



**OBSERVATIONS OF THE JASMINKA DZUMHUR,  
HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND  
HERZEGOVINA ON THE IMPLEMENTATION OF THE  
UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN (CEDAW) IN  
BOSNIA AND HERZEGOVINA**

**Committee on the Elimination of Discrimination against Women  
Fifty-fifth session 8-26 July 2013**

## General

- Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter referred to as: the Ombudsman) was accredited by the International Coordinating Committee of National Human Rights Institutions (ICC) with „A“ status as a national human rights protection mechanism in Bosnia and Herzegovina (BiH). In the framework of its mandate the Ombudsman is following-up and providing protection or the rights of the citizens of BiH including the rights guaranteed by the UN Convention on the Elimination of Discrimination against Women (hereinafter: CEDAW) and regularly submit its observations thereon to the relevant UN bodies.
- There is the established practice in BiH that laws are easily adopted, but without the efficient measures for the implementation. An example of this is Article 7 paragraph 5 of the Law on Prohibition of Discrimination pursuant to which the budget of the BiH Ombudsman needs to have a special budget line necessary for functioning of a special Department for combating discrimination. Unfortunately this provision has not been implemented so that funds in budgets 2010, 2011 and 2012 which prevented implementation of the activities related to the promotion of the Law on Prohibition of Discrimination, follow-up of court proceedings related to discrimination, research and surveys related to discrimination and law harmonization.
- Observations on the implementation of CEDAW in BiH (hereinafter: Observations) are primarily focused to the my experience, as the one of three Ombudspersons, gained through handling of individual and group complaints lodged to the Institution in addition to the cases of ex officio investigations made by the Institution of ombudsman which relate to the protection and promotion of human rights enshrined by the CEDAW. It includes maximum efforts to make a comprehensive analysis of the situation with emphasis to the prohibition of discrimination as an absolute right. Particular attention is dedicated to the analysis of the implementation of the Concluding comments of the on the Elimination of Discrimination against Women<sup>1</sup> with an overview of the legislative and institutional framework and procedures aimed at securing the implementation of the international standards in BiH in the field of the elimination of discrimination against women.
- Gender equality in BiH cannot be regarded as an issue isolated from other issues pertaining to human rights. Complaints received by the BiH Ombudsman Institution indicate to an increasingly complex situation related to human rights which includes, in addition to the factors recognized by the Committee as causes of human rights violations, aggravated economic and social situation and weakened role of the institutions. Inefficiency of court protection mechanisms in cases involving gender based discrimination and gender based violence additionally victimize women victims of violence.
- It is important to pinpoint that the preparations for the census are in progress, and after that, there will be more detailed statistics available.

---

<sup>1</sup> Bosnia and Herzegovina, adopted on 35<sup>th</sup> session held from 15 May to 2 June 2006 CEDAW/C/BIH/CO/3

## **Women in post-conflict situations**

- Existence of the awareness of the importance of strategic approach for realization of gender equality in BiH resulted in the adoption of a series of strategic documents including the Gender Action Plan, [Action Plan for the implementation of Resolution 1325 in BIH](#) and like. Unfortunately, lack of a comprehensive national plan in the field of human rights reflected to a large degree to the efficiency of the implementation of mentioned strategic documents related to gender equality. Therefore, in absence of such plan, these remain so far the only documents regarded as a gender equality mechanisms intended to ensure its implementation.

## **Constitutional and legislative framework**

- Constitutional framework of Bosnia and Herzegovina imposed by the Dayton Peace Accords dividing the member-state to two entities (decentralized Federation of BiH made of 10 cantons and centralized the Republic of Srpska) in addition to one district (Brčko District). This creates a complex administrative structure which often results in non-adjustment and non-implementation of the laws and policies intended to ensure equal enjoyment of the rights for men and women in BiH. This is particularly expressed in areas traditionally linked to women such as education, social welfare etc. Then, in place are policies aimed to ensure the rights of constituent peoples as a collectivity, which often result in neglecting the rights of other collectivities such as gender-based collectivities.
- In the reporting period, BiH saw certain improvements that could be conditionally regarded positive and this is primarily related to the adoption of the Law on Prohibition of Discrimination that entered in force on 05 August 2009. In addition to the prohibition of different treatment on any grounds including gender, the Law makes distinction between the direct and indirect discrimination and introduces new forms of violence such as: harassment, sexual harassment, mobbing, segregation, instruction to discriminate, assistance to others in discrimination and victimization. The Law defines the scope of application as it also determines the Ombudsman as a central institution for the protection of discrimination. The Law also provides administrative and court proceedings for the protection from discrimination and penal/minor offence provisions for actions made in violation of this Law including non-compliance with the Ombudsman's recommendations.
- Being aware of the importance of the establishment of a strong mechanism for the prevention of all the forms of discrimination, in January 2009. which means, a full year before the entry into force of the Law on Prohibition of Discrimination, the Ombudspersons reached a decision to establish the Department for Elimination of all Forms of Discrimination within the Institution. The main task of the Department was to ensure equal access to the realization of the rights of all the citizens on the territory of BiH and take efficient measures to prevent any form of discrimination of citizens in the enjoyment of their rights enshrined by the Constitution.

- A consolidated Law on Gender Equality was adopted in BiH<sup>2</sup> incorporating previous amendments. This way the Law became more accessible to citizens and its implementation was facilitated and more transparent.

### **Temporary special measures**

- Based on provisions of the Law on Gender Equality gender mechanisms were established: Gender Equality Agency of BiH, Gender Center of the Federation of BiH and Gender Center of the Republic of Srpska. Unfortunately, position of these mechanisms within the executive power has a large impact on their independence, thus their efficiency in ensuring gender equality.
- Efforts of the Gender Equality Commission of the Parliamentary Assembly of BiH on advancement of the situation in this area are evident. For instance, at 26th session of the House of Representatives of the Parliamentary Assembly of BiH held on 19 April 2012 adopted was initiative of the female representative Ismeta Dervoz related to gender mainstreaming in daily operations and work of the Parliamentary Assembly of BiH. I, as one of three ombudspersons, note that laws and by-laws, that is, decisions of administrative bodies at all the levels are expressed in masculine form and do not comprise any remark that wording equally relates to male and female individuals.

### **Violence against women**

- For instance the laws of the protection from domestic violence<sup>3</sup> foresee different measures for the protection of victims in sense of reparation and prevention, but very little has been done for the implementation of these provisions. Systematic co-ordination is still missing between the relevant authorities in cases involving gravest criminal offences or murders where women are mostly victims and sometimes perpetrators after the years of being subjected to violence.
- Despite the adoption of relevant legislation, practice, unfortunately, shows that there are problems in processing of cases involving gender-based violence and implementation of the Law on Gender Equality and Criminal Code where injured party is a child (a person below 18). So there was a case where the Office of the BiH Prosecutor held that provisions of the Law on Gender Equality could not be implemented since the injured party was in the age of 14, therefore it was considered a child. This was the reason not to implement the said Law.
- Reviewing the above case in light of the Law on Gender Equality, I, as one of three ombudspersons, note that different law provisions use different terms related to the subject to protection, e.g. Article 1 of the Law

---

<sup>2</sup> The Law on Gender Equality, consolidated, "Official Gazette of BiH", no.: 32/10

<sup>3</sup> FBiH, RS, Brčko District BiH

„regulates, promotes and protects substantive gender equality and guarantees equal opportunities to all, in public as well as private life, and eliminates and prevents direct and indirect gender based discrimination“, while other articles use the term all and everybody. This inconsistency with regard to the subject to protection in the Law resulted in different treatment in court proceedings since the relevant prosecutors had no unified opinion as some interpreted that a minor cannot be regarded as a citizen or an individual or a person which questions the whole concept of the Law on Gender Equality and the Constitution of BiH. This also raises the issue of readiness of prosecutors and judges to efficiently process cases involving gender-based violence thus putting in question protection and dignity of the victim.

- Reform of criminal justice system was done in 2003 bringing the amendments particularly related to the status of the parties to the court proceedings (prosecutor and suspect, that is, accused) that changed position of injured party as well in a way that it created stronger dependence of the injured party's position of the prosecutor's actions. Reform has failed in segment of injured party's protection to fully reconcile traditional and new solutions related to criminal processing institutes, international human rights standards and case-law. Interests and legal position of the injured party are only a marginal issue.
- Victims still do not have support according to the international standards, which raises particular concerns for women victims of war which face the problem of recognition of the status. BiH has not adopted the law to regulate torture in accordance to the recommendations of the UN bodies, which is a main reason of problems they suffer after the war.
- It is obvious that de facto court applicability of the rights enshrined by the Convention before all domestic courts and other mechanisms is not secured and one of the reasons for that is the absence of the introduction of additional measures for dissemination of information on the Convention which means that Item 14 of the Concluding observations of the Committee.

### **Trafficking and exploitation of prostitution**

- In the period 2001-2010 in BiH important activities were taken on the prevention of trafficking in human beings which was the reason for the USA State Department to transfer the State from the group III to the group II, and subsequently to the group I. This means that efforts of the authorities resulted in putting the human trafficking under control. Unfortunately aggravated situations in this area, especially from the aspect of child exploitation in form of begging and non-efficient processing of child traffickers lead to recent classification of BiH into the group II.
- I, as one of three ombudspersons, note that efforts on the establishment of drop-in centers yielded results, yet the more systematic approach to the issue of child abuse in form of forced begging is not in place.

## Participation in political and public life and decision-making

- Gender based discrimination is still existing, which is a result of lack of harmonization of the laws with the Law on Gender Equality. The deadline for this was six months following the adoption of this Law in June 2003.<sup>4</sup> This is particularly related to the Election Law in BiH,<sup>5</sup> since the election results after the general elections held in BiH in 2010 show that participation of women in legislative bodies decreased. Election system in BIH is based on quotas and this system had significant impact to the elections held in 1998. In 1998 this system had helped to have a critical mass of women elected to the Parliamentary Assembly of BiH, and number of elected women at 2000 local elections had also increased. However, the new Election Law of BiH adopted in 2001 provides for quotas, but it also provides for open lists, which had negative impact to women's participation in political life. Women in BiH, unfortunately, despite their presence on candidate lists, do not get positions as they would according to quotas system so that percentage of women's participation in BiH could be compared to that in countries where quotas have not been implemented at all. This is also result of non-efficiency in implementation of Article 15 of the Law on Gender Equality which reads "that the relevant state authorities at all the levels and local self-government bodies shall ensure and promote equal gender participation in administration, decision-making process and representation". Election results indicate that goal promoted by this legal provision has not been achieved.
- In the Parliamentary Assembly of BiH, women are represented by 11 seats, or 19,2%. In the National Assembly of the Republic of Srpska after the last elections women have 18 seats, which is 21,68% out of 83 seats in total, while the Parliament of FBiH has 33 seats for women out of the total of 156 seats. Even the members of the Election Commission of BiH have not been nominated pursuant to the provisions of the Law on Gender Equality since they have only one woman out of 7 members. Semi-open lists system in combination with quotas system apparently is not a mechanism enabling the equal representation of men and women in authority bodies.
- In general, Bosnia and Herzegovina has a small number of women political leaders, on both national and local levels. This has negative implications on political actions since women as a minority in party structure and political bodies elected to have to obey to the party discipline which sometimes does not allow them to advocate for gender equality principles although they might be gender sensitized women. An additional obstacle to more significant women's participation in decision-making is the fact that women are minority also in the bodies of political parties where they can hardly

---

<sup>4</sup> Unfortunately even 9 after the adoption of the Law on Gender Equality full implementation of Article 32 paragraph 2 of the Law according to which all the state and entity laws and other relevant regulations should be brought in line and harmonized with the provisions of the Law within 6 months following its entry into force.

<sup>5</sup> 2010. saw the adoption of amendments to the Election Law of BiH ("Official Gazette of BiH" no: 23/01, 7/02, 9/02, 52/02, 4/04, 20/04, 25/05, 528/05, 62/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10) which brought significant modifications of Article 4.19 paragraph (4) which reads: „Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest integer“.

manage to put in focus gender equality since political parties programs often do not include gender equality principles.

- Some better representation of women could be found in judicial area. For instance, the Court of BiH out of 41 local judge<sup>6</sup> has 16 women or 36.59%. President of the Court of BiH is a woman. Women hold 14 prosecutor positions, that is 37.83% out of the total number of prosecutors.<sup>7</sup> In the Constitutional Court of BiH there are only three women out of the total of 9 judges<sup>8</sup>, one of them being the president of the Court.
- Issue of women's participation in political life is not usually recognized as one of the pillars of democracy development and it does not attract equal attention and efforts aimed at the efficient implementation.
- This raises the issue of sophisticated discrimination of women in political life in BiH, as well as the lack of political culture which is particularly manifested in election campaigns when political parties do not pay equal attention to male and female candidates. During the pre-election campaigns mostly male candidates address the public as they are represented in the promotion materials, in media and public addresses. Women are mostly candidates for the positions to which they would not be elected and everybody knows that. Political parties are very acquainted with methods on how to put candidate lists complying with quotas system with minimal representation of women.

## Education

- Roma, as the largest national minority in Bosnia and Herzegovina is in the unenviable economic - social position, because most of them can not provide physical existence without social assistance. Largely without health insurance, very few have a job or steady source of income, a large number of Roma children do not attend school. Roma are also and often discriminated against minority, and to unequal treatment of this population comes in the area of employment, education, public services and access to places of public assembly. Of course, within this group most affected categories of all these shortcomings are just girls and women.
- Number of appeals in Institution of ombudsman doesn't reflect the actual number of cases discrimination against Roma, due to the fact that they live on the margins of society, which affects the recourse to legal remedies and legal mechanisms for protection their rights.
- Although numerous programs are implemented, supported by international organizations and UN agencies, aimed at resolving the problems of the Roma population in BiH, the effective programs to improve education system and

---

<sup>6</sup> In the Court of BiH judges functions are carried out by the BiH and foreign nationals. There are 41 judges BiH nationals and 16 international judges. For purposes of this study it is necessary only to take statistic data related to judges which are BiH nationals since participation of international judges is a transitional measure.

<sup>7</sup> The Office of the BiH Prosecutor comprises 37 prosecutors including 11 internationals.

<sup>8</sup> The Court of BiH has three international judges out of which one is a woman in addition to 6 judges BiH nationals out of which two are women

employment of Roma girls and women, and their access to health and Social Welfare have not yet developed.

## **Employment**

- Gender inequality is particularly present in economy and natural resources management, which could be proven by the fact that management structures of telecommunication, hydro-potential, natural and financial resources management companies mostly comprise men.
- When it comes to the employment rate in BiH it is obvious that there is a difference between sexes, from the low rate of 43 % among men to the extremely low rate of 24 % among women. Furthermore, imbalance can be observed among youth. Younger men are twice more employed than young women, which means that only one of ten young women in the age 15-24 is employed. Such low participation of women in employment is partially a consequence of low education level and the fact that the least educated women do not even try to find employment.
- Analyzing the case-law of the Ombudsman in context of the violation of the rights to work and benefits arising therefrom, I, as one of three ombudspersons, find that the right to work is violated mostly toward pregnant women, especially when they have temporary engagement contracts with their employers. In such cases employers often do not extend their work contracts in order to avoid its legal obligations toward the future mothers. This is particularly the case in private sector, while the situation in the public sector had improved from the reactions of the Ombudsman in 2009 to the decision of the Constitutional Court in 2010.<sup>9</sup> Following this decision the Council of Ministers regulated this issue by its Decision on methods and procedure for realization of the right to compensation during maternity leave in the institutions of BiH.
- However, despite this Decision of the Constitutional Court we cannot confirm that all the pregnant women are finally in the same position. Regulation of these rights falls within the mandate of the entities, cantons and Brčko District and it depends on their available funds and allocation of their budgets to which degree this decision would be complied with. Significant number of women in BiH, unfortunately, fails to enjoy this right as the budgets are not gender sensitive. Funds are rather allocated to other lines with „higher priority“. Analyzing the impacts of the current legal solution governing the compensation during the maternity leave, it could be concluded that the enjoyment of this right depends on the place of residence, that is, the place where contributions are paid. Due to the administrative distribution of mandates pursuant to the Constitution of BiH and constitutions of the BiH entities, there is as much as 12 different models of realization of this right. Therefore the payment of complaints during maternity leave is not harmonized, and there are cantons where this right is

---

<sup>9</sup> Issue of compensation during maternity leave was put before the Constitutional Court of BiH upon which it delivered a decision that Article 35 of the Law on Salaries and Compensations in the Institutions of BiH was discriminatory and in contravention to Article II/4. of the BiH Constitution. In addition to that the Constitutional Court of BiH re-confirmed that „maternity leave is particularly related to the right of women not to be discriminated and to enjoy appropriate work conditions“.

not guaranteed at all. The right to compensation during maternity leave based on place of residence after the adoption of the Law on Salaries and Compensations in the Institutions of BiH had lead to significant differences for persons employed in BiH institutions.

- It could be concluded from the above that Bosnia and Herzegovina failed to fulfill its obligations related to securing the right to compensation during maternity leave for all the citizens without discrimination.

## RECOMMENDATIONS

- Amendments of the Law on Gender Equality, especially its Article 15 in a way to provide that equal participation of men and women in public life is more precisely defined and that obligation of the authorities to ensure implementation of this principle in executive power as well is clearly highlighted. This process must be based on consultative approach with full participation of NGOs;
- Harmonization of laws and other regulations in BiH, primarily the Election Law with the Law on Gender Equality and international standards promoting and supporting the gender equality in structures of authority and decision-making in accordance with recommendations of the UN CEDAW;
- Development of procedures for full implementation of Article 15 of the BiH Law on Gender Equality in accordance with the UNSC Resolution 1325, in order to ensure equal gender participation in policy creation and decision-making procedures at the most responsible functions in diplomacy, in parliamentary and other delegations addressing the international fora as well as negotiations teams for the accession of Bosnia and Herzegovina to EU.
- Active inclusion of women in reforms, in particular the upcoming constitutional reforms and initiatives for legal amendments in order to remove provisions decreasing the participation of women in political life;
- Educational reform and introduction of gender equality education into the regular curricula, especially for generations that will soon enjoy the right to vote.
- Adoption of the strategy for the prevention of human trafficking and provision of funds as necessary for the Office of the national coordinator for the prevention of trafficking in human beings and illegal migration in order to provide its implementation.



Jasminka Dzumhur, Ombudsperson for  
Human Rights of BiH