for protection against discrimination by providing instructions, advice, consultations during the proceedings, proposals and recommendations.

All state institutions, entity, cantonal and bodies of the Brčko District of Bosnia and Herzegovina, municipal, institutions and legal entities with public authority, and other individual and legal persons are obliged, at the request of the Ombudsman of Bosnia and Herzegovina, to submit the required data and documents no later than 30 days from the date of receipt.

Otherwise, in accordance with the Law (Article 15, paragraph (1)), in the case when on the basis of available evidence it seems probable that discrimination has occurred, the burden of proving that there has been no discrimination lies on the opposite side.

Competent institutions in BiH have the obligation to cooperate with the Ombudsman of Bosnia and Herzegovina and provide written answers and notifications within the deadline set by the Ombudsman of Bosnia and Herzegovina and the effect of recommendations made to eliminate discrimination.

Under Chapter VI. Article 19, paragraph (4) of the Law (Penal and Misdemeanor Provisions) stipulates that if a legal entity or individual person fails to act upon the recommendation of the Ombudsman of Bosnia and Herzegovina, the legal entity shall be fined in the amount of 2,500 to 6,500 KM, and the responsible person in the legal entity, or an individual will be fined in the amount of 1,000 to 3,000 KM.

Furthermore, the Law stipulates that in case of violation of Article 7 para. (6) and (7) of the Law, ie. obligations, to submit the requested data and documents/cooperation with the Ombudsman Institution)⁴:

A legal entity will be fined for a misdemeanor in the amount of 1,000 to 5,000 KM, a responsible person within an institution in the amount of 500 to 1,500 KM, as well as an individual of the responsible institution with a fine in the amount of 450 to 1,000 KM if:

- a. fails to submit data or documents at the request of the Ombudsman of Bosnia and Herzegovina, or fails to submit them within the prescribed period and does not allow access to them, contrary to Article 7 (Central Institution for Protection against Discrimination), paragraph (6) of this the law;
- b. does not cooperate with the Ombudsman of Bosnia and Herzegovina and does not provide written answers, or notifications, or does not report on the effect of recommendations made with the aim of eliminating discrimination.

EXAMPLE No.1 – RECOMMENDATION OF the OMBUDSMAN:

Ombudsmen acted in a case where the appellant pointed out that she had been absent from work for a long time (due to a high-risk pregnancy), that during that time the employer had violated the provisions of the Labor Law in the Institutions of Bosnia and Herzegovina and the Rulebook on Internal Organization of Bosnia and Herzegovina with a job description for the position where the appellant was employed (the position needed one executor), another person was provided for an indefinite period of time. At the same time the appellant was offered a lower rank position after the amendment of the Ombudsmen, in relation to the position she held before pregnancy. Following the investigation, the Ombudsmen determined that the appellant was a victim of discrimination on the grounds of sex - pregnancy, and in the field of work and working conditions, the Ombudsmen, on 31.12.2018 issued a recommendation to the Independent System Operator in Bosnia and Herzegovina to take actions that will result in the elimination of the committed discrimination.

⁴ (6) Sve državne institucije, entitetske, kantonalne i tijela Brčko Distrikta Bosne i Hercegovine, općinske, institucije i pravna lica s javnim ovlaštenjima, te ostala pravna i fizička lica dužna su, na zahtjev Ombudsmena Bosne i Hercegovine, najkasnije u roku od 30 dana od dana zaprimanja zahtjeva, dostaviti tražene podatke i dokumente.

(7) Nadležne institucije u Bosni i Hercegovini obavezne su saradivati s Ombudsmenom Bosne i Hercegovine i davati pismeno odgovore i obavještenja u roku koji je Ombudsmen Bosne i Hercegovine odredio, kao i o efektu preporuka datih s ciljem otklanjanja diskriminacije.

EXAMPLE No.2 – RECOMMENDATION OF the OMBUDSMAN:

Ombudsmen acted on the complaint of a professor at the Faculty of Philosophy, University of Sarajevo, in which the appellant stated that he had been exposed to mobbing for a long time by the Dean, and that he had been given a written warning issued by the Dean on May 3, 2018., for breach of duty, without presenting the reasons that led to such a decision and without prior disciplinary proceedings. Acting upon the complaint, and after the conducted investigation procedure, the Ombudsmen on June 18, 2018., sent recommendation number P-136/18 to the University of Sarajevo and the Faculty of Philosophy to put out of force a written warning to the employee dated 03.05.2018., and to ensure the mechanism for protection against discrimination within the Faculty of Resolution and Prevention. In addition, to take measures to implement Article 24, paragraph 4 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina, according to which all public bodies and other legal entities are obliged to their general legal acts, or through special legal acts, regulate the principles of equal treatment and ensure effective internal procedures for protection against discrimination.

The Ombudsman's recommendation no. P136 / 18 was adopted.

2.3. Rules of procedure of the Institution of human rights Ombudsman of Bosnia and Herzegovina

This regulation establishes the rules of procedure of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH" No. 104/11) regarding complaints alleging violations of human rights and fundamental freedoms of citizens, or conducted by ombudsmen ex officio, and regulate other issues of importance for the work of the Ombudsman Institution. The key elements of the regulations are as follows:



The institution of the Ombudsman of BiH is independent of all state authorities and will not receive any orders or instructions in the performance of its function.



In performing their function, the Ombudsman of BiH are independent and nobody or person can interfere in the operations of the Institution.



It is the obligation of all authorities to cooperate and to ensure that the ombuds institution has access to information, including secret and confidential information.



Regular or extraordinary legal remedies cannot be declared against decisions and other acts of the BiH Ombudsman.

PROCEDURE INITIATION	<ul style="list-style-type: none"> • By complaint of legal entity or individual; • Ex officio;
COMPLAINT FORM AND MANNER OF SUBMISSION	<ul style="list-style-type: none"> • Written Form; • Submission by mail, fax, email;
COMPLAINT FORM AND CONTENT	<ul style="list-style-type: none"> • Personal data about the appellant (name and surname, occupation, gender, date and place of birth, address (nationality, if available), • Data on the proxy ie contact person, if any, • Information of the body to which the complaint relates, • Brief statement of facts that indicate the violation of rights, • Statement as to whether and when proceedings have been instituted with another authority in connection with the case, • A statement issued by the appellant as to whether s/he requests that his/her identity and the circumstances of the case be kept secret, • Date of appeal and signature of the appellant, • Notice that the proceedings before the Ombudsman Institution are free of charge and that the appellant is still obliged to use regular legal procedures and respect the deadlines for the use of legal remedies before courts or administrative bodies.
POSSIBILITY OF MERGER OR SEPARATION OF PROCEDURES	<ul style="list-style-type: none"> • Possibility of merging several complaints into one case if they relate to the same factual situation, ie. the same cause of violation of human rights and freedoms, • Possibility of separation of proceedings and formation of special cases if one complaint alleges multiple human rights violations committed against the same appellant by several responsible parties, or is in the complaint.
PRELIMINARY PROCEDURE	<ul style="list-style-type: none"> • Registration of each complaint received, whether it is admissible or not; • Preliminary examination of the complaint, ie. establishing procedural preconditions for considering cases such as the orderliness and admissibility of the appeal;
LACK OF GROUNDS FOR ACCEPTANCE OF THE COMPLAINT	<ul style="list-style-type: none"> • In case of receiving an appeal orally, by telephone, email, or fax, which are deemed to have no grounds for acceptance, the appellant is provided with expert assistance on which body and by which procedure s/he can exercise his/her possible right; • Obligation to record appeals and provided professional assistance with the obligation to make an official note - the complaint is not registered in that case; • Official notes are made on all contacts with the appellant, as well as on all actions and activities taken and entered in the case file;
REFUSAL TO ACCEPT THE COMPLAINT	<ul style="list-style-type: none"> • in case of an anonymous complaint; • in case of a complaint that is considered to be malicious; • in case of an appeal that is found to be unfounded; • in case of an appeal that does not contain any request; • in case of a complaint that entails a violation of the legitimate rights of a third party; • in case of an appeal filed after more than one year from the facts, events and decisions to which the appeal relates; • if an appellant had not exhausted all legal remedies, which was reasonable to expect from him; • if a complaint is incomplete or incomprehensible, and the appellant has failed to supplement or correct it at the request of the ombudsman; • if the applicant has withdrawn the appeal; • a complaint that is basically identical to the case already considered by the Ombudsman of BiH, and does not contain new relevant information; • a complaint concerning the facts as before 14 December 1995; • in all mentioned cases the ombudsman is obliged to make a decision on the inadmissibility of the complaint, of which s/he is obliged to inform the appellant in writing as soon as possible, stating the reasons for non-acceptance, with possible advice on other possibilities of resolving the case;
EX OFFICIO INITIATION OF THE INVESTIGATION PROCEDURE	<ul style="list-style-type: none"> • if, based on the knowledge, the Ombudsman of BiH assesses that there is a serious violation of human rights, or fundamental freedoms of the individual, or mass violations of rights, or freedoms, or that citizens are discriminated against on a prohibited basis, and citizens out of fear or other justified reasons do not want to appeal; • if, based on the information, the Ombudsman of BiH assesses that there is a violation of someone's basic rights and freedoms, and there is a physical impediment of the endangered person to file a complaint.

<p>STARTING AND CARRYING OUT INVESTIGATIONS</p>	<p>When BiH Ombudsman decides that a complaint, or a case initiated ex officio, indicates a possible violation of the appellant's rights, s/he will initiate an investigation procedure which includes:</p> <ul style="list-style-type: none"> • obtaining the necessary documentation, • requesting a statement from the responsible party, • inspecting the appropriate file, • consideration of the possibility of mediation in order to peacefully and efficiently resolve the case presented in the complaint etc. <p>The appellant, the authority, or the responsible party to which the case relates, shall be notified of the actions taken, and the the Ombudsman of BiH shall request a statement from the responsible party within a certain period that may be extended if the circumstances so require.</p> <p>Refusal to act upon the request of the Ombudsman of BiH shall be considered a refusal to cooperate, of which the higher body shall be directly notified. Any form of non-cooperation with the Institution of the Ombudsman of BiH is recorded and published in the Annual Report.</p> <p>If the body or service fails to submit its response or position within the set deadline, the Ombudsman may continue to consider the complaint without the requested response;</p> <p>The Ombudsman shall submit the response of the public authority to the appellant in writing if that response is not considered confidential in nature, or secret, with a deadline for a written statement on the allegations in the response.</p> <p>If the response of the authority determines that there are no grounds for further action, the party will be notified of the closure of the case (Article 35 of the Rules of Procedure).</p> <p>If the appellant does not comment on the response of the authority within the given deadline, it will be considered that he has lost interest in further proceedings,</p> <p>During the investigation, the ombudsman may request assistance from any person, body, or service s/he deems to be able to assist in resolving the case, and they have access to any authority or officer, in order to verify all necessary information, conduct individual interviews, or studying the necessary writings and documents.</p> <p>When during the investigation the Ombudsman of BiH determines that the execution of the decision of the administrative body may cause an unacceptable violation of the rights of the appellant, s/he may propose to the competent body to suspend the execution of the disputed action for a period not longer than 10 days.</p> <p>The responsible body to which the suspension applies may, within three days from the day of receipt of the proposal, and in any case before the execution of the disputed action, refuse to comply with the proposal, explaining, in a written document addressed to the BiH Ombudsman, the reasons.</p>
<p>MEDIATION BETWEEN THE PARTIES</p>	<p>During the proceedings, the ombudsman strives for mediation between the parties, all with the aim of amicably resolving the disputed situation indicated in the complaint, and peaceful, efficient and quality resolution of cases.</p>
<p>CLOSING CASES</p>	<p>The Ombudsman of BiH will close the case and make a decision on closure in the following cases:</p> <ol style="list-style-type: none"> 1) if the appellant does not participate in the procedure without a justified reason, despite the invitation by the Ombudsman of BiH, 2) if the appellant withdraws the complaint, and the Ombudsman of BiH considers that conducting the investigation on his own initiative would have no meaning, 3) if the responsible party during the procedure eliminates the indicated violation of the rights and freedoms indicated in the appeal, 4) if the parties reach an amicable solution, 5) if the appeal is unfounded, 6) if the Ombudsman of BiH, after conducting an investigation, determines that there are any of the reasons regarding the inadmissible complaint, 7) if it is determined that this is not a violation of the rights and freedoms protected by the ombudsman, 8) if the recommendation is accepted, or when the recommendation is not accepted, and the ombudsman has subsequently taken actions in accordance with the Law.
<p>RECOMMENDATIONS OF OMBUDSMEN AND PUBLICITY OF WORK</p>	<p>If the Ombudsman of BiH finds that a violation of rights and freedoms has been committed, s/he may recommend to the competent authorities and officials to take measures to eliminate violations of human rights and freedoms, or poor functioning of public administration.</p> <p>All recommendations of the BiH Ombudsman are available to the public, except in cases where they relate to confidential and secret matters, or when the appellant explicitly requests that his name and the content of the complaint not be disclosed.</p> <p>The publicity of the work of the Ombudsman of BiH is ensured, among other things:</p> <ul style="list-style-type: none"> • by informing the public about certain cases through the media, • by publishing decisions and reports, • by posting decisions and reports on the website of the Ombudsman of BiH.

2.2.3 What the ombudsmen institution cannot do?

Institution of Human Rights Ombudsman of BiH:

- * cannot change the decisions of public authorities,
- * cannot take on the role of a body acting on a complaint,
- * cannot interfere in the judicial decision-making process,
- * does not represent appellants before public authorities,
- * does not write submissions or appeals on behalf of the appellant,
- * cannot award compensation for established human rights violations.



2.4. Annual report of the Institution of human rights ombudsman of bih for 2019

In accordance with the Law on the Human Rights Ombudsman of BiH, the Ombudsman Institution submits to the Presidency of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska an annual report on the results of the Institution's activities.

The annual report is publicly presented and submitted to the professional public, professional organizations, domestic and international organizations, civil society, the media and citizens.

The annual report must contain:

- total number and nature of complaints received,
- the number of complaints that the Ombudsmen did not consider, as well as the reasons for that,
- the number of complaints that were the subject of the investigation, as well as the findings of the acting lawyers on it,
- data on the number of issued recommendations of the Ombudsman that were accepted by the responsible authorities are presented, as well as
- statistical data related to the number of issued recommendations that were not accepted by the responsible authorities, the so-called unrealized recommendations.

During 2019, a total of 3218 complaints were registered.

TYPE OF VIOLATION OF RIGHTS:	NO. OF CASES:
violations of civil and political rights	978
violation of rights in the judiciary and administration	851
economic, social and cultural rights	801
all forms of discrimination	206
violations of children's rights	198
violations of the rights of persons deprived of their freedom	129
violations of the rights of persons with disabilities	48
violations of the rights of national and religious minorities	7
TOTAL	3.218

Complaints indicate that citizens have difficulty accessing efficient judiciary, public administration, employment, and social rights, and that these violations are often caused by high levels of poverty, corruption, and migration.

During 2019, a total of 304 recommendations were issued in 374 cases, of which 105 were fully implemented, nine partially implemented and 77 recommendations according to which cooperation with the Ombudsman Institution was achieved.

Certain recommendations, given their complexity, require a longer period of implementation.

It is worrying that in 124 recommendations there was no reaction from the responsible authority.

Type of implementation of recommendations	Number of cases
Realized	105
Partially realized	9
Cooperation achieved	77
No answer	124
Not realized	59
TOTAL	374

Overview of the number of complaints with a recommendation issued during 2019 and the number of recommendations by each department is presented in the following table:

DEPARTMENT	Number of complaints with the recommendation issued in 2019	Number of recommendations by the departments in 2019
Department for the Protection of the Rights of the Child	24	23
Department for the Protection of the Rights of Persons with Disabilities	4	3
Department for the Protection of the Rights of National, Religious and Other Minorities	0	0
Department for the Protection of Economic, Social and Cultural Rights	97	56
Department for the Protection of Political and Civil Rights	175	161
Department for elimination of all forms of discrimination	42	31
Department for the Protection of the Rights of Persons Deprived of Their Liberty	6	6
Department for the Protection of Rights in Judiciary and Administration	26	24
TOTAL	374	304

2.4.1 Civil and political rights

The International Covenant on Civil and Political Rights obliges Bosnia and Herzegovina to respect the civil and political rights of the individual, including the right to life, freedom of religion, freedom of speech, freedom of assembly, suffrage and the right to a fair trial.

The largest number of registered complaints in the past ten years relates to violations of rights by the judiciary and administrations. For this reason, in 2019, the Ombudsmen decided to establish a special department in addition to the Department for the Protection of Civil and Political Rights, which deals exclusively with complaints related to violations of rights in the field of justice and administration.

The largest number of complaints in 2019, as in previous years, was registered within the Department for the

Protection of Political and Civil Rights.

The work of the Department for the Protection of Political and Civil Rights, in 2019, focused on the following cases:

TYPE OF VIOLATION OF RIGHTS:	NUMBER OF CASES:	NUMBER OF RECOMMENDATIONS:
Access to Information	275	57
Property-legal relations	169	8
Police ⁵	154	5
Inspections	80	5
Government and ministerial appointments	56	27
Migration and Asylum	52	10
War damage	50	2
Public documents	42	8
Media and freedom of the information	8	
Free Legal Aid	5	
Corruption	4	
Freedom of assembly	3	
Religious freedoms		
TOTAL	978	175

TERRITORIAL CASE REPRESENTATION:	NUMBER OF CASES:
Seat of the Institution in Banja Luka	325
Regional Office Sarajevo	397
Regional Office Mostar	65
Regional Office Brčko	90
Field Office Livno	101
TOTAL	978

Out of the total number of issued recommendations, 51 recommendations were implemented, 2 were partially implemented, cooperation with the responsible authorities was achieved in 38 recommendations, 29 recommendations were not implemented, and there are no answers for 55 issued recommendations.

The largest number of registered cases within this department related to violations of rights concerning access to information.

The most common reason for addressing the Institution in 2019 was:

- failure to decide within the legally prescribed deadline,
- inability to use a legal remedy, and
- refusing access to information that citizens believe should be available because it is in the public interest.

⁵ Treatment of citizens by police authorities, problems with the employment status of police officers, including issues of rank and promotion.

In 2019, 275 complaints were received, and 57 recommendations were issued related to:

- silence of administration, ie. failure to act upon requests for access to information and on appeals against first instance decisions,
- failure to provide a legal remedy in the decisions,
- establishing exceptions in situations where information does not constitute exceptions,
- failure to conduct a public interest test, or inadequate conduct of a public interest test,
- failure to appoint an information officer and similar.

In 2019, the total number of registered cases related to **government and ministerial** appointments was 56. In 27 cases, a recommendation was issued ordering the responsible public official to cancel the appointment procedure. Out of that, two recommendations were implemented, cooperation with the bodies was achieved for five recommendations, six of them were not implemented, and there are no answers for 12 issued recommendations.

Complaints refer to violations of the following principles of the Law:

- the area of appointment during the implementation of procedures for the appointment of members of management and supervisory boards in public companies and institutions,
- non - application of objective criteria, and
- non-transparency in the decision-making process.

2.4.2 Judiciary and public administration

2.4.2.1 Judiciary:

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms - The Right to a Fair Trial reads: *“ In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law... “*.

The position of the European Court of Human Rights in Strasbourg is that the states signatories to the European Convention on Human Rights are obliged to organize legal systems that will ensure compliance with Article 6 of the Convention (conducting proceedings in civil matters and criminal charges, on courts and other state bodies without delays and to be completed within a reasonable time).

The right to a fair trial, in addition to the right to a trial within a reasonable time, includes the right to unimpeded access to justice, the right to legal aid, the right to legal certainty, the right to procedural equality and the right to a clear and fully reasoned decision. Therefore, the principle of the rule of law in modern legal systems implies the obligation of the signatory states to the Convention to provide an effective system of guarantees and respect for rights in court proceedings, which ultimately leads to the timely administration of justice.

An analysis of 504 complaints received by the Ombudsman Institution during 2019, which relate to the field of justice, it can be concluded that citizens mostly turn due to the violation of the following rights:

TYPE OF VIOLATION OF RIGHTS:	NO. OF CASES:
Inadequate length of judicial proceedings	101
Ineffective enforcement of judicial decisions	56
Complaints against the work of judges due to violations of the provisions of procedural laws	20
Complaints related to other violations of rights related to judicial proceedings ⁶	12
Complaints related to the work of prosecutor's offices in Bosnia and Herzegovina	80

⁶ Violations of the principle of impartiality, failure to make court decisions in the manner prescribed by law and within the time limit, inconsistency of jurisprudence.

TERRITORIAL REPRESENTATION	NUMBER OF CASES:
Seat of the Institution in Banja Luka	244
Regional Office Sarajevo	302
Regional Office Mostar	19
Regional Office Brčko	63
Field Office Livno	223
TOTAL	851

26 recommendations were issued, of which five were fully implemented, cooperation was achieved within five recommendations, three recommendations were not implemented and in 13 cases the designated responsible authority did not provide feedback regarding the recommendation.

2.4.2.2 Public administration:

The right of citizens to good governance is regulated, among other things, by Article 41 of the Charter of Fundamental Rights of the European Union. This right is also regulated by the laws on (general) administrative procedure at the level of BiH and the entities, especially through the principle of protection of citizens' rights and protection of public interest, the principle of efficiency, the principle of hearing the party and other provisions guaranteeing the right to access and participate in proceedings, the right to appeal, the right to assistance, the prohibition of discrimination, etc.

The quality of public services and the work of public administration bodies for citizens is a tangible indicator of the functionality of a particular state. Good public administration should be at the service of the community and promote societal confidence in the executive, contribute to political stability, and foster economic development and social well-being

In the reporting period, Ombudsmen handled 322 complaints related to the violation of the right to good administration.

Citizens' complaints about the work of public administration bodies, as in previous years, most often refer to:

- duration of the administrative procedure,
- the inefficient reaction of inspection services,
- silence of administration,
- failure of the competent authorities to act within the legal deadlines when deciding on the requests of the parties,
- inappropriate behavior of officials,
- insisting on the submission of a large number of unnecessary documents,
- referral of parties from one body to another,
- violations of procedural provisions governing administrative procedure and misapplication of substantive regulations in general,
- the length of decision-making procedures in the second instance, and the return of cases to first-instance bodies for renewal of administrative procedure.

2.4.3 Economic, social and cultural rights

Economic, social and cultural rights are guaranteed by the constitutions of Bosnia and Herzegovina, the Republika Srpska and the Federation of BiH, as well as the constitutions of the ten cantons and the Statute of the Brcko District of Bosnia and Herzegovina. These rights are more precisely regulated by laws at the level of entities and cantons and the Brčko District, since according to the constitutional order of Bosnia and Herzegovina, they are in their exclusive jurisdiction.

During 2019, a total of 801 cases were registered within the Department for the Protection of Economic, Social and Cultural Rights, which is 24 cases less than in 2018. From previous years, 506 cases remained in the process of resolution, so that a total of 1,307 were pending. Out of this total number, 445 cases were completed.

The largest number of received complaints relates to:

- violation of the right to work; the most noticeable violations are competition procedures during employment, illegalities related to the termination of employment contracts, procedures related to promotion,
- non-payment of contributions for pension and disability insurance, and
- non-payment of salaries to workers by the employer.

VIOLATION OF RIGHTS	NUMBER OF CASES:	NO. OF RECOMMENDATIONS
Labour	281	51
Pensions	217	11
Utilities	92	5
Social Protection	82	4
Health	74	19
Education	33	3
Ecology - environmental protection	21	6
Public revenues	4	
TOTAL	801	97

TERRITORIAL REPRESENTATION	NUMBER OF CASES:
Seat of the Institution in Banja Luka	198
Regional Office Sarajevo	378
Regional Office Mostar	51
Regional Office Brčko	127
Field Office Livno	50
TOTAL	801

2.4.3.1 Pensions:

During 2019, 217 complaints were registered regarding violations of pension insurance rights. A total of 11 recommendations were issued.

The registered complaints concerned:

- the length of proceedings in the first and second instance in connection with the recognition of the right to a pension, as well as certain irregularities in the calculation of the monetary amount of pensions,
- slow procedures for recognition and exercise of rights if the appellant has completed his/her work experience in other countries.

2.4.3.2 Utilities:

In 2019, 92 cases related to utility problems were registered. Five recommendations were issued.

The registered complaints concerned the following:

- non-performance of services by utility companies, problems related to water supply,
- requirements for connection to the water supply and electricity distribution network,
- provision and denial of services by utility companies, irregularities in the calculation of utility services,
- obsolescence of utility claims, etc.

2.4.3.3 Social protection:

During 2019, 82 complaints were registered and four recommendations were issued. Complaints relate to the failure to resolve requests for one-time financial assistance for the needs of housing, problems related to the recognition of the right to someone else's care, assistance and similar.

2.4.3.4 Health:

In 2019, 74 cases in the field of health care were registered; recommendations were issued in 19 cases.

Complaints related to the inability to reimburse the costs borne by health insurance funds, the inability to provide health care due to unavailability of drugs to certain categories of patients according to their actual needs, which resulted in the opening of a number of ex officio cases related to this issue.

2.4.3.5 Education:

In the field of education, in 2019, 33 cases were registered, and three recommendations were issued. Complaints in the field of education refer to failure in making decisions by the ministries responsible for education, the inability to attend the school where schooling began during the school year, as well as poor material conditions, or inadequate space for teaching. A number of cases related to the procedure of conducting competitive procedures at higher education institutions, accreditation of higher education institutions, the equivalence of diplomas and non-recognition of appropriate titles in teaching and scientific areas within higher education.

2.4.4. Children's rights:

At the international level, the rights of the child are guaranteed by the UN Convention on the Rights of the Child (which has priority over domestic law, given that it has the force of a constitutional norm), as well as other international conventions ratified by Bosnia and Herzegovina.

On the other hand, the rights of the child are guaranteed by many domestic laws, such as family laws, laws on protection from domestic violence, laws on protection and treatment of children and juveniles in criminal proceedings, etc.

During 2019, the Department for the Protection of Children's Rights received 198 complaints. In cases where violations of children's rights were found, the BiH Ombudsmen issued 23 recommendations. Analyzing the complaints received during the reporting year, it is evident that the complaints most often related to work of:

- centers for social work,
- courts,
- prosecutor's offices,
- educational institutions,
- inspection bodies, i
- other competent administrative bodies.

In 2019, Ombudsmen drafted and presented to the public a Special Report on the Prohibition of Corporal Punishment of Children in Bosnia and Herzegovina. The report states that *"violence against adults is prohibited and punishable in all situations and environments, while violence against children is prohibited and punishable only in educational institutions, social welfare institutions and institutions for the execution of criminal sanctions"*.

Bosnia and Herzegovina therefore has an obligation to take all necessary measures to explicitly prohibit the corporal punishment of a child in all settings, including the family. The competent authorities have one year left to act upon the recommendations from the Special Report, and in 2020 the Ombudsmen will monitor the implementation of these recommendations.

2.4.5 Rights of persons with disabilities:

The United Nations Convention on the Rights of Persons with Disabilities is the first comprehensive document guaranteeing the rights and freedoms of persons with disabilities.

In addition to the Convention, there are a number of other international documents that guarantee the rights and freedoms of persons with disabilities, including the following:

- Universal Declaration of Human Rights,
- International Covenant on Civil and Political Rights,
- International Covenant on Economic, Social and Cultural Rights and others, which proceed from the basic principle that every human being has innate, equal, inalienable and universal rights arising from the dignity of the human being.

In 2019, 48 cases in this area were registered with the Institution, and four recommendations were issued.

Cases received in the reporting period relate mainly to:

- problems in exercising rights in the field of social and health care,
- rights from pension and disability protection,
- rights to education,
- employment,
- accommodation in social welfare institutions, as well as
- the issue of accessibility of public transportation.

2.4.6 Discrimination:

The principle of equality and non-discrimination is part of all international treaties and declarations of human rights, as well as the Constitution of Bosnia and Herzegovina (Article II, paragraph 4), the Constitution of Republika Srpska and the Federation of Bosnia and Herzegovina and the constitution of all ten cantons in FBiH, while the significance of the Law on Prohibition of Discrimination in Bosnia and Herzegovina is immeasurable.

The law defines the legal and institutional framework for combating discrimination in Bosnia and Herzegovina, and entrusts the Ombudsman Institution with the status of “*central institution responsible for protection against discrimination*”.

During 2019, a total of 206 cases were registered in the Department for the Elimination of All Forms of Discrimination, and 42 recommendations were issued. The largest number of complaints in the reporting period related to:

- mobbing, as a special form of discrimination in the workplace (a significant increase compared to the previous year is evident),
- discrimination based on national or social origin,
- discrimination on the grounds of membership in a trade union or other association,
- age discrimination,
- discrimination based on religion, and
- discrimination based on ethnicity.

There are more and more cases of multiple discrimination, so that the whistleblower on a certain basis in some future period would be additionally exposed to victimization.

94 cases were registered in which the parties did not specify the basis of discrimination, which is a consequence of the provision of Article 2 of the Law on Prohibition of Discrimination of Bosnia and Herzegovina, which exhaustively states prohibited grounds of discrimination. Article 2 provides as a basis for discrimination “any other circumstance that has the purpose or consequence of preventing or endangering any person’s recognition, enjoyment, or exercise on an equal basis of rights and freedoms in all areas of life”.

2.4.7 Rights of persons deprived of freedom:

In the reporting period, the Institution received 129 complaints, which is a decrease of 10.42% compared to 2018. 110 complaints were received at the Sarajevo Regional Office, and 18 complaints at the Institution's seat in Banja Luka.

Analyzing the structure of submitted complaints, it is evident that the largest number refers to:

- dissatisfaction with the quality of health care provided in these institutions,\
- denial of the use of non-institutional benefits,
- transfer to another institution,
- use of the possibility of conditional release,
- unsatisfactory conditions of accommodation and treatment in institutions,
- some form of ill-treatment, i.e. misconduct by staff, or violence by other prisoners,
- visits by family members,
- resolving statutory issues, etc.

A number of complaints also related to the review of judicial proceedings and final court decisions, but the Ombudsmen in this case inform the appellants that they cannot act in such cases, because, according to the law, they cannot interfere or influence judicial decisions.

During 2019, Ombudsmen presented to the public a Special Report on the situation in detention facilities in certain police administrations in Bosnia and Herzegovina.

TOTAL OVERVIEW OF STATISTICAL INDICATORS, BY DEPARTMENTS FOR 2018 AND 2019

DEPARTMENT	Received in 2019	Carry forward from previous years	Processed in 2019	Completed in 2019	Transferred to 2020
Department for the Protection of economic, social and cultural rights	801	506	1307	838	469
Department for The Protection of Political and Civil Rights	978	1066	2044	1320	724
Department for the Elimination of All Forms of Discrimination	206	207	413	214	199
Department for The Protection of the Rights of Persons Deprived of their liberty	129	74	203	114	89
Department for The Protection of Rights in the Judiciary and Administration	851	0	851	502	349
Department for The Protection of Children's Rights	198	144	342	180	162
Department for The Protection of the Rights of Persons with Disabilities	48	18	66	29	37
Department for The Protection of the Rights of National, Religious and Other Minorities	7	6	13	8	5
TOTAL	3218	2021	5239	3205	2034

3. Right to free access to information

3.1. Law on freedom of access to information in BiH

Freedom of access to information is:

- the conditio sine qua non of the democratic order of each state,
- represents a constitutional category that appears as an independent right, ie as an integral part of the right to free expression established by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 19 of the United Nations Universal Declaration of Human Rights, Article 19 and United Nations political rights, Council of Europe recommendations, etc.,
- an extremely important tool in ensuring the rule of law and good governance,
- guarantor of control of elected representatives by citizens and protection against abuse of power,
- the basis for citizen participation in setting government priorities and is linked to the concept of good government, which means an open government that operates on the principles of efficiency, transparency and legality.

Bosnia and Herzegovina was the first country in the region which adopted the Law on Freedom of Access to Information (FOIA) in 2000, first at the state level and then in 2001 in both entities.

Over time, with the evolution of the international and EU legal framework, as well as the development of the Internet and electronic media, FOIA BiH has been partially improved through several amendments, the most important of which were:

- ✓ prescribing the obligation of making a decision upon the request for access to information,
- ✓ penal provisions, and
- ✓ prescribing the competencies of the administrative inspectorate in cases of non-compliance with the provisions of the aforementioned Law (Administrative Inspectorate of the Ministry of Justice of Bosnia and Herzegovina).

The FBiH FOIA was amended once – the obligation to issue a decision upon the request for access to information and issues of the second instance body that decides on the appeal against the decision has been prescribed. RS FOIA has not been changed so far.

Although the goal of FOIA in BiH is to promote greater transparency of public bodies, FOIA does not prescribe the obligation to proactively publish information on the work of the institution, but is limited to the right of citizens to request any information in administrative proceedings, with the exceptions established by Law.

In December 2018, at its 160th session, the Council of Ministers of BiH, at the proposal of the Public Administration Reform Coordinator's Office, adopted the Policy and Standards of Proactive Transparency and instructed all institutions of the Council of Ministers of BiH to regularly update documents and information published on their official websites.

The purpose of the Policy of Proactive Transparency in Public Administration is to define the standards of proactive disclosure of the information of BiH Institutions with the aim of increasing their transparency. Proactive transparency standards include a set of 38 types of the information to be disclosed. They are divided into following six categories: budget, operational, organizational, strategic documents, and information on public procurement and freedom of access to information.

Proactive disclosure of the information is of public importance because it directly contributes to the realization of the concept of good governance in Bosnia and Herzegovina, restores public confidence in the work of state institutions and provides citizens with greater information about the work of public administration.

Principles of proactive publication of the information on the websites of beneficiary institutions are:

- **timeliness**, which means the publication of the information as fast as possible from the moment of the event;
- **verifiability**, which means the possibility of verifying information from an additional source;
- **regular updating**, which includes the timely publication of changes of the basic content of the information;
- **structuredness**, which implies the orderliness of the information units;
- **searchability**, which means publishing information in machine/electronically readable formats and under an associative title;
- **comparability**, which implies the possibility of comparing information from several identical documents;
- **availability**, which means the ability to use information without the use of specialized software tools and licenses, and through various communication channels and without a time limit.

EXAMPLE No. 1 - RECOMMENDATION P-176/20 REGARDING THE AVAILABILITY OF LAWS AND OTHER GENERAL LEGAL ACTS AT ALL LEVELS OF THE LEGISLATIVE AUTHORITY IN BOSNIA AND HERZEGOVINA:

General legal acts at all levels of government in Bosnia and Herzegovina stipulate that they cannot enter into force before they are published in the official gazettes. All official gazettes in Bosnia and Herzegovina have been established by the executive level of government. In order for citizens to be able to comply with the regulations that apply to them, it is necessary for them to be familiar with their content. Editions of official gazettes are available only to those persons who have subscribed to their printed or electronic editions.

Bearing in mind the fact that a large number of citizens of Bosnia and Herzegovina (Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina) live on the brink of poverty, and having in mind the new situation regarding the COVID-19 virus, most of them are not in the position to afford some form of publication of official gazettes.

Official gazettes in Bosnia and Herzegovina are established as public enterprises or public institutions. Their exclusive activity is of general interest. The general interest is achieved by ensuring that all individuals and legal entities, ie. all citizens, are acquainted with laws, other regulations and general acts. Some official gazettes provide budgets from their own funds earned through their business. However, despite this fact, the Ombudsmen consider that the general interest is much more important in terms of their availability.

Given the above, Ombudsmen consider that it would be appropriate to find technical possibilities to make electronic editions of official gazettes available on official websites. In addition, the Ombudsmen remind that they have issued a recommendation (P-102/20, dated 13 April 2020) ordering the crisis management headquarters in Republika Srpska and Federation of Bosnia and Herzegovina to take the necessary measures to ensure that all decisions of the crisis management headquarters across all the levels of government in BiH are published in all media and on websites of responsible institutions in a completely simple and understandable way to all citizens of Bosnia and Herzegovina, in order to avoid unnecessary different interpretations.

EXAMPLE No. 2 - RECOMMENDATION TO THE CRISIS HEADQUARTERS P-102/20 REGARDING THE PUBLICATION OF DECISIONS DURING THE EMERGENCY/EMERGENCY STATE:

Taking into account the emerging state/emergency related to the spread of coronavirus, based on the Law on Freedom of Access to Information and related to monitoring the implementation of obligations under Article 10 of the European Convention on Human Rights, and in accordance with its powers under Article 32 of the Law on Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina" No. 32/00, 19/02, 35/04, 32/06), Institution of Human Rights Ombudsmen of Bosnia and Herzegovina provide the following to the above-mentioned bodies:

RECOMMENDATION

To take the necessary measures in accordance with their powers so that all decisions of crisis management headquarters at all levels of government are published in all media and on the websites of institutions in a completely simple and understandable way to all citizens of Bosnia and Herzegovina aiming at to avoid unnecessary differences and interpretations.

To inform the Ombudsmen of Bosnia and Herzegovina about the undertaken activities on the implementation of this recommendation within 15 days from the day of receipt.

International experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in Bosnia and Herzegovina", as well as OECD/SIGMA experts within the project "Improving the legislative framework for access to public information in Bosnia and Herzegovina", proposed adoption of a new FOIA BiH (and entities), or revision of the existing legislative framework in BiH on freedom of access to information in accordance with European Union regulations:

- Regulation 1049/2001 of the European Parliament and the Council dated on 30 May 2001 on public access to European Parliament, Council and Commission documents,
- Directive 2003/98 / EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

It is recommended that the new or revised FOIA BiH (and entities) be based on the following EU principles:

- **Principle of publicity and free access:** the information should be available to any domestic or foreign individual or legal entity in accordance with the conditions and restrictions contained in EU legislation and FOIA BiH.
- **Principle of timeliness, completeness and accuracy of the information:** information published or provided by public authorities must be timely, complete and accurate.
- **Principle of equality:** the right to access information, either by proactive publication, or on request, as well as the right to reuse information belongs to all users in the same way and under the same conditions. Users are equal in its realization. Public authorities must not put users in an unequal position, especially not in a way that provides information to certain users before others, or in a way that particularly benefits them.
- **Principle of disposing of the information:** the user who disposes of the information has the right to make this information public.

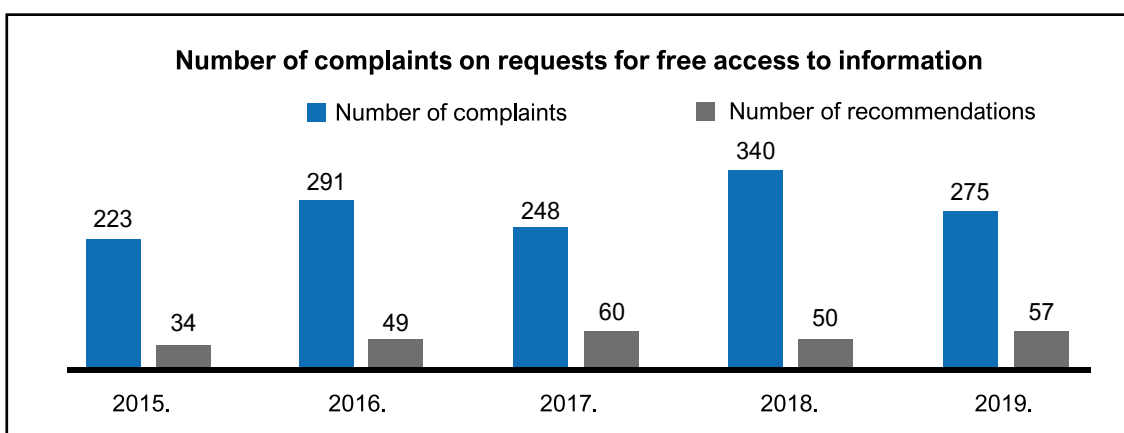
3.1.1 Mandate of the Institution of the ombudsman under the FOIA BiH

In accordance with the provisions of the Law on Human Rights Ombudsman of Bosnia and Herzegovina and the applicable laws on freedom of access to information in BiH, the Institution of Human Rights Ombudsman of BiH:

- handles complaints related to the violation of the right to freedom of access to information,
- conducts investigations ex officio,

- established a mechanism for monitoring the situation in this area by monitoring the implementation of the obligations of the public authority established by the FOIA,
- collects and analyzes statistical data submitted to by public authorities regarding the number of received requests, the type of requested information, established exceptions, as well as decisions made during the procedure and final decisions;
- prepares and submits guides and general recommendations related to the implementation and enforcement of laws within this area,
- regularly, within the annual report, submits to the Presidency of BiH, the Parliamentary Assembly of BiH, the Parliament of the Federation of BiH and the National Assembly of Republika Srpska information related to the application of laws governing freedom of access to information with the recommendations for improvement.

The analysis of data conducted by the Ombudsman Institution indicates that since 2015 there has been an evident increase in the number of complaints in this area:



The increase in the number of complaints is the result of several factors:

- more frequent violations of the right to access information by public authorities in Bosnia and Herzegovina,
- better informed citizens on mechanisms for the protection of the right to access information,
- activities of the Institution of the Ombudsman,
- the role of media in the promotion of FOIA.

3.1.2 Weaknesses in legislation and its application:

Weaknesses in the application of FOIA on the part of public authorities are reflected in:

- delaying the decision-making process in the first and second instance proceedings;
- making decisions that do not contain all the elements prescribed by the law (introduction, dispositive, explanation, instruction on legal remedy);
- formal compliance, in the absence of ensuring effective access to information;
- the practice of public authorities refusing access to information;
- by invoking the protection of personal data, ie the commercial interests of third parties, without conducting a public interest test;
- in some cases, public authorities have denied the obligation to comply with a received request for access to information.

Weaknesses in legislation:

- the Administrative Inspectorate of the Ministry of Justice of Bosnia and Herzegovina has been authorized to perform inspection supervision over the implementation of the Law at the request of the parties. This enables any individual or legal entity to submit a request to the administrative inspection in order to protect the right to free access to information when a public body prevents that access. However, the introduction of this method of protection has created confusion among citizens who submit requests for access to information to public authorities and often, addressing all institutions and not using a legal remedy. By doing this, they miss deadlines for initiating administrative disputes that proves the ineffectiveness of this mechanism;
- In addition, it is not envisaged that the Administrative Inspectorate act ex officio, but to act only at the request of the parties.

Numerous weaknesses and recommendations for overcoming them were identified and contained in the Report of the TAIEX - IPA Expert Mission on *“Improving the right to access information in Bosnia and Herzegovina”*, as well as the Report of OECD/SIGMA experts within the project *“Improving the legislative framework for access public information in Bosnia and Herzegovina”*. Their findings and recommendations will be discussed later in more detail.

3.1.3 Effect of the ombudsman’s recommendation

As an institution that, in accordance with the laws on freedom of access to information at the level of BiH and the entities, has a special mandate, which to some extent refers to monitoring the implementation of the law on freedom of access to information, the recommendations of the Ombudsman of Bosnia and Herzegovina have a dual role:

- on one hand, they have a corrective role, which means eliminating the identified violation of the right to access information;
- on the other hand, the Ombudsman’s recommendations often contain opinions, ie interpretations of the Law on freedom of access to information, thus trying to instruct public authorities on the effective and correct application of the law, in order to prevent further violations of the right to access information. Examples of such effect of the recommendations of the Ombudsman of BiH are given in the previously presented two examples of recommendations.

However, as already mentioned, the decisions of the Ombudsman Institution have the character of authoritative, but legally non-binding recommendations for the authorities in BiH.

EXAMPLE no. 3 - RECOMMENDATION OF THE OMBUDSMAN (Verification of diplomas of civil servants and employees):

Ombudsman Institution has received an act of the Secretariat of the Parliamentary Assembly of Bosnia and Herzegovina requesting an opinion on the implementation of activities to verify the diplomas of employees and civil servants. In relation to this issue, Agency for Personal Data Protection in BiH issued an opinion, which states, among other things: “We are of the opinion that bringing into question all public documents, in this way, is harmful to the public interest because such actions violate legal certainty. “ Agency also took the position that in this way the human dignity of employees is violated if everyone is questioned, on which it would be desirable to seek the opinion of other institutions responsible for the protection of human rights.

This opinion was the reason for addressing Ombudsmen. The opinion issued by Ombudsmen pointed out that the right to protection of personal data is one of the basic rights of every human being, and that the purpose of personal data protection is the protection of private life. Also, the provisions of the Law on Personal Data Protection in BiH were pointed out and it was stressed that when assessing the case in question, it is necessary to take into account the purpose for which the data are processed. On the other hand, the fact must not be overlooked that in the present case, the data carriers are employees of public bodies financed from the public budget and who, upon entering the public service, agree to work for the public good and in the public interest. Ombudsmen have taken the view that the public interest in such and similar cases always takes precedence over the protection of privacy, especially if a particular case is accompanied by circumstances such as breach of a legal obligation, the existence of any offense, miscarriage of justice, abuse of power or negligence, unauthorized use of public funds, health hazards, or safety of an individual, the public or the environment.

THE OMBUDSMAN'S RECOMMENDATION - EXAMPLE no. 4 (Publication of the Register of Public Sector Employees in the Sarajevo Canton):

The Ombudsman Institution was addressed by the Independent Trade Union of Primary Education of the Federation of BiH with a request to submit an opinion on the issue of publishing the Register of Public Sector Employees in the Sarajevo Canton. The Ombudsman's act pointed out that publishing this type of the information contributes to a more proactive role of public authorities. The Institute for Proactive Disclosure of the Information aims to establish the obligation of public authorities to publish certain categories of the information on the official website on their own initiative. With this approach, the main goal is more efficient, faster and more transparent obtaining of the information of public importance, without submitting a request for access to information and additional exposure to the use of time and human resources to make solutions and conduct proceedings on request. This concept is of particular importance when it comes to the spending of budget funds by public authorities.

3.2 Certain aspects of the current application of the Law on Freedom of Access to Information

3.2.1 Determination of exceptions and conduct of the public interest test

The Law on Freedom of Access to Information is based on the principle that information is a public good, therefore, the property of all citizens, whereas that public authorities are only controllers of that information.

Accordingly, Article 4 of the Law on Freedom of Access to Information of Bosnia and Herzegovina prescribes the right of every individual and legal entity to access information, as well as the obligation of every public body to disclose information in its possession. This right may be limited only in the manner and under the conditions determined by the provisions of the Law on Freedom of Access to Information of Bosnia and Herzegovina and the competent authorities are obliged to take all necessary actions to communicate the requested information in the possession of the competent authority.

Establishing exceptions does not necessarily mean that access to information will be denied, but in that case the public authority is obliged to conduct a public interest test in accordance with Article 9 of FOIA, which essentially serves as a weight scale in assessing the reasons for granting or denying access to information.

The examination of the public interest is the most demanding, but also the most important part of the processing of requests for access to information and it must be elaborated by the public authority.

Thus, the basic premise of the FOIA is that all information should be available to the public, unless otherwise provided by law as exceptions, because it contains certain information regarding the functions of public bodies (Article 6); confidential commercial information (Article 7), or protection of privacy (Article 8). Conducting the public interest test practically means that the restrictions prescribed by the Law are implemented due to the necessity of protection from serious violation of the overriding interest, where no provision of the Law may be interpreted in a way that would result in revocation of a right established by the Law or in its restrictions to a greater extent than that prescribed by law.

Conducting a public interest test involves the following actions:

1. Checking whether the requested access to information is denied in order to protect the exceptions/ interests enumerated by the Law;
2. If this is found to be the case, would allowing the requested access seriously harm that interest in the present case?
3. Is it necessary to deny access to information by the standards of a democratic society?

Regarding proportionality, it is important to point out the following steps:

- (1) determining whether the measure restricting access to information is adequate to achieve the objective to be reached,
- (2) determining whether the aforementioned measure is necessary for the achievement of the objective in question, ie whether there is any less restrictive measure by which the same objective can be achieved. This is a key step in applying the principle of proportionality because if the measure does not pass the necessity test, there is no need to continue the test,
- (3) determination of proportionality, because although the measure is adequate and necessary, it will still

not be allowed if it affects the fair balance.

Thus, the public interest test assesses whether the interest in publishing information, or denying it, prevails, since the requested information is in the domain of restrictions of a relative nature to which access may or may not be denied. Rejection of a request for access to information is not justified unless the public authority proves that the information has been subjected to a strict “three-part test” according to which it is justified to be exempted from publication, and the burden of proving the restriction always falls on the information holder.

In general, the key element in assessing proportionality is whether the requested information indicates any misconduct, injustice, abuse of power, negligence in the performance of official duties, non-compliance with legal obligations, unauthorized spending of public funds and health hazards, or safety of individuals, society and the environment. In these and similar situations, the authority should give priority to the public interest and provide the requested information.

Based on the research of the Ombudsman Institution from 2019, the largest number of public bodies at the level of BiH stated that so far they have not considered the requests within which they would be obliged to examine the public interest.

3.2.2 Exception regarding confidential commercial information (Article 7 of FOIA BiH)⁷

Analyzing the current practice of BiH institutions, in the application of this article, which claims that in practice they have not met the request for access to information involving the commercial interests of third parties, it is not possible to draw a conclusion on its application.

However, in the review of Article 7 of the FOIA BiH (and the Entities), the team of international experts within the TAIEX - IPA Expert Mission on “Improving the right to access information in Bosnia and Herzegovina” recommended:

- it is necessary to define more clearly the mechanism for consultations with third parties,
- the final decision on whether or not to publish information must always be made by the public body dealing with the request,
- third parties should have the right to appeal to the law enforcement supervisory authority (commissioner/information commissioner and/or court) in case they want to challenge the possible disclosure of the information.

EXAMPLE No. 5 - RECOMMENDATION OF THE OMBUDSMAN REGARDING CONFIDENTIAL COMMERCIAL INFORMATION

Deciding on the request for access to information, by which the appellants requested from the Public Enterprise Elektroprivreda Bosne i Hercegovine d.d. Sarajevo-Branch of Tuzla Thermal Power Plant, delivery of copies of concluded contracts for the supply of meat with a private company, the public body decided to refuse access to information, citing the commercial interest of a third party. The appellants lodged an appeal which was rejected as unfounded.

When deciding on the request, the first instance body did not conduct a public interest test in accordance with Article 9 of the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina, taking into account any harm and benefit that may result from publishing information, nor did it establish exceptions. 6-8. Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina, but in the present case an article of the rulebook-act of lesser legal force was applied in relation to the Law on Freedom of Access to Information, and access to information was denied, so the requested information was declared a business secret. The appellate body rejected the appeal, citing an exception regarding the commercial interest of a third party, although no procedure was conducted in accordance with Article 7 of

⁷ „In the event that the competent public authority justifiably determines that the request for access to information involves confidential commercial interests of a third party, the competent public authority shall, by urgent decision, inform the third party of the details of the request. The decision shall inform the third party about the immediate disclosure of the information, if the third party, within 15 days of receiving the decision, does not respond in writing to consider such information confidential and state the reasons for the damage that would result from publishing the information. Upon receipt of such a response, the competent public authority shall determine the exception.”

the Law, nor was it stated which types of commercial interests were endangered in the specific case.

Ombudsman on 28 December 2017 issued Recommendation No. P-328/17 recommending that the public body annul the decisions rendered and issue a new decision satisfying the appellant's request for access to information, to harmonize the decisions of the public body and the Rulebook on Business Secrets with the provisions of the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina.

On 02 April 2018, the act of Elektroprivreda number 01-06-9111 / 18 from March 30, 2018 was received on in which it is stated that Elektroprivreda will annul the disputed decisions, in terms of conducting a public interest test, and return for renewed procedure, but the part of the recommendation related to the harmonization of the Rulebook on Business Secrets and the Decision on Free Access to Information has not been implemented because the public body remains with the decision that the case in question is a business secret.

3.2.3 Personal information (*Article 17 of FOIA BiH*)

The protection of individual privacy in relation to the processing of personal data is treated as a basic human right. This position is based on Article 8 of the Charter of Fundamental Rights of the European Union⁸, and Article 16 of the Treaty on the Functioning of the European Union⁹, which, inter alia, stipulates that everyone has the right to protection of his/her personal data.

Therefore, the protection of privacy and personal data is absolutely necessary, given that it is also a basic human right. At the same time, it is important to ensure that the application of this exception is not so widespread, in order to prevent the public from obtaining information on the names of those involved in public bodies, including those working as public officials as well as external actors (such as representatives academia, civil society organizations participating in meetings, lobbyists, etc.). As a general rule, access should be provided for personal data that identify a person only, such as their name and professional name and affiliation, when this information relates to their engagement in the organization, functioning and/or activities of a public body.

Information on the use of public funds related to public servants should also be publicly available. This includes salaries and other income, as well as funds spent on activities in which a public servant is engaged, such as travel expenses, entertainment expenses, etc.

The recommendation of international experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in Bosnia and Herzegovina" is to delete Article 17 of the FOIA because this issue is covered by the Law on Personal Data Protection ("Official Gazette of BiH" number: 49/06, 76/11 and 89/11).

Although the FOIA is a *lex specialis* (ie restrictions on the right to access information should be prescribed only by this Law) there are other regulations at the level of BiH (and entities) that prevent the right to access information: Law on Personal Data Protection, Law on Protection of classified information and the Law on the Intelligence and Security Agency of Bosnia and Herzegovina, which made these regulations *lex specialis* regulations in regard to FOIA.

The standard across the EU (and in many other parts of the world) is to have separate legal instruments for personal data and public information. This is something that needs to be amended in Bosnia and Herzegovina, especially given the validity of the Law on personal data protection, which is in line with the EU Directive. The current provision of Article 17 of the FOIA is therefore obsolete and should be excluded from the Law.

EXAMPLE No. 6 - RECOMMENDATION OF THE OMBUDSMAN NUMBER P-1/18 FROM 04 January 2018 YEARS:

The appellant submitted a request to the Civil Service Agency of the Federation of Bosnia and Herzegovina for access to information, requesting access to the documentation of selected candidates, in connection with the public tender of the Sarajevo Semi-Open Penitentiary for the positions of 3rd Security Associate and 4th Expert Associate for planning and development of education/treatment of convicted persons.

⁸ <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A12007P>

Article 8 (Protection of personal data)

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly, for specified purposes and with the consent of the person concerned, or on some other legitimate basis established by law. Everyone has the right of access to or data relating to the data collected concerning him or her.

3. Compliance with these rules shall be subject to the supervision of an independent body.

⁹ <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:12016ME/TXT>

The first-instance body issued a decision granting the appellant direct access to part of the tender documentation, but denied access to information relating to “individual assessments of members of the Commission in the oral part for positions 03 and 04 and access to the competition documentation of candidate V.K.”

In the part of the request by which the appellant requested access to the competition documentation for the selected candidates, the first instance body assessed that the requested documentation contained personal information due to which the written consent of the selected candidates was requested. Given the fact that one of the candidates did not submit written consent, access to the requested documentation was denied, which was confirmed by the second-instance decision, and the appellant’s objection was rejected as unfounded.

Ombudsmen of Bosnia and Herzegovina have issued a recommendation to the Civil Service Agency of the Federation of Bosnia and Herzegovina to annul both decisions and issue a new decision granting the request for access to information and to authorize the Information Officer to make decisions on requests for access to information in the first instance and, in that way, ensures full respect of the two-level principle in administrative proceedings.

FBiH Civil Service Agency submitted a response/act to the Ombudsman Institution stating that the appellant sued the Agency for annulment of the aforementioned decisions and initiated an administrative dispute before the Cantonal Court in Sarajevo and then after the end of the administrative dispute proceedings the Agency will inform about the actions taken, in connection with the stated recommendation.

3.2.4 Partial granting of access to information (*Article 10 FOIA BiH*)

Based on the research conducted by the Ombudsman Institution in 2019, most public bodies at the level of BiH stated that in the previous practice they acted on requests for access to information, according to which a decision on partial access to information was made in terms of Article 10 of the BiH FOIA (separation of the information). Separating information into parts, among other things, implies obscuring the personal data of natural persons, for which there is no public interest for being available to the public (e.g. address, ID card number, bank account number, health card data, etc.).

A team of international experts in the field of freedom of access to information, within TAIEX - IPA, ENI - TAIEX Expert Mission on “Improving the right to access information in Bosnia and Herzegovina”, in connection with Article 10 FOIA stated that the possibility of separation of the information and partial approaches is, in general, the positive provision contained in the FOIA.

However, their report indicates that the Law, within the same article, put at disposal the possibility that, if the information is “incomprehensible” after the text has been edited, the information should not be published. In this regard, it was pointed out the experience of many judgments has shown that even redacted documents have a certain value, because they can e.g. contain a date, a sentence, a reference number, which can be the basis for an appeal in order to achieve a broader approach. When partial access to documentation is granted by a public authority, the redaction is done by stating which elements of the information have been removed under which exception, or exceptions in accordance with guidelines to be drawn up and issued by the “supervisory authority”. Therefore, the recommendation of international experts from the above-mentioned project is that the documents should always be published, even though if most of the information in them has been redacted.

3.2.5 Examination of justification of the request and/or explanation of the request and determination of competencies (*Article 11, paragraph 4 of the FOIA*)

„The public authority shall not examine or require reasons for validation of the request.“

This is a positive provision contained in the Law which stipulates that applicants do not have to give reasons, or justify their requests for information. This is an essential provision, which goes to the very heart of the right to free access to information as the fundamental right is linked to freedom of expression so that applicants should never be asked to explain why they are seeking information, or what they intend to do with it.

Therefore, access to information should be provided by the public authority, without assessing the justification of the reasons for the request. Unfortunately, the research of the Ombudsman Institution shows that there are still practices that some public authorities, when deciding on a request for access to information, examine its justification, or require a justification of the request. Namely, a number of public bodies stated within the research of the Ombudsman Institution that they examine the justification of the request for access to information, but only if the request is imprecise or unclear, and an amendment/supplement is requested in order to clarify ambiguities.

There is also a different practice in dealing with the receipt of requests for which the public authority is not competent. A number of public authorities return the request to the applicant by providing information on the competent authority, while others forward the request to the competent authority and inform the applicant accordingly.

A team of international experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in Bosnia and Herzegovina" stated that in principle the provision of Article 11 Paragraph (4) of FOIA BiH is of a positive nature, given that the applicants they do not have to give reasons for seeking information. Since this fundamental right is linked to freedom of expression, applicants should never be required to explain why they are seeking for certain information or what they plan to do with it.

3.2.6. Deciding on the request for access to information (*Article 14 of the FOIA*):

FOIA BiH has determined that a statement in the form of a decision is made on the request for access to information. In this regard, the practice shows that in most cases, public authorities at the level of BiH make statements in the form of decisions, but that there is also the practice that in certain cases decisions are made by a conclusion or by a letter.

Furthermore, in accordance with Art. 14 para. (3) FOIA, the obligation of the public body to state in the decision the instruction on the right to appeal, the address of the body to which the complaint is submitted, the deadline and costs for filing a complaint, and instructions on the right to address the Ombudsman indicating the necessary Ombudsman contact details.

However, the mentioned research of the Ombudsman Institution pointed out the presence of different practices in the execution of this obligation, from instructing the decision-maker or the second instance body within the public body, or the head of the body (which is the most common approach), the Appeals Board of Council of Ministers of Bosnia and Herzegovina. In some cases, an instruction on legal remedy is not given at all.

In some cases, instructions on the right to address the Institution of Human Rights Ombudsman of Bosnia and Herzegovina are provided, while in a number of cases public authorities do not fulfill this obligation.

It is similar at other levels of government in BiH. For example, the District Court in Banja Luka took the position that an administrative dispute can be initiated against notifications or letters issued on requests for access to information regardless of the fact that they are not made in the form of a decision. The court stands on the position that they are administrative acts.

All this creates legal uncertainty, reduces the level of protection and ultimately allows for a delay in the process of resolving claims.

3.2.7 Information Officer (*Article 19 of the FOIA BiH*)¹⁰

The research of the Ombudsman Institution showed that almost all public bodies at the level of Bosnia and Herzegovina have fulfilled the obligation to appoint information officers. However, there are also public bodies that have not yet implemented this obligation even 20 years after the adoption of the Law - the BiH Civil Service Appeals Board.

Although they fulfilled the obligation to appoint an information officer, a number of public bodies did not submit data on the same to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, in accordance with the obligation under Article 19 of the BiH FOIA (Indirect Taxation Authority of BiH, Institute for Standardization of BiH, Agency for Anti - Doping Control of BiH, Agency for Medicines and Medical Devices of BiH, Directorate for Civil Aviation of BiH, Institute for Metrology of BiH and Postal Agency of BiH).

¹⁰ „Each public body shall appoint an information officer who shall process requests prepared in accordance with this Law. After the appointment of the information officer, his/her name and contact details shall be provided to the Ombudsman.”

The appointment in some public bodies has certain shortcomings because most often the jobs and tasks of the information officer are added to some other jobs and tasks to which the employee is assigned in accordance with the general act on internal organization and systematization. As a result, the jobs to be performed by an information officer are not included in that systematization so the information officer tasks are considered as some additional jobs and as such are not evaluated separately. The most common sense practice shows that an institution spokesperson is an information officer.

Public bodies covered by the Ombudsman Institution's research, according to the responses submitted, have a divided opinion regarding the question of whether information officers are sufficiently educated for an effective interpretation of the law on freedom of access to information in Bosnia and Herzegovina. However, a significant number of public authorities consider that education is desirable, not only for information officers, but for all civil servants and persons exercising public authority, who are in possession of the information.

The recommendation of international experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in BiH" is that it is necessary to strengthen the role of the information officers.

In practice, information officers should have sufficient experience and knowledge of the administrative procedure. A person appointed as an information officer should work in an appropriate position, for example, in a ministry secretariat or a minister's office. Information officers should be assisted by other relevant civil servants, such as IT support people and the legal department. Training should be provided by the oversight body, possibly in partnership with a civil service training institution, but should also be supported by training provided by other training partners (such as CSOs under training programs funded by international organizations).

3.2.8 Information Access Guide and Information Index Registry¹¹

A significant number of public bodies at the level of BiH have fulfilled the obligation to develop and publish guides for access to information and index information registers. Exceptions are the Service for Joint Affairs of the Institutions of Bosnia and Herzegovina and the Board of the State Appeals Service of Bosnia and Herzegovina, which have not yet fulfilled this obligation

However, public authorities do not make regular updates, especially when it comes to the Information Index Register and due to changes in competencies, actions, or other circumstances that affect the list of the information that should be available to the public.

This is especially important when it comes to activities on the introduction of proactive disclosure of the information within the establishment of e-government systems. The second part of the legal obligation, which refers to the submission of guides and the index of registers, is less frequently performed by public bodies at the level of BiH, which also prevents the Institution of Human Rights Ombudsman from systematically monitoring the situation in this area.

It is recommended by international experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in BiH" that all information concerning work, organization and functioning, as well as decision-making, financing and spending should be automatically proactively published. In that sense, the obligation to create special documents, guides and index register should be abandoned. Instead of adding this additional burden to public authorities, it is necessary that information on the ways and modalities of exercising the right of access to information can be found on the Internet. All public bodies should publish on their websites user-friendly information on how citizens and legal entities can exercise this right.

Also, instead of creating an index register, public authorities should simply follow the provision of the Law/ Act on what information should be proactively disclosed. Public bodies should state their main tasks within their competencies and the documents they adopt, but also change frequently, in the descriptive part, their mission, vision and role.

The publication should not be limited to the Internet, but should include other appropriate means of sharing information so that it reaches all relevant parts of the population (eg. reports, statistical bulletins, guides, etc.). The use of the Internet does not automatically mean that users are able to search for information on the websites of public bodies or that the Internet is available to everyone, especially those living in rural areas.

Information should be available. This means that the information must be easily accessible on the website, which should be structured in a clear and simple way. The three-click rule should be followed as much

¹¹ Article 20, paragraph 1, items a) and b) of the BiH FOIA

as possible (e.g. the user should be able to easily access any information in a maximum of three mouse clicks). Websites of public bodies in the EU should respect accessibility standards as set out in Directive EU / 2016/2102. Also, many countries have established central portals, which is a good and recommended practice. However, users are mainly focused on public bodies of their specific interest, and therefore portals cannot replace the websites of such individual public bodies.

The information should be understandable. This means that the information should be presented in a way that is easy to understand for the general public, as well as certain groups (eg. minorities, language groups, people with disabilities, etc.).

The information should be free, timely and up-to-date. The information should be published proactively after its creation. Proactively published information will be updated frequently; the public will be clearly informed of the date of creation and publication of all proactively published information, as well as the frequency with which it will be updated.

In terms of format, proactively published information should be published in a way that can be accessed by various technology platforms, such as computers and mobile phones, using all common operating systems. The ability to reuse information requires that the information be available in a machine-readable and open format. To this end, the information should be available in forms to which access is not restricted by ownership.

In order to meet all proactive disclosure requirements, the supervisory authority should have the authority to verify compliance with proactive disclosure, to receive regular reports, to conduct ex officio investigations and to receive complaints from the public, and should be empowered to order appropriate action to ensure compliance. In addition, public bodies should provide sufficient resources (financial, human resources) to organize, prepare and publish information and maintain active disclosure for a longer period.

3.2.9 Production and submission of statistical data (Article 20, paragraph 1 c) FOIA BiH)¹²

Less than half of the surveyed public bodies at the level of BiH stated, in their answers to the Ombudsman Institution' research, responded that they submit statistical data regularly. In that regard, the Central Election Commission of Bosnia and Herzegovina is e.g. pointed out that it irregularly submits the statistical data to the Parliamentary Assembly of Bosnia and Herzegovina and the Ombudsman Institution.

In general, most public bodies in Bosnia and Herzegovina, at all levels of government, do not provide statistical indicators on submitted requests for access to information to the legislature and the Ombudsman Institution.

Also, the record-keeping methodology is questionable, in the sense that records on submitted requests for access to information are kept separately in relation to other requests.

The recommendation of international experts within the TAIEX - IPA Expert Mission on "Improving the right to access information in BiH" is to establish and maintain a special/separate register of requests for access to information.

Most EU countries, as well as countries in the region, have introduced the obligation for authorities to establish and maintain a separate register of requests for access to information, which should contain a unique reference number for each request, together with the possibility of following the main procedural steps competent public authority, informing the user, decision, appeal, the decision on appeal, etc.). This practice helps information officers to manage their requests efficiently and effectively, to inform the public more effectively about the status of requests and to keep records, compile reports and submit them to the competent authority in an efficient and uniform manner.

¹² Each public body publishes and submits:

c) Statistics, on a quarterly basis, relating to, but not limited to, the number of requests received, the type of the information requested, the exceptions identified, as well as decisions taken during the proceedings, and final decisions. These statistics are submitted to the Parliamentary Assembly of Bosnia and Herzegovina and the Ombudsman, and are available upon request.

Bibliography

- United Nations General Assembly Resolution, 48/134 of 20 December 1993
www.ombudsmen.gov.ba/documents/obmudsmen_doc2014012212054704cro.pdf
- European Convention for the Protection of Human Rights and Fundamental Freedoms
www.echr.coe.int/Documents/Convention_ENG.pdf
- Charter of Fundamental Rights of the European Union,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF>
- Annual report on the results of the activities of the Institution of the Human Rights Ombudsman of BiH for 2019. www.ombudsmen.gov.ba/documents/obmudsmen_doc2020051813152592bos.pdf
- Special report on experiences in the application of the law on freedom of access to information in BiH
www.ombudsmen.gov.ba/documents/obmudsmen_doc2020020515415139bos.pdf
- Proceedings presented at the conference “Exchange of best practices in resolving human rights violations with a special focus on combating discrimination”, Sarajevo, February 15 and 16, 2018;
www.ombudsmen.gov.ba/documents/obmudsmen_doc2018112810551180eng.pdf
- 25 years of the European Ombudsman, www.ombudsman.europa.eu/webpub/25years/hr/index.html
- Council of Europe, Council of Europe Convention on Access to Official Documents, CETS no. 205 (Strazbur: Council of Europe, 2009), <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.html>
- Anupama Dokeniya, Implementing the right to information: Lessons from experience (Vašington: World Bank, 2013)
- Ingrams, A., Piotrowski, S., Berliner, D. 2020. Learning from Our Mistakes: Management Reform and the Hope of Open Government. Perspectives on Public Management and Governance, 2020, 1–16
- Kostadinova, P. 2015. Improving the transparency and accountability of EU institutions: The impact of the office of the European Ombudsman. Journal of CommonMarket Studies, 53, 1077–1093.
<https://doi.org/10.1111/jcms.12245>
- Meijer, A. J., Deirdre, C., Hillebrandt, M. 2012. Open government: connecting vision and voice. International Review of Administrative Sciences
- Moore, M. H. (1995). Creating public value : strategic management in government. California, USA: Harvard University Press.
- Moore, M. H. (2013). Recognizing Public Value. Cambridge & London: Harvard University Press.
- OECD. 2018. European Ombudsman. The role of Ombudsman Institutions in Open Government. OECD Working Paper on Public Governance No. 29
- Pollitt, Christopher, and Geert Bouckaert. 2011. Continuity and change in public policy and management. London, UK: Edward Elgar Publishing.
- Romzek, Barbara S. and Melvin J. Dubnick. 1987. Accountability in the public sector: Lessons from the Challenger tragedy. Public Administration Review 47 (3):227–38.

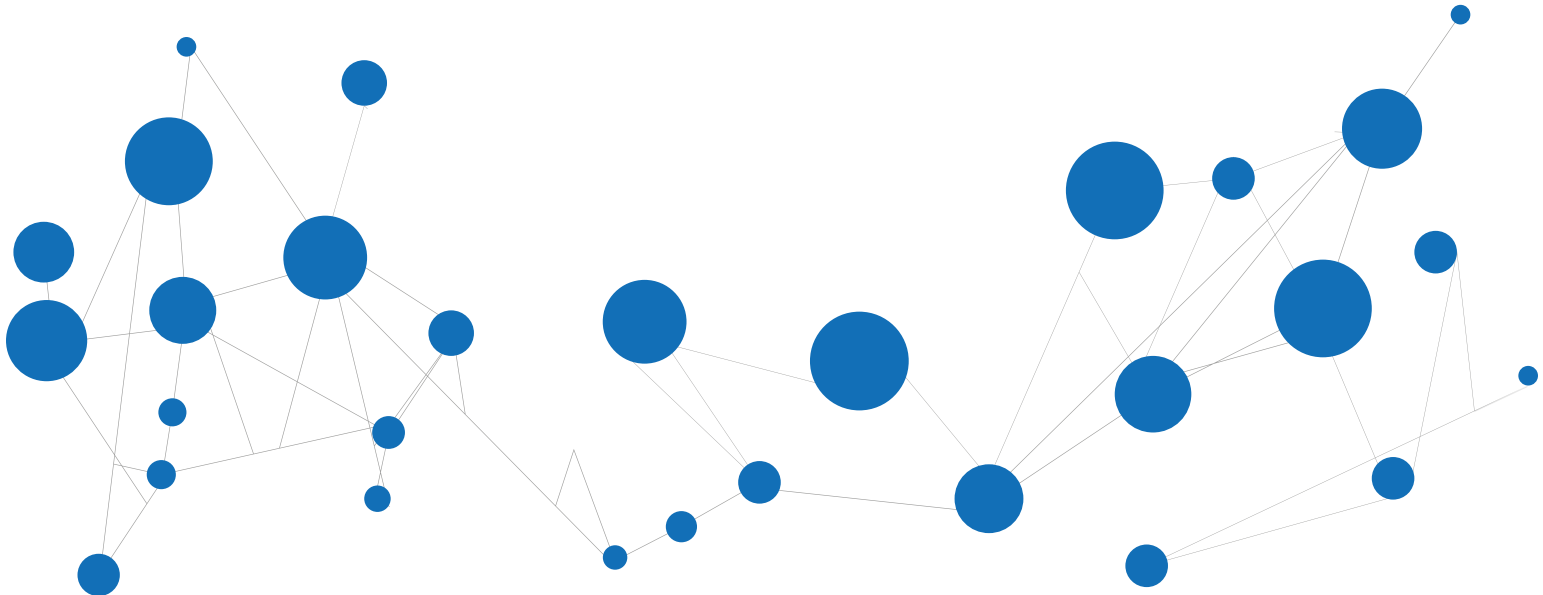


www.ombudsmen.gov.ba



Institucija ombudsmena/ombudsmana
za ljudska prava Bosne i Hercegovine

Институција омбудсмена/омбудсмана
за људска права Босне и Херцеговине



Implemented by



In cooperation with:

