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*United Nations*  
*Human Rights Committee Secretariat*  
*8-14 Avenue de la Paix*  
*CH 1211 Geneva 10*  
*Switzerland*  
*Attention: Kate Fox/Sindu Thodiyil*

**Subject:** Report of the Human Rights Ombudsman of Bosnia and Herzegovina on implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter referred to as: the Ombudsman) is a national mechanism for the promotion of human rights in Bosnia and Herzegovina (hereinafter referred to as: BiH) established in accordance with Annex VI of the Dayton Peace Accords. The Ombudsman is accredited in status “A” by the then International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) known as the Global Alliance of Human Rights Institutions (GANHRI) from March 2016. Within its organizational structure the Ombudsman includes Department for the protection of civil and political rights in BH which has a mandate to act in cases related to the protection and promotion of civil and political rights in BiH. Annual reports of the Ombudsman<sup>1</sup> indicate that a half of the lodged complaints of citizens relate to these rights, particularly violation of the rights to access to court and fair trial, denial of enjoyment of some rights by the administration, freedom of access to information, actions of the police and prosecution, freedom of media etc.

In their activities Ombudspersons pay particular attention to the implementation of recommendations of the Human Rights Committee (hereinafter referred to as: the Committee), and also to the opinions of the Committee adopted during their processing of individual complaints filed by the citizens of BiH. This submission includes the basic observations of the Ombudsman in respect of honoring the obligations assumed by the authorities of BiH following their ratification of the International Covenant on Civil and Political Rights (hereinafter referred to as: the Covenant) which follows the List of Issues referred by the Committee to the authorities of BiH in its structure.

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<sup>1</sup> Reports in official languages of BH and translated into English are available on the web site of the Ombudsman: [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

**Positive aspects:**

Compared to the previous report Ombudspersons would like to emphasize the following positive activities taken for the improvement of the environment for more efficient implementation of the Covenant's provisions:

- In 2015 and 2016 the Parliamentary Assembly of BiH have adopted the Law on Aliens<sup>2</sup> and the Law on Asylum<sup>3</sup>. Until the adoption of the mentioned laws, policy applied in governing the issues of immigration, refugees and asylum was reflected in the Law on Movement and Stay of Aliens and Asylum<sup>4</sup>. Separation of the Law on Asylum and the Law on Aliens opens possibility to more efficient resolution of the issues linked to the migration flows in BiH with respect to the international standards. The BiH Law on Aliens lays down the terms and procedure applicable to entry of aliens to BiH, including visa and visa waiver regime, passports and travel document for aliens, stay and removal of aliens, acceptance and subjecting of aliens to monitoring, as well as powers of the authorities in implementation of the Law, while BiH Law on Asylum lays down the details on the authorities in charge of the implementation, as well as principles, terms and procedure to be followed for the refugee status approval. It also brings the procedure of subsidiary protection approval, temporary protection, identification documents, rights and obligations of asylum seekers, refugees and aliens subject to subsidiary protection and many other asylum related issues.
- In 2016 BiH has adopted a Strategy in the field and migration and asylum and Action plan for the period 2016-2020.
- New labor laws adopted in the Federation of BiH and the Republika Srpska bring significant enhancements in legal framework, thus improving this area, but harmonization of these laws with the Law on Prohibition of Discrimination in Bosnia and Herzegovina has not taken place, especially in respect of deadlines for the initiation of legal proceedings. New Labor Law in the Federation of Bosnia and Herzegovina includes mobbing in the workplace and sexual harassment.
- In 2015 adopted was a Justice Sector Reform Strategy in BiH for the period 2014 – 2018, while the National Strategy for Processing War Crimes was adopted earlier. However, justice sector reforms were halted, and the Structured Dialogue does not show progress.
- Strategic Paper at the level of Bosnia and Herzegovina was adopted defining the priorities in higher education development in BiH for the period 2016-2026.
- Law on Free Legal Aid Provision in BiH was adopted<sup>5</sup>.
- Ratified are the following documents: The International Convention for the Protection of All Persons from Enforced Disappearance of 30 March 2012, the Convention on the Rights of Persons with Disabilities and its Optional Protocol of 12 March 2010, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 18 January 2012 and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 24 October 2008.
- Years 2015 and 2016 are very important when it comes to the legislation on the prohibition of discrimination in Bosnia and Herzegovina. In addition to the new labor legislation in the Federation of BiH where the institute of mobbing and sexual harassment as a form of discrimination was recognized for the first time, amendments to the Law on Prohibition of Discrimination in Bosnia

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<sup>2</sup> Official Gazette of BiH, no. 88/15

<sup>3</sup> Official Gazette of BiH, no. 11/16 and 16/16

<sup>4</sup> Official Gazette of BiH, no.. 29/03, 4/04 and 53/07

<sup>5</sup> Official Gazette of BiH, no. 83/16

and Herzegovina were adopted in 2016<sup>6</sup>. With these adopted amendments an improved legal framework for the protection of discrimination was created through the following new provisions whereby:

- appropriate terminology was used when designating the orientation and gender identity as the bases to prohibit discrimination, another basis on which discrimination is prohibited is „gender characteristics“, which makes the BiH a first country in the SEE region to foresee the protection of the inter-gender/intersex persons in all areas of life under its comprehensive Law on Prohibition of Discrimination in Bosnia and Herzegovina. In addition to that, the Law finally regulates the rights of gays, lesbians, trans and inter-gender persons (LGBTI) and their protection from discrimination, then explicitly lists the age and disability as the basis on which the discrimination is prohibited, it also links prohibition of discrimination to certain vulnerable groups, as it brings an improved definition of harassment and sexual harassment, defines aggravated forms of discrimination, brings improvements in procedural aspects of the law when it comes to the summary proceedings, the deadline to institute an action was extended to three or five years and in case of continuous discrimination the deadline counts from action that was committed the last. Initiating class actions is also a novice, as well as the improved role of the Ombudsman as a central institution for the protection from discrimination by posing the obligation before the court to give its opinion on recommendations of the Ombudsman in cases involving discrimination.
- Ombudspersons have drafted a Special report on situation of LGBTI persons in BiH, which was discussed by the Parliamentary Assembly of BiH on their session held on 6 December 2016 and a series of recommendations was defined to improve the situation of this population in Bosnia and Herzegovina<sup>7</sup>. Concluding observations and recommendations comprise answers to the questions from the Committee's List of Issues.
- In 2013 Ombudspersons prepared a Special Report on the Status of Roma in and in 2015 a Special Report on the implementation of recommendations given in the mentioned Report originating from 2013. Findings and recommendations given in that Report give answers to the Committee's List of Issues in respect of the situation of Roma minority in Bosnia and Herzegovina.
- A system of monitoring the implementation of recommendations given to BiH by the UN bodies including the HRCtte has not, unfortunately, established yet. Translation of recommendations is often delayed or if translated, these recommendations are not conveyed neither to the relevant authorities, nor the general public in systematic and regulated way. This indicates to the necessity of passing the relevant legislation to govern these issues.

### **Constitutional and legal framework within which the Covenant is implemented (arts. 2, 6 and 7)**

In their communication with the entity centers for education of judges and prosecutors Ombudspersons constantly indicate to the need to establish modules for training on international human rights standards whereby a special focus should be put on their direct implementation, in particular in respect of Article II of the Constitution of BiH, which defines the possibility of direct implementation of the international human rights standards if national legislation has not been harmonized with it. This is particularly important given that *curricula* of law schools do not pay attention to this issue as required, which means that no system is established to make legal experts familiar with international human rights standards. It is very important to ensure that this issue be

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<sup>6</sup> Official Gazette of BiH, no.. 59/09 and 66/16

<sup>7</sup> Report available at the web-site: ombudsmen.gov.ba

subject to a mandatory course at law schools and other humanities, and also a part of bar exams and civil servants examination required for work in administrative bodies, and mandatory module for all the judges, prosecutors, police officers, prison officers and other relevant employees included in criminal sanctions execution system, and social workers.

Availability of legal remedy is enshrined by the Constitution of BiH, but for slowness of court proceedings indicated to in complaints lodged to the Ombudsman gives a serious rise to a question of the efficiency of these remedies. Length of the proceedings before the national courts, and subsequently, before the Constitutional Court of BH is compelling citizens to seek their rights before the international bodies, but even in this case, when they get the relevant decisions, such as in case of the Committee's opinion, the applicants face non-enforceability of these decisions. In general, enforcement of court decisions is a big problem in Bosnia and Herzegovina which violates the rule of law principle.

### **Electoral law**

Process of implementation of ECHR in cases "Sejdić and Finci v. Bosnia and Herzegovina" and "Zornić v. Bosnia and Herzegovina" is still the subject of discussions of political subjects in Bosnia and Herzegovina. The most recent amendments to the Electoral Law took place in 2016.<sup>8</sup>

### **Free legal aid**

In the Federation of BiH, free legal aid institutes are established in seven cantons (they do not exist in Canton 10, Central Bosnia Canton and Herzegovina-Neretva Canton). In Republika Srpska, free legal aid is provided by the Free Legal Aid Center with headquarters in Banja Luka, and offices in Doboј, Bijeljina, Trebinje and East Sarajevo. The Office for the Provision of Free Legal Aid is active in Brčko District of BiH.

NGOs play an important role in providing free legal aid, but their activities are limited by applicable legislation and depend on availability of required donor funding. Municipal legal aid services are also in place. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina in the framework of its mandate provides legal aid to the citizens of Bosnia and Herzegovina.

### **Discrimination**

Law on Prohibition of Discrimination in Bosnia and Herzegovina has not yielded the expected results given the small number of relevant court decisions, so it could be said that the law in its full capacity has not been implemented, while the funds necessary for the fully-fledged operation of the Department for elimination of all forms of discrimination and the Ombudsman in general have not been sufficient, which limits the operation of the Departments.

Ombudspersons have noted that Article 24 Paragraph 2 of the Law on Prohibition of Discrimination, according to which, within one year from the date of enactment of this Law all laws and general regulations had to be brought in line with its provisions was not fully implemented yet.

Since the entry into force of the Law on Prohibition of Discrimination the Ombudsman registered was about 40 cases of discrimination based on sexual orientation, with the majority of cases opened "ex officio" or upon reports of the NGOs. Number of cases of discrimination based on sexual orientation in the Ombudsman in 2012 was 4, in 2013 there was 10 cases, 11 cases in 2014, 4 cases in 2015, and 5 cases in 2016. All the cases were processed and appropriate recommendations made to the competent authorities. It should be noted that most of these cases were initiated out of duty –

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<sup>8</sup> Official Gazette of BiH, no 31/16

*ex officio*. According to the findings of the Ombudsman, there were no cases of discrimination based on sexual orientation that had a court epilogue. Since the adoption of the Law on Prohibition of Discrimination, the position of LGBT people is slightly better in terms of the openness of society to accept them as equal members of the community and significantly better in terms of openness to civil society organizations, and also in the area of advocacy, promotion, activism and presence in the media. Despite the evident positive examples, most NGOs dealing with LGBT issues believe that police officers inadequately respond to cases involving rights of LGBT people, which is especially reflected in the gaps in the organization of high risk events. They state that the police officers as well as the employees of judicial institutions are not sensitized to adequately address the issue of LGBTI people, and there are no institutional mechanisms and programs for the system to deal with these issues. This prevents LGBT persons to report cases of discrimination, violence, freedom of speech and hate crimes. Cases of violence against LGBT persons are generally treated as minor offenses and punishable by a monetary fine, while the elements of "hatred" during the processing of such cases are not taken in consideration.

### **Hate speech**

In the reporting period, the Ombudsman had examples of hate speech in its work, it refers mostly to name calling using inadequate terms for members of certain vulnerable groups, inappropriate public statements given by natural and legal persons about the personal and moral characteristics of individuals holding public office, publicly available texts accompanied by pictures and comments of an offensive content, some posts on the blogs of some politicians including false, offensive, degrading or compromising, which makes persons targeted by such attacks feel fear for themselves and their family, or nationalistic statements that spread hatred toward the constituent peoples in some returnee environments. In its recommendations the Ombudsman demanded immediate cessation of publication of offensive contents including inappropriate or offensive names, removal of portals offensive in character from the Internet, publication of new articles that contain a public apology to members of minority groups, taking necessary measures for some journalists in discharge of their work to fully comply with requirements of the Law on Prohibition of Discrimination and measures to educate journalists and other actors present in public sphere to avoid future writing of offensive articles or other similar texts. In conclusion, Ombudspersons state that their recommendations are partially implemented, and its further implementation is aggravated by the fact that responsible party is a legal person in private ownership in most cases, that hate speech is present on the Internet, and that there is a very small number of *reported offenses involving the incitement of racial, ethnic or religious hatred, discord or intolerance, which saw an epilogue in court.*

### **Women's rights**

The Council of Ministers of BiH has ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (2013) with no reserves and adopted the Framework Strategy for the implementation of this Convention for the period 2015 – 2018 emphasizing the principal determination to its full implementation in light of its taking over the Chairmanship of the Council of Europe Committee of Ministers (2015), which is a positive

development in direction of strengthening of awareness of mandatory implementation of the international instruments in the protection of the women's rights in BiH.<sup>9</sup>

However, despite the adoption of the most important international documents relevant for the area of the women's rights, BiH has failed to ensure efficient mechanisms for its implementation and monitoring, and did not produce quality progress indicators, as it could be seen from the data available to the Ombudsman and collected at the different meetings on this issue.

More concretely, Bosnia and Herzegovina still has in place the basic legislative framework which partially ensures participation of women in the electoral process. However, without systemic affirmative measures to be applied in cases when legally guaranteed participatory rights are not implemented in practice, the way to women's marginalization in management process at all the levels will remain open.

With regard to the exercise of civil and political rights of women in Bosnia and Herzegovina, Ombudspersons paid special attention to the issue of appointment of members of the board of directors and supervisory boards in public institutions and companies, with an aim to ensure the gender equality in accordance with the Law on Gender Equality in BiH.

Investigation results in individual cases show that men are mostly appointed at the aforementioned positions, which raises the issue of potential systemic gender based discrimination in management bodies in the public sphere. Discrimination of women is manifested also in appointment to managerial positions in public companies and to managing boards and different executive positions in economy sector where men are appointed more than women. Also, participation of women in parliaments at all levels is in stagnation. Therefore (having in mind the relevant indicators of many national and international GOs and NGOs) it is necessary to change the current legislation and adopt the new one which will lead greater participation of women in power holding and managerial positions.

Ombudspersons point out to problem of prolonged working hours in the private sector, particularly in services industries, which mostly affects women, as well as the problem of undefined working hours, which allows employers to exploit workers. Ombudspersons also emphasize that that female workers are sometimes exploited through abuse of the institution of "trial work", unpaid overtime, denial of weekly recess and of other rights guaranteed by labor legislation. Ombudspersons particularly point to the problem of evening work, which results in frequent exposure of female workers to incidents of violence and looting, and they call on competent entity institutions to review the needs for night work in some facilities where the aforementioned risks exist.

As to women's health care, Ombudspersons note that more attention should be paid to diseases and care of persons who have been diagnosed with breast cancer and to women's reproductive health in general. The complaints filed with the Ombudsman Institution show that the existing health insurance models may put women in an unequal position in relation to their spouses, which is particularly manifested in domestic violence cases. Against this background, Ombudspersons point out that women are in most cases the beneficiaries of social care centers, and call upon competent authorities to strengthen the capacity of the centers, in order to enable them to respond to the growing challenges in providing minimum living standards to persons who seek their assistance.

In the reporting period, the Ombudsman prepared its Special report on the protection of mothers and motherhood on the territory of the Federation of Bosnia and Herzegovina.

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<sup>9</sup> Alternative CEDAW report, CSOs Report on Implementation of Concluding Observations and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013 – 2017, November 2016

## **Domestic violence**

Family laws of the Federation of BiH and Republika Srpska prohibit domestic violence. Criminal legislation of BiH, Republika Srpska, the Federation of BiH and Brčko District of BiH incriminate domestic violence, provide grounds for prosecution of perpetrators and for protection of victims in terms of gender based violence. Provisions of the Law on the Protection from Domestic Violence in the Federation of BiH and the Law on the Protection from Domestic Violence of Republika Srpska provide measures and mechanisms of protection in cases involving domestic violence.

So, since 2003 legislative reform on, domestic violence is treated as a separate criminal offence in the whole Bosnia and Herzegovina. Following the adoption of the Law on the Protection from Domestic Violence in Republika Srpska is possible for offences involving domestic violence to be processed as petty offences as well, which causes practical problems. Ombudspersons draw the attention to the fact that it is necessary to review the existing mechanisms for the protection of victims of domestic violence and the application of safeguard measures. Namely, in a situation involving the provision of safe accommodation for women victims of domestic violence, there is a need for accommodation of minor children as well, but this implies their separation from their previous living environment and educational institutions. It is justified to ensure the victim's safety by displacing the perpetrator while taking appropriate legal measures. It is particularly important that members of the ministries of interior take appropriate actions in situations where they register disturbed family relationships so that serious consequences are avoided and violence prevented. It is also important that competent prosecutor offices act urgently.

## **Rights of the child**

Positive legislation in the field of health care is not fully in line with the Convention on the Rights of the Child concerning the definition of a child, which poses a permanent challenge which is particularly expressed in the exercise of the right to health care for children between 15 and 18 years of age. Children in BiH, as a rule, enjoy the rights to unconditional health care during their primary school, which is not always the case with children at the between 15 and 18. All the problems facing children in the field of health care were subject to a Special report of the Ombudsman published in 2012 under the title: Health care of children in BiH.

One of the main problems that the Ombudspersons noted is the lack of a database that would show the exact number of children subject to adoption or guardianship, which opens the possibility for manipulation and child trafficking. Ombudspersons recommended the Government of the Federation of BiH, the Government of Republika Srpska and the Government of Brčko District of BiH<sup>10</sup> to establish a database at the entity level that will contain information about children subject to adoption or guardianship, taking into account the protection of personal data of children by restricting access to the relevant data.

In Bosnia and Herzegovina, legal provisions in the domestic legislation governing conditions prescribed for the adoption of children, in respect of the age of the child are still not harmonized. For instance, Article 157 of the Family Law of the Republika Srpska reads: *“Full adoption shall only be allowed of a child under the age of five who has no living parents, or whose parents are unknown, or whose parents abandoned the child, and their whereabouts are unknown for more than one year, or whose parents agreed to the full adoption of their child before the competent guardianship authorities”*, while Article 101 of the Family Law of the Federation of Bosnia and

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<sup>10</sup> 2015 Annual Report of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

Herzegovina and Article 86 of the Family Law of the Brčko District of Bosnia and Herzegovina prescribe: "*A child up to 10 years of age may be fully adopted.*" Ombudspersons<sup>11</sup> are of the opinion that it is necessary to harmonize the provisions of the family laws of the Federation of Bosnia and Herzegovina, Brčko District of Bosnia and Herzegovina and Republika Srpska which stipulate the conditions for child adoption.

In the Federation of BiH and the Brčko District of BiH an explicit prohibition of physical punishment of children in all environments including the family environment is missing, while the Family Law of the Republika Srpska provides for prohibition of physical punishment of children.

Issue of education of children with special needs is not resolved in practice and these children are excluded and do not receive any kind of assistance (teaching assistants etc.), so that everything comes down to good will and capacity of parents caring of these children. Inclusion in education is not solved, especially since mechanisms for implementation of this Law are not ensured.

Action Plan for Children in BiH is adopted (2015-2018).

### **Rights of national minorities**

There are 17 ethnic minorities in Bosnia and Herzegovina, the Roma minority being the largest one. In the period from November 2013 to November 2014, there were no significant changes to the regulations governing the rights of national minorities in BiH, and therefore no changes took place in the legal status of Roma.<sup>12</sup> Unfortunately, legislation governing the issue of national minorities in the Brčko District of Bosnia and Herzegovina and a number of cantons<sup>13</sup> has not been adopted yet. In the area of normative regulation of the issues involving national minorities, on 15 January 2014 the Council of Ministers of Bosnia and Herzegovina has adopted a Decision on Amendments to the Decision on Nomination of the members of the Roma Council within the Council of Ministers of Bosnia and Herzegovina<sup>14</sup> thus changing the composition of the Roma Council. On 19 March the Council of Ministers adopted a Decision on Nomination of the Expert Team to provide support to the Chairmanship of Bosnia and Herzegovina over the Roma Inclusion Decade. In 2014 the Ministry of Human Rights and Refugees adopted a very important Decision on Guidelines for the Improvement of Roma children status in Bosnia and Herzegovina – Social inclusion<sup>15</sup> whereby key challenges facing Roma children are elaborated and presented solutions, guidelines for their social inclusion through several protection systems such as: social protection, education, employment, housing and improvement of inter-sectoral co-operation for the benefit of children and families in Bosnia and Herzegovina.

In respect of the status of Roma population in BiH, the state authorities have employed significant efforts to protect their rights, among others through the inclusion into the international Project „Roma Decade 2005-2015”. Improvements are registered in the access to identification documents, establishment of a register related to the rights of Roma, in particular in the area of employments, and similar registers should be maintained in other areas.

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<sup>11</sup> 2015 Annual Report of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina

<sup>12</sup> The BiH Law on Protection of National Minorities is still in force without amendments (Official Gazette of Bosnia and Herzegovina”, no. 12/03), The FBiH Law on Protection of National Minorities (Official Gazette of FBiH, no:56/08) and the RS Law on Protection of National Minorities (RS Official Gazette, no: 02/04), laws on protection of national minorities in cantons as follows: Una-Sana Canton (Of. Gazette of Una-Sana Canton no.: 4/12), Tuzla Canton (Official Gazette of Tuzla Canton, no: 14/09), Bosna-Drina Canton Goražde (Of. Gazette BDC Goražde, no: 8/11, Sarajevo Canton (Of. Gazette of Sarajevo Canton, no: 28/11)

<sup>13</sup> Herzegovina-Neretva Canton, Posavina Canton, Canton 10, West Herzegovina Canton, Central Bosnia Canton and Zenica-Doboj Canton

<sup>14</sup> Official Gazette of BiH, no 15/14

<sup>15</sup> Official Gazette of BiH, no 101/13

## **Rights of prisoners**

By ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in October 2008, the authorities of Bosnia and Herzegovina took over responsibility for the establishment of a National Preventive Mechanism for the Prevention of Torture. However, in Bosnia and Herzegovina has not yet come to its establishment.

One of the organizational units of the Ombudsman is its Department for protection of the rights of prisoners/detainees which is not yet formally discharging the function of a National Preventive Mechanism for the Prevention of Torture (NPM), but through the visits of their staff members to the prisoners it examines how they are treated in order to increase their protection from torture.

At the end of November 2016 Institute of Forensic Psychiatry became functional. It has a huge importance for the criminal sanctions execution system as persons who need professional medical assistance were for years accommodated in prisons and other institutions. Commencement of work of this Institute also means the fulfillment of obligations posed by the Court of Human Rights in Strasbourg in respect of enabling the adequate treatment of persons who have committed crimes in the state of reduced, or significantly reduced mental capacity or incapacity.

Long standing problem of overcrowded prison facilities in the Federation of BiH is solved by construction and adaptation of the current institutions, while prisons in the Republika Srpska have enough accommodation capacities.

With the aim of resolving the issue of overcrowded prisons it is necessary in the future to develop concepts of alternative sanctions, such as community service or electronic monitoring.

In its Annual Report for 2015 the Ombudsman issued a recommendation to all the prison facilities in Bosnia and Herzegovina in accordance with their objective possibilities, and pursuant to European Prison Rules to secure confidentiality of letters and complaints of the prisoners addressing the Ombudsman.

## **Freedom of expression**

Implementation of Law on Freedom of Access to Information<sup>16</sup> (LFAI) even ten years after its adoption has not yielded satisfactory results.

Some of noted weaknesses in the implementation of the mentioned laws (noted based on complaints of citizens filed within the Ombudsman) are the following: entity laws do not contain penalty clauses, monitoring and oversight over the implementation of the LFAI is not efficient, civil servants are not trained for the implementation of the LFAI, citizens are not aware of their rights in respect of this law, many public authorities do not meet their obligations under this Law in segment of nominating the information officer.

Responsible authorities interpret the provisions of the LFAI differently, as well as obligations they have under this Law. Many do not follow legally prescribed form, do not allow for legal remedy and do not provide asked information. Protection of personal information is often invoked as a reason for refusal, but with no grounds, since personal data protection must be proven. Media often report with sensationalism.

The Parliamentary Assembly of BiH has also adopted the Law on Whistle-Blowers Protection. Ombudspersons expressed their concerns about the lack of full protection of these persons from victimization.

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<sup>16</sup> Official Gazette of the Reublika Srpska, no. 20/01, Official Gazette of the Federation of BiH, no. 32/01 and 48/11, Official Gazette of BiH, no. 28/00, 45/06, 102/09, 62/11 and 100/13

## **Rights of persons with disabilities**

In 2010 Bosnia and Herzegovina ratified the Convention of the Rights of Persons with Disabilities and its Optional Protocol<sup>17</sup>. In this way the possibility of its direct implementation was opened, which is not often used in practice. Namely, by adoption of new laws and by-laws many issues are governed in a different way, since these issues mostly fall within the jurisdiction of the entities and the cantons. As such, this constitutes the basis for discrimination.

On the other hand, data collection in respect of persons with disabilities is still a challenge. For instance, after the 2013 census, statistical data and separate records of persons with disabilities should have been implemented. However, the census results published in July 2016 did not include these data.

A single definition of persons with disabilities does not exist. Current definitions are not harmonized and adjusted with the definition present in the United Nation Convention on the Rights of the Persons with Disabilities. Applicable laws govern differently the rights of war veterans, civil victims of war, civil victim of accidents at work and peace-time disabled persons. Procedures and conditions for them to acquire the status, and also allocated funds to cover the costs of the protection of persons with disabilities are different, where remuneration and allocated funds are much higher when it comes to war veterans compared to civil persons with disabilities.

Citizens' complaints lodged within the Institution show that the provided services do not meet the specific needs of persons with disabilities, and that the development of the services depends on the development of the region in which these people is supposed to realize their rights. Namely, social welfare services are provided and social benefits generally realized at the local/municipal level. This social care system means that local communities will create social care system according to their financial possibilities. Experience of the Ombudsman in dealing with persons with disabilities shows that in both entities more attention is paid to the provision of financial benefits for persons with disabilities and provision of institutional care for them than other types of services, in particular the assessment, care and assistance at home, personal assistance, etc.

In their special reports Ombudspersons<sup>18</sup> emphasized the existence of some continuous systemic problems in realization of civil and political rights of citizens, therefore it would be critical to ensure that the competent institutions in the coming period employ more efforts in implementation of the Ombudsman's recommendations contained in these special reports.

## **Media**

The Press Council in BiH, the Press Code prohibits "*incitement*", which is defined as "*intentionally or unintentionally encouraging discrimination and intolerance*", where the printed media have an obligation to refrain from incitement to hatred or inequality on any grounds, as well as incitement to commission of criminal acts or violence. The provision relating to discrimination stipulates that journalists must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state. As a matter of fact, to the Ombudsman's best knowledge, in practice the references to a person's ethnic group, nationality, race, religion, gender, sexual orientation, physical disability or mental state are only made when directly relevant to the event being reported, i.e. when it constitutes the grounds for a violation.

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<sup>17</sup> Official Gazette of BiH – International treaties, no. 11/09

<sup>18</sup>2009 *Special report on situation in institutions accommodating mentally challenged persons in Bosnia and Herzegovina*, 2010 *Special report on the rights of persons with disabilities*, 2010. *Special report on the rights of children in institutions*, 2016 *Special report on accessibility of business premises of the legislative bodies in Bosnia and Herzegovina to persons with disabilities*

As regards to the obligation to respect gender equality it is envisaged that the journalists avoid direct or indirect comments that may put individuals in an unequal position or discriminate them based on sex, race, sexual identity, gender identity, gender expression and/or sexual orientation. It is important to emphasize that the Communications Regulatory Agency of Bosnia and Herzegovina is authorized to sanction hate speech observed (from fines to turning off the TV stations), while the Press Council has only an advisory role and can make recommendations, but not sanction.

Ombudspersons noted that in spite of the current legislative and institutional framework related to the media there is still a number of problems in functioning of this segment of society, where hate speech can be considered as the biggest problem, which requires a review of existing sanctions, and also the causes. It is very important that the Ombudsman be supported in drafting its special reports and that its recommendations are implemented. Ombudspersons are currently drawing up a special report on the situation of journalists and cases involving threats to journalists based on a recommendation issued by of the Council of Ministers within the framework of obligations from the Action Plan for the Association to EU.

Ombudspersons of Bosnia and Herzegovina:



Jasminka Džumhur, PhD

Nives Jukić

Ljubinko Mitrović, PhD