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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Secretariat

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Dear Mr Schultz,

With regards to your call for alternative report/alternative information concerning the Third Periodic Report of Bosnia and Herzegovina (CMW/C/BIH/FCO/3), we will herein refer to the follow-up information received from Bosnia and Herzegovina on the concluding observations of its Third Periodic Report (received by CMW on 28 September 2021).

The following is stated under item 5 of the follow-up information:

“The Service temporarily places an unaccompanied minor who entered BiH illegally and who is not accompanied by a parent or legal representative or proxy parent or was left unaccompanied by those persons upon entering BiH, and whom the Service cannot immediately return to the country from which he arrived or hand him over to representatives of the country of which he is a citizen, in the department of the institution specializing in minors, of which he informs the competent centre for social work, which immediately appoints a temporary guardian. Unaccompanied minors are kept in the Immigration Centre exceptionally, only as a measure of last resort and for the shortest possible time, and minor aliens are treated with special care and respect, in accordance with the European Convention on Human Rights and Fundamental Freedoms and the Convention on the Rights of the Child and other regulations in BiH concerning care and protection of minors.”

“Children on the Move “are immigrant children who accompany their parents or have gone abroad on their own in pursuit of employment and better living conditions, children displaced by war or natural disasters, asylum-seeking children, and often victims of human trafficking. It is imperative to recognise their needs and protect their rights precisely because of the dangerous conditions they live in, and this requires adequate cross-border cooperation, i.e. exchange of information and coordinated action of state and other bodies from different countries¹.

¹ Children on the Move Compendium from the thematic meeting of the Children’s Rights Ombudspersons Network in South-East Europe, paper of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, author Aleksandra Marin Diklić

Aware of the importance of migration issues in Bosnia and Herzegovina, IHROBiH decided to draft the *Special Report on the Migration Situation in Bosnia and Herzegovina*². Special attention was paid to the protection of rights of children, in particular unaccompanied children. In its report, IHROBiH stressed that a special form of responsibility for migration issues in Bosnia and Herzegovina lies with the institutional mechanisms responsible for conducting application procedures and ensuring status and other rights guaranteed by the legislation of Bosnia and Herzegovina and ratified international standards.

IHROBiH highlights that unaccompanied minors belong to a vulnerable category of asylum-seekers, as defined under Article 2, item ii) of the *Asylum Act*, which is why the competent authorities are legally obliged to ensure that the best interests of children are primarily taken into account in all procedures concerning children, and that all children's rights are protected pursuant to the *UN Convention on the Rights of the Child*³ and the legislation of Bosnia and Herzegovina pertaining to the care and protection of children. The best interest of the child, as per Article 11 of the *Asylum Act*, is the very thing that requires priority action aimed at their early identification, protection and care. The complete Special Report on the Migration Situation in Bosnia and Herzegovina is available on the IHROBiH website www.ombudsmen.gov.ba.

The particular issue that the institutions of Bosnia and Herzegovina face is the protection of the rights of accompanied or unaccompanied children. Without personal ID documents, it is difficult to establish who the persons accompanying the child are or whether they really are their parents as they claim, what the actual relationship of the child with other members of the group is, whether the child is endangered and whether they need protection. Police officers, who are most often the first to come into contact with the child, are often focused on protecting the state border from illegal entry of foreign nationals and thus there is a gap between their primary role of state border protection and the requirement to identify and recognise a child in need of help and protection.

Children on the move are not singled out as a particularly sensitive and vulnerable category of migrants, which results in their inadequate recognition by either the legislation or practice. If their needs are not recognised and their rights are not protected in their pursuit of better conditions, they are at risk not only of not reaching better conditions but also of being further harmed. Therefore, it is crucial to recognise the needs of this category of children at all stages of their journey and, with appropriate legal solutions, adequately respond to them.

In connection with unaccompanied and separated children, the UN Committee on the Rights of the Child particularly stresses the state's obligation that "*the provisions and principles of the Convention are fully reflected and given legal effect in relevant domestic legislation*" and that "*obligations deriving from the Convention vis-à-vis unaccompanied and separated children apply to all branches of government (executive, legislative and judicial)*".⁴

² https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

³ Adopted by the United Nations General Assembly on 20 November 1989.

⁴ General Comment no. 6: Treatment of unaccompanied or separated children outside their country of origin, Ombudsman for Children of the Republika Srpska; Children on the move are also entitled to the rights set forth in the UNCRC, Children on the Move Compendium from the thematic meeting of the Children's Rights Ombudspersons Network in South-East Europe, author Nada Grabovac, Ombudsman for Children of the Republika Srpska

According to Article 2 of the Convention on the Rights of the Child, States Parties shall respect and ensure the rights set forth in CRC to each child within their jurisdiction, which obliges the State Party to ensure that children on the move are entitled to the same rights as children with a permanent residence in the country.

The *Asylum Act of Bosnia and Herzegovina* stipulates, *inter alia*, that a temporary guardian shall be appointed for a minor. Social welfare centres are the competent authorities in this specific case. The Act also stipulates that it is prohibited to return a minor to the country of their residence until their admission by the parents or competent institution is ensured. It is particularly interesting that prohibiting the return of minors is stipulated in such a way that "*under no circumstances may they be returned in a way that is in violation of the European Convention on Human Rights*", not the Convention on the Rights of the Child, although the same article of the Act stipulates the competent authorities are obliged to treat them "*in compliance with the Convention on the Rights of the Child*". In addition, the Act does not set forth any other rights of minors - right to education, right to legal aid, right to social protection services, right to an interpreter/translator, right to freedom of expression and opinion. While stipulating that at all stages of the proceedings foreign nationals shall be informed of the rights and obligations arising from this Act (Article 12, paragraph 1) and the obligation of the authority conducting the proceedings to provide a translator or interpreter to the foreign national who does not understand the language in which the proceedings are conducted (Article 12 paragraph 2), the legislator makes no distinction in respect of the exercise of this right in case of children. However, bearing in mind the statutory obligation of the competent authorities set forth by the Act (Article 139 paragraph 2) to treat minors with particular care and respect and to treat them in compliance with the Convention on the Rights of the Child, it is beyond dispute that special responsibility lies with temporary guardians, appointed in each individual case.

The fact that social welfare centres in Bosnia and Herzegovina are under-capacitated poses a particular problem. This is an issue that results in violations of children's rights. The temporary guardian is appointed by the competent social welfare centre and, under the applicable law, this guardianship shall be in effect during the proceedings for accommodating the child in an institution in the territory of the competent centre. The new guardian must be appointed for every new placement of the child (relocation). There are registration interviews that have been conducted with children without their guardians present, or without even appointing special guardians. Thus, complete proceedings get conducted without children having their special guardian appointed and it remains unclear who represents the interests of such children in the proceedings.

The participation of children in these proceedings poses a separate issue – whether and to what extent their opinion is taken into account when appointing the guardian, accommodating them, providing their education – as does the supervision of the work of services and institutions responsible for children on the move. All this simply confirms that this is a complex issue, that it requires a comprehensive and multidisciplinary approach and defined treatment procedures.

IHROBiH receives complaints pertaining to the position of unaccompanied alien children and falling within its competence and it also acts *ex officio*, investigating potential human rights violations, taking decisions, issuing recommendations to the competent authorities in Bosnia and Herzegovina.

We would like to note that the past communication with the organisations monitoring and assisting unaccompanied minors shows that the capacities which would facilitate the fastest possible treatment and work have not yet been developed.

Item 11 of the follow-up information reads as follows:

“The beneficiary of free legal aid may be, among others – “a natural person who is in the territory of BiH under international protection in accordance with international standards, especially asylum seekers, refugees, persons under subsidiary or temporary protection, persons in exile, stateless persons, victims of trafficking, in accordance with the obligations of BiH according to international conventions.” Legal aid is provided by officers of the Office for Legal Aid, which is a section of the Ministry of Justice of BiH. The Law on Provision of Legal Aid was passed in the Republika Srpska, the Brčko District of BiH and cantons in the Federation of BiH.”

We would like to point to the issue which could emerge in the period to come because of the potential greater influx of migrant workers into Bosnia and Herzegovina.

Namely, due to the drain of the workforce from Bosnia and Herzegovina into European Union countries, certain sectors (construction, transport, energy, service and other) face the depleting workforce and employers’ associations from the Federation of Bosnia and Herzegovina and the Republika Srpska, as well as some sectoral associations, have continuously called on the authorities to increase the quotas for foreign workers to overcome the said problem.

It is to be expected that this will lead to an increase in the number of migrant workers and therefore to certain problems which could occur when regulating their status and residence.

Free legal aid can only be obtained by persons granted international protection, and in the specific case, migrant workers who are unable to engage a lawyer and an interpreter/translator or are not provided assistance by their employers could therefore find themselves in an unfavourable position, given the costs that may be incurred.

We believe that the authorities should consider models of cooperation with the non-governmental sector and international organisations whereby migrant workers during their first work and residence years would obtain a certain form of free legal aid, with a view to preventing potential exploitation.

With regard to the national strategy to combat human trafficking and the statistics provided to you, we have no alternative information that would dispute what was said.

As for birth and citizenship registration, IHROBiH acted on a complaint filed by association “Vaša prava BiH” concerning the non-compliance of certain provisions of the FBiH Public Records Act with international standards and obligations of Bosnia and Herzegovina. This led to the impossibility of registering children in civil records, due to legal gaps, rigid and over-formalised procedures, inapplicable to particular everyday situations. Due to this incompliance, association “Vaša prava BiH” is of the opinion that there is no adequate mechanism to ensure that every child born in the territory of the Federation of Bosnia and Herzegovina is registered in the birth records. The registration of children in the civil records in the Federation of BiH functions partially, only

when it comes to children of parents who are citizens of BiH and born in healthcare institutions. The registration of children, citizens of BiH, born outside healthcare institutions or the registration of children of citizens of Bosnia and Herzegovina born abroad and children of foreign nationals born in the territory of the FBiH is not functioning at all. Also, the handling practices of the authorities vary from canton to canton and they propose that amendments to the Public Records Act and accompanying by-laws be made. The Asylum Act is erroneously applied. IHROBiH issued a recommendation calling on the FBiH Parliament to consider initiatives for amending the FBiH Public Records Act as soon as possible. Also, the FBiH Ministry of Internal Affairs was called on to consider the initiative to amend and harmonise the bylaws for implementing the FBiH Public Records Act, in particular Articles 5 and 8 of the Rulebook on Child Registration Forms and Death Certificates of the FBiH Ministry of Internal Affairs. The recommendation called on the Ministry of Security of BiH to consider the allegations made by association “Vaša prava BiH” in connection with the application of Article 38, paragraph 1 of the Asylum Act of BiH in terms of mandatory registration of the place of temporary residence and to take the necessary measures which will result in the implementation of the Act.

The initiatives of association “Vaša prava BiH” were not accepted. IHROBiH notices that there have been amendments to the Extrajudicial Procedure Act, stipulating the procedure for “establishing the place and time of birth”.

THE INSTITUTION OF OMBUDSPERSONS OF BOSNIA AND HERZEGOVINA