



**HUMAN RIGHTS IN BOSNIA  
AND HERZEGOVINA  
2008**

Legal Provisions, Practice and  
International Human Rights  
Standards in the Bosnia and  
Herzegovina with Public Opinion  
Survey

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HUMAN RIGHTS  
IN BOSNIA AND HERZEGOVINA  
2008

LEGAL PROVISIONS, PRACTICE AND INTERNATIONAL HUMAN  
RIGHTS STANDARDS IN THE BOSNIA AND HERZEGOVINA WITH  
PUBLIC OPINION SURVEY

Human Rights Centre, University of Sarajevo

Sarajevo, 2009



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## Introduction

In Bosnia and Herzegovina, there is a gap between rights recognized by obligatory international and regional instruments and defined in national constitutional and legislative framework, and the way they are implemented and respected in practice. Constitution of Bosnia and Herzegovina provides primacy of collective rights – rights of constituent peoples (Bosniaks, Croats and Serbs) over collective rights even though the European Convention on Human Rights has supremacy over all other law in Bosnia and Herzegovina. This in large scale leads to negative estimation of condition of human rights protection of citizens of Bosnia and Herzegovina. In the country that wants to be member to European Union its citizens who do not declare themselves as members of one of the three constituent peoples still have certain political rights denied. This brought Bosnia and Herzegovina before the European Court of Human Rights to which discriminated citizens appealed. State is additionally complex by administrative-territorial organization of the state (state, entities, Brčko District, cantons/counties, municipalities). Their disharmonized and sometimes imprecise legislative leaves too much space for different interpretations of issues like jurisdiction, which extremely hardens, not to say takes away any sense, of usage of instruments for human rights protection. If one would add insufficiently developed legal awareness of citizens on human rights, ignorance of mechanisms of their protection and distrust towards competent institutions, then it becomes clear that from

the signing of Dayton Peace Agreement until today authorities in Bosnia and Herzegovina have not used the potential created in specific positioning of provisions on human rights in mentioned Dayton Agreement, as well as the Constitution of Bosnia and Herzegovina. This is the main reason to conclude that Bosnia and Herzegovina is at the very beginning of building efficient and functional system of human rights protection.

Acting of political and government officials as key precondition for elaboration and implementation of efficient human rights policies was, in 2008 as well as in previous years, mostly determined as protection of, sometimes grounded and most often created for political purposes, so-called vital national interests. This usually occurred at the expense of wider catalogue of real and mostly unrealized rights that are constituent part of modern concept of human rights. Result of irresponsible behaviour of authorities in this field is multi-dimensional and it is best visible in chaotic state of institutions competent for protection of human rights. The best example is current status of institution of ombudsmen in Bosnia and Herzegovina caused by problems related to closing of entity institutions and their unification in state office. Namely, National Assembly of Republic of Srpska failed twice in bringing the law on termination of the Law on Ombudsman of Republic of Srpska because of objections of certain number of parliamentarians considering there is no constitutional basis for requesting closure of entity ombudsman through state law. On the other hand, even though in July 2007 Federation of B&H passed the Law on Manner Stop of Functioning of Institution of Ombudsman of FB&H, it contains certain provisions relating to simultaneity of the process of unification causing the process, as Ombudsmen of Federation of B&H interpret it, stop until the Republic of Srpska adopts the mentioned law. So, in this moment there are three institutions of ombudsmen in Bosnia and Herzegovina. This complex situation is additionally complicated by one of the three newly elected state

ombudsmen who, in the meantime, filed a resignation since and it caused new beginning of the procedure of election of ombudsmen which in previous case had thirty months of duration and was the main reason why B&H in 2008 had no functional state office of Ombudsman. It is needless to mention that media reporting on this process significantly disturbed the trust of citizens towards mentioned institutions.

The Constitutional Court of B&H as key institutional factor of protection of human rights and freedoms faces with difficulties in its work. Those are mainly relating to quite high percentage of backlogged decisions, which, no matter their background, represents violation of authority of the institution and its position in the legal system of Bosnia and Herzegovina. There is also a problem of continuous increase of incoming cases with capacities of Constitutional Court remaining the same. Therefore, there is a question of urgent reform that would be focused on creating conditions for its more efficient work.

As expected, weaknesses of institutional framework leave enough space for different forms of violations of human rights protected by constitution and laws. For example, apart from the fact that national legislative usually includes obligatory antidiscrimination provisions certain deviations are present in administrative and judicial practice often questioning the principle of equality in realization of rights. Already mentioned complex administrative structure and division of competence leads to disharmonized law and bylaw acts bringing citizens of Bosnia and Herzegovina to unequal position depending in which part of the state they live. Bosnia and Herzegovina still has no state law on prohibition of discrimination and law on free legal aid, which are two acts essential for functional system of human rights protection.

However, great number of categories subject to analysis within this report has high level of harmonization with European

and international human rights standards but in those cases there is sometimes the problem of quality of implementation of legal provisions. For example, in protection of rights of national minorities it was established that the state Law on Protection of National Minorities is act guaranteeing even more rights than provided by relevant international standards. Here the respectable body like Venice Commission seriously warned on possible problems in implementation of these positive provisions. This problem becomes obvious if one takes in consideration the area of realization of rights to participation in public and political life. Since national minorities belong to constitutional category of “others”, which reflects also to their position in election legislative, it can be rightfully said that national minorities do not enjoy same rights as citizens declaring as members of one of three constituent peoples.

There are also situations, especially in category of economic, social and cultural rights, when positive legal provisions are not implemented and it is justified by difficult economic situation that is lack of financial means.

Wide area of human rights and their violations in Bosnia and Herzegovina is an object of everyday media reporting. However, the problem of its quality should be mentioned here. Topics relating to economic and social rights dominate in printed media reporting followed by right to fair trial, right to life, minority rights, political rights, rights of the child, freedom of thought, conscience and religion etc. By analysing reporting on these topics it is difficult to avoid the conclusion that domestic media, with always present exceptions, have expressed the need to write in sensationalistic style considering it to be, as appeared, the key to obtain the readers' attention. This approach in reporting does not lead to full usage of significant potential media have in protection and promotion of human rights.

Main conclusion of the Report speaking on the gap between theory and practice of human rights in Bosnia and Herzegovina has its confirmation in analysis of citizens' legal awareness on human rights. The analysis points to common fact on undeveloped and neglected citizens' awareness on human rights whose main cause can be the gap between formal awareness on protection of human rights and real trust in protection of those rights. In other words, if citizens have specific knowledge on human rights they have, there is then a general understanding that human rights are not respected which actually decreases and almost completely abolishes the necessity of understanding, accepting and teaching human rights and instruments of their protection which would surely lead to developing awareness and spreading the culture of human rights. This (mis-)understanding of condition of human rights in Bosnia and Herzegovina is extremely dangerous since the trust of citizens in system of protection of human rights is undermined and they are additionally discouraged to try to use it.

Current state of human rights and their future in Bosnia and Herzegovina could be the best represented through borrowed economic concept of supply and demand. If we assume that adequate and efficient system of human rights protection in this case is object of supply and demand, then we could say that the state of Bosnia and Herzegovina as key supplier is not offering its citizens adequate protection of human rights which could be primarily explained by low "price" of human rights. In other words, human rights have no value that would raise their price and make the state to increase their supply. Additionally, the state of Bosnia and Herzegovina, i.e. political forces leading it in the moment and interpreting its interests, probably consider that the low supply of human rights is not a cost to both the state or them as carriers of political powers and therefore there is no encouragement to raise the curve of supply. On the other hand, the already mentioned price factor that is low value of human

rights influences on their demand by citizens. So, if citizens are not convinced in value of human rights they would not demand them. This leads us to situation in which Bosnia and Herzegovina is today: without demand of human rights there is no supply! Some results of research on citizens' awareness on human rights confirm this conclusion where, beside the fact that out of 81, 3% of citizens considering that only partially (72, 6%) or not at all (8, 7%) manage to realize their human rights, only 12, 7% out of total number of interviewed stated they sought help in protection of their human rights while 87, 3% of citizens did not requested any kind of protection, help or advice. Therefore, the conclusion is that the future of human rights that is promotion of existing system of their protection, depends on action on factors of demand, primarily thinking about values and understanding of all interest groups and individuals, including the international community in B&H but also the regional and international organizations outside of B&H, who are actually "consumers" that is potential demanders of human rights in Bosnia and Herzegovina.

Having in mind all abovementioned, it is more than obvious that promotion of system of protection of human rights can be only through comprehensive strategic action supported by minimum of political will, necessary knowledge and skills of all involved and interested actors, as well as adequate financial means that would follow firstly planned activities. In elaborating these efforts recently\* published recommendations of Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights, should be taken into account. These recommendations are cited in the document titled "Recommendation on systematic work for implementing human rights at the national level"\* representing methods of systematic

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\* 18 February 2009

\* CommDH(2009)3

work in this field. Council of Europe Commissioner for Human Rights' opinion is that the methods of work include baseline study, state action plans in human rights, mainstreaming, rights based approach and human rights indicators that is various combinations of all mentioned methods. In this context, one can say that elaboration of this Report is in accordance with Recommendation and it represents contribution of academic community to baseline study, as foundation for any systematic work in field of human rights.

Regardless of the fact that from the signing of Dayton Peace Agreement till today Bosnia and Herzegovina, through numerous domestic and international, mostly nongovernmental, organizations was a specific training ground for implementation of different programmes and projects focusing on education and raising awareness on human rights, these efforts and insisting on their continuity still remain the key precondition of building efficient and effective system of human rights protection in Bosnia and Herzegovina. However, it is necessary to point out that in order for efforts focusing on education and raising awareness on human rights are used in its full capacity it is necessary that they are in largest scale possible harmonized as part of a wider strategy of strengthening the system of human rights protection in Bosnia and Herzegovina. Beside the fact that strategy is also the concept that is undermined in the eyes of citizens due to domestic political and administrative practice, it is still essential instrument that would, along with baseline studies, create conditions for systematic work on human rights.

In first lines of this introduction, we mentioned the key problem of human rights in Bosnia and Herzegovina, which is the large gap between their theory and practice. In closing paragraph, it is necessary to consider the possible model for overcoming this problem, which is, according to Human Rights Centre of the University of Sarajevo, and in accordance with mentioned

Recommendation of Council of Europe Commissioner for Human Rights, continuous education on human rights and raising awareness, but exclusively under condition that these efforts are realized within a wider strategy. This strategy would deal with strengthening the human rights protection system as a whole that is solving all individual problems and obstacles noted, among other, in this Report also. Therefore, we hope that wider domestic and international public as well as human rights community in Bosnia and Herzegovina would accept and use this Report and support its continuity as part of joint efforts to build efficient system of human rights protection in our country that would serve all its citizens.



# I

## HUMAN RIGHTS IN LEGISLATION

### 1. Human rights in the legal order of Bosnia and Herzegovina

#### *1.1. Introduction*

This chapter will provide an overview of the protection of human rights in Bosnia and Herzegovina with special focus on the rights guaranteed by the Constitution of Bosnia and Herzegovina (hereinafter: the Constitution of BiH) and rights to access the fulfilment of those rights in the institutions whose primary task is the protection of human rights in Bosnia and Herzegovina.

The key question of the efficient protection of human rights in Bosnia and Herzegovina is reflected in the legal nature of the BiH Constitution, as well as in the relation between the BiH Constitution and ratified international documents for the protection of human rights, primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention). From the answer to this question stems also the answer to the question of the efficient institutional protection of human rights in a substantive sense, as well as the psychological aspect that is reflected in the confidence

of citizens in the state institutions and, above all, in the institutions whose primary task is the protection of human rights.

Likewise, the issue of harmonisation of the legal system of Bosnia and Herzegovina with the international and regional documents on the protection of human rights is, above all, (but not exclusively) the issue of the attitude of Bosnia and Herzegovina towards the commitment made when the country acceded to the Council of Europe. The Parliamentary Assembly of the Council of Europe, in its Resolution No. 234 (2002)<sup>1</sup> on the acceptance of Bosnia and Herzegovina into the membership of the Council of Europe, analysed the progress made by Bosnia and Herzegovina since the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: the Dayton Peace Agreement) in all fields, and it accepted, inter alia, the commitments made by the Presidency of Bosnia and Herzegovina, the Parliament of Bosnia and Herzegovina and the prime ministers to honour the following commitments:

*iii. Related to the Convention:*

*c. Continuous control of the compatibility of legislation with the European Convention for the protection of human rights and fundamental freedoms.*

In view of the aforementioned, Bosnia and Herzegovina established, in cooperation with the Council of Europe, a special expert team given the task of establishing the compatibility of all the regulations in Bosnia and Herzegovina with the commitments made, and primarily with the European Convention. The Compatibility Study was published on 16 September 2008.<sup>2</sup>

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<sup>1</sup> Resolution of the Parliamentary Assembly of the Council of Europe, No. 234 (2002).

<sup>2</sup>[http://www.coe.ba/web/index.php?option=com\\_content&task=view&id=324&Itemid=34](http://www.coe.ba/web/index.php?option=com_content&task=view&id=324&Itemid=34)

## *1.2. Constitutional provisions on human rights*

The BiH Constitution is quite certainly a typical transitional document, irrespective of its constitutional status. It was created as a part of the peace negotiation package agreed in Dayton in November 1995 and accepted by two entities (the Federation of Bosnia and Herzegovina and Republika Srpska) and the central government that was internationally recognized as the Government of the Republic of Bosnia and Herzegovina. The BiH Constitution was the second constitution agreed with international assistance in hostile conditions on the ground in BiH (the first was the Constitution of the Federation of Bosnia and Herzegovina adopted in March 1994).<sup>3</sup>

Almost all the competences of the state were transferred to the two entities – the Federation of Bosnia and Herzegovina and Republika Srpska. It also effectively prevents the central government from performing those few competences vested in it by the BiH Constitution. It combines a *minimalist* approach in terms of central, state authority and a *maximalist* approach in

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<sup>3</sup> Bosnia and Herzegovina was created, in its present form, as the result of peace agreement signed on 14 December 1995 in Paris, after negotiations held in the period from 1 November to 21 November 1995 in the military base Wright-Patterson near Dayton. This agreement officially stopped the war in Bosnia and Herzegovina and it was signed by three presidents: Alija Izetbegović, Franjo Tuđman and Slobodan Milošević. The peace agreement, officially called «The General Framework Agreement for Peace in Bosnia and Herzegovina» defined the ensuing political climate in Bosnia and Herzegovina. The Dayton Peace Agreement established a union of newly established territorial units, i.e. Republika Srpska and the Federation of Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina is a territorial unit that resulted from the agreement signed in 1994 in Washington between the representatives of the Republic of Croatia, Herzeg-Bosna and the Republic of Bosnia and Herzegovina. Thus, in the past 13 years, the political landscape of Bosnia and Herzegovina was shaped by negotiated constitutions agreed, under the pressure of foreign powers, in the process of two separate peace negotiations.

terms of balance of powers. Central authorities have only several competences that must be carried out solely upon the agreement of all parties, including entities and constituent peoples.<sup>4</sup> The BiH Constitution is just one of the annexes of the Dayton Peace Agreement. These annexes, undoubtedly, also have a constitutional dimension. Some of the international instruments for the protection of human rights, re-establishment of infrastructure and dispute resolution between the entities are the issues defined in special agreements that are an integral part of the BiH Constitution itself.<sup>5</sup>

The key aspect of this new constitutional order in Bosnia and Herzegovina, and the embryo of the future development of the system, is human rights and their protection. Today, in Bosnia and Herzegovina, human rights have become a phrase that is frequently used for the purpose of daily politics, without a full understanding of the meaning of the concept and awareness of effective mechanisms for their protection. Indeed, human rights, without a mechanism of their protection, represent a mere proclamation without any relevance in real life. However, the same Constitution that places human rights in the central position as one of its basic pillars (probably due to the war circumstances in which it was drafted), contains some provisions that are typical examples of discrimination. The most obvious examples are the provisions that determine the manner of election of members of the Presidency of BiH and delegates of the House of Peoples of the Parliamentary Assembly of BiH on which the Venice Commission has already expressed its opinion<sup>6</sup>. For all

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<sup>4</sup> Constituent people are one or more peoples sharing a territory of a state.

<sup>5</sup> Morrison, L. Fred. *The Constitution of Bosnia and Herzegovina, Constitutional Commentary*. Volume: 13. Issue: 2. Publication Year: 1996. p. 145-157.

<sup>6</sup> Opinions of the Venice Commission, No. CDL-AD (2005) 004, Venice, 11 March 2005. "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative."

these reasons, the issue arises of the relation between the constitution, as the supreme legal and political act of a country, and the European Convention, as an act that contains a minimum of joint will of member states in terms of the substantive human rights it protects, as well as the mechanisms of the protection of those rights, including the obligations that must be respected by the member states in order for those substantive rights to be implementable not only at a supra-national level, but also within each individual legal system.

### *1.2.1. The Constitution of Bosnia and Herzegovina*

It arises from Article XI of the [General Framework Agreement for Peace in Bosnia and Herzegovina](#) (in the English text), that the BiH Constitution was written in Bosnian, Serbian, Croatian and English and that all four versions are authentic. Therefore, in the interpretation of the provisions of this Agreement all four linguistic versions should have equal relevance. However, given that the version of the BiH Constitution in the official languages – Bosnian, Serbian and Croatian were never published in the official gazettes, only English version can be accepted as authentic. In the text in English, therefore, the only authentic versions, Article II/2 of the BiH Constitution<sup>7</sup> states:

*“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. These shall have priority over all other law.”*

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<sup>7</sup> Bosnia and Herzegovina, Essential texts (2<sup>nd</sup> revised and updated edition), OHR.

Grammatical interpretation leads us to the conclusion that the phrase *over all other law* is interpreted so that in the legal order of Bosnia and Herzegovina the European Convention has priority over the entire legal order of the country and, consequently, over the BiH Constitution as well, i.e. „ *over all other law.*”.. As additional confirmation of this view one can cite the formulation of Article III, Point 3/b of the BiH Constitution that states that *the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities*. Here, therefore, the word *law* is translated as legal order and this is the context similar to that of Article II/2 of the BiH Constitution. In Article I/2 of the BiH Constitution it is also stipulated that *Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections* where the term *rule of law* is often mistranslated as the rule of legislation, which is essentially much closer to the understanding of “continental-German” understanding of law that would be acceptable were it not the case that the Constitution of Bosnia and Herzegovina represents a typical result of the Anglo-American approach to the development of general legal acts.

The BiH Constitution must be viewed as a whole whose components are closely interlinked so that individual provisions cannot be interpreted separately without the complementary meaning of other provisions. Thus, e.g. Article I/2 states that *Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections*. This provision carries with it an obligation to create a state structure which can stand the test imposed by the obligation of the establishment of supreme principles - democratic state, the rule of law, and free and democratic elections – in the same sense that those notions are endowed with in developed democratic states with a long practice of implementation of those principles. Although one can not speak about the mutual supremacy of

individual constitutional provisions, in the Constitution of Bosnia and Herzegovina the fundamental principles on which this state relies are established, i.e. the principles expressed in the Preamble of the BiH Constitution.

Obligation to protect human rights represents a similar case, as it was established in the previously cited Article II/2 of the BiH Constitution vis à vis the status of the European Convention in the constitutional and legal order of Bosnia and Herzegovina. Such a formulation puts the European Convention into the fundamental pillar of the constitutional order of Bosnia and Herzegovina and represents the *Supreme Law of the Land* since *all other law* represents the entirety of the legal system including the constitutional law. Thus, the European Convention is endowed with the legal force of the BiH Constitution itself.

An additional argument may be found in Article X of the BiH Constitution that determines the procedure of amending the BiH Constitution, but in Article X/2 it is stipulated that no amendment to the BiH Constitution can eliminate, nor reduce any of the rights and freedoms defined in Article II of the BiH Constitution, nor can this provision be modified. Thus, Article II of the BiH Constitution became the only article of the BiH Constitution that safeguards the human rights it protects against any changes or reductions.

Relating the formulation on *direct applicability* of the European Convention in Bosnia and Herzegovina, one may say that this provision allows the direct application of the rights it contains by courts in Bosnia and Herzegovina without the adoption of any additional enforcement acts. At the same time, the essence of the notion of *direct applicability* lies in the prohibition imposed on the state bodies to prevent, in any way possible, the application of these rights or to transform those rights into national legislation as well as to hide their true source and meaning. This was the case with the BiH Constitution, since

in Article II/3 it enumerates the rights that are almost identical to those in the European Convention, but *the author of the Constitution* decided to give to the European Convention a special place in the BiH Constitution regardless of that fact, Those provisions represent a direct source of rights and obligations for all the addressees, i.e. Subject of communitarian law, irrespective of whether they are member states or individuals.

If the human rights provisions are viewed in the context of the particularities of Bosnia and Herzegovina in relation to the facts of existence of “constituent peoples“ and, consequently, of the protection of collective rights, one may say that the necessary balance between the respect for individual and collective rights has not been established in an adequate way. Normatively, in Bosnia and Herzegovina and in its both entities, Bosniak, Croatian and Serbian are constituent peoples, i.e. they have equal rights. The BiH Constitution that regulates this issue undoubtedly has its undemocratic implications. Namely, Bosnia and Herzegovina is presided over by three presidents (three members of the Presidency) from three constituent peoples and these three positions are reserved exclusively for them. Other peoples or minorities in BiH are not allowed by the BiH Constitution to be members of the Presidency (they are prohibited in the sense that they are not allowed). Besides, the BiH Constitution implies other elements such as the proportionality of the three peoples in the assemblies and the like, without mentioning others.

In the last line of the Preamble to the Constitution of Bosnia and Herzegovina, Bosniaks, Croats, and Serbs are defined as „ constituent peoples (along with the “Others”), and citizens of Bosnia and Herzegovina.” The Constitutional Court concluded, in its third partial Decision *U 5/98* (of 7 January 2000, published in the Official Gazette of Bosnia and Herzegovina, No. 23/00, Paragraph 52) that "However vague the language of the Preamble of the Constitution of BiH may be because of this lack of a definition of the status of Bosniaks, Croats, and Serbs as



constituent peoples, it clearly designates all of them as constituent peoples, i.e. as peoples." The Constitutional Court, furthermore, concluded that "Taken in connection with Article I of the Constitution, the text of the Constitution of BiH thus clearly distinguishes constituent peoples from national minorities with the intention to affirm the continuity of Bosnia and Herzegovina as a democratic multi-national state (ibid Paragraph 53). Related to this, it is concluded that the notion of constituent peoples is not an abstract one, but rather that it incorporates certain principles without which a society, with constitutionally protected differences, could not effectively function.

Since the Constitution of Bosnia and Herzegovina at some points establishes proportional participation of constituent peoples in the election for the state bodies, the quota system being established in relation to the composition of the House of Peoples (Article IV/1), election of Speaker and Deputy Speaker of the Parliamentary Assembly houses (IV/3.b), the composition of the Presidency of Bosnia and Herzegovina (Article V) or the composition of the Governing Board of the Central Bank of Bosnia and Herzegovina (Article VII, Para 1, Point 2). In addition to the system of quotas, in Article IV/1.b) of the BiH Constitution the decision-making procedure is defined in the House of Peoples, with the condition of minimum presence and representation of the delegates of each of the constituent peoples. Finally, in Article IV/3.e and f, i.e. in Article V/2.d of the BiH Constitution, a principle of the protection of the vital interest of constituent peoples is introduced, as an additional mechanism of constitutional protection.

### *1.2.2. The Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska*

The principal constitutional texts that are in force in BiH were adopted during or at the end of the war. The Constitution of RS was originally adopted in 1992<sup>8</sup>, as the constitution of a separatist entity that claimed that it was an independent state founded on the concept of a unitary state.<sup>9</sup>

Both entities were obliged by the BiH Constitution to harmonise their constitutions with the state Constitution within three months. Although this was a constitutional obligation, this was not done within the given timeframe or was done only partly.<sup>10</sup> Nevertheless, certain progress was made in terms of the harmonisation of entity constitutions with the state constitution. This harmonisation was not voluntary but, as the rule, once the Constitutional Court takes a decision that represented unavoidable obligations for the responsible bodies, that decision is implemented by the High Representative by way of imposing the amendments to entity constitutions.<sup>11</sup> As far as the Constitution of RS is concerned,

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<sup>8</sup> The Constitution of Republika Srpska – Edited text, «Official Gazette of RS» No. 3/92, 6/92, 8/92, 15/92 and 19/92.

<sup>9</sup> Opinion of the Venice Commission, No. CDL-AD (2005) 004, Venice, 11 March 2005. “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative.”

<sup>10</sup> An example may be the constitutional and legal provisions that regulate the issue of entity symbols, anthems and flags as well as laws or segments of laws that were in force until recently and that regulated the collection of excise duties, sale tax, etc.

<sup>11</sup> Office of the High Representative (OHR) is an ad hoc international institution responsible for supervision of implementation of civilian aspects of the agreement that put an end to the war in Bosnia and Herzegovina. Pursuant to Article II of Annex 10 of the Dayton Peace Agreement the High Representative is given the task of supervising the implementation of the Peace Agreement; keeping close contacts with the parties signatories of the

this harmonisation was done, when - acting upon the demand of the High Representative - the Venice Commission gave its opinion in which it rather precisely established which provisions of the Constitution of RS should be harmonised with the BiH Constitution.<sup>12</sup> Still, the fact remains that the entity constitutions were conceptually different, whereby Republika Srpska was envisaged as a unitary entity with Serb domination, while the Federation of BiH was envisaged as a decentralised federation with competences at the federal level shared between Bosniaks and Croats.

The next step in constitutional development was taken on the basis of a decision of the Constitutional Court of 1 July 2000, in the case relating the *constituent status of peoples*.<sup>13</sup> The Constitutional Court considered some constitutional provisions in Republika Srpska that grant a privileged position to the Serbs in that entity. The Constitutional Court ruled that those provisions were incompatible with the BiH Constitution, and that members of all three constituent peoples have the same rights across Bosnia and Herzegovina. International legal instruments built in the BiH Constitution did not allow privileges to be granted to already privileged groups, but only affirmative action to be taken to benefit

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Agreement aimed at affirmation of full observance of all the civilian aspects of the Agreement; and coordination of activities of international civil organizations and agencies in Bosnia and Herzegovina aimed at ensuring efficient implementation of the civilian aspects of the Peace Agreement. One of the most important events in the process of implementation of peace was the meeting of the Peace Implementation Council (PIC) in Bonn, in December 1997. Analyzing Annex 10 of Dayton Peace Agreement, PIC demanded from the High Representative to oust public officials who were breaching the legally assumed obligations and the Dayton Peace Agreement, and to impose, if he deems it necessary, key laws in case legislative bodies of Bosnia and Herzegovina fail to do so.

<sup>12</sup> Opinion of the Venice Commission, No. CDL(1996) 56, final

<sup>13</sup> The Constitutional Court Decision No. U 5/98, «Official Gazette of BiH», No. 36/00.

the minorities. This decision had far-reaching consequences for both entities, since they were both based on the domination of Serbs in Republika Srpska and Bosniaks and Croats in the Federation of BiH respectively.

The Constitution of the Federation of BiH<sup>14</sup> (FBiH) was adopted in June 1994, in the framework of the Washington Agreement between Bosniaks and Croats, with American mediation. According to the then Constitution of FBiH, only Bosniaks and Croats were constituent peoples in FBiH, while decisions on the constitutional status of the territories with majority Serb population were left for some future negotiations. The Constitution of FBiH established an exceptionally decentralised federation made of ten cantons, whereby five cantons are primarily of Bosniak character, three are primarily Croat and two are mixed Bosniak/Croat cantons. Together with a directly elected House of Representatives, there is an indirectly elected House of Peoples, made of an equal number of Croat and Bosniak delegates. In this House, "*decisions related to vital interests of any of the constituent peoples*" required the approval of the majority of delegates of both constituent peoples which often led to paralysis of the legislative body in FBiH.

Such constitutional arrangements were changed after the Decision of the Constitutional Court of Bosnia and Herzegovina „on the constituent nature of peoples.” A number of amendments that made the members of constituent peoples and “Others” equal in relation to the realisation of their rights. The House of Peoples of the Federal Parliament was “filled” with an adequate number of Serbs and members of „Others“, and constitutional and legal protection was ensured in cases of highlighting vital national interests in decision-making processes, however, only for the representatives of constituent peoples and not for „Others.”

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<sup>14</sup> «Official Gazette of the Federation of BiH», No. 1/94 of 30 March 1994.

Starting from the BiH Constitution, human rights are also established in the constitutions of the two entities of Bosnia and Herzegovina (the Federation of BiH and Republika Srpska), as well as in the Statute of the Brčko District of Bosnia and Herzegovina, and the constitutions of ten cantons in the Federation of BiH. The Constitution of Republika Srpska, however, does not refer to any of the international standards for the protection of human rights, except for the aforementioned nor does it refer to the institution of Ombudsman. If we take into account the existing constitutional framework, it could be said that the citizens of Bosnia and Herzegovina enjoy the highest possible standards of human rights protection, at least theoretically.

The implementation of the Constitutional Court Decision was the subject of numerous debates, including the Opinions of the Venice Commission (CDL-INF (2001)006 and CDL-AD (2002)024)<sup>15</sup>. An agreement was finally achieved between the leading political parties in BiH and, in October 2002 and April 2003, the High Representative imposed amendments to the entity constitutions<sup>16</sup> that were part of this agreement. The basic approach that was opted for was based on the equality of constituent peoples across the territory of BiH. The provisions relating to a division of powers, including a veto based on vital national interests, similar to the provisions at the state level, were introduced in both entities and in cantons, and rules according to which the most relevant positions are assigned on an equal basis to constituent peoples were introduced into their constitutions. The results of this historic

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<sup>15</sup> Opinions of the Venice Commission, CDL-INF (2001) 006 and CDL-AD (2002) 024.

<sup>16</sup> Decision (of the High Representative on adoption of amendments to the Constitution of FBiH and RS aimed at implementing partial decisions of the Constitutional Court of Bosnia and Herzegovina), «Official Gazette of the Federation of BiH », Nos. 3/01-37 and 39, as well as 10/01-194.

development are the fact that BiH is, on the one hand, still divided into separate units – i.e. two entities, of which one is divided into ten cantons. On the other hand, representatives of three constituent peoples now, constitutionally, have a strong position to block the decision-making processes in different units, even where they represented only a limited number of voters.

The Constitution of Republika Srpska, just like the Constitution of FBiH, has been changed in the process of implementation of the BiH Constitutional Court's „Decision on the “constituent status of the peoples“ because the Serbs in Republika Srpska, according to the then constitutional provisions, were the only constituent people there, while Republika Srpska was „the state of the Serb people.“ As a result of the decision on Constituent Status, other constituent peoples have been made equal partially in the realisation of their rights, although not in the same way as in FBiH.

### *1.3. Internationally guaranteed human rights and Bosnia and Herzegovina*

The BiH Constitution focuses especially on the respect of human rights and other obligations that stem from the observance of international law – i.e. the observance of the *general principles of international law* that, according to the BiH Constitution, are an integral part of the legal order of Bosnia and Herzegovina and its entities.

Authors of the Constitution probably wanted to achieve automatism in the application of international agreements, ratified by Bosnia and Herzegovina; perhaps due to the awareness of how complicated the decision-making system is in the legislative bodies, and particularly in the Parliamentary Assembly of Bosnia and Herzegovina. It is without question that the

aforementioned formulation in Article III/3.b) of the BiH Constitution stipulates that the general principles of international law are part of the legal order of Bosnia and Herzegovina and its entities not only where a specific international agreement is concerned, but that they exist per se and that they are a key element of the legal system in Bosnia and Herzegovina. Consequently, interpretation of legal norms that make up the entirety of the legal order in Bosnia and Herzegovina, whose component is undoubtedly the constitutional order, cannot be viewed separately from the general rules of international law.

1. The Constitution of Bosnia and Herzegovina, as well as entity constitutions, contains special provisions that enumerate all international documents for the protection of human rights which must be applied in Bosnia and Herzegovina. In addition to the aforementioned European Convention, there is a number of other international documents: 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter

for Regional or Minority Languages; 1994 Framework Convention for the Protection of National Minorities.<sup>17</sup>

The aforementioned list of rights applied in Bosnia and Herzegovina look truly impressive, but their downside lies in the fact that the Constitutional Court of BiH applies these documents only when an appellant claims discrimination as defined in Article II/4 of the BiH Constitution. This provision is the „key” that „unlocks” the gate for the application of all these documents which makes their application more difficult. E.g., if someone addresses the Constitutional Court with an appellation claiming the violation of his right to work, that is protected by the International Covenant on Economic, Social and Cultural Rights that is a part of Annex I to the BiH Constitution and if, by doing so, he/she fails to prove that he/she is discriminated against a realising that right of Article II/4 of the BiH Constitution (it is known that it is very difficult to prove discrimination in judicial proceedings), his/her appellation will be rejected as being, *ratione materiae*, incompatible with the BiH Constitution, since the right to work is not protected by the basic text of the BiH Constitution, but solely by the aforementioned Covenant.

Another drawback relates to the process of the ratification of new international documents for the protection of human rights, i.e. the lack of automatism in the application of newly ratified documents for the protection of human rights. If the

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<sup>17</sup> Bosnia and Herzegovina, Essential texts (2nd revised and updated edition), OHR. On the exactness of the translation of the Constitution of BiH one can conclude on the basis of the introduction written by the first High Representative for Bosnia and Herzegovina, Carl Bildt, on constitutional texts, OHR (ed.) Sarajevo, 1996, which can serve as the basis for clarification: «The English language contained in this booklet is the agreed text contained in the Peace Agreement. The Bosniak, Serb and Croat texts, which the parties have been using themselves. A legal expert from Sarajevo has looked at these texts, and believes that each of them represents an accurate translation of the English» (sic).



Parliamentary Assembly of BiH ratified some international convention, it would not be possible to apply it in the Constitutional Court proceedings, if that ratification were not followed by an amendment of the BiH Constitution, since the Constitutional Court evaluates constitutionality, and not legality (with the exception of issues referred to it by regular courts as defined in Article VI/3c of the BiH Constitution), which prevents the „introduction“ of new documents for the protection of human rights into the scope of the jurisdiction of the Constitutional Court, and, consequently, reduces the scope of protected rights.

## 2. Right to an effective legal remedy for the violation of human rights

### 2.1. *Regular and extraordinary legal remedies*

Article II/6 of the BiH Constitution stipulates that:

“Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above.”<sup>18</sup>

In terms of the alleged violations of human rights, Bosnia and Herzegovina has fully accepted and partly applies the principles applied by the European Court for Human Rights, primarily through the functioning of the Constitutional Court of

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<sup>18</sup> Bosnia and Herzegovina, Essential texts (2nd revised and updated edition), OHR.

Bosnia and Herzegovina. Thus, the issue of regular and extraordinary legal remedies is the full responsibility of regular courts that, by application of relevant legal provisions, enable the respect of the right to a fair trial. On the other hand, the constitutional provision that establishes the obligation of all courts, institutions and bodies of authority to apply the human rights and freedoms defined in Article II of the BiH Constitution, represents an additional obligation for regular courts to directly apply, in addition to relevant laws, the rights referred to in Article II of the BiH Constitution, which also implies the implementation of the European Convention.

The issue of classification of regular and extraordinary legal remedies can be viewed in terms of domestic legislation and from the point of view of the jurisdiction of the European Court for Human Rights.

Domestic legislation, just as in most legal systems, recognised the distinction between regular and extraordinary legal remedies while if this issue is viewed in relation to the respect for human rights, such a distinction becomes irrelevant because, according to the jurisprudence of the European Court for Human Rights, the determining issue is not whether effective regular or extraordinary legal remedies have been exhausted or not, but rather the substance of the legal remedy in question, i.e. the effect of exhaustion of a specific legal remedy for the party himself/herself who claims that his/her human rights are violated. In line with such a position, the jurisprudence of the Constitutional Court of Bosnia and Herzegovina in relation to one of the preconditions for an appeal to be admitted, is whether all effective legal remedies have been exhausted, e.g. that request for revision, when admitted, and when it is classified as an extraordinary legal remedy, must be exhausted in order to admit such an appeal, which is in full accordance with the relevant jurisprudence of the European Court for Human Rights.

## *2.2. The Constitutional Court of Bosnia and Herzegovina*

### *2.2.1. The system of protection of human rights*

The Constitutional Court of Bosnia and Herzegovina has existed since the time when Bosnia and Herzegovina was one of the republics of the former Socialist Federal Republic of Yugoslavia (SFRY). It was first established on 15 February 1964, in accordance with the 1963 Constitution of SFRY and then continued its existence on the basis of the 1974 Constitution of SFRY. The competences of the originally established Constitutional Court of BiH were primarily focused on an abstract normative control, such as the assessment of constitutionality of the laws of individual republics and their concordance with the Constitution as well as an assessment of constitutionality and legality of general acts, self-governance acts, as well as the resolution of disputes between the Republic and other socio-political communities, as well as disputes over the jurisdiction between courts and other bodies of the socio-political community.

By defining preconditions for the further development of the democratic political system and market economy and modifying the internal structure of the state, the 1995 BiH Constitution (Annex 4) also established the institutional framework of the Constitutional Court of BiH based on completely new and different political and legal grounds *visà vis* the previous period. Those changes made the constitutional position and jurisdiction of the Constitutional Court of BiH compatible with the standards of the constitutional judiciary – as an independent “guardian of constitution” and as an institutional arbiter of the protection of human rights and freedoms.

### *2.2.2. Jurisdiction*

Generally speaking, the jurisdiction of the Constitutional Court is defined in Articles VI/3 and IV/3 of the BiH Constitution. In the framework of its main task, i.e. supporting the BiH Constitution, according to these constitutional provisions, there are five aspects of jurisdiction, which ultimately means differentiated proceedings as well as specified decisions depending on the type of jurisdiction and nature of disputes.

Basically, differentiation of these competences is based on the extent to which the Constitutional Court, besides its classic task that relates to the protection of constitutionality, exercises, in some types of disputes a direct link to judicial, i.e. legislative authorities.

### *2.2.3. Disputes over the conflict of jurisdiction and abstract control of constitutionality<sup>19</sup>*

The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. In essence, the Court here decides on positive or negative conflicts of competence, as well as on all other disputes that may appear in relations between the state and entity governing structures, i.e. the institutions of Bosnia and Herzegovina.

The Constitutional Court is competent to decide whether any provision of the constitution or laws of the two entities is in line with the BiH Constitution. Although the BiH Constitution

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<sup>19</sup> Article VI/3.a of the Constitution of BiH.

explicitly speaks only about the “provisions of an entity’s law”<sup>20</sup>, the following general task of the Constitutional Court is to support the BiH Constitution, therefore, the laws of Bosnia and Herzegovina are not excluded from the assessment of constitutionality.

As a special support to the BiH Constitution, the Constitutional Court is also competent to check whether to establish a special parallel relationship with a neighbouring state and whether this is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.

In both the aforementioned cases, according to the BiH Constitution, disputes may refer only to a defined number of authorised appellants: a member of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, one-fourth of the members of either chamber of the Parliamentary Assembly, or one-fourth of either chamber of a legislature of an Entity.

Within the overall scope of competence to support the BiH Constitution, the Constitutional Court does not have any limitations to enter on its own initiative into the procedure of assessment of constitutionality of every law in the country. However, in the Rules of the Constitutional Court a principle of self-limitation is imposed, so that the action of the Constitutional Court on its own initiative is not regulated in relation to the assessment of constitutionality of laws. In other words, the Constitutional Court cannot initiate a procedure of assessment of constitutionality on its own initiative, only the trigger for action, i.e. for proceedings before the Constitutional Court, must be initiated by authorised subjects as enumerated in Article VI/3a of the BiH Constitution.

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<sup>20</sup> Article VI/3.a) of the Constitution of BiH.

#### *2.2.4. Appellate jurisdiction<sup>21</sup>*

The appellate jurisdiction of the Constitutional Court is defined by the constitutional provision that grants the Constitutional Court "appellate jurisdiction for the issues related to the Constitution that appear on the basis of a judicial decision of any court in Bosnia and Herzegovina"<sup>22</sup>.

This means that the Constitutional Court of BiH is the highest instance in relation to the courts in Bosnia and Herzegovina, which confirms its role in terms of special institutional guarantor of the protection of rights and freedoms established in the BiH Constitution. It is important to point out that there are two fundamental formal conditions for a case submitted to the Constitutional Court to be admissible – exhaustion of all effective legal remedies, which means the persons who want to lodge an appeal to the Constitutional Court must first exhaust all effective legal remedies before regular courts and only then may he/she lodge an appeal to the Constitutional Court within 60 days from the day of receipt of the last decision that meritoriously adjudicated the case.

The Rules of the Constitutional Court, the aforementioned constitutional provision, is operationalised so that the Constitutional Court, if it finds that the appeal is founded, can act in two ways: the Constitutional Court can act as

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<sup>21</sup> Article VI/3.b of the Constitution of BiH.

<sup>22</sup> In practice, application of appellate jurisdiction in the Constitutional Court of BiH is, in content, very similar to that of the European Court of Human Rights in Strasbourg, given that the Constitutional Court applies the European Convention directly. In terms of its organization, the Constitutional Court has "copied" the arrangements of the European Court of Human Rights, introduced the function of Registrar, and additionally strengthened the functions of advisors in the Secretariat, i.e. the Registrar's Office, very similarly to the manner this system functions in the European Court of Human Rights.

the full jurisdiction court, i.e. it can decide on the merit of the case, or quash the judicial decision and refer the case to the repeated procedure. The Court, whose decision is quashed, is obliged to undertake a summary procedure and pass a new decision, whereby it is obliged by the legal interpretation of the Constitutional Court dealing with the violation of the rights and fundamental freedoms of the appellant that are guaranteed by the BiH Constitution.

### *2.2.5. Referral of issue by other courts<sup>23</sup>*

Article VI/3c) the BiH Constitution<sup>24</sup>, that determines one of the competences of the Constitutional Court, reads:

«The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.»

This provision comprises two parts – the first relates to the classical notion of *constitutionality of law* and it is only in this provision that there is the possibility for the Constitutional Court to assess constitutionality. The other part of the provision, does not link the consideration made by the Constitutional Court to a

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23 Article VI/3.c of the Constitution of BiH.

24 Bosnia and Herzegovina, Essential texts (2nd revised and updated edition), OHR.

concrete legal provision i.e. some law as a whole, but introduces the competence of the Constitutional Court to verify the *existence or scope of some general rule of international law that is essential for the Court's decision*, without linking that decision of the Constitutional Court to any concrete law or any of its provisions. If we apply a linguistic interpretation, it would mean that any provision that is in force in the legal order of Bosnia and Herzegovina, (including constitutional provisions as part of the entirety of legal order of a country) may be subjected to assessment of conformity with the fundamental principles of international law.

The Constitutional Court, as a general rule, can support a law that is relevant for the decision of a lower-instance Court or pronounce it invalid. The aforementioned lower.-instance court is then bound to act in accordance with the Constitutional Court's decision.

Unfortunately, although the purpose of this competence of the Constitutional Court to reach differentiation of competences between the Constitutional and regular courts, through an active approach of regular courts and to reduce the number of cases in which violation of individual rights needs to be established that originates from legislation, through an active functioning of the Constitutional Court this competence is one that is the least present of all the competences of the Constitutional Court – only four decisions have been taken so far by the Constitutional Court upon requests made by regular courts. The cause of such a low number of requests that fall within the scope of this competence of the Constitutional Court may be found in the fact that the entity Constitutional Courts have similar competence and that there were significantly more cases of this type that were adjudicated by those courts, particularly by the Constitutional Court of FBiH, but those cases are mainly related to cantonal regulations from which the



Constitutional Court of Bosnia and Herzegovina is not competent at all.

#### *2.2.6. Unblocking of the Parliamentary Assembly of BiH<sup>25</sup>*

The competence of the Constitutional Court in case of a "blockade" of the House of Peoples of the Parliamentary Assembly of BiH linked to the issue of vital national interest represents in many ways an atypical form of activity of a constitutional court practice, since, practically speaking, in this way a "close contact" is established between constitutional-legal and "legislative" authorities.

Here, the Constitutional Court resolves disputes in which a proposed decision of the Parliamentary Assembly of BiH is considered by the majority of delegates of one of the constituent peoples as destructive for their vital national interest, whereby in the House of Peoples all the "parliamentary means" for resolution of that issue has been exhausted.

#### *2.2.7. Failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina*

Failure to enforce decisions of the Constitutional Court of Bosnia and Herzegovina is sanctioned by Article 239 of the *Criminal Code of BiH<sup>26</sup>*. Officials in the institutions of BiH, its entities or District Brčko, who refuse to enforce the final and enforceable decision of the Constitutional Court of BiH, or prevent its enforcement, or in any other way obstruct its

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<sup>25</sup> Article IV/3f, of the Constitution of BiH.

<sup>26</sup> Official Gazette of BiH, No. 3/03.

enforcement, shall be punished from 6 months to five year prison sentence. According to the accessible data, roughly over 20 % of decisions of the Constitutional Court of BiH, in which a violation of constitutional rights, i.e. human rights has been established, have not been enforced, which is a high percentage. However, if we look into the structure of those unenforced decisions, then the situation looks a little more positive: a great number of this 20 % relates to the so-called „systemic oversights” of authorities and the issue of missing persons, which are, realistically speaking, very difficult cases for the authorities of Bosnia and Herzegovina, be they the state level authorities or those at the entity level. In any case, in the forthcoming period, these problems will have to be resolved in an adequate manner, while some steps have already been taken relating to the problem of old foreign currency savings and payment of war damages that were decided by the courts. Still, the fact that the BiH Prosecutor’s Office has not initiated criminal proceedings against individuals responsible for the failure to undertake adequate measures represents a special problem that relates to the very heart of the principle of the rule of law, because if there is no adequate sanction for one’s failure to enforce a decision of the BiH Constitutional Court this means that the authority of that institution and its position in the legal system of Bosnia and Herzegovina is undermined.

#### *2.2.8. Work of the Constitutional Court of Bosnia and Herzegovina in 2008*

Given that annual reports on the work of the Constitutional Court of BiH are usually adopted in January or March of the next year, we will show the tendencies in terms of increase of inflow and efficiency in resolving cases using the indicators from the previous years.

<b>COMPARATIVE INDICATORS OF THE NUMBER OF RECEIVED AND RESOLVED CASES FOR THE PERIOD 2003 – 2007</b>				
Year	Received cases	Percentage of increase of the number of case compared with the previous year	Total number of resolved cases irrespective of the year of receipt	Percentage of resolved cases
2003	832	182 %	339	41 %
2004	1169	41 %	1255	107 %
2005	2703	131 %	1717	64 %
2006	3458	29 %	2365	61 %
2007	3666	6 %	2051	55 %

What is striking about this table are two parallel processes: increase of inflow of new cases and stagnation in the number of resolved cases that leads us to conclude that there is a rise in the confidence of citizens in the Constitutional Court of BiH, as the last resort when it comes to seeking justice, but also the inability of the Constitutional Court of BiH to respond in a timely manner to the increased demand of citizens. Inability to respond in a timely manner to citizens' demands is certainly inherent in the structure, since the decision-making method in the Constitutional Court of BiH does not allow any special acceleration of proceedings since the cases within the framework of abstract jurisdiction<sup>27</sup> are adjudicated solely by the Court in plenary composition, while cases of appellate jurisdiction may be adjudicated by a 5-member panel of judges as well as the court in plenary composition. In other words, the Constitutional provision of Article VI/2a, which determines that the majority of the overall number of judges (nine) makes a quorum for a decision, has "tied the hands" of the BiH Constitutional Court to form more panels that could adjudicate on cases from appellate jurisdiction that make about 99 % of all the cases lodged with the BiH Constitutional Court.

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<sup>27</sup> Assessment of constitutionality, forwarded, i.e. referred issues, dispute resolution, unblocking of parliamentary procedure etc.

## *2.2.9. Advantages and obstacles – the Constitutional Court of Bosnia and Herzegovina*

*2.2.9.1. Decision-making method* – The greatest problem in the functioning of the Constitutional Court is an increased inflow of cases whereby the capacity of the Constitutional Court to „absorb“ such an inflow,<sup>28</sup> remains the same. Therefore, the Constitutional Court must be reformed urgently. The number of judges must be changed from nine to 13 or 15 at least. The reason for such a radical increase lies exclusively in the need for a more efficient functioning of the Constitutional Court.

Arrangements stipulated in Annex 4, or, more specifically, in Article VI that regulates the operation and jurisdiction of the Constitutional Court also envisage an inefficient system of decision-making given that the quorum requires half of the total number of judges, which means that every decision, even those rejecting appellations or requests, must be taken by at least five judges. When we add to this the interpretation of the Constitutional Court itself that this implies that every decision must be made with at least five votes for or against the proposed decision, then we get a rather inefficient institution which is shown in the number of unresolved cases in 2008 (about 5,000). This practically means that, according to the current arrangement, the Constitutional Court can make its decision solely in the plenary sitting or at the session where there is a panel of at least 5-member judges so that there is no possibility to form other panels, e.g. 3-member panels that would adjudicate the cases in the Court's appellate jurisdiction. So far, the Constitutional Court has succeeded, with the existing decision-making method, in efficiently resolving a great inflow of cases

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28 In 2004, the Constitutional Court received 1,169 cases; in 2005 – 2,075 cases; in 2006 – 3,480 cases; in 2007 – 3,666 cases.

primarily thanks to its exceptionally well-organised and very professional Secretariat. However, with an increased inflow of cases due to the increase of confidence of citizens in its work and obligations to exhaust the Constitutional Court procedure before addressing the European Court for Human Rights, the work of the Constitutional Court has reached the point when the problem does not lie in the size of Secretariat, but the number of judges and their ability to overcome a huge inflow of cases in a thorough manner (in the last several years, the Constitutional Court resolved about 2,300 cases per year, while it receives about 3,800 cases a year). That is why it is necessary to enable the Constitutional Court to increase the number of judges to 13 or 15 so that it could form panels of 3 judges who would adjudicate the appellate jurisdiction cases that make up about 99 % of all cases. Thus, judges would be equally burdened and the main burden would be carried by an enlarged Secretariat whose productivity, alongside the productivity of the Court itself, would be greater. This change would not require amendments to the BiH Constitution, but could be made by adopting internal acts that regulate the organisation of the Secretariat of the Constitutional Court.

Considering these problems, the Constitutional Court must always take into account one of the fundamental requirements: to respond to the need for efficient proceedings before the Constitutional Court, which would have, as a consequence, less application for the determination of the violation of the right to trial within a reasonable time by the European Court for Human Rights, which could incur a significant financial burden for the state. Finally, the quality of decisions of the Constitutional Court would certainly be higher.

The appointment of judges of the BiH Constitutional Court needs to be done by the Parliamentary Assembly of BiH (so far, four members were selected and appointed by the Parliament of FBiH, two by the National Assembly of RS, and three foreign

judges by the President of the European Court for Human Rights in consultation with members of the Presidency of BiH). This is very important because of the respect of the principle of independence and impartiality of the judges of the Constitutional Court, which is directly manifested in the way they are selected. Unlike the method that was used earlier by which judges of the Constitutional Court were selected by the entity parliaments without any preliminary professional testing of candidates that, as a consequence, has rather recognisable political appointees in the position of judges of the Constitutional Court, future solution need to reconcile the need for candidates to undergo preliminary professional testing and the so-called negative selection system through the functioning of, e.g. the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH) and only then, eventually, granting the possibility to decision-makers in the political sphere to make their choice of the politically most acceptable candidates out of the candidates that had previously been filtered (similar to the selection of entity constitutional courts). In this way, those who advocate appointments that would directly depend on the political power structures and those who advocate preservation of a professional structure of judges of the Constitutional Court and the necessary quality of decision which would be free from any unnecessary political influence. The precondition and guarantor of full professionalism in the work and selection of candidates by HJPC BiH is the change in the composition of HJPC BiH so that it will have an equal share of judges of entity constitutional courts and those of the BiH Constitutional Court. It is only in this way that the professional evaluation of candidates could be conducted.

### *2.3. Ombudsman Offices in Bosnia and Herzegovina*

As of 3 January 2001, the Law on Human Rights Ombudsman of Bosnia and Herzegovina (Official Gazette of BiH, No. 32/00) replaced Annex 6 of the Dayton Peace Agreement and became a legal basis for the functioning of this institution. However, the essence of this Law lies in the provisions of Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina, and it is, therefore, necessary to mention that it envisaged in Article 2 of Section II the establishment of the Human Rights Commission.

#### *2.3.1. Overview*

The institutions of ombudsman that currently function in Bosnia and Herzegovina, i.e., the Human Rights Ombudsman of Bosnia and Herzegovina, Ombudsmen of the Federation of BiH and Ombudsmen of Republika Srpska, were established on the basis of the Peace Agreement (except for the Ombudsman of Republika Srpska). The Dayton Agreement, which entered into force on 14 December 1995, establishes that Bosnia and Herzegovina is the successor of the Republic of Bosnia and Herzegovina and consists of two entities, i.e. the Federation of BiH and Republika Srpska.

Before the long-awaited merging of the Office of Ombudsman of BiH and entity Ombudsman Offices into a single institution of Human Rights Ombudsman of BiH, that was supposed to start operating on 1 January 2007, we need to analyse some of the structural issues, such as the composition, selection and operational procedure- The basic impression that one might have when analysing this new, reformed structure in light of international standards and comparative experiences is that, in

Bosnia and Herzegovina, it is about a formal, administrative merging and that, as a matter of fact, the domination of an ethnic approach to the protection of human rights is thus being reaffirmed, alongside the preservation of the application of the principle of parity, consensus and internal balancing in the decision-making process between the three representatives of constituent peoples in this institution. Thus, instead of serving to correct consociation, which is more than problematic from the point of view of human rights and instead of providing an inherent focus on individual rights as a counterbalance to the dominant ethnic paradigm in BiH, the reform ombudsman only reflects the essential elements of consociation, thus making the system of human rights in BiH even more vulnerable.

Given that the problems in question are structural, it is very likely that these drawbacks would be manifested in the new, reformed institution of the Ombudsman of BiH. The only true change and hope for the success of this institution in terms of a change of understanding and context for the implementation of human rights may be brought about by the choice of individuals of authority and reputation who would, in the forthcoming period, perform this important function. Only those ombudsmen who consistently insist on the discourse of rights vs. the ethnicisation and politicisation of the implementation of human rights in our country will be able to adopt such internal procedures that will turn this institution into a strong and efficient protector of citizens.

Proof that this process will not take that direction may be found in the procedure of election of three new ombudsmen of BiH, which began two years ago. The published competition notice was annulled by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina because it was impossible to gain enough votes of the representatives for proposed candidates, although they were politically recognisable, however, divisions in the majority coalition in the Parliamentary



Assembly of BiH were proven again to an insurmountable obstacle in this case. Although it does not seem to be a political issue, this selection was burdened by the weak functioning of the ruling coalition which was unable to agree about the joint list of candidates for their three positions, given that one of them is a Bosniak, another a Serb, and the third is a Croat. Whoever gets elected for ombudsmen at the level of Bosnia and Herzegovina, their work is doomed, due to such a development, since it has become more than obvious (and it was obvious in the case of earlier appointments that were also followed by the deep involvement of politics) that politicians want the “politically suitable” ombudsmen who would be neither independent nor impartial. In this way, the authorities want to avoid potential criticism of their work. They have succeeded in this in the past, since the present three ombudsmen were appointed by the Presidency of Bosnia and Herzegovina in a non-transparent fashion with the direct involvement of politics in the process. On the other hand, it is a legal obligation to merge the three Ombudsman institutions; however, this process has also been halted for almost two years, until the election of new BiH ombudsmen.

At the beginning of December 2008, new ombudsmen of BiH were elected. Thus, the process of election was completed, yet the legal obligation to create a single institution at the state level has not been met. Although the newly elected state ombudsmen took their position on the 14 December 2008, they were faced with certain obstacles in fulfilment of their legal obligation to merge the three institutions of ombudsmen. The National Assembly of Republika Srpska has not yet adopted the draft law on abolishment of the institution of entity ombudsman. On the other hand, FBiH adopted the Law on Manner of Termination of Functioning of the Institution of Ombudsman of the Federation

of BiH in the Interim Period and Transfer of its Competences to the Institution of Human Rights Ombudsman of BiH<sup>29</sup>, as early as in 2007, but the Federal Institution of Ombudsman continued to operate referring to Article 3 of this Law that prescribes the obligation of "final simultaneous merging of the institutions of ombudsmen." Until the completion of this report, in Bosnia and Herzegovina three institutions of ombudsmen will still exist: the Ombudsman of FBiH, the Ombudsman of RS, and the Ombudsman of BiH.

### *2.3.2. A single structure: consolidation or reduction*

*The Dayton Agreement established in our country a complex constitutional and legal arrangement, as well as a complex system of the protection of human rights that was expected to respond to the challenges of post-conflict transition as well as to be a corrective of such a state structure. The intention of the system was the protection of individuals from violations of their rights in the intricate labyrinths of multiple layers of authorities.*<sup>30</sup>

The Constitution of Bosnia and Herzegovina and Annex VI of the Dayton Peace Agreement has established a rather unusual state institution for the protection of human rights – the Human Rights Commission made of the Human Rights Ombudsman and the Human Rights Chamber. The main difference between these two institutions is as follows: while the

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<sup>29</sup> Official Gazette of the Federation of BiH, No. 53/07,

<sup>30</sup> Edin Hodžić: „Protector of Citizens and Hostage of Consociation – Human Rights Ombudsman of BiH“, the paper published on 26 February 2007, accessible on:

<http://www.pulsdemokratije.net/index.php?a=detail&l=bs&id=199>.

Chamber was established as a judicial body which makes final and binding decisions on cases of the violation of the human rights of the citizens of BiH, Ombudsman is an institution whose decisions have the character of authoritative, yet non-binding recommendations for the bodies of authority at the level of BiH. Besides the Human Rights Ombudsman of BiH, since 1995 and 2000, respectively, such an institution exists also in the Federation of BiH and Republika Srpska. With the termination of the mandate of the Human Rights Chamber, on 31 December 2003, the Ombudsman of BiH remained the only state institution for the protection of human rights at the level of BiH, while the Ombudsman of FBiH and the Ombudsman of RS continued acting on the resolution of cases concerning the inadequate work of public administration and the violation of human rights of the citizens at the entity level.

The Human Rights Ombudsman of Bosnia and Herzegovina became operational in 1996, when one person - a foreign national - performed the role. As of the beginning of 2004, the institution was taken over by the nationals of BiH, but, as it is usual in our country, the number of ombudsmen rose to three. In April 2006, amendments to the Law on Human Rights Ombudsman of BiH were adopted as the basis for the establishment of a single Ombudsman structure in the country that implies the termination of the operation of entity institutions of ombudsman.

There were numerous reasons for merging the institutions of Ombudsman in BiH and for the abolishment of their entity equivalents. These arguments are perhaps summed up best in the Annual Report of the Human Rights Ombudsman that states that the merging of these institutions and reduction of the number of ombudsmen from nine to three would bring about „better service with less cost“ and eliminate „public confusion, contradictions, duplication, as well as coordination and double administration problems.”

The merging of these institutions is one of the post-accession commitments of Bosnia and Herzegovina to the Council of Europe. Besides, the United Nations bodies tasked with the implementation of the Convention on Human Rights almost unavoidably mentioned, in their documents dedicated to BiH, the problematic three-ethnic structure of the institution of Ombudsman as one of the significant areas of concern. Thus, the Closing Remarks of the UN Committee for Elimination of Racial Discrimination made in April 2006 states that the tripartite structure of this institution threatens its efficiency, so the future merging of the institutions of ombudsman in BiH should be undertaken with the aim of „ensuring a unified and uniform, instead of ethnically divided, approach to the protection of human rights.”

We need to underline, however, that the reservations that were also expressed at the end of their mandate by the ombudsmen of the Federation of BiH and Republika Srpska that can be summarised as a concern that a reformed, single institution could lead to the reduction of the overall structure of the protection of human rights in the country are definitely not unfounded. The fact that the reduction of the annual budget for this institution has already been announced, as well as the shutting down of some regional offices, which makes the realisation of one of the very crucial principles of the accessibility of the institution of Ombudsman to citizens rather difficult. Such announcements give rise to justified concern, particularly in view of available statistics on the increase of reports of human rights abuses made by the citizens in recent years. An illustration may be the fact that, until August 2003, the Ombudsman of the Federation of BiH registered about 570,000 contacts with citizens while according to the information provided by this institution, in the period from 2003 to 2006, almost 700,000 additional complaints were registered. Such a rise can partly be explained by the increased awareness of citizens about the work and capacities

of this institution, while it definitely indicates the continuous problem of human rights abuses in the post-war period. The statistics provided by the Ombudsman of Republika Srpska, according to which, in the course of 2006, there were 40 % more complaints in comparison with the previous year, doubtlessly confirms that the merged institution of Human Rights Ombudsman in BiH will be faced with numerous challenges in the realisation of its activities.

Therefore, one could say that this erosion of the institutions for the protection of human rights in BiH has not been followed by a corresponding decrease of the significance of the reasons that led to the initial establishment of this complex structure in the country. However, it is difficult, in this phase when the single institution of the Human Rights Ombudsman of BiH has not become operational, to objectively assess the potential of this institution and its efficiency, but two elements are in the focus of our concern (just like in the case of the Constitutional Court of BiH) – the composition of the institution and the method of selection of ombudsmen – which are of conceptual, rather than empirical nature and they can already be analysed in line with international standards and the experiences of other countries in this field.

### *2.3.3. Representativeness and composition of the Human Rights Ombudsman of BiH*

Given that it was adopted after decades-long development of relevant international standards and after an equally long period of functioning of this kind of institution in many countries in the world, most of the Law on Human Rights Ombudsman of BiH, adopted in 2001, represents the highest expression of achievements and standards of the work of such an institution.

Replacing the relevant provisions of Annex VI of the Dayton Peace Agreement, this law endowed this institution with very broad competences, which include supervisions of the authorities, including the judiciary. This is certainly in line with the highest requirements expressed in the UN Paris Principles of 1993 that are the primary source of international standards for the establishment and operation of state institutions for the protection of human rights. Besides the typical competence relating to the admission of individual complaints from citizens in cases of unlawful or, broadly viewed, inadequate work of administration, the Human Rights Ombudsman of BiH may undertake independently general investigations of violations of human rights and recommend general and individual measures.

We also need to emphasise that the very fact that the position of this institution is defined in the Constitution of BiH and the relevant law are very significant since, as it is often underlined, the guarantees for independence of a governmental human rights institution are in direct correlation with the hierarchical position of legal acts upon which it is established.

However, despite adequate legal status and competences, the composition of the institution for the protection of human rights and the procedure of selection of candidates for the highest position in the body is an element of its overall success. A lot depends on the authority and the reputation of members of this institution, ranging from maintaining positions of essential independence, both from the authorities and from unprincipled influence of organisations of civil society, as well as employment and prevention of brain drain, its efficiency and legitimacy, particularly in a deeply divided society such as that of Bosnia and Herzegovina.

The Paris Principles define, *inter alia*, that one of the key elements of independence of this institution is its pluralism. As it is underlined in numerous analyses (see Assessing the

Effectiveness of National Human Rights Institutions, p. 8), the representativeness of institution for the protection of human rights and its composition that follows the social, ethnic, linguistic and gender structure of the society in which it functions do make a considerable contribution to its efficiency. According to the Law on Human Rights Ombudsman of BiH, the function of „protector of human rights” is carried out by three ombudsmen. Although this institution is in principle linked to one person and this prevents the fulfilment of the aforementioned requirement of representativeness, BiH is not the only exception to this rule. Thus in Sweden, for example, there are four Parliamentary Ombudsmen and in Austria it is a collective body made up of three ombudsmen, while in Belgium the function of the Federal Ombudsman is performed by two persons, one of whom is from the French and another from the Flemish linguistic community.

Although the original version of the Law from 2001 does not contain the provision on ethnic background of ombudsman, stating that every adult citizen of BiH is entitled to apply for this position, their number indicates that the *implicit* intention of the legislator was primarily to achieve a balance between the representatives of constituent peoples. A very good solution was offered in the initial proposal of the law on the unified structure of this institution that was drafted by the representatives of the Ombudsman of BiH in 2003.<sup>31</sup> This proposal envisaged that the institution should have one ombudsman and three deputy-ombudsman, and such a legal arrangement was led by the principle that it was not necessary to include the provision on ethnic background of individuals who would perform these functions, nor on their eventual rotation in the position of ombudsman because adequate representation of constituent peoples and others in this body would be secured through the practice of the Presidency of BiH and the Parliamentary Assembly

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<sup>31</sup> Report of Human Rights Ombudsman of BiH for 2003.

of BiH, which were, according to this proposal, in charge of nominations. The current law, however, pursuant to the amendments adopted in 2006, defines in a ridiculous manner the way ombudsmen are “nominated from the three constituent peoples”... which excludes every possibility of nomination of an individual from the ranks of “Others.” Such a formulation is truly absurd, since two elements of this provision are mutually exclusive: if ombudsmen are truly nominated from the ranks of constituent peoples, how would this three-member structure secure the presence of the fourth, composite ethno-cultural entity in BiH – i.e. „Others“? On the other hand, if members of those “Others” are really entitled to be nominated to this function, the first part of the provision that regulates representation of constituent peoples becomes redundant.

In this way, the previous composition of the Parliamentary Assembly of BiH which passed the Law on Amendments to the Law on Human Rights Ombudsman, ignored even the opinion of the Venice Commission on the draft of the law made in 2004, which emphasised that, although the three ombudsmen would most probably be the representatives of the three constituent peoples in reality, in the Law itself ethnic criteria for the selection of individuals to that position should have been abandoned and, instead, the formulation should have been included that ombudsmen would be the citizens of BiH.

Such an approach to the protection of human rights and reserving even the institution of ombudsman for members of the three constituent peoples – something we seem to have gotten used to, since both the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH are used to act in that way – is absolutely unacceptable. Instead of serving as a good opportunity for the state to show readiness to improve the position of “Others” in the political and public life of BiH, this amended Law on Human Rights Ombudsman of BiH is an



unnecessary and inappropriate affirmation of the dominant ethnic matrix.

Therefore, one gets the impression that the purpose of having three ombudsmen as leaders of this institution is only to enable the mere presence of the representatives of constituent peoples, whereby consociation and division of power between ethnic groups in BiH is mirrored in the area of the protection of human rights, where it should never be. If we were to try to justify such an approach applying the principle of representation of the potential victims of the violation of human rights in this institution to benefit the constituent peoples claiming that, having in mind the depth of ethnic divisions in BiH, the members of those ethnic groups would be the most probable victims of violations of human rights, which makes such a premise unfounded. As an illustration one can certainly cite the statistics produced by the Ombudsman of FBiH in August 2003, according to which the members of "Others" were dominant in the ethnic structure of applicants (Christopoulos and Hormovitis, 2003: 32).

Finally, for the successful work of this institution it is very important not to repeat the experience of 2003, when, according to the Report of the Helsinki Committee of BiH, the Presidency of BiH, that, according to earlier legal solutions determined who can be candidates for the position of Ombudsman of BiH, it proposed for this position „the people close to nationalistic political parties and without any references in the domain of human rights.” Because of that, it is worth bearing in mind the legal provision that establishes that „the citizens of Bosnia and Herzegovina... who have proven experience in the domain of the protection of human rights and fundamental freedoms and a high moral reputation can be nominated for the position of Ombudsman.“ However, recent experiences in the (still unfinished) process of nomination of the three Ombudsmen by the Parliamentary

Assembly of BiH, indicate that no progress would be made, but rather the opposite – that, now, in a transparent process,<sup>32</sup> it will select the candidates from the middle or the bottom part of the scale of professionalism, and not the candidates who are evaluated as the best by the commission in charge. The fact is that it is the same scenario that has been already seen in the last three nominations of judges of the BiH Constitutional Court,<sup>33</sup> whereby this process was not even transparent in the same way as in the process of the nomination of ombudsmen.

In the context of transition in BiH, the institution of Ombudsman has a specific weight. Unlike developed democracies where this institution is an important factor of the maintenance and observance of the principles and procedures of democratic governance, in our country this body is expected to play a role in the development and consolidation of these principles. Also, one should not ignore the fact that the competences of this institution are very broad, even comparatively speaking; consequently, it has potential to have a positive impact on the processes of consolidation of democratic institutions and development of good governance standards in BiH.

Therefore, it is of essential importance to ensure that this important function is performed by individuals who would adopt such internal procedures that would eventually enable them to act at least as one ombudsman, if, due to the particularities of the problems they would be faced with, as well as the context in

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<sup>32</sup> The process of interviews and evaluating is public with the presence of NGO and OHR representatives.

<sup>33</sup> The last three appointments of judges of the Constitutional Court of BiH are completed so that three members of presidencies of ruling parties became constitutional court judges, which opens serious doubts relating “impartiality” of the Constitutional Court as the guarantor of respect of the Constitution of BiH and fundamental principles of democracy and rule of law as the basis for consideration of human rights-related cases.

which they would operate, it is unrealistic to expect them to be three times more efficient.

#### *2.4. Entity constitutional courts*

Given that Bosnia and Herzegovina is divided into two entities, there are constitutional courts in each of them with traditional jurisdiction like most European constitutional courts, i.e. establishment of constitutionality of laws, or, in other words, their compliance with entity constitutions. The establishment of the so-called regional constitutional courts is not an unusual solution, given that in some countries of „Western democracy” (e.g. in Germany) there are constitutional courts at regional level, i.e. at the level of the territorial organisation of the state despite the fact that the state or federal Constitutional Court. Exists. What differentiates them, to some extent, from other constitutional courts is the non-existence of the possibility to assess the legality and the fact that their key role is to unblock the work of entity legislative bodies when an issue arises that, in view of delegates of the House of Peoples of the Parliament of the Federation of BiH or the Council of Peoples of the National Assembly of Republika Srpska, is deemed to be an issue of vital national interest for some of the constituent peoples. Besides, none of the entity constitutional courts has appellate jurisdiction, i.e., the constitutional text does not provide the possibility to individual citizens to address these courts with a request for the protection of human rights in relation to rulings of regular courts as it is the case with the Constitutional Court of BiH. Such constitutional arrangements, although they are not unusual for constitutional courts, do not make these courts effective protectors of human rights in the full sense of the word, unless we consider their role in the protection of human rights through their performance of abstract jurisdiction, i.e. assessment of

constitutionality or protection of collective rights. However, if we compare the data on the number of cases from appellate jurisdiction of the Constitutional Court of BiH with a relatively low number of cases adjudicated by the entirety of the constitutional courts, the conclusion is that defined competences of the two entity and one state constitutional courts are not adequately divided and that in future there should be a redistribution of competences of the constitutional courts in order for each of them to fulfil their role of protector of human and constitutional rights of citizens.

### 3. Limitations and derogation of human rights

Article 4 of the Covenant on Civil and Political Rights (ICCPR):

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons according to which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*(Official Gazette of SFRY, No. 7/71)*

Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures it has taken and the reasons therefore. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

*(Official Gazette of BiH, No. 6/99)*

*3.1. Limitations and derogation according to the  
Constitution of Bosnia and Herzegovina*

The Constitution of Bosnia and Herzegovina does not contain explicit provisions on limitations and derogation of human rights. However, in Article 2, Point 2, it is stipulated that the rights and freedoms established in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its related protocols that are directly applicable in Bosnia and Herzegovina and have supremacy over national law. Consequently, limitations of human rights and derogation which is the subject of our research in Bosnia and Herzegovina are contained in the European Convention for the Protection of

Human Rights and Fundamental Freedoms as well as in its related protocols.

### *3.2. Limitations of human rights*

In the European system of human rights that is contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms there are exemptions, special limitations and reservations envisaged.

#### *3.2.1. Exemptions*

However, exemptions in Paragraph 2 of this Article are particularly important since they stipulate that “Deprivation of life shall not be regarded as a contravention of this article when it results from the use of force which is no more than absolutely necessary: a) in defence of any person from unlawful violence; b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection.” In this regard, the European Court of Human Rights in the case *Stewart v United Kingdom* from 1984, stated an important interpretation relating to the use of force that may have, as consequence and unintended outcome, deprivation of life.<sup>34</sup>

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<sup>34</sup> “The European Court considers that exceptions described in Para 2 indicate that this provision also extends to permitted murder, but does not relate only to it. As the European Commission emphasized, the text of Article 2, understood as a whole, does not primarily determine the case in which it is permitted to kill an individual with premeditation, but describes situations in

All these cases refer to the use of force with a certain goal, whereby this use of force should not exceed the one necessary for attainment of that goal. Here, in actual fact, the principle of proportionality between the intensity of force used and the goal to be attained, was applied. In the jurisprudence of the European Court it is clear that those decisions that relate to the exemption in case of unrest or rebellion are particularly clear. Thus, cases are cited that most often relate to the exemption in case of unrest or rebellion as is evident in applications *X v Belgium* from 1966, *Farell v United Kingdom* from 1980 and *Kelly v United Kingdom* from 1990, where the Court supported the view that the state was right when its bodies have deprived of life some individuals in the situation that could be defined as «unrest» with an explanation that limitation of the rights from Article 2 of the Convention was proportionate to the legitimate goal that was to be achieved. In other words, in all the aforementioned murders perpetrated by police and military bodies, the Court was of the view that the use of force did not exceed that necessary for society to defend itself from unlawful violence.

Exemptions envisaged by the provisions of Article 5 of the Conventions are also of great significance. Namely, in Point 1 of Article 5 the Convention states that “everyone has the right to liberty and security of person.” However, the Convention goes on to and states that it is still possible to deprive man of liberty if that is in accordance with legally prescribed procedure. Exemptions in Paragraph 1 of Article 5 must be strictly interpreted and restrictively applied which has been affirmed by the decision of the European Court of Human Rights *Ciulla v Italy* from 1989.

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which it is permitted to use force that could have as a consequence, and as an unintended outcome, deprivation of life. The use of force, however, shall not exceed the force that is absolutely necessary for the attainment of the objectives as set down in sub-paragraphs (a), (b) or (c).”

From the list of exemptions enumerated in Article 5 of the European Convention it is evident that the Convention, in actual fact, permanently legitimises a certain number of deprivations of liberty. These are certainly mainly the exemptions that relate to the deprivation of liberty due to the reasons that stem from criminal law. However, the Convention envisages a number of possibilities given to the state bodies to deprive some individual of their liberty even if they have not committed any criminal offence, such as minors, persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants or persons against whom action is taken with a view to deportation or extradition.

An insight into the jurisprudence of the European Court of Human Rights indicates that, even in these cases, control by bodies for protection of human rights is not excluded. There are numerous examples in which the Court criticised the behaviour of states in relation to committing these exemptions to the general rule of the protection of a very man from deprivation of liberty, if it considered that the state exceeded permitted limits envisaged by the Conventions, e.g. *Guzzardi v Italy* from 1980 and *Bouamar v Belgium* from 1988. The European Court of Human Rights in the case *Bozano v France* from 1986 also intervened when the measures of deprivation of liberty, which are exemptions to the general rule, were undertaken under abnormal circumstances, but in *Winterwerp v Holland* from 1979, where the principle of *habeas corpus* that provides guarantees that a person deprived of liberty will be promptly brought before an official and that he would be informed about the reasons of his deprivation of liberty was not respected.

All other exemptions should be interpreted in the same way, e.g. Protocol No. 1, Article 1, Paragraph 2, that states that “The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to



control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.“; Protocol No. 7, Article 1, Paragraph 1 that states that “An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: a) to submit reasons against his expulsion, b) to have his case reviewed, and c) to be represented for these purposes before the competent authority or a person or persons designated by that authority“, and Protocol No. 7, Article 2 that reads: „This right may be subject to exceptions in regard to offences of a minor, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

### *3.2.2. Special limitations*

Special limitations mean those limitations of human rights that can be made by the state if there are conditions for it envisaged by the Convention. These are the conditions: a) that these limitations are prescribed by law or in accordance with law; b) that these limitations are in the interest of a democratic society; and c) that there are certain, clearly expressed legitimate reasons. Special limitations are, therefore, permanent possibilities for a state to limit certain human rights stipulated by the Convention.

All these three criteria are contained in the Preamble of the European Convention for the Protection of Human Rights. The principle of accordance with law stems from the principle of the «rule of law», the principle indispensable in a democratic society that is based on the view that human rights are “best protected by true political democracy”, while the legitimate goals of a state are, in actual fact, mainly identical to the «same goals

and shared legacy of political traditions, ideals, freedom and the rule of law.” The principle that stems from the Preamble of the Convention means that human rights are «on the one hand, best protected by true political democracy, and, on the other, by common understanding and respect for the human rights it depends on” a balance is established between enjoyment of individual rights and the necessity to protect democratic society as a whole.

The essence of special limitations lies in the fact that they allow states to impose limitation on certain human rights, while, at the same time, enabling the European bodies to exercise control over these state activities. Special limitations are given to states under the conditions, which enable European control to assess whether they are in accordance with the provisions of the Convention. In most cases of special limitations envisaged by the Convention, states are given a relatively wide field of assessment. There is even the possibility and obligation of European judicial bodies to check whether a state remained within the limits of free assessment set down in the Convention.

With an exhaustive explanation of limitations in Paragraph 2, the European Convention in actual fact tried to keep the aforementioned rights as fully as possible, and to apply as few limitations as possible. That is why, the formulation of this paragraph is a result of an endeavour to define limitations as precisely as possible, so that potential arbitrariness of the state would be reduced to a minimum. Preventing the states from having unlimited discretionary power, the Convention obviously did not accept the slogan that ends justify means. Special limitations contained in Article 8 - 11 of the European Convention have double function since they set a basis for the states to limit certain rights – therefore, deviating from its fundamental obligation to protect human rights defined in the Convention, but also the basis for the protection of individuals from arbitrariness of the state in terms of limitations of human

rights – if the states are allowed to impose limitation of these rights.

The European Court for Human Rights states, in the Leander Case from 1987, that the law itself must clearly emphasise the scope of discretion that is transferred to competent authorities in relation to the legitimate goal<sup>35</sup>. Precise legal definition of this area was also affirmed in the Kruslin & Huvig Case from 1990, when the emphasis is put on serious interference in private life and correspondence<sup>36</sup>. In line with the aforementioned facts, one can conclude that only a clear and precise law with a clearly defined goal may be the basis for the criteria for the limitation of human rights in accordance with the law.

The concept of a democratic society is a comprehensive concept and in European documents it is most often defined by pluralism, tolerance, the spirit of openness and freedom of expression. The European Court for Human Rights in the Lingens Case from 1986 emphasised these three requirements which the states must meet when imposing limitations on human rights on the basis of “necessity in a democratic society”: a) whether motives are reasonable and sufficient; b) whether interference of the state is proportionate to the desired goal; and

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<sup>35</sup> “Where application of law consists of secret measures that are not accessible to the surveillance of the individual in question or to the larger public, the law itself, contrary to the administrative practice that follows it, must indicate the scope of discretion that is transferred to competent authorities with sufficient clarity and proportionately to the legitimate goal of the measure in question, in order to provide the individual with protection against arbitrary interference.”

<sup>36</sup> “Tapping and *other forms of interception* of telephone conversations constitute a serious interference in private life and correspondence and must, consequently, be based on a law that is particularly precise. The key element here is that there should be clear, detailed regulations in this regard since available technologies are continuously improved and becoming ever more sophisticated.”

c) whether states maintain a balance between the interest of individuals and public interest.

The third criterion that must be taken into account by states when imposing a limitation on human rights is the criterion of the legitimate goal. Thus, in all the aforementioned articles of the Convention legitimate goals are cited as guiding the protection of the interest of a democratic society. One can conclude from this that any measure undertaken in the interest of a democratic society was not a sufficient criterion for the limitation of human rights imposed by states, so that in almost all articles there are categories or goals prescribed, such as: national security, public safety, the protection of public order, health or morals, the protection of the rights and freedoms of others (Article 9 of the European Convention) and prevention of disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (as stated only in Article 10 of the European Convention).

### *3.2.3. Reservations*

Reservations imply the right of states to exclude or modify its obligations that stem from that document, when ratifying the European Convention for the Protection of Human Rights. The possibility of stating reservations means the adjustment of states to the requirements of the European Convention to their specific possibilities and needs. However, our state in the procedure of ratification of the European Convention for the Protection of Human Rights did not declare reservations and, therefore, this provision has no relevance for the state of Bosnia and Herzegovina.

### *3.3. Derogation*

Derogation of human rights enables states to derogate some human rights and freedoms in the time of war or some other public emergency threatening the life of the nation. A state of emergency actually means the state of serious threat that jeopardises the existence of a state, while with the permission to derogate the old principle of the state of emergency in exceptional circumstances is revived which enables a state to secure its continuity in any situation. Only a number of human rights cannot be derogated, so one can conclude that most of the human rights are subject to suspension, including some of the most important ones, such as the right to a fair trial and the protection of the freedom and security of man.

The State of Bosnia and Herzegovina proclaimed the state of emergency during the 1992-1995 war.<sup>37</sup>

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<sup>37</sup> The 1974 Constitution of the Socialist Republic of Bosnia and Herzegovina contained provisions on the state of emergency in the case of war or imminent danger of war. On the basis of this provision, Bosnia and Herzegovina proclaimed, on 8 April 1992, «imminent war danger», which fully fits into the aforementioned provisions on “in time of war or other public emergency threatening the life of the nation» as set in Article 15 of the Convention and then, on 20 June 1992, passed the Decision on the Proclamation of the State of War. In the period from 14 December 1995, when the Framework Agreements on the Peace in Bosnia and Herzegovina were signed in Paris until 22 December 1995, when the Presidency of Bosnia and Herzegovina passed its Decision on the Termination of the State of War, the European Convention for the Protection of Human Rights was in force and, consequently, Article 15 of the Convention.

Transfer of legislative authority on the executive, but also derogation of human rights was enabled by the Constitution of the Socialist Republic of Bosnia and Herzegovina dating back to 1974, to the extent that international documents allowed it and to the extent that the defence of the state required it. Based on Article 350 of the Constitution of SRBiH and the amendment to this Constitution introduced in 1990, it is evident that the state of emergency – in this case, the state of war or the state of imminent danger – of the Constitution

envisages, above all, the transfer of legislative powers to the executive, whereby the Presidency, at the proposal of the Executive Council or on its own initiative enacts decrees with the force of law on the issues under the competence of the Assembly.

The Constitution further permits derogation of certain human rights, i.e. it is permitted by way of decrees with the force of law to suspend the application of some – in other words by no means all of the provisions of this Constitution that relate to individual freedoms, rights and duties of men and citizens, which is absolutely in accordance with the provisions of the UN Covenant on Civil and Political Rights of 1966 as well as with Article 15 of the European Convention. The possibility of restructuring the executive and administrative bodies is also permitted, the change of composition and competences of executive and administrative bodies, as well as the creation of new institutions, if the newly created social situation imposes such a need.

From all the above-mentioned, it is clear that it was a matter of a temporary suspension of human rights and that the Presidency of SRBiH intended to submit the decrees with legal force relating to the issues that fall under the competence of the Assembly to this Assembly's confirmation as soon as it was able to hold a session, which clearly emphasises the democratic meaning and character of the state of emergency according to the 1974 Constitution of the country. Namely, having made a commitment that it will observe the Covenant on Civil and Political Rights, SR Bosnia and Herzegovina, i.e. the Republic of Bosnia and Herzegovina, starting from 8 April 1992, when a decision on immediate public and war emergency - could quite lawfully refrain from its obligation to respect certain human rights in the manner prescribed by the aforementioned Covenant.

The analysis of application of the provisions of Article 350 of the Constitution of the Republic of BiH and the character of the state of emergency that occurred during the irredentist war that was waged against the Republic of Bosnia and Herzegovina (1992-1995) is undoubtedly of great relevance for the determination of the constitutional and legal character of the State of Bosnia and Herzegovina in this period. The provisions of Article 350 of the Constitution of SR Bosnia and Herzegovina from 1974 had a great historical as well as practical relevance.

From 8 April, when it passed the Decision on Imminent War Danger, SRBiH, or the Republic of BiH could absolutely lawfully and legitimately refrain from its obligation to protect certain human rights in the manner prescribed by the Covenant. The country could absolutely lawfully introduce certain forms of compulsory work to the extent to which the interest of defence of the state

Bosnia and Herzegovina, according to its 1995 Constitution (Annex 4 of the Framework Agreement for Peace in Bosnia and Herzegovina), does not contain explicit provisions on the possibility of derogation of human rights in the case of a state of emergency.

However, with the aforementioned inclusion in the Constitution of the provision on direct applicability of the European Convention for Protection of Human Rights and its supremacy over all other law of the country, the right of the state was introduced to derogate a number of human rights in case of the state of war or other state of public emergency threatening the life of the nation. Therefore, all the provisions of Article 15 of the

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from foreign, regular and numerous domestic paramilitary formations required it. No other state or para-state, military or paramilitary formation – of all those that existed in the territory of the Republic of BiH during the 1992-1995 war – had the legitimacy to impose any restrictions of human rights. It is for this reason that this topic has a great relevance for the determination of the constitutional and state continuity of Bosnia and Herzegovina and, particularly, its legitimacy. Territorial defence and the Army of BiH were the only legitimate military and political forces that, during the aforementioned war, existed within the internationally recognised borders of the country. The State of BiH is, therefore, the only entity authorised to apply certain measures of derogation of human rights pursuant to the provisions of the International Covenant (restriction of the freedom of movement, compulsory work, prohibition of assembly etc) and the European Convention, which indicates that, here, it is primarily the legitimate right of the Republic of BiH that must be kept in mind by all international political and judicial institutions, and particularly, the Tribunal for the War Crimes Committed on the Territory of the Former Yugoslavia in the Hague. The accession of Bosnia and Herzegovina in the Council of Europe imposes the obligation to harmonise fully the Constitution of Bosnia and Herzegovina with the European Convention for the Protection of Human Rights. This, of course, imposes the need for the existence of the constitutional provision on the behaviour of the state of Bosnia and Herzegovina in time of war or other public emergency threatening the life of the Bosnian and Herzegovinian „nation.” (See: L. Sadiković, *Vanredno stanje i ljudska prava*, Magistrat Sarajevo, 2003.)

European Convention for the Protection of Human Rights relate to our country. Thus, the principle of derogation was introduced as the law of the State of Bosnia and Herzegovina

In that respect, if the State of Bosnia and Herzegovina wants to limit certain human rights pursuant to Article 15, the state must respect the following conditions: a) war or other emergency threatening the life of the nation, b) proportionality of undertaken measures with the gravity of the situation, c) compliance with other obligations of international public law, d) prohibition of derogation of certain human rights, e) obligation of notification of the Secretary General on measures that were undertaken, and f) notification of the Secretary General on termination of these measures.

According to the European Convention the following rights are absolutely protected: Article 2, Point 1 – Right to life, Article 3 – Freedom from torture and other inhuman or degrading treatment or punishment, Article 4. Point 1 – Prohibition of slavery and compulsory labour, Article 7 – Punishment only on the basis of law (prohibition of retroactive criminal legislation), Protocol No. 6. Article 3 – Prohibition of Death Penalty, Protocol No. 7. Article 4 – Prohibition of trial or punishment again in criminal proceedings for an offence for which he has already been finally acquitted or convicted (*non bis in idem*).

The issue of derogation of human rights in Bosnia and Herzegovina definitely imposes the need to determine the nature of the role and function of OHR, i.e. The High Representative, in the Constitution of Bosnia and Herzegovina and generally in the context of implementation of the Framework Agreement for Peace in Bosnia and Herzegovina. Namely, the Parliamentary Assembly of the Council of Europe in its Resolution 1384 of 23 June 2004, requested the Venice Commission to consider the role and legal scope of OHR in the constitutional system of Bosnia



and Herzegovina. The Parliamentary Assembly of the Council of Europe considered that „it is irreconcilable with democratic principles that OHR has the capacity to pass executive decisions without bearing responsibility for them and without obligation to justify their validity whereby there is no legal remedy against its decisions.” The Parliamentary Assembly of the Council of Europe requested the Venice Commission to determine to what extent such a practice was in line with fundamental principles of the Council of Europe, and in particular with the Convention for the Protection of Human Rights and Fundamental freedoms. In its answer to this question, the Venice Commission issued an Opinion on the Constitutional Situation and the Powers of the High Representative on 11 March 2005 in which it advocated the opinion that these powers of OHR should be in line with fundamental democratic principles and the European Convention, if related to the role of state in the state of emergency. The powers „may be qualified as emergency powers. By their very nature, emergency powers, however, have to cease at the same time as the emergency originally justifying their use. “

Finally, to get a full picture of the right of the State of Bosnia and Herzegovina to derogate fundamental human rights defined in the European Convention for the Protection of Human Rights relevant provisions of the Law on Defence need to be cited.<sup>38</sup> In Article 10 of the Law on Defence it is stated that „the Parliamentary Assembly of Bosnia and Herzegovina has the power to proclaim a state of war at the request of the Presidency in case of direct attack on Bosnia and Herzegovina or a part of Bosnia and Herzegovina, and to proclaim a state of emergency at the request of the Presidency when there is a threat to the life of Bosnia and Herzegovina, the threat of attack on Bosnia and Herzegovina or any part of Bosnia and Herzegovina or imminent

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<sup>38</sup> Law on Defence of Bosnia and Herzegovina, Official Gazette of BiH, No. 88/05 dated 20.12.2005.

danger of war.” In Article 12 of the Law on Defence it is stipulated that „the Presidency enacts decisions by consensus and it has the power to: a) request the proclamation of the state of war from the Parliamentary Assembly; b) request the proclamation of the state of emergency from the Parliamentary Assembly.” In Section IV „Proclamation of the state of war or of emergency“ (Articles 40-43), and Section V „Natural and Other Disasters and Accidents“ (Articles 44-45) regulates the issue of request for proclamation of the state of war, the proclamation of the state of war or emergency, timeframe for consideration, as well as engagement of armed forces in case of natural and other disasters and accidents.

Similar provisions on the introduction of a state of emergency are contained in the constitutions of the Federation of Bosnia and Herzegovina (Article 9) and Republika Srpska (Article 70), which is definitely paradoxical given the fact that there is no such provision in the Constitution to which these entities belong.

In the Constitution of Republika Srpska in Article 70 (National Assembly), Paragraph 3 is amended by Amendment CVII that reads: „The National Assembly, pursuant to the Constitution and law, proclaims: the state of emergency for the Republic or a part of the Republic in case of threat to security, due to natural disasters (floods, earthquakes and fires), natural catastrophes, epidemics, violations of human rights and freedoms and of normal functioning of the constitutional bodies of the Republic. The provisions of Paragraph 3 of this Article do not relate to the use of the army and other measures in the competence of the institutions of Bosnia and Herzegovina.”

The Federation of Bosnia and Herzegovina, as an entity of the State of Bosnia and Herzegovina, has the competence to adopt regulations with legal force in case of a state of emergency that threatens the country on the basis of Article 9 of the Constitution: „The Government is authorized to promulgate decrees having the force of law in response to national emergencies when the

Legislature is unable to do so. Decrees shall take effect in the same manner as a Decision of the Legislature and may not derogate from the rights and freedoms provided in this Constitution. Each decree shall terminate no later than the end of the thirtieth day after its promulgation, provided that it shall terminate immediately upon disapproval by a Decision of the Legislature or at the end of the tenth day after its promulgation if the Legislature is in session when the decree is promulgated. A decree promulgated while the Federation is using armed force in accordance with this Constitution shall remain in force until the fifth day of the next session of the Legislature, when it shall expire unless approved but in no event more than six months. After termination, a decree shall not be extended, reinstated, or repeated without a Decision of the Legislature to that effect.”

It arises from the aforementioned that in the process of constitutional changes that are the condition for accession of Bosnia and Herzegovina to the European Union, the issue of the functioning of the State of Bosnia and Herzegovina in the conditions of a state of emergency needs to be adequately regulated. All the European states have defined clearly in their constitutions which body of their states can pronounce the state of emergency. In that respect, Bosnia and Herzegovina cannot and should not be an exception. The constitutional provisions that are being drafted must quite clearly define the body that will realise legislative and executive authority in the conditions of internal or internal emergency threatening the life of the Bosnia-Herzegovinian nation, pursuant to Article 15 of the European Convention for the Protection of Human Rights.

## 4. Special rights

### *4.1. Prohibition of discrimination*

Article 2, Paragraph 1 of ICCPR:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*(Official Gazette of SFRY, No. 7/71)*

Article 14 of ECHR:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

*(Official Gazette of BiH, No. 6/99)*

Article 1 of Protocol 12 to ECHR:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

*4.1.1. General considerations*

Discrimination in Bosnia and Herzegovina is expressly prohibited by its Constitution, a number of international documents included in Annex I to the Constitution that are its integral part,<sup>39</sup> and other acts ratified by Bosnia and

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<sup>39</sup> Convention on the Prevention and Punishment of the Crime of Genocide; 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 1957 Convention on the Nationality of Married Women; 1961 Convention on the Reduction of Statelessness; 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 1966 Covenant on Economic, Social and Cultural Rights; 1979 Convention on the Elimination of All Forms of Discrimination against Women; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 1989 Convention on the Rights of the Child; 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 1992 European Charter for Regional or Minority Languages; 1994 Framework Convention for the Protection of National Minorities.

Herzegovina.<sup>40</sup> In the legal system of Bosnia and Herzegovina, the European Convention on Human Rights and Fundamental Freedoms has a supra-legal force.<sup>41</sup> Protocol No. 12 to the European Convention was ratified by Bosnia and Herzegovina on 29 July 2003.

Provisions on the prohibition of discrimination are contained also in the constitutions of Republika Srpska and the Federation of BiH,<sup>42</sup> including the international documents that make an integral part of the Constitution of FBiH<sup>43</sup> and the Statute of Brčko District of BiH.<sup>44</sup>

The Constitution of Bosnia and Herzegovina stipulates that:

*The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*<sup>45</sup>

This constitutional provision is actually the provision on prohibition of discrimination taken over from the International Covenant on Civil and Political Rights and the European Convention on Human Rights. It does not distinguish direct from indirect discrimination, neither does it introduce affirmative

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<sup>40</sup> E.g. The Convention related to discrimination in employment and occupation (No. 111), UNESCO Convention against Discrimination in Education.

<sup>41</sup> Article 2 (2) of the Constitution of BiH.

<sup>42</sup> Article 2 (1) of the Constitution of the Federation of BiH, Article 10 of the Constitution of Republika Srpska.

<sup>43</sup> Annex to the Constitution of the Federation of BiH.

<sup>44</sup> Article 13 of the Statute of Brčko District of BiH

<sup>45</sup> Article 2 (4) of the Constitution of BiH.

action, yet it does open up the possibility to expand the formulation *on any ground* so that it covers situations that are not explicitly enumerated in the provision itself.

The issue that has caused controversies is the alignment of this provision of the Constitution of BiH and of Article 14 of the European Convention with the constitutional provisions related to the election of members of the Presidency of BiH and of the House of Peoples of the Parliamentary Assembly of BiH. The Constitution stipulates that a person who runs for the office of the Presidency of BiH or for delegate of the House of Peoples must belong to one of the constituent peoples, whereby the choice is reduced to Bosniak and Croat candidates for this office in the Federation of BiH, and to Serb candidates in Republika Srpska.

In its decision on the constituent status of peoples, the Constitutional Court of BiH gave, *inter alia*, the following interpretation of this issue:

*“ .... One must not forget that the Serb member of the Presidency, for instance, is not only elected by voters of Serb ethnic origin, but by all citizens of Republika Srpska with or without a specific ethnic affiliation. He thus represents neither Republika Srpska as an entity nor the Serb people only, but all the citizens of the electoral unit Republika Srpska. And the same is true for the Bosniak and Croat Members to be elected from the Federation.”<sup>46</sup>*

Similarly, the Constitutional Court of BiH concluded in its considerations related to the issue of election of delegates to the House of People of the Parliament of the Federation of BiH:

*... that Article 3 of Protocol No. 1 to the European Convention does not exclude indirect elections and that people may*

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<sup>46</sup> Decision U-5/98 of the Constitutional Court of BiH.

*freely express their opinion on the final composition of the legislature even in the indirect elections.*<sup>47</sup>

One should have in mind the fact that the European Court of Human Rights, in the *Mathieu – Mohin and Clerfayt v. Belgium Case*<sup>48</sup> and *Melničenko v. Ukraine Case*<sup>49</sup> was willing to leave a particularly broad scope of freedom to states in relation to their interpretation on their respective election laws.

On the other hand, the UN Committee for Elimination of Racial Discrimination, in its concluding commentaries,<sup>50</sup> called upon Bosnia and Herzegovina to undertake all legislative measures to secure prohibition of ethnic discrimination and to initiate the modification of relevant provisions of the state Constitution and the state Election Law so that the right of every person to elect and be elected is secured irrespective of ethnic affiliation.

The Committee also recommended the elimination of discriminatory language from the national and entity constitutions, including, but not limited to, distinction between *constituent peoples and others*.

Discrimination as violation of equality of men and citizens is envisaged also in the Criminal Codes of BiH, the Federation of BiH, Republika Srpska and Brčko District of BiH.<sup>51</sup> Thus, the Criminal Code of FBiH stipulates that:

(1) *Whoever, on the ground of differences in nationality, race, skin colour, religion, political or other belief, ethnic*

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<sup>47</sup> Decision AP-35/03 of the Constitutional Court of BiH

<sup>48</sup> Judgment of 2 March 1987.

<sup>49</sup> Judgment of 19 October 2004.

<sup>50</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Bosnia and Herzegovina CERD/C/BIH/CO/6 of 11 April 2006.

<sup>51</sup> Article 145 of CC BiH, Article 177 of CC FBiH, Article 162 of CC RS, and Article 174 of CC BDBiH.



*background, sex, language, education or social status or social origins denies or restricts the civil rights as provided by the Constitution, Law or some other regulation or general act or ratified international agreement, or whoever on the ground of these differences grants unjustified privileges or does unjustified favours to citizens, shall be punished by imprisonment for a term between three months and five years.*

*(2) Official or responsible person in the Federation who commits a criminal offence referred to in Paragraph 1 of this Article, shall be punished by imprisonment for a term between one and eight years.*

*(3) Official or responsible person in the institutions of the Federation who, in contravention of the regulations on the equal use of language or alphabet of constitutive peoples and others living on the territory of Bosnia and Herzegovina restricts or denies to a citizen the use of his/her language or alphabet addressing the bodies of authority and the institutions in the Federation, companies and other legal entities in order to exercise his/her rights, shall be punished by imprisonment for a term not exceeding one year.*

*(4) Official or responsible person in the institutions of the Federation who restricts or denies to a citizen his/her right to free employment throughout the territory of Bosnia and Herzegovina under expel prescribes conditions, shall be punished by imprisonment for a term between six months and five years.*

It is interesting to note that the Criminal Code of Republika Srpska prescribes for the aforementioned criminal offence the sanction of three years of imprisonment, while official persons who abuse their position or competences shall be sanctioned with the imprisonment for a term between six months and five years. The Criminal Code of Brčko District of BiH prescribes the sentence of imprisonment between six months and five years, while the Criminal Code of Bosnia and Herzegovina, in

view of the jurisdiction of the state bodies, determines the violation of equality of men and citizens only when it is committed by official persons and for such offence sit envisages the imprisonment for a term between six months and five years.

The provisions on prohibition of discrimination can be found in other laws of Bosnia and Herzegovina and its entities as well, e.g. the entity Labour Codes,<sup>52</sup> while the Framework Law on Higher Education in BiH and the Statute of Brčko District of BiH have expanded their provisions on the prohibition of discrimination to the offences committed on ground of sexual orientation.<sup>53</sup> The Law on High Judicial and Prosecutorial Council of BiH prohibits judges and prosecutors to be members of organisations that commit acts of discrimination and to use premises of those organisations.<sup>54</sup>

However, the Family Law of the Federation of BiH introduces some restrictions that can be considered as discrimination, e.g.:

*Husband may not apply for divorce when his wife is pregnant or until their child reaches the age of three.*<sup>55</sup>

The Family Law of FBiH introduces the concept of mediation,<sup>56</sup> and prescribes that its implementation is mandatory. In the situation when a duly summoned party does not respond to the summons, the consequence would be the suspension of proceedings, which implies that appeal can not be lodged by the divorce-seeking spouse. The Law explicitly prescribes that the

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<sup>52</sup> Article 5 of the Labour Code of FBiH, Article 5 of the Labour Code of RS.

<sup>53</sup> Article 7 of the Framework Law on Higher Education in BiH, Article 13 of the Statute of Brčko District of BiH,

<sup>54</sup> Article 82 of the Law on HJPC of BiH

<sup>55</sup> Article 43 of the Family Law of BiH.

<sup>56</sup> Article 49 of the Family Law of BiH.

consequence of appeal against suspension of proceedings shall be rejection of the appeal.

This situation is in contravention with the opinion of the European Court of Human Rights, which defined, in the *Golder v. United Kingdom Case*,<sup>57</sup> that the right to appeal to court is one of the universal legal principles and that it is an integral part of the right to fair trial.

The legislation in Bosnia and Herzegovina prohibits discrimination of persons with disabilities, e.g. the Law on the Rights of Persons with Mental Disorders in the Federation of BiH,<sup>58</sup> but there is still a distinction between different categories of persons with disabilities. War-disabled persons are privileged<sup>59</sup> vis à vis civilian victims of the war and persons born with disabilities.

The Council of Ministers of Bosnia and Herzegovina adopted in 2003 the Standard Rules on Equal Opportunities for Persons with Disabilities, whereby the state has taken an obligation to remove all obstacles these persons are faced with. Bosnia and Herzegovina has not accepted yet the UN Convention of the Rights of Persons with Disabilities.

#### *4.1.2. Law on Gender Equality*

In 2003, Bosnia and Herzegovina adopted the Law on Gender Equality that prohibits discrimination on the basis of gender, and defines this form of discrimination in this fashion:

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<sup>57</sup> Judgment of 21 February 1975.

<sup>58</sup> Article 5 of the Law on the Rights of Persons with Mental Disorders in FBiH

<sup>59</sup> See the Law on the Rights of War Veterans and Members of their Families in FBiH, Law on the Rights of War veterans, War Disabled and the Families of Fallen Combatants of Homeland War in RS.

*For the purposes of this Law, discrimination on the grounds of gender is defined as all juridical or effective, direct or indirect distinction, privilege, exclusion or restriction on the grounds of gender as a result of which the recognition, exercise or enjoyment of a person's human rights and freedoms in the political, educational, economic, social, cultural, sports, civil and all other domains of public life are denied or curtailed.<sup>60</sup>*

This Law has introduced distinction between direct and indirect discrimination, whereby indirect discrimination implies the existence of apparently neutral norms, criteria or practices equal for all that put persons of other gender in an unequal position.

Likewise, the Law prescribes that the norms, criteria or practices that are justified by the achievement of legal goals, which are proportionate to the necessary and justified measures, shall not be considered as discriminatory; consequently, it is permitted to introduce special measures aimed at promotion of equality and equal gender-related rights and at the elimination of existing inequalities.

On the other hand, the Election Law of BiH<sup>61</sup> determines that every list of candidates for public office must include persons of male and female gender, whereby the minimum of one candidate of the less represented gender must be among the first two candidates and the minimum of two candidates of the less represented gender must be among the first eight candidates, so that, practically, the principle of affirmative action is introduced in this Law.

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<sup>60</sup> Article 3 of the Law on Gender Equality of BiH.

<sup>61</sup> Article 4.19 of the Election Law of BiH.

#### *4.1.3. Powers of the High Representative in BiH*

Annex 10 of the Dayton Peace Agreement determines the powers of the High Representative in BiH. At the conference held in Bonn in 1997, the Peace Implementation Council supported the adoption of legally binding decisions taken by the High Representative, the so-called Bonn Powers, which, in addition to the right to impose laws includes the HRs right to remove individual officials if they obstruct the implementation of the Peace Agreement. By the rule, decisions of the High Representative enter into force immediately and, when decisions on removal of officials are concerned, the prohibition is related to any official, elected or appointed public function in the future without any temporal limitations. The High Representative is the only one who is entitled to revoke these prohibitions; in the meantime the HR has initiated the rehabilitation of some individuals who had been removed from office.

In its Opinion on the Constitutional Situation in BiH and the Powers of the High Representative, the Venice Commission<sup>62</sup> concluded that this practice, besides the usefulness of the Bonn Power for BiH and its citizens, does not correspond to democratic principles when used without legal procedure and the possibility of judicial control, and the Commission called for the establishment of a panel of independent jurists for decisions related to individual rights.

So far, the Constitutional Court of BiH<sup>63</sup> has rejected all appellations that requested the Court to reconsider the decisions of the High Representative with an explanation that it has an appellate jurisdiction over the issues of competence that are related to decisions of any court in Bosnia and Herzegovina, while

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<sup>62</sup> CDL- AD (2005)004 of 11 and 12 March 2005.

<sup>63</sup> See Decision U-37/01 of the Constitutional Court of BiH.

decisions of the High Representative on removal from office and prohibition to perform public function without an explicit permission of the High Representative cannot be considered as court decisions and that, consequently, the Constitutional Court does not have an appellate jurisdiction in relation to such decisions.

#### *4.1.4. Law on Prohibition of Discrimination*

In 2008, a Working Group of the Ministry for Human Rights and Refugees of BiH developed a draft Law on Prohibition of Discrimination; in this process, the Working Group has prepared several versions of the law and organised a public debate that involved representatives of non-governmental and international organisations. According to the last version of the Draft Law that was submitted to the parliamentary procedure, this Law regulates, in one of its provisions, the prohibition of discrimination, defining forms and exemptions of discrimination, the institutions competent for protection against discrimination and for monitoring of implementation of the Law. It is important to note that the concept of special complaint is introduced in relation to the protection against discrimination. The Proposal of the Law stipulates that the following acts shall be considered as discrimination:

*... when the authorities in BiH, as well as private persons or natural persons, put a person or a group of persons in an unequal position on grounds race, colour of skin, sex, language, religion, ethnic background, national or social origin, relation to national minority, political or other belief, financial situations, membership in trade-union or other associations, education, social status, marital or family status, pregnancy, maternity, age, state of health,*

*disability, genetic heritage, gender identity, sexual orientation as well as some other real or assumed characteristics,*<sup>64</sup>

This Proposal differentiates direct from indirect discrimination and defines other forms of discrimination that include harassment, sexual harassment, mobbing, segregation, victimisation, discrimination of persons with disability, as well as the act which instigate others to commit discrimination.<sup>65</sup>

The proposed law also introduces positive actions, i.e. exemptions from discrimination that are interpreted proportionally to the goal and purpose for which they were introduced, primarily for the purpose of ensuring access to the enjoyment of rights and improvement of position of vulnerable groups, i.e. protection of minorities. Measures and treatment undertaken by churches and religious communities in the context of their teachings and mission that are related to activities, membership or work contracts shall not be considered as discrimination.<sup>66</sup>

The central body for protection against discrimination is the Human Rights Ombudsman of Bosnia and Herzegovina, who can receive complaints, inform complainants on their rights and obligations, and on the possibilities of judicial and other protection, including assistance to persons who turn to international bodies for the protection against discrimination, and propose mediation proceedings. Ombudsman can conduct investigations, collect evidence and documents from competent state, entity and cantonal bodies and the bodies of Brčko District of BiH, give recommendations and opinions aimed at preventing and suppressing discrimination, and present regular reports prepared in collaboration with NGOs that deal with the

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<sup>64</sup> Article 2 of the Proposal of the Law on Prohibition of Discrimination.

<sup>65</sup> Article 4 of the Proposal of the Law on Prohibition of Discrimination.

<sup>66</sup> Article 5 of the Proposal of the Law on Prohibition of Discrimination.

promotion and protection of human rights and the rights of groups exposed to high risk of discrimination.<sup>67</sup> The Ministry for Human Rights and Refuges of BiH is competent for the implementation of the Law and is consequently obliged to submit annual reports to the Council of Ministers and the Parliamentary Assembly of BiH as well as to establish a central database of committed acts of discrimination.<sup>68</sup>

Protection against discrimination may be requested in a procedure when the right in question is decided upon as the key issue, and when it is considered that that right was breached due to discrimination or to special treatment. In such cases discriminated persons may submit complaints in which they can request from Ombudsman to determine whether discrimination was committed against them, as well as to prohibit or eliminate discrimination, compensate him/her for damages, and to publish such decision in the media. When such requests are based on the same factual and legal grounds, all the aforementioned requests can be stated cumulatively in one single complaint. When discriminated person offers evidence wherefrom one can be reasonably conclude that there was the case of discrimination against him/her, the burden of proof rests on the other party. With the consent of discriminated person, an organisation or a person that deals with the protection against discrimination may appear as the third party in such proceedings. Associations or other organisations that have justified interest in the protection of certain groups may submit collective complaints if rights of a larger group of members of such groups, whose rights should be protected by the plaintiff, are violated.<sup>69</sup>

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<sup>67</sup> Article 7 of the Proposal of the Law on Prohibition of Discrimination.

<sup>68</sup> Articles 8 and 9 of the Proposal of the Law on Prohibition of Discrimination.

<sup>69</sup> Articles 11, 12, 15, 16 and 17 of the Proposal of the Law on Prohibition of Discrimination.



This Draft Law envisages that such complaints are decided upon by courts of general local jurisdiction which apply the provisions of Civil Procedure Code in their adjudication. Requests for revision may be lodged against the second-instance decision. Deadline for submission of complaints is three months from the date when a person has become aware of the committed violation, i.e. maximum one year from the date the violation was committed; deadline for revision of decision is thirty days from the date when the second-instance decision was submitted to a person.<sup>70</sup> The Draft Law gives an opportunity to the Ombudsman of BiH to initiate the proceedings of protection against discrimination for the offence of failure to submit evidence that is prescribed by this Draft Law.<sup>71</sup>

#### *4.2. Right to life*

Article 6 of ICCPR:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party

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<sup>70</sup> Article 13 of the Proposal of the Law on Prohibition of Discrimination.

<sup>71</sup> Articles 19 and 20 of the Proposal of the Law on Prohibition of Discrimination.

to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

*(Official Gazette of SFRY, No. 7/71)*

#### Article 1 of the Second Optional Protocol to ICCPR:

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

#### Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a) in defence of any person from unlawful violence;
- b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;

- c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such a penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such a penalty or executed.

Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

*(Official Gazette of BiH, No. 6/99)*

#### *4.2.1. General provisions*

Right to life is one of the fundamental human rights which are the legal and political precondition of realisation of all other rights and freedoms. Without the right to life it would be pointless to speak about respect and protection of other individual and collective rights and freedoms. Right to life primarily means an obligation of the state authorities to ensure and protect the right to life and the protection of life. This is possible only if a state respects the law that puts sanctions on every intentional deprivation of life, be it an individual or legitimate representative of authorities who have violated his legal competences<sup>72</sup>. The European Convention particularly emphasises that „no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. “ In earlier times, states could, therefore, under certain conditions sign the death penalty. However, due to changes that occurred meanwhile, most of the countries members of the Council of Europe expressed their intention to abolish the death penalty. In Protocol No. 6 to the European Convention on Human Rights that was adopted in 1983, the death penalty is permitted for acts committed in the time of war or imminent threat of war.

Thanks to the growing tendency to strengthen the protection of the right to life, and the fact that Protocol No. 6 to the Convention does not exclude the death penalty for acts committed in the time of war or imminent threat of war, Protocol No. 13 to the European Convention was adopted. It emerged on the basis of the conviction that the “right of every individual to life represents the fundamental value of a democratic society and that abolition of the death penalty is an essential element of the

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<sup>72</sup> See a detailed analysis in: Lada Sadiković: Human Rights, Faculty of Criminology of the University of Sarajevo, 2006.

protection of that right and full recognition of the inherent dignity of all human beings.”

Deprivation of life is not in contravention to Article 2, Point 2 of the Convention if it arises from the use of force that is absolutely necessary “in defence of any person from unlawful violence, done in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and done in action lawfully taken for the purpose of quelling a riot or insurrection.”

Euthanasia, or the so-called “mercy killing”, as it is usually called – also gives rise to dilemmas. In this case, it is the termination of life and it differs from the right to abortion which is treated as the “beginning of life.” In view of Article 3 of the Convention, i.e. prohibition of „inhuman and degrading treatment“, euthanasia is not absolutely in contravention of Article 2 of the Convention, i.e. the right to life. In the Case *Pretty v United Kingdom* from 2002, the Court of Human Rights was of the opinion that there is no violation of Article 2 of the European Convention when the state refuses to commit itself not to undertake criminal prosecution of the husband who helped the suicide of his wife who suffered from an incurable degenerative disease that damaged all her physical, but not intellectual capacities. However, „active assistance in dying” gives rise to various abuses.

That was the reason why the member countries are more and more faced with the problem of euthanasia conducted in secrecy and beyond the legal framework. On the one hand, there are opinions that people have a right to die humanely, instead of having a mere vegetative existence, and that is used to justify the reasons for legalisation of euthanasia, as it has already been done in Holland and Belgium. However, on the other hand, there is no universal standard in this regard yet so the member countries do not take a resolute position in relation to the acceptance and legalisation of euthanasia. Despite different initiatives and

proposals made by individual member states (Declaration on Euthanasia, Hubinek/Voogd from 1976), the Parliamentary Assembly of the Council of Europe still expressly rejects every form of legalisation of euthanasia.

Here, we need to say that the death penalty provisions of the Constitution of Republika Srpska were not harmonised with Protocols Nos. 6 and 13 of the European Convention although Republika Srpska, according to the provisions of Article 2, point 2 of the Constitution Bosnia and Herzegovina was obliged to do it. However, on 19 March 2008, the National Assembly of Republika Srpska adopted draft amendments to the Constitution of Republika Srpska, which, inter alia, envisage the abolition of the death penalty.<sup>73</sup>

Criminal legislation of Bosnia and Herzegovina contains the provisions that protect the right to life. These are primarily the criminal offences against life and body such as murder that is regulated by Article 163 of the Criminal Code of Brčko District (CC BD), Article 166 of the Criminal Code of the Federation of BiH (CC FBiH), Article 148 of the Criminal Code of Republika Srpska (CC RS); inducing to commit suicide and assistance in suicide as stipulated in Article 167 of the Criminal Code of Brčko District, Article 180 of the Criminal Code of the Federation of BiH and Article 153 of the Criminal Code of Republika Srpska.

Criminal legislations contain also the criminal offences against humanity and values protected by international law (Articles 171-203 of the Criminal Code of Bosnia and Herzegovina), criminal offences against life and body (Articles 166-176 of the Criminal Code of the Federation of BiH; Articles 148-161 of the Criminal Code of Republika Srpska; Articles 163-173 of the Criminal Code of Brčko District), criminal offences

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<sup>73</sup> The Dnevni List daily, 1 June 2008, pp. 22-23.

against the general security of people and property (Article. 328 of the Criminal Code of the Federation of BiH, Article 322 of the Criminal Code of Brčko District); criminal offences against security of traffic (Article 336 Criminal Code of the Federation of BiH, Article 330 of the Criminal Code of Brčko District).

#### *4.2.2. Arbitrary deprivation of life*

The Law on Police Officers of BiH – Official Gazette of BiH, No. 27 of 15 June 2004, in Article 8 stipulates that „application of police competences must be adequate and proportionate to the purpose for which they are undertaken”, which is in accordance with the European Convention for the Protection of Human Rights and the International Covenant on Civil and Political Rights Article 27 of the same Law defines the use of force by police officers „only if it is absolutely necessary and exclusively to the extent necessary for the attainment of a lawful goal.” The means of force – according to Article 27 – e.g. physical force, including martial arts, baton, means of tying, device for forceful stopping of persons and vehicles, chemical means, firearms, water cannons, special vehicles, special types of weapons and explosive devices may be used only when it is necessary for the protection of human life. The use of firearms according to Article 29 of this Law may be applied only „if the means of force that had already been applied were inefficient, or if the use of other means of force did not to guarantee success, i.e. if there was no other way to protection oneself, or others, from direct death threat or the threat of serious injury, prevention of perpetration of a criminal offence that represents a serious threat to life and integrity, arrest of the person who represents such a threat and resists the police bodies .”

Article 27 of the Law on Police Officers of BiH in the Federation of BiH enumerates the conditions for the use of force

while Article 29 regulates the use of firearms. The Law on Internal Affairs of Republika Srpska (Official Gazette of RS, No. 48 of 24 June 2003) refers to the use of adequate and proportionate force in Article 32, while in Article 33 it regulates the condition for the use of firearms. In the process of preparation for the signing of the Stabilisation and Association Agreement (SAA, signed on 16 June 2008), significant progress was made in the creation of the police structures at state level. In this respect, further progress is expected in the direction of modernisation of the police at state level.

#### *4.2.3. Protection of the life of detainees and prisoners*

The laws relating to the issues of execution sanctions for of criminal and minor offence in BiH have been harmonised (Law on Execution of Criminal Sanctions of FBiH – Official Gazette of FBiH, No. 44/98; Law on Execution of Criminal and Minor Offence Sanctions of Republika Srpska – Official Gazette of RS, No. 64 from 2001 and Amendments to this Law (Official Gazette of RS, No. 24/05; Law on the Execution of Criminal and Minor Offence Sanctions of Brčko District – Official Gazette of Brčko District, No. 8/00; BiH Law on Execution of Criminal Sanctions of Detention and Other Measures – Official Gazette of BiH, 13/05).

On all these laws there is the obligation to protect the life and dignity of man which is in accordance with the European Convention for the Protection of Human Rights and Freedoms.

The prohibition of the violations of Article 3 of the European Convention, are contained in the basic provisions of all the aforementioned laws (Article 11 in FBiH; Article 9 in RS; Article 10 in Brčko District; Article 45 in BiH). The issue of the protection of life is mentioned as protection of dignity and physical and mental integrity (Article 10 of LECMOS of Brčko District - Official Gazette of Brčko District, No. 8/00).



Medical help in all these laws is treated as obligatory and free of charge except in the case of intentional self-injuries or a specialist check-up at the request of convicted persons, where the medical doctor of the institution in which the person serves his sentence has not recommended it. Medical care and protection of health is treated in the following laws:

- The Law on the Execution of Criminal Sanctions of FBiH: Articles 45- 51, and the protection of health is stipulated in the Article 15 on separately on those serving prison sentence, inter alia, when the state of health requires it; Article 17 – work adapted to psycho-physical capacities; Article 27 – postponement of the execution of a sanction due to acute disease; in Article 34 on the obligation to determine the state of health at a person’s admission to detention facility; in the segment that deals with the treatment of sentenced persons - Articles 62, 67, 68, and 75 that refer to work in prison and protection at work; Article 98 – solitary confinement is not allowed if it threatens the health of the prisoner; Article 99 – solitary confinement is suspended if the medical doctor finds that a person’s physical and mental state does not permit further solitary confinement, while the prisoners kept in solitary confinement are subject to daily medical checks; Articles 167–178 refer to the execution of security measures; Articles 179-182 deal with measures applied when the sentenced person is at large and Articles 183–187 deal with the obligatory medical treatment of alcoholics and drug addicts.
- The Law on the Execution of Criminal and Minor Offence Sanctions of Republika Srpska: Article 14. – separately dealing with those serving prison sentence, inter alia, when the state of health requires it; Articles 28, 31, 36, 37 – special healthcare institutions; Article 46 – healthcare service; Article 90 – supervision of the operation of a

specialised hospital and healthcare service; Article 106 - postponement of execution of sanction for the reasons of health; Article 112 – determining of the state of health; Article 144 - protection in case the detainee falls ill at work or in relation to work; Articles 148-151 health protection of sentenced persons; Article 188 – termination of serving the prison sentence due to acute disease; Article 204 – nutrition of underage detainees - care for health and psycho-physical development; Articles 217-225 – execution of security measures; Article 298 – person in custody – general medical check-up at admission.

- The Law on the Execution of Criminal and Minor Offence Sanctions of the Brčko District: Articles 39–52 - execution of security measures, Articles 39–45 - obligatory psychiatric treatment and supervision in a medical institution; Articles 46–49 - obligatory psychiatric treatment of a person at large; Articles 50-52 medical treatment of alcoholics and drug addicts;
- The Law on the Execution of Criminal Sanctions of Detention and Other Measures of BiH - Articles 60-66 – healthcare protection; Article 92 - rights of detained persons and those in solitary confinement; Article 127 – admission to healthcare institutions due to psychological problems.

The issue of the use of the means of force is treated in the following laws:

- The Law on the Execution of Criminal Sanctions of FBiH - Article 52; Article 183 is of particular importance in view of the protection of the life of detainees;
- The Law on the Execution of Criminal and Minor Offence Sanctions of Republika Srpska - Article 181 - 182;

firearms; Article 183 – particularly its Point 3 in view of the protection of life;

- The Law on the Execution of Criminal Sanctions of Detention and Other Measures of BiH - Article 33 – use of firearms; Article 67 – use of means of restriction of movement.

Given that, according to the Law on the Execution of Criminal and Minor Offence Sanctions of the Brčko District, the prison sentence is carried out in the entity institutions, their detainees are subject to the norm governing the operation of those institutions in view of their treatment.

All other conditions in penal-correctional institutions (accommodation, food, and clothing) must be in the function of the protection of the health and the life of detainees.

#### *4.2.4. Obligation of the state to protect life from the risk for health and other life hazards*

The Law on the Environmental Protection of the Federation of BiH (Official Gazette of FBiH, No. 33 of 19 July 2003) in Article 1 states that „aimed at the protection of human health and improvement of conditions of the environment for the quality of life“ it regulates: preservation, protection, restoration and the improvement of the ecological quality and capacity of the environment as well as of the quality of life ; measures and conditions for managing, preserving and for rational use of natural resources; the framework for legal measures and institutions for the preservation, protection and improvement of environmental protection; financing environmental activities and for voluntary measures; responsibilities and tasks and duties of public administration at different state levels.” Article 10 regulates public participation and access to information concerning the

environment handled by administrative bodies, including the information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.” The Law on the Protection of the Environment of Republika Srpska (Official Gazette of RS, No. 53 of 24 August 2002), in Article 1, regulates: preservation, protection, restoration and improvement of the ecological quality as well as quality of life by promoting the protection of human health and the improvement of environmental conditions for the quality of life, while in Article 10 it regulates public participation and access to information.

Criminal legislation especially treats criminal offences against human health, in Article 240 of the Criminal Code of the Federation of BiH, Article 234 of the Criminal Code of the Brčko District, as well as criminal offences against the environment in articles 415-437 of the Criminal Code of Republika Srpska.

#### *4.2.5. Abortion*

“The issues relating to abortion are issues that have always been considered as important in philosophical, sociological, ethical and juridical human rights considerations that have remained controversial in our time. Thus in modern societies there are differences in legal regulation of abortion that ranges from absolute prohibition with the exception of abortion aimed at the protection of life of pregnant women, to its legalisation in specific cases, and, finally, to the broad possibility of abortion at the request of pregnant women, to its full legalisation. Our legislation, like most of the European legislations, belongs to those that principally allow abortion, with limitation in certain conditions. Thus, the contemporary positive European legislations have found a compromise between the rights of

women to freely decide about their progeny and criminal law protection of future life.”<sup>74</sup>

Illegal abortion is regulated by Article 171 of the Criminal Code of the Federation of BiH (CC FBiH) and Article 154 of the Criminal Code of Republika Srpska (CC RS), as well as in Article 168 of the Criminal Code of the Brčko District (CC BD). The CC of the Brčko District in its Article 226 regulates the failure to provide medical help.

Articles 171 of the Criminal Code of FBiH and 154 of the Criminal Code of RS are based on a similar concept. Article 154 of the Criminal Code of RS, in Paragraph 2, defines that “those who perform or start performing an abortion on a pregnant woman without her consent, if she is less than sixteen years old and without the consent of her parent, adoptive parent or custodian” is considered to have performed an illegal abortion. However, Article 171, Point 2 of the Criminal Code of FBiH does not explicitly refer to an age that defines illegal abortion – the difference exists in the sense that in the provision of Paragraph 2 of Article 171 of the Criminal Code of FBiH there is no explicit reference that illegal abortion without the consent of the pregnant woman exists also when the passive subject of abortion is less than sixteen years old in case there is no written consent of her parent, adoptive parent or custodian. Given that the legislator in FBiH was not explicit in this respect, it is considered that there is illegal abortion without the consent of the passive subject, if the consent was given by a minor aged until 14 without the consent of a parent, adoptive parent or custodian. Having in mind that there are no other differences between this incrimination and that in Article 154 of the Criminal Code of RS, the explanation attached to this Article may fully apply to this incrimination.”<sup>75</sup>

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<sup>74</sup> Commentary of the CC RS, Council of Europe 2005, p. 1502,

<sup>75</sup> Commentary of the CC FBiH, Council of Europe 2005, p. 969,

From the point of view of human rights the issue definitely arises whether the right to life in case of abortion protects the life and physical integrity of the pregnant woman or the life and physical integrity of the human foetus. The solution to this dilemma is seen in the fact that “as the object of protection is determined by future life, i.e. life in creation, which implies the whole process, the living symbiosis that is manifested through the long-term unity of human foetus and physical integrity and health of the woman, i.e. mother.”<sup>76</sup>

According to the statistics of major clinical centres in Bosnia and Herzegovina, the number of abortions performed in recent years is in constant decrease:

“Thus, in 1991, in the Banja Luka Clinical Centre there were 4,500 abortions recorded, whereas last year the number dropped to 475 intentional abortions. The similar trend was registered in the University Clinical Centre of Tuzla. At this clinic in 1992 there were 3,707 intentional abortions, while last year the number was 448. At the Gynaecological and Obstetrical Clinic of the Clinical centre of the University of Sarajevo in 2001 there were 781 abortions and in 2007 the number was 438. In addition to private clinics, the problem was caused by the non-existence of written protocols and procedures for abortion and of counselling prior and after the abortion.”<sup>77</sup>

In relation to the obligations of the State of Bosnia and Herzegovina to protect the right to life, the Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for the period 1994-2004, published in June 2005, especially underlines that:

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<sup>76</sup> Commentary of the CC RS, Council of Europe 2005, p. 1503.

<sup>77</sup> The Dnevni list daily, 1 June 2008, p. 22-23.

“...the right to life is a fundamental human right which cannot be derogated even in the time of state of emergency threatening the lives of the citizens of the member country of the Covenant. The right to life implies the protection of human rights by other persons as well as by the state, i.e. its bodies. The right to life in relation to other persons is protected by criminal legislation, and in the case of the state, by its position towards the death penalty that was abolished in Bosnia and Herzegovina. In Bosnia and Herzegovina, the Constitution and laws determine that nobody can be arbitrarily deprived of life. The Constitution of Bosnia and Herzegovina in Article 2, Point a, emphasises that all persons in the territory of Bosnia and Herzegovina enjoy human rights of which the right to live is ranked first. The legislation of Bosnia and Herzegovina and its entities explicitly prohibit war propaganda and incitement to violence. The State undertakes special measures for the prevention of cases of deprivation of life, just like it prevents the cases of deprivation of life committed by the state authorities. Due to this fact, the valid laws strictly control and limit the circumstances in which an individual may be deprived of life.”

In view of the aforementioned one can conclude that, observed during this period, the State of Bosnia and Herzegovina has consistently fulfilled its obligation to protect the right to life.

### *4.3. Prohibition of torture, inhuman or degrading treatment or punishment*

Article 7 of ICCPR:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

*(Official Gazette of SFRY, No. 7/71)*

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*(Official Gazette of BiH, No. 6/99)*

#### *4.3.1. Introduction*

In addition to the European Convention, prohibition of torture is established in numerous international agreements that are also binding for BiH, e.g.: the UN Universal Declaration on the Rights of Man, Geneva Conventions from 1949, UN International Covenant on Civil and Political Rights from 1966 (hereinafter: ICCPR, UN Convention against Torture and Other Inhuman or Degrading Treatment or Punishment from 1984 (hereinafter: UN Convention against Torture), European Convention on the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (hereinafter: European Convention against Torture). We should add that, according to



the jurisprudence of international courts, the prohibition of torture is considered to be *ius cogens*.<sup>78</sup>

For a behaviour to fall under the scope of Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) there needs to be a certain minimum degree of cruelty (*de minimis* rule), whereby the assessment of this minimum degree of cruelty is relative and assessed for each individual case.<sup>79</sup>

There is no single definition of torture, however, from the texts of different conventions as well as judicial practice one may point at three basic elements – infliction of serious physical or psychological pain or suffering, whereby the pain or suffering is caused intentionally and consciously and with a particular goal (e.g. to get information, to punish, to intimidate). The position of the European Court is that the difference between torture and other forms of abuse is based on the intensity of inflicted pain. Therefore, treatment that does not have a sufficient degree of intensity or a goal to be qualified as torture is qualified as inhuman or degrading treatment.

Article 3 of ECHR is given in absolute terms and, in that respect, there is no room for its limitations or derogation under the exceptional circumstances envisaged by Article 15). The same position is taken by other international documents and by the UN Convention against Torture, according to which there are no exceptional circumstances that could justify torture, even the state of war, imminent threat of war or any other type of emergency. Likewise, an order issued by a superior official or institutions can not be used as a justification for torture.

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<sup>78</sup> See, e.g. the Judgement of the International Criminal Court for the Former Yugoslavia (ICTY) in the case Prosecutor v. Furundžija of 10 December 1998.

<sup>79</sup> Different factors are taken into consideration, such as duration, physical and psychological consequences, subjective circumstances of victim (e.g., gender, age, the state of health), the method of perpetration, etc.

#### *4.3.2. Prohibition of torture in criminal legislation*

The states signatories of the UN Convention against Torture have committed themselves to treat all acts of torture, as well as attempts to commit torture and every form of complicity in the committing of torture as criminal offences for which adequate sanctions will be established. Furthermore, every state party to the UN Convention against Torture, BiH included<sup>80</sup>, must guarantee in its legal system the right of compensation and fair and adequate damages to victims of torture. In case of death of a victim of torture, the right of compensation is granted to his/her heirs. For the implementation of this Convention the UN established is Committee against Torture whose competence in relation to accession and consideration of inter-state and individual complaints was recognised by Bosnia and Herzegovina.

The Criminal Code of BiH includes the provisions on several criminal offences sanctioning prohibited treatment defined in Article 3 of ECHR. Thus, in Article 190 of the Criminal Code of BiH torture and other forms of cruel, inhuman and degrading treatment is prescribed as a criminal offence. Pursuant to Article 1 of the UN Convention against Torture, an official or any other persons acting on the basis of official authority, explicit order or approval of another official can be considered as a perpetrator of this offence. Furthermore, the Criminal Code of BiH incriminates also those acts of abuse that are committed by private individuals, e.g.: genocide (Article 171), crimes against humanity (Article 172)<sup>81</sup>, war crimes against wounded or diseased

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<sup>80</sup> SFRY ratified this Convention in 1991 (Official Gazette of SFRY–International Agreements, No. 9/91), and BiH became its party on the basis of succession (Official Gazette of RBiH, No. 25/93).

<sup>81</sup> In CC BiH torture is referred to as one of forms of crime against humanity, following the model of the Statute of permanent International Criminal Court.

persons (Article 174), war crimes against POWs (Article 175), human trafficking (Article 186) etc.

In the criminal codes of entities and the Brčko District many acts related to torture are also prescribed as defined in Article 3 of ECHR, i.e. those relating to the object that has the protection of the integrity of person and his/her human dignity: maltreatment in the discharge of duty (Article 182 of the Criminal Code of FBiH (CC FBiH), Article 168 of the Criminal Code of RS (CC RS)<sup>82</sup>, Article 179 of the Criminal Code of Brčko District (CC BD)), extraction of statements under duress (Article 181 CC FBiH, Article 358 CC RS, Article 178 CC Brčko District) incitement of national, racial or religious hatred or discord (Article 163 of CC FBiH, Article 390 of CC RS, Article 160 of CC Brčko District), infliction of serious bodily injuries (Article 172 of CC FBiH, Article 156 of CC RS, Article 169 of CC Brčko District), infliction of light bodily injuries (Article 173 of CC FBiH, Article 155 of CC RS<sup>83</sup>, Article 170 of CC Brčko District), violent behaviour (Article 162 of CC FBiH, Article 385 of CC RS, Article 356 of CC Brčko District) etc.

The greatest problem in this segment lies with the partial discrepancy between positive criminal legislation applied in BiH that ultimately leads to the unequal protection of citizens exercising their human rights. An example of these discrepancies is the criminal act of maltreatment in the discharge of duty that is prescribed in the criminal codes of FBiH and the Brčko District. The offence that is complementary to torture in the Criminal Code of RS extends the responsibility for torture defined in the previous two laws to any person, not only official persons and emphasises offences perpetrated against a minor as separate qualified form of offences. At the same time, prescribed sanctions

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<sup>82</sup> In CC RS the corresponding offence is called “ill-treatment”

<sup>83</sup> In CC RS the corresponding offence is called “bodily injury”,

are not the same. Thus, if one could commend the intention of the legislator in Republika Srpska to sanction every person who perpetrates torture and to sanction particularly those who commit torture against a minor, on the other hand, one cannot but notice that the sanction prescribed for that offence seems to be inadequate – a fine or up to a one year prison sentence – while in the criminal codes of FBiH and the Brčko District it is a 3 months to five years prison sentence. We need to mention here that these differences among prescribed sanctions are more evident than the incongruities between these complementary provisions in the criminal legislation in and that those differences vary in scope. Finally, it still seems that sanctions do share one feature - none of them seems adequate given the gravity of offences of torture, inhuman or degrading treatment or punishment while the international law sanctions these exceptionally strictly. Also, amendments to the criminal codes of entities and the Brčko District aimed at the introduction of torture and other forms of cruel, inhuman and degrading treatment as a special criminal offence in these laws would be desirable.

#### *4.3.3. Article 3 in the context of criminal procedure and deprivation of liberty*

The behaviour of a victim can in no way justify torture. This prohibition is, according to ECHR, absolute in any, even the gravest circumstances. It is applicable equally on treatment of persons who are for whatever reason deprived of liberty, particularly persons deprived of liberty for health reasons and minors. Thus a person should not be exposed to torture during questioning and informative interviews, nor can the evidence obtained in this manner be used in court. Furthermore, states are not permitted to apply sanctions that are aimed at intimidation or

those sanctions whose punishment, method and conditions of custody/detention are in contravention to Article 3.

National criminal procedure codes and relevant laws on the enforcement of sanctions and other measures as well as laws that regulate the competences and operation of police officers contain provisions that protect human integrity and dignity.

Criminal legislation was changed in 2003 and subsequently amended several times with the purpose of a greater and more comprehensive harmonisation with international standards and principles. The inquisitory procedure was transformed into a mixed accusatory and inquisitory procedure and consequently investigative actions have been transferred to the prosecution service. Significant changes were introduced in terms of deprivation of liberty, decisions for and duration of detention etc, all aimed at the improvement of guarantees for persons deprived of liberty so that the whole system is now much closer to international practice.

The extraction of an admission of guilt or other statements under duress from suspect/accused, or any person participating in the procedure is prohibited. Furthermore, the principle of legality of evidence envisages that courts cannot make their decisions on evidence collected by breaches of human rights and freedoms guaranteed by the Constitution and international documents that are mandatory in BiH.<sup>84</sup> Thus, the application of medical interventions or administering medicines that could influence the will of suspects/accused or witness when giving statements is prohibited. A physical check-up of suspects/accused and other persons is allowed without their consent if it is necessary for establishment of facts relevant for a criminal procedure if such actions do not damage the health of persons in

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<sup>84</sup> The principle of legality of evidence is prescribed in Article 10 of CPC BiH, Article 11 of CPC BiH, Article 10 of CPC RS, and Art 10 of CPC BD.

question (Article 109 of CPC BiH, Article 173 of CPC FBiH, Article 123 of CPC RS, Article 109 of CPC BD). Such a solution is not of concern in view of Article 3 of ECHR since such a check-up per se does not amount to the lowest degree of the prohibited maltreatment, if there is judicial control during such actions (the check-up of a person without his/her consent is ordered by court and only in exceptional cases, when there is a danger of delay, it can be ordered by the prosecutor). Evidence collected otherwise cannot serve as a basis for judicial decisions.

Criminal procedure codes in BiH contain special provisions relating to the detention and treatment of detainees.<sup>85</sup> Detention is carried out in a such a way that it does not insult the detainees and their dignity, while his/her rights and freedoms can be violated only to the extent that it realises the purpose for which his/her detention is given. A detainee is entitled to receive visitors of his/her choosing, and those who are foreign nationals are entitled to receive visits of his/her diplomatic/consular representatives or representatives of the state that protects his/her interests. In exceptional circumstances, these rights may be limited or denied, by written court decision, if a visit would be detrimental to the course of a criminal procedure. There are guarantees of a detainee's freedom to contact their defence attorneys as well as to have confidential correspondence with other persons, except when courts prohibit it in writing. This prohibition cannot relate to appeals, complaints and requests. The provisions of the Criminal Procedure Code also contain basic rules of conditions of accommodation of detainees. It must be in adequate premises, detainees in detention must be separated from sentenced ones; they cannot be put together with detainees of another sex nor with the persons who may act detrimentally towards either the detainees or the course of criminal procedure.

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<sup>85</sup> Articles 140-147 of CPC BiH, Articles 154-161 of CPC FBiH, Articles 197-204 of CPC RS, and Articles 140-147 of CPC BD.

Judges may visit detainees at any time, talk to them and receive complaints from them. We need to mention that this supervision does not represent regular supervision of the conditions of detention and treatment of detainees that are required by international standards. Regular supervision is regulated by relevant laws on the execution of criminal sanctions and measures of detention, and is conducted by official persons with special competences – inspectors of competent ministries of justice, who have to prepare reports upon supervision. Legal provisions on the execution of criminal sanctions and measures of detention as well as other by-laws passed to ensure their implementation (e.g. house rules etc.) also contain the prohibition of any kind of maltreatment that is unjustified and disproportionate to the needs of execution of sanction, i.e. a measure of detention so that they guarantee respect for and the dignity of detainees.

However, in the context of Article 3, there are reasons for concern regarding the situation in the system of the execution of criminal sanctions and other measures of deprivation of liberty in BiH. Namely, in Bosnia and Herzegovina, there are four incoherent systems of execution of criminal sanctions,<sup>86</sup> with different legal arrangements. None of them functions as a whole that would meet internationally recognised standards in terms of the protection of human rights of persons deprived of liberty. First of all, there are no special correctional institutions for

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<sup>86</sup> Execution of criminal sanctions at the level of BiH is regulated by the Law of Bosnia and Herzegovina on Execution of Criminal Sanctions and Other Measures (Official Gazette of BiH , No. 13/05), in FBiH, by the Law of on Execution of Criminal Sanctions in FBiH (Official Gazette of FBiH , No. 44/98 and 42/99), in RS, by the Law of on Execution of Criminal Sanctions in RS (Official Gazette of RS , No. 64/01), Law on Amendments to the Law of on Execution of Criminal and Minor Offence Sanctions of RS Official Gazette of RS , No. 68/07), and Brčko District BiH, by the Law of on Execution of Criminal Sanctions in Brčko District BiH (Official Gazette of Brčko District BiH, Nos. 8/00 and 1/01).

women or those that would provide adequate accommodation to the particularly vulnerable groups like minors, the mentally disturbed, addicts, the disabled, elderly and weak persons, etc.

The execution of a prison sentence and measures of detention decided by the Court of BiH are regulated by the Law on Execution of Criminal Sanctions, Detention and other Measures of Bosnia and Herzegovina. The Ministry of Justice of BiH adopted all relevant by-laws for the enforcement of this Law in line with the European standards and rules and other international documents on the rights of detained/sentenced persons as well as the recommendations of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Only the measure of detention decided by this Court is served in the detention Unit of the Court of Bosnia and Herzegovina. According to various international and national experts, this detention Unit meets high European standards of treatment of detainees. However, due to insufficient capacities, a number of detainees are placed on the entity correctional institutions. On the other hand, there is no special institution at the state level for the execution of a prison sentence so it is carried out in the entity institutions. Construction of a state level institute is now planned and some preparatory actions have been undertaken however, sufficient funds have not been provided yet to start the construction.

Similar is the situation in the Brčko District that has a facility for detainees to be placed there on order of the courts of the Brčko District, yet there is no penal-correctional institution for the execution of prison sentences so that those are also carried out in the entity institutions.

Additionally, almost all available capacities in the existing institutions in BiH are filled while these institutions are faced



with the problems of over crowdedness, insufficient professional staff, poor equipment, material and hygienic conditions etc.

In view of the aforementioned, the State of BiH should urgently take action aimed at the improvement of material and hygienic conditions in these institutions so that it can achieve international standards in this domain. One needs to have in mind in particular the specific needs of minor detainees since there are no adequate institutions for them-

As for persons with mental disorders, this category is excluded from the criminal legislation and their treatment is assigned to specialised institutions and social care services and regulated by special laws. The text of the Law on the Protection of Persons with Mental Disorders<sup>87</sup> guarantees these persons the rights that are based on European standards and principles; thus, their right to protection and improvement of health, dignity and protection against any form of maltreatment or degrading treatment etc are ensured. The situation is, however, alarming despite the legislation in both entities, due to the lack of adequate institutions and accommodation conditions. Fragmentation of the state structure contributes to this state of affairs. Thus, in order to improve the situation and create adequate conditions, as early as in 2006, a Memorandum of Understanding on Legal Assistance and Official Cooperation in the Area of the Execution of Security Measures of Mandatory Psychiatric Treatment in Criminal Procedure was signed between BiH, Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District.<sup>88</sup> This Memorandum regulates that all the measures of mandatory psychiatric treatment pronounced by any of the courts

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<sup>87</sup> The law on the protection of persons with mental difficulties implies under the term “mental difficulties” persons with mental diseases, mental disorders, insufficiently mentally developed persons, alcohol or drug addicts, or persons with mental problems.

<sup>88</sup> Official Gazette of BiH, No. 44/06.

in Bosnia and Herzegovina will be executed in the Psychiatric Hospital Sokolac that is currently the only specialised institution of the sort in BiH. By mid-2006, the Council of Ministers of BiH decided to endorse the Memorandum and to adopt a special measure to provide the funding for reconstruction and rehabilitation of the Sokolac Hospital. This has not been carried out, however, the issue of the status of the future institution was raised, or else, who is to be its founder. Therefore, in order to overcome this situation that is in direct contravention to international standards and universally accepted norms, there should be special effort of all levels of authorities, legislative, judicial and executive since it is the respect and application of generally accepted standards and norms that is essential for the level of respect of human rights, including those contained in Article 3 of ECHR.

The absolute prohibition of torture referred to in Article 3 of ECHR has also an extraterritorial character, i.e. member states are not relieved of responsibility to provide the protection of persons against torture even if it is committed by individuals who are not in their jurisdiction and responsibility. In other words, a state is not allowed to extradite a person to another state if he/she may be exposed to ill-treatment (the right of *non-refoulement*).<sup>89</sup> This

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<sup>89</sup> This rule was confirmed several times before the European Court of Human Rights. Most of the cases before this court related to this prohibition relating to the cases of extradition and deportation to other state in which, as applicant claimed, they might be exposed to torture, inhuman or degrading treatment. In these cases, the Court took the position that nothing releases the state signatory of the Convention from violation of Article 3 if the individual in question would be exposed in that other state to real risk of torture, and it established the principle that the state must make an independent assessment of the situation to which the individual would be exposed. See e.g. the Judgement of the European Court in the case *Jabari v. Turkey* taken in 2000.

prohibition stems from ICCPR,<sup>90</sup> and is explicitly envisaged in Article 3 of the UN Convention against Torture.<sup>91</sup> A similar provision is contained in Article 33 of the UN Convention on the Status of Refugees.

States are obliged to take this rule into account when concluding multilateral and bilateral agreements that relate to suspected, indicted and sentenced persons. If there are no international agreements, or if they do not regulate certain issues, the procedure of extradition is executed pursuant to the provisions of CPC BiH (Article 414), since these issues are the sole jurisdiction of the state. In this respect, CPC BiH envisages, as one of the requirements,

*that the extradition of an alien has not been requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition has not been requested on the grounds of a criminal offense that carries a death sentence under the legislation of the country which has requested the extradition unless the state which has requested the extradition has granted a guarantee that no death sentence shall be pronounced or executed.*

However, CPC BiH does not contain in its provisions the prohibition of extradition of foreign nationals if there are serious reasons to believe that he/she will be exposed to torture or other degrading treatment in the state to which he/she is extradited.

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<sup>90</sup> The Committee for Human Rights of the United Nations emphasises this obligation in its General Comment No. 20 (44).

<sup>91</sup> UN Convention against Torture envisages this obligation only if there is a threat that person will be subjected to torture, but not the more lenient forms of ill-treatment.

Deportation, as a special measure of extradition of a foreign national is prescribed by the Law on Residence and Movement of Foreigners and Asylum.<sup>92</sup> According to this Law, a foreigner can be given the order to leave the country and a prohibition from re-entering it in the period that cannot be shorter than one year or longer than ten years. The Ministry of Security of BiH is competent to issue the extradition order, and it issues it ex officio at the proposal of a court, other organisational unit of the Ministry of Security of BiH or entity ministries of the interior and the Police of the Brčko District. In the criminal codes in Bosnia and Herzegovina extradition is not a special security measure that could be pronounced in criminal procedure. As such, it will most probably be included in the amendments to CPC BiH by CCIAT (Criminal Code Implementation Assessment Team).

#### *4.3.4. Police measures of extraction of statement and evidence under duress*

The rules of conduct of members of police forces, who are most often referred to as perpetrators of torture, are contained in the criminal procedure codes and relevant internal affairs laws and rulebooks. In addition to differences in the organisation and regulations, each of them contains rules on police ethics and manner of performing police tasks that are based on international and European standards. Also, the current police reform and transfer of certain competences to the state level are expected to improve the situation in this domain.

According to the new criminal legislation, the longest period of police custody is 48 hours. A person deprived of liberty

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<sup>92</sup> Official Gazette of BiH, No. 29/03, Article 56.

by the police on the basis of suspicion that he/she had committed a criminal offence must be brought before the prosecutor within 24 hours and the prosecutor either submits, within the next 24 hours, a request to the preliminary procedure judge to order detention or to issue an order for his/her release. Furthermore, mandatory detention that had existed in the previous criminal law for some types of offences has been abolished. The maximum detention during investigation, during the trial as well as after the pronouncement of the first instance judgement is also regulated.

Police officers must act within the limits of the Constitution, laws and other regulations applied in BiH. They are obliged to act impartially and lawfully, led by public interest to serve and assist the public, promoting the development and maintenance of democratic practice in line with the protection of human rights and fundamental freedoms. Application of police competences must be adequate and proportionate to their purpose and applied by using the means that enable them to achieve the legitimate goals with minimum detrimental consequences and in the shortest possible time.<sup>93</sup> The use of force is possible only when it is absolutely necessary and solely to the extent necessary for the achievement of legitimate goals, i.e. when it is necessary for the protection of human life, protection against assault, suppression of resistance or prevention of escape. Police officers must immediately make a report on the need to use coercive measures upon which its legality and adequacy is decided by the internal control unit. The duty of a police officer is to reject the unlawful orders of his/her superiors. Such an order and its rejection have to be reported to the manager of the police department, i.e. internal control unit if the order is repeated.

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<sup>93</sup> See, e.g. Article 8 of the Law on Police Officers of BiH (Official Gazette of BiH, No. 27/04).

#### *4.3.5. Article 3 of ECHR in the cases of missing persons*

For almost two decades the problem of missing persons has been one of the most important problems facing BiH. Long time ago, the UN Human Rights Commission identified the fundamental human rights of persons gone missing due to the use of violence and by forceful measures prohibited by United Nations' Universal Declaration on Human Rights and other international human rights documents. These rights include the following: the right to freedom and security of person, the right to humane conditions of custody and to the freedom from torture, inhuman or degrading treatment or punishment, and the right to life. Despite this, the explicit regulation in this domain was adopted as late as in 1992, when UN Declaration on the Protection of All Persons from Forceful Disappearance that incorporated all the then relevant principles, were adopted, so that forceful disappearance was characterised as violation of the right to freedom and security of person, while disappearance was considered as torture or other prohibited treatment and, consequently, as violation or serious threat for life. Subsequently, forceful disappearance was defined as one of the forms of crime against humanity in the Statute of the International Criminal Court. This positive example was followed by recently adopted criminal legislation in BiH.

The practice of bodies tasked with the protection of human rights rightfully requires that, in addition to the missing persons themselves, members of their families are to be considered as victims of violation of human rights in this context, whereby it is primarily related to the violation of their right not to be subjected to inhuman treatment and their right to private and family life. Not knowing about the destiny of their beloved ones, families of missing persons live in an agony of uncertainty years after the end of conflict. This uncertainty disables them from getting over the past events in order to continue with their own

lives, which most often causes different psychological, economic, social and legal problems. This is the view taken by the European Human Rights Court.<sup>94</sup> This Court has repeatedly established that fear and utmost distress caused by not knowing about the destiny of one's beloved ones fits into the concept of inhuman or degrading treatment prohibited by Article 3 of ECHR.<sup>95</sup> The violation of Article 3 that was most frequently identified in these cases was the violation caused by the failure of authorities to determine, in a timely and adequate manner, the destiny of missing persons or to provide information to their families.

Following numerous misunderstandings and disagreements, the absence of cooperation, as well as years of attempts to face the issue of thousands of missing persons during the war in BiH, a state-level Law on Missing Persons<sup>96</sup> was finally adopted by the end of 2004. This Law envisages the establishment of the Missing Persons Institute of BiH, as the state agency, the establishment of the Fund for Assistance to Missing Persons' Families, as well as a central database whose establishment, due to the lack of will and cooperation shown by the authorities took years to materialise.

Due to these developments, families of the missing persons submitted appellations to the Constitutional Court of BiH, which, following the practice and interpretation of the European Human Rights Court related to the prohibition of

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<sup>94</sup> In the context of Article 5, the jurisprudence of the European Human Rights Court mainly adjudicated the cases of disappearance of persons who were last seen while in detention or under control of official authorities, including military and security authorities. On the other hand, the Court's opinion is that violent or forceful disappearance of persons also violates the rights of relatives and, consequently, the Court has adjudicated such cases in conjunction with Article 3.

<sup>95</sup> See, e.g. the Judgment of the European Human Rights Court in the Kurt v. Turkey Case, adjudicated in 1998.

<sup>96</sup> Official Gazette of BiH, No. 50/04.

torture of members of families of missing persons, adopted a Decision<sup>97</sup> in 2005, whereby it concluded that there is no efficient specialised institution, at the level of BiH, tasked with impartial investigations of cases of persons who had gone missing during the recent war. The Court also concluded that the suffering imposed on the applicants (family members of missing persons), due to denial of information on the destiny of their family members who had gone missing during the war, represents a clear case of inhuman treatment and pronounced that the Council of Ministers of BiH, the Government of FBiH and the Government of RS were responsible for this violation. However, even today, four years after the adoption of this Law, the institutions envisaged by that Law have not become fully operational, nor is the Decision of the Constitutional Court of BiH or, for that matter, the Recommendations of the UN Committee against Torture, which are complimentary to the Court Decision, fully implemented and, consequently, the issue of the missing persons and their families has not been fully solved.

The fact that there is an ongoing search for about 13,000 missing persons in BiH undoubtedly imposes an obligation to resolve the issue urgently, whereby the responsibility for action to that effect fully lies on the competent state authorities, given that all the preconditions and an adequate legal framework have already been put in place.

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<sup>97</sup> Decision of the Constitutional Court of BiH in the of Munib Hadž et al. Case, No. AP 129/04, of 27 May 2005.



#### *4.4. Prohibition of slavery and compulsory labour*

##### Article 8 of ICCPR:

1. No one will be held in slavery; slavery and the slave-trade in all their forms will be prohibited.
2. No one will be held in servitude.
3. (a) No one will be required to perform forced or compulsory labour;  
(b) Paragraph 3 (a) will not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;  
(c) For the purpose of this paragraph the term "forced or compulsory labour" will not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
  - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
  - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - (iv) Any work or service which forms part of normal civil obligations.

*(Official Gazette of SFRY, No. 7/71)*

##### Article 4 of ECHR:

1. No one will be held in slavery or servitude.

2. No one will be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" will not include:
  - a. Any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. Any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. Any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d. Any work or service which forms a part of normal civic obligations.

Article 1 of the Protocol No. 4 to ECHR:

No one will be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

*(Official Gazette of BiH, No. 6/99)*

#### *4.4.1. General considerations*

Bosnia and Herzegovina is the signatory of numerous international documents on the prohibition of slavery and compulsory labour,<sup>98</sup> which oblige its authorities to protect those

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<sup>98</sup> Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Types of Cruel,

rights by combating and punishing all forms of slavery, the status similar to slavery as well as the transportation of persons in the status of slavery, human trafficking and compulsory labour.

One of the most relevant international documents signed and ratified by Bosnia and Herzegovina in the recent period is the UN Convention against Organised Transnational Crime and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the so-called Palermo Protocol), as well as the Protocol against Smuggling of Migrants by Land, Sea and Air.<sup>99</sup>

In addition to the aforementioned, BiH has signed and ratified, as the member of International Labour Organisation (ILO), the following relevant conventions: the Convention No. 29 on Prohibition of Forced Labour<sup>100</sup>, the Convention No. 97 on Migration for Employment<sup>101</sup>, the Convention No. 105 on Abolition of Forced Labour<sup>102</sup> and the Convention No. 143 on Migrant Workers (supplementary provisions)<sup>103</sup>.

#### *4.4.2. Human trafficking and smuggling*

*4.4.2.1 Human trafficking – Palermo Protocol in Article 3 defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or*

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Inhuman and Degrading Treatment or Punishment, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention Relating to the Status of Stateless Persons, Convention of 1951 and Protocol of 1967 that relate to the status of refugees.

<sup>99</sup> Official Gazette of BiH, No. 3/02.

<sup>100</sup> Ratified on 2 June 1993.

<sup>101</sup> Ratified on 2 June 1993.

<sup>102</sup> Ratified on 15 November 2000.

<sup>103</sup> Ratified on 2 June 1993.

*use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation will include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”* In its defining the criminal offence of human trafficking, the Criminal Code of BiH<sup>104</sup> is led by the definition of human trafficking provided by Palermo Protocol. For perpetrators of this criminal offence, the Criminal Code of BiH prescribes sanctions ranging between one and ten years of imprisonment (Article 186). This Code is fully aligned with Article 3 of Palermo Protocol, particularly in view of the fact that human trafficking is considered as criminal offence irrespective of whether the victim has accepted to be exploited or not (Article 186, Paragraph 4). Thus, the sanctioning of perpetrators and the protection of victims are secured.

The legal minimum of sanction prescribed for human trafficking involving minors as victims is five years of imprisonment (Article 186, Paragraph 2), while, at the same time, the Code prescribes one to ten years of imprisonment for international recruitment of minors for prostitution (Article 187, Paragraph 3).

Slavery and transportation of persons in the status of slaves is regulated in Article 185 of the Code. For perpetrators of this criminal offence the Code prescribes between one and ten years of imprisonment, similarly as in the case of criminal offence of human trafficking (Article 185, Paragraph 1). At the same time,

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<sup>104</sup> Official Gazette of BiH Nos. 3/03, 32/03, 37/03, 54/04, 61/04 30/05, 53/06, 55/06 and 32/07.

in Paragraph 2 of the same Article, in addition to slavery, the legislator also establishes the criminal offences of purchase or sale (as well as soliciting in these acts) of minors with the purpose of adoption, organ transplantation, labour exploitation with the minimum prescribed sentence of five years of imprisonment.

In 2003, the criminal legislation in the entities of BiH was harmonised with the Criminal Code of BiH. Despite these efforts, there are still deviations in the entity legislation from the aforementioned definition of human trafficking. The Criminal Code of RS<sup>105</sup> has reduced this criminal offence only to offences perpetrated for procuring prostitution (Article 198), while the Criminal Code of FBiH<sup>106</sup> refers only to those who procure or induce females to prostitution (Article 210), as criminal offence that can be linked with human trafficking. Thus, the criminal codes of the entities of BiH do not provide for adequate sanctioning of this offence, nor are they fully harmonised with the Criminal Code of BiH, and, consequently, with international standards in this domain.

In May 2008, the Council of Ministers of BiH adopted a new National Action Plan for 2008 – 2012 aimed at improvement of criminal prosecution of perpetrators of human trafficking and ensuring higher degree of protection of victims of this crime. The Action Plan cites two goals of harmonisation of domestic legislation with international conventions applied in this area, and, at the same time, harmonisation of legislation within BiH (i.e. between the state, entity and cantonal laws).<sup>107</sup>

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<sup>105</sup> Official Gazette of RS No. 49/03, 108/04, 37/06 and 70/06.

<sup>106</sup> Official Gazette of FBiH, Nos. 36/03, 37/03, 21/04, 69/04 and 18/05.

<sup>107</sup> The Council of Ministers of BiH, National Action Plan 2008-2012 ([http://www.anti-trafficking.gov.ba/fajlovi/DAP\\_2008-2012\\_loc.doc-106.doc](http://www.anti-trafficking.gov.ba/fajlovi/DAP_2008-2012_loc.doc-106.doc) - accessed on 27 August 2008)

4.4.2.2. *Trafficking in human organs* – As it was previously mentioned, the Criminal Code of BiH, in its provisions related to human trafficking, refers to the criminal offence of human trafficking indented for taking organs or parts of body (Article 186, Paragraph 1). BiH also has the Law on Conditions for Taking and Transplanting Parts of Human Body, inherited from the former SFRY.

4.4.2.3. *Smuggling of persons* – Smuggling of persons is defined as a criminal offence in the Criminal Code of BiH. The Code stipulates that whoever, for financial or material benefit, engages in illegal transport of other persons across the state border, or whoever enables another person to cross the border illicitly, will be punished by imprisonment for a term between six months and five years (Article 189, Paragraph 1). Paragraph 2 of this Article prescribes fine or the imprisonment of up to three years for those who, for financial or material benefit, enables other persons to stay illegally in the country. Paragraph 3 of this Article prescribes the imprisonment of one to eight years for those perpetrators who, while enabling illegal border crossing, expose the life and safety of these persons to risk and who treat them in an inhuman and degrading manner. The legislator has thus harmonised the provisions of this law with the standards defined in the Protocol against Smuggling of Migrants by Land, Sea and Air (Article 6), and introduced adequate protection of rights of smuggled persons.

However, despite the observance of certain provisions of this Protocol, the legislation failed to harmonise provisions of national legislation in relation to Article 5 of the Protocol that guaranties that migrants will not be criminally prosecuted if they are victims of smuggling of persons, i.e. there is no such provision in the Code that provides migrants with this guarantee.

#### *4.4.3. Protection and compensation of victims*

*4.4.3.1. Protection of victims* – The Criminal Procedure Code of BiH<sup>108</sup> and the Law on Protection of Witnesses under Threat and Vulnerable Witnesses<sup>109</sup> both contain the provisions that secure a certain degree of protection of witnesses, including those who are victims of human trafficking. The latter law prescribe that, at the main trial, witnesses under threat and vulnerable witnesses will be heard within the shortest possible time (Article 7).

The Law on the Program of Protection of Witnesses in BiH<sup>110</sup> provides to witnesses, in this specific case the victims of human trafficking, not only the protection during the criminal proceedings, but also after the completion of proceedings, if it transpires that the person who had taken the witness stand is threatened because of that. (Article 2, Paragraph 2)

*4.4.3.2. Confiscation of Proceeds Gained by Crime and Compensation of Victims* – BiH has not signed yet the Council of Europe's Convention on Money Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism.<sup>111</sup>

In BiH, victims of human trafficking are entitled to compensation of damages which can be realised by initiating civil

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<sup>108</sup> Official Gazette of BiH, Nos. 03/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08 and 58/08.

<sup>109</sup> Official Gazette of BiH, Nos. 21/03, 61/04 and 55/05.

<sup>110</sup> Official Gazette of BiH, No. 29/04.

<sup>111</sup> See:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=198&CM=8&DF=20/07/2005&CL=ENG>.

procedure against perpetrators, as it is regulated in the Codes of Civil Procedure of FBiH<sup>112</sup>, RS<sup>113</sup> and Brčko District<sup>114</sup>.

#### *4.4.4. Forced labour*

The Constitution of BiH does not refer explicitly to the prohibition of forced labour. However, BiH is the signatory of international documents that regulate the issue of forced labour (especially the European Convention on Human Rights and Fundamental Freedoms, the ILO Conventions Nos. 29<sup>115</sup> and 105<sup>116</sup>), so that it is obliged to protect persons against forced labour. At the same time, entity constitutions refer specifically to the protection of these rights, so that, in Article 39 of the Constitution of Republika Srpska, forced labour is explicitly prohibited, while the Constitution of FBiH refers only in general terms to the protection of internationally recognised human rights without explicit mentioning the prohibition of forced labour.

The criminal legislation in BiH partly regulates the issue of forced labour in the context of execution of criminal sanctions. Thus, the Criminal Code of BiH in Article 108 and the Criminal Code of FBiH in Article 112 mention the possibility of work for convicted persons, but only if those persons accept to work, which can be understood implicitly as prohibition of forced labour. At the same time, the Criminal Code of Republika Srpska

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<sup>112</sup> Official Gazette of FBiH, No. 53/03.

<sup>113</sup> Official Gazette of Republika Srpska, Nos. 58/03 and 85/03.

<sup>114</sup> Official Gazette of Brčko District, Nos. 5/00, 1/01 and 6/02.

<sup>115</sup> ILO Convention on Prohibition of Forced or Obligatory Labour, ratified on 2 June 1993.

<sup>116</sup> ILO Convention on Prohibition of Forced Labour, ratified on 15 November 2000.



fails to mention the prohibition of forced labour and in the section related to execution of criminal sanctions, it only refers to obligation to respect the perpetrator's person and human dignity in the execution of criminal sanction (Article 105), which can be understood as prohibition of forced labour.

#### *4.5. Right to freedom and security of persons and the treatment of persons deprived of liberty*

Article 9 of ICCPR:

1. Everyone has the right to liberty and security of person. No one will be subjected to arbitrary arrest or detention. No one will be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested will be informed, at the time of arrest, of the reasons for his arrest and will be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge will be brought promptly before a judge or other officer authorized by law to exercise judicial power and will be entitled to trial within a reasonable time or to release. It will not be the general rule that persons awaiting trial will be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention will be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention will have an enforceable right to compensation.

*(Official Gazette of SFRY, No. 7/71)*

Article 5 of the European Convention on Human Rights and Fundamental Freedoms:

1. Everyone has the right to liberty and security of person. No one will be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested will be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article will be brought promptly before a judge or other officer authorised by law to exercise judicial power and will be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention will be entitled to take proceedings by which the lawfulness of his detention will be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article will have an enforceable right to compensation.

*(Official Gazette of BiH, No. 6/99)*

#### *4.5.1. Right to the freedom and security of person*

The key principle behind Article 5 of the European Convention on Human Rights and Fundamental Freedoms is respect for the rule of law. The basic premise that every person is born free was codified by the Universal Declaration on Human Rights, adopted by the United Nations. Right to the freedom and security of person was further incorporated and elaborated in the subsequent human rights documents, including the one that is for us the most relevant, i.e. the International Covenant on Civil and Political Rights (ICCPR). This inviolable civil status grants a certain status to human beings, primarily the protection against arbitrary detention by State. States, therefore, must restrain themselves from interfering into the privacy of citizens and must enable to citizens and other persons residing in their territories, free movement and the choice of place of residence. Relevance of the right to freedom and security of person is clear if we have in mind that deprivation of liberty has direct impact on the enjoyment of numerous other guaranteed rights, and that it brings person into a vulnerable position exposing him/her to the threat of torture, or other inhuman or degrading treatment.

We need to point out the fact that the right to freedom

and security of person is a unique right and, in that context, this phrase needs to be read as such, given that it relates solely to the physical freedom. The guarantees stemming from Article 5 of the European Convention on Human Rights and Fundamental Freedoms are always relevant when the degree of limitation of freedom of movement at a certain place is extreme in the sense that a person cannot leave that place. Although Article 5 of the European Convention on Human Rights and Fundamental Freedoms guarantees the „security of person“, the practice has shown that this aspect does not exist independently, i.e. that Article 5 cannot be applied in the sense of protection of physical integrity. This further means that Article 5 of the Convention relates only to deprivation of liberty and not to the conditions of detention.

Given the obligations assumed by the signing of international agreements, Bosnia and Herzegovina is obliged to respect the legal framework established by the ratified international documents on human rights, primarily the European Convention on Human Rights and Fundamental Freedoms, which, as it was stated earlier, has, according to the Constitution of BiH, priority over all other law in BiH. In the legal system of BiH this right is explicitly guaranteed in its constitutions. It is contained and further elaborated in the criminal procedure codes, as well as in other relevant laws.

By mid-2003, the High Representative in BiH imposed new criminal procedure codes at the state and entity levels that came into force the same year. These codes incorporate the principle provisions that are in line with the standards of internationally guaranteed rights, particularly Article 5 of the European Convention on Human Rights and Fundamental Freedoms and Article 9 of ICCPR. The catalogues of measures that secure the presence of the accused/suspect and successful criminal proceeding have been amended by additional measures, while earlier mandatory pre-trial custody for some criminal

offences was abolished and provisions were amended by adding the legal reasons for pre-trial custody, which is now optional. Conditions were set also regarding the duration of detention after indictment and until final judgment, so that detention is now much more clearly regulated. Subsequently, amendments to the Criminal Procedure Code of BiH, introduced in 2006, 2007 and 2008, have extended further this spectrum of measures so that protection of individual freedoms is additionally strengthened. The problem with the legal order of Bosnia and Herzegovina lies in the entity and Brčko District codes that are lagging behind the state Code, i.e. they are not duly and/or sufficiently timely harmonised with the state Code, which ultimately leads to unequal treatment of suspects/accused before law in terms of protection of their right to freedom and security of person. Nevertheless, by the end of 2008, only the Criminal Procedure Code of FBiH has not been harmonised yet, although relevant amendments are in the parliamentary procedure and their entry into force is expected by the beginning of 2009.

The procedure of adoption of new amendments is also underway. These envisaged changes relate to the very essence of enjoyment of the right to freedom and security of person, i.e. duration of detention between the first-instance and the second-instance judgement that are made upon appeal.

*4.5.1.1. Prohibition of arbitrary arrest and deprivation of liberty* – The basic meaning of Article 5 of the European Convention on Human Rights and Fundamental Freedoms is to ensure the guaranties that would prevent arbitrary and illegal deprivation of liberty. International standards related to fair trial, i.e. Article 5 of the European Convention on Human Rights and Fundamental Freedoms contains, in its Paragraph 1, a strong support to the protection of the right to freedom. That is why deprivation of liberty must always be an exception, supported by an objective justification, and can last only as long as it is

absolutely necessary and only if the purpose cannot be achieved by other measures. The measures of restriction of the right to freedom have multiple effects on human rights of persons exposed to them – their privacy, their bonds with family, professional career, use of free time and the like, even after they are terminated, i.e. once the person is released. Given their far-reaching consequences, it is necessary to carefully assess all circumstances that go in favour or against deprivation of liberty. The aforementioned arguments indicate that those who deprive someone of liberty bear the burden of proof that the grounds on which deprivation is done fall within the framework of the grounds enumerated in Article 5, and that they are applicable in the given case. Certainly, relevant decisions taken in this respect must be legal, reasoned in detail, and must be carried out by a just and transparent procedure.

The guaranties contained in Article 5 European of the European Convention on Human Rights and Fundamental Freedoms relate to deprivation of liberty in criminal proceedings, as well as to cases of deprivation of liberty (e.g. due to mental disease, vagrancy, alcohol or drug addiction, etc.) imposed to persons in order to limit, to greater or lesser extent, his/her right to individual freedom.

Pursuant to Article 5 (1) of the European Convention on Human Rights and Fundamental Freedoms, every deprivation of liberty must be done in accordance to the procedure prescribed by law. This provision is interpreted as to meet the requirement of legality, which must be in accordance with domestic legislation and with the European Convention on Human Rights and Fundamental Freedoms. Consequently, deprivation of liberty that lack legal basis in domestic law is in absolute contravention to the requirements of Article 5 of the European Convention on Human Rights and Fundamental Freedoms. Therefore, member states must precisely define the cases in which deprivation of liberty is possible. However, violation of the right to liberty and security of

person will exist if deprivation of liberty is done lawfully in the context of national legislation, if one of the grounds enumerated in Article 5(1) of the European Convention on Human Rights and Fundamental Freedoms is not used as basis for detention. It should be remembered that the legality requirement relates to procedural as well as substantive aspects of deprivation of liberty and extends to the entire period of deprivation of liberty. However, even when all the aforementioned conditions are met, deprivation of liberty will not be considered as legal if it is a consequence of arbitrary use of jurisdiction. And, finally, in order to meet the criteria imposed by the European Convention on Human Rights and Fundamental Freedoms, the legality requirement implies that this right must be accessible, predictable and certain and must contain guaranties related to prohibition of arbitrariness in action against the concerned persons. In addition to direct responsibility for actions taken by their bodies, the state is obliged to ensure that private individuals, in their own actions, do not breach the rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms. States, therefore, also have positive obligations in terms of the right to liberty and security of person. This means that states are obliged to prohibit and to adequately investigate and sanction every case of illegal deprivation of liberty, even when perpetrators are obviously not state agents.

In Bosnia and Herzegovina, the possibility of deprivation of liberty is primarily prescribed in criminal legislation, in the civil procedure codes, and in the laws on the protection of persons with mental incompetence. All relevant laws are published in official gazettes and, therefore, are publicly accessible. They contain the guaranties of protection against arbitrariness and clearly formulated provisions that enable to all concerned bodies and individuals to envisage the consequences of their actions. In terms of limitation of the right to personal liberty and security, the legislation in BiH incorporates the principles of

legality, judicial supervision, proportionality and subsidiarity.

Positive legislation in Bosnia and Herzegovina establishes the rule that detention can only be ordered by the competent court and at the proposal of prosecutor (Article 134 of CPC BiH), Article 134 of CPC BD, Article 148 of CPC FBiH, and Article 191 of CPC RS). The principle of legality is explicitly adopted when limiting the suspect/accused in his/her freedom and other rights (Article 2 of CPC BiH, Article 2 of CPC BD, Article 2 of CPC FBiH, and Article 2 of CPC RS). The basic rights of persons deprived of liberty are guaranteed and they must be promptly instructed about them. These rights are: reasons for deprivation of liberty, instruction on the right to remain silent, the right to have a defence attorney of his/her own free choice, or to have a defence attorney assigned if he/she can not afford the costs of defence, to have his/her family, consular officer of the state whose citizen he/she is, or other person he/she nominates, informed about his/her deprivation of (Article 5 of CPC BiH, Article 5 of CPC BD, Article 5 of CPC FBiH, and Article 5 of CPC RS). It is also prescribed that the suspect//accused is entitled to be brought before court in the shortest reasonable time and that trial will be conducted without delay. It is also emphasised that duration of detention must be reduced to the minimum necessary time (Article 13 of CPC BiH, Article 13 of CPC BD, Article 14 of CPC FBiH, and Article 13 of CPC RS). Detention can be decided solely under the conditions prescribed by law and can only be done if the purpose of that measure cannot be achieved by other measures, emphasising that, during the entire procedure, detention will be abolished as soon as reasons for which it had been decided are terminate (Article 131 of CPC BiH, Article 131 of CPC BD, Article 145 of CPC FBiH, Article 188 of CPC RS).

Decision on detention is submitted to the concerned person at the moment of detention. The hour of deprivation of liberty and the hour of submission of decision on detention must be indicated in the file. Appeal can be lodged against such



decision to the panel of judges within 24 hours from its receipt; the panel of judges is obliged to decide on the appeal within 48 hours. Appeal does not stall the execution of decision on detention (Article 134 of CPC BiH, Article 134 of CPC BD, Article 148 of CPC FBiH, and Article 191 CPC RS).

Criminal procedural codes in BiH recognise deprivation of liberty of suspects by police bodies, but only as a factual measure on which no decision is taken. Therefore, in the new legislation there are no provisions on decision on detention by non-judicial bodies. This jurisdiction is not granted even to prosecutor, but solely to the competent court. This kind of deprivation can be done only if there are grounds for suspicion that the person has committed a criminal offence and if there are any legal grounds for detention in addition to the one in question. The person thus deprived of liberty must be instructed of his/her rights promptly, and within maximum 24 he/she must be taken to prosecutor who must decide whether he/she will release the person or submit to the preliminary procedure court the proposal to decide on detention. If prosecutor submits such a proposal, the preliminary procedure judge must promptly, and within maximum 24 hours, decide on detention or release of the person (Article 139 of CPC BiH, Article 139 of CPC BD, Article 153 of CPC FBiH, and Article 196 of CPC RS).

As it was stated above, courts are competent to decide upon detention once they receive a fully reasoned proposal of prosecutors. Prosecutor's proposal is also required for any extension of detention. Criminal procedural codes prescribe the maximum duration of detention during investigation, during trial, and after pronouncement of the first-instance judgement. Duration of detention depends on the gravity of criminal offence (Article 135 of CPC BiH, Article 135 CC BD, Article 149 CC FBiH, and Article 192 CC RS). Detention is initially decided by preliminary procedure judge, upon whose decision detention can last for maximum one month. At the decision of panel of judges,

detention can be extended by additional two months. For some less serious offences, this is the maximum duration of detention during investigation (3 months). For criminal offences with prescribed sanction of ten or more years of imprisonment and if there are particularly important reasons, it is possible to extend detention for another three months (six months in total). Exceptionally, and in extremely complex cases for which the prescribed sanction is long-term imprisonment, it is possible for detention to be extended for additional three months, two successive terms (12 months in total). Duration of detention begins on the first day of detention and, if indictment is not confirmed, within the aforementioned deadlines, the suspect must be released.

Duration of detention after confirmation of indictment and before the pronouncement of first-instance judgement depends on the gravity of criminal offence (Article 137 of CPC BiH, Article 137 of CC BD, Article 151 of CC F BiH, and Article 194 of CC RS). Detention after confirmation of indictment may last for maximum one year (in case of criminal offence for which the prescribed sanction is up to five-year imprisonment), one year and six months (in case of criminal offence for which the prescribed sanction is up to ten-year imprisonment), two years (in case of criminal offence for which prescribed sanction is above ten-year imprisonment, but not long-term imprisonment), or three years (in case of criminal offence for which prescribed sanction is long-term imprisonment).

When interference into the right to liberty and security of person is done by private individuals, BiH criminal codes, in accordance with the European Convention on Human Rights and Fundamental Freedoms, incriminate such actions and those criminal offences are the offences of illegal deprivation of liberty (Article 147 of CC BiH, Article 176 of CC BD, Article 179 of CC F BiH, Article 166 of CC RS ), abduction (Article 168 of CC BiH, Article 177 of CC BD, Article 180 of CC F BiH, Article 165 of CC

RS), and human trafficking (Article 186 of CC BiH).

*4.5.1.2. Presumption in favour of liberty and detention –*

The European Convention on Human Rights and Fundamental Freedoms recognises that rights must be followed by obligations. International standard related to fair trial contains strong arguments favouring freedom, while member states are obliged to apply measures that are more lenient than detention need to be applied whenever possible, and, in any case, the member states have to refrain from deciding on detention as a criminal sanction. Therefore, limitations may be allowed only if there is a risk of abuse that amounts to threat to the rights of others, or interference with the interest of justice. In addition, member states are obliged to define in their positive legislation the conditions under which limitation can be applied.

Once there is reasonable suspicion that a person has committed criminal offence, the right of such person to liberty may be limited. Then, measures that directly or indirectly limit the liberty of a suspect/accused can be undertaken with the aim of ensuring his/her presence and successful conduct of criminal proceedings (Chapter X of CPC BiH, Chapter X of CPC BD, Chapter X of CPC FBiH, and Chapter XVI of CPC RS). These measures do not always have to lead to deprivation of liberty. In terms of limitation of person's right to liberty and security, criminal procedural legislation in BiH incorporates the principles of legality, court supervision, proportionality and subsidiarity. The Criminal Procedure Code in BiH recognise five types of measures of insuring the presence of suspect/accused and successful conduct of criminal proceedings – summons, bringing of person to court, measures of prohibition, guarantees and detention. For each of these individual measures, the legally prescribed conditions of application must be followed by competent bodies. When deciding which of the available measures for insuring the presence of suspect/accused and

successful conduct of criminal proceedings to apply, competent body must adhere to the conditions defined for the application of individual measures, and when doing so it must take into account that more serious measures are not applied if the same purpose can be achieved by more lenient ones (Article 123 of CPC BiH, Article 123 of CPC BD, Article 137 of CPC FBiH, and Article 180 of CPC RS).

Detailed grounds are also prescribed for deciding the measure of detention, alongside the jurisdiction for such decision, maximum duration of custody, duty of urgent action taken by the bodies participating in criminal procedure in cases involving custody, compensation for damages in cases of unfounded deprivation of liberty, as well as execution of custody (Articles 131-147 of CPC BiH, Articles 131– 147 of CPC BD, Articles 145–161 of CPC FBiH, and Articles 188–204 of CPC RS).

*4.5.1.3. Grounds for decision on custody* – Provisions of Article 5 of the European Convention on Human Rights and Fundamental Freedoms suggest that the permitted condition for limitation of liberty is that further enjoyment of liberty may prevent the execution of justice. According to international standards, and, consequently, to those contained in the European Convention on Human Rights and Fundamental Freedoms, permitted reasons for limitation of liberty fall in the following categories: risk of hiding, risk of perpetration of serious criminal offence, risk of obstructing the execution of justice, and risk of serious threat to public law and order. According to a recommendation made by the Committee of Ministers of the Council of Europe, it is necessary for courts to investigate, on the basis of circumstances of the given case, prior to taking into consideration the measure of custody, whether there are adequate more lenient measures. When doing so, the circumstances relevant for such a decision are: type and gravity of criminal offence for which the accused is charged; the sanction which

would probably be pronounced by the court in the case he/she is found guilty; age, state of health, character, criminal records and personal and social circumstances of the accused, and particularly his/her links in the community and his/her behaviour, particularly in terms of fulfilment of any obligation ordered in the previous criminal procedure.

Detention is the ultimate and the most stringent measure in the context of control of suspect/accused. New criminal legislation in BiH has abandoned the previous concept of mandatory custody for some types of criminal offences so that only optional custody is now envisaged. Such measures can be taken against a person only if it is necessary and if, cumulatively, the legally prescribed criteria are met (Article 131 of CPC BiH, Article 131 of CPC BD, Article 145 of CPC FBiH, and Article 188 of CPC RS) – grounded suspicion that a person has committed criminal offence (positive criteria), existence of minimum one of the legally prescribed conditions for custody (positive criteria), and that there are no other measures for the achievement of the same purpose (negative criteria). The positive criteria for deciding on custody are prescribed in Article 132 of CPC BiH, Article 132 of CPC BD, Article 146 of CPC FBiH, and Article 189 of CPC RS. Grounded suspicion, as a general precondition for deciding on such measures, according to the law amounts to higher degree of suspicion based on collected evidence that have led to the conclusion that criminal offence has been committed (Article 20 of CPC BiH, Article 20 of CPC BD, Article 21 of CPC FBiH, and Article 20 of CPC RS). As mentioned earlier, in order to decide custody, in addition to grounded suspicion as defined in general conditions, at least one of the following prescribed conditions need to be met.

1. if he conceals himself or if other circumstances exist which suggest the strong possibility of flight;

2. if there is a warranted fear that he will destroy, hide, alter or falsify evidence or clues important to criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, fellow accused or accessories in terms of concealment;
3. if particular circumstances justify the fear that the crime will be repeated or an attempted crime will be completed or a threatened crime will be committed and for those offenses a sentence of imprisonment of three years or a more severe penalty is prescribed; in extraordinary circumstances, if it is the criminal offence for which the prescribed sanction is ten or more years of imprisonment, and which is a particularly serious crime in view of the method of perpetration or consequences, and if release from imprisonment would result in real threat for public law and order.

Despite the existence of the aforementioned conditions, before deciding on the measure of custody, courts are obliged to consider the pronouncement of another more lenient measure for ensuring the presence of accused/suspected persons and successful criminal proceedings. Such consideration is done by courts *ex officio* when they take decision on custody, or at the proposal of one of the parties in the proceedings.

Therefore, as far as legislation in BiH is concerned, one can say that it is aligned with the requirements and practice stemming from Article 5 of ECPS. Likewise, the provisions of the existing criminal procedure codes in BiH are in this respect harmonised, i.e. they provide for identical legal arrangements in terms of conditions and grounds on which decision on custody can be taken.

However, the practice of domestic courts demonstrates a certain inconsistency with the requirements of the Convention.<sup>117</sup>

Thus, in terms of existence of general condition for custody, i.e. grounded suspicion, it sometimes happens that in court decisions related to custody taken prior to indictment, no specific facts and evidence on which such a suspicion is based are not given. Likewise, when decision is taken, i.e. when control of decision on custody after indictment is passed and confirmed, it often happens that the existence of grounded suspicion is not seriously checked; instead, evidence of its existence is simply stated as a matter of fact, which is not in line with the requirements of Article 5 of ECPS and gives rise to suspect that there is arbitrariness on the part of courts.

On the other hand, in relation to special grounds for custody, and, especially, the one that relates to the threat to public law and order (previously defined as risk for security of citizens and property), the court decisions in BiH often show a lack of objective and concrete circumstances that led to courts' decisions on custody,<sup>118</sup> while quite often very insufficient explanation of such decisions are made.

Likewise, application of more lenient measures as an alternative to custody is not adequately considered; sometimes it is not even done, while, at times, decisions do not contain reasons

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<sup>117</sup> For a more detailed description of application of pre-trial custody and alternative measures in the practice of BiH courts, see OSCE BiH, *Law and Practice in the Application of Measures of Restriction of Liberty: Justifiability of measures of pre-trial custody in Bosnia and Herzegovina* dated August 2008.

<sup>118</sup> On several occasions, upon individual appellations, this issue was dealt with by the Constitutional Court of BiH. See, e.g. Decisions of the Constitutional Court in the cases *Neđo Zeljaja*, Decision on Admissibility and Merits of the Constitutional Court of BiH No. AP 6/08 of 13 May 2008 and *Aida Selmanović*, Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP 566/08 of 12 June 2008.

for decision on custody or extension of custody and the impression is that, in the practice of some courts in BiH, custody is applied more as a rule than as an exception to the rule.

*4.5.1.4. Compensation for damages due to unfounded deprivation of liberty* – The right of a person who is a victim of ungrounded deprivation of liberty to get compensation of damages is envisaged in Article 5(5) of the European Convention on Human Rights and Fundamental Freedoms. This article and Article 3 of Protocol No. 7 are the only instances in the Convention that require from domestic legislation to envisage compensation of damages. The Criminal Procedure Codes in BiH explicitly prescribe the right of persons unfoundedly deprived of liberty to get rehabilitation, compensation for damages from the budget, and to have other rights defined by law (Article 11 of CPC BiH, Article 12 of CPC FBiH, Article 11 of CPC RS and Article 11 of CPC BD) ensured. Besides the aforementioned provision that guaranties the right to compensation of damages to persons unfoundedly deprived of liberty, the criminal procedural law regulates also the grounds, conditions and procedures for realization of this right (Chapter XXXII of CPC BiH, Chapter XXXII of CPC FBiH, Chapter XXXII of CPC RS, and Chapter XXXI of CPC BD).

Damages in the meaning of the aforementioned provisions imply the material and non-material damages as defined by property legislation. Before submission of complaint in civil procedure, damaged party needs to submit a request to the competent ministry at the state or entity level or the Judicial Commission in Brčko District in order to reach an agreement relating the existence, type and amount to damages caused (Article 433 of CPC BiH, Article 415 of CC BD, Article 436 of CC FBiH, Article 426 of CC RS). Only if request for compensation of damages is not accepted, or if the competent body fails to take decision upon it within three months from the date of



submission, damaged party can seek fulfilment of his/her right in civil procedure before competent court (Article 434 of CPC BiH, Article 416 of CC BD, Article 437 of CC FBiH, Article 427 of CC RS).

Thus, one can conclude that the relevant provisions of criminal procedural law in BiH meet the requirements of Article 5(5) of the European Convention on Human Rights and Fundamental Freedoms, by guarantying the right to compensation of damages to persons who are unfoundedly deprived of liberty even beyond the minimum stipulated in the ECHR provision.

Although it is elaborated in detail in the criminal procedural laws, it seems that there is no effective mechanism for the protection of this right in BiH yet. The obligation of the State of BiH to establish such a mechanism was emphasized in the decisions of the Constitutional Court of BiH and the Human Rights Chamber of BiH.

#### *4.6. Right to fair trial*

Article 14 of ICCPR:

1. All persons will be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law will be made public except where the

interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence will have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone will be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure will be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime will have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction will be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one will be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

*(Official Gazette of SFRY, No. 7/71)*

#### Article 6 of ECHR:

1. In the determination of his civil rights and obligations or of 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. Judgment will be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence will be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

- c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 of ECHR:

1. No one will be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor will a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article will not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Protocol No. 7 to ECHR:

Article 2 – Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal will have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, will be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

### Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction will be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

### Article 4 – Right not to be tried or punished twice

1. No one will be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph will not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article will be made under Article 15 of the Convention.

*(Official Gazette of BiH, No. 6/99)*

#### *4.6.1. Judicial system*

In the judicial system of Bosnia and Herzegovina, both at the state and at the entity and Brčko District levels, there are only the courts of general jurisdiction.<sup>119</sup> Pursuant to the Law on

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<sup>119</sup> In Bosnia and Herzegovina, there were minor offence courts as courts with special jurisdiction, whose function was taken over in RS on 1 September 2006

Amendments to the Law on Courts of Republika Srpska that entered into force on 26 December 2008, the District Commercial Court and the Higher Commercial Court of Republika Srpska were established, although relevant provisions of this Law will enter into force as of 1 July 2009.<sup>120</sup> In Brčko District (hereinafter: BD), there are: the Basic Court and the Appellate Court of BD. In Republika Srpska, there are 19 basic courts and 5 district courts, as well as the Supreme Court of Republika Srpska and 5 newly established district commercial courts and a Higher Commercial Court of Republika Srpska. In the Federation of BiH, there are 28 municipal courts, 10 cantonal courts, and the Supreme Court of the Federation of Bosnia and Herzegovina. At the level of Bosnia and Herzegovina there is the Court of Bosnia and Herzegovina, composed of first-instance Divisions I, II and III and an Appellate Division. In such a specific judicial system the issue of the existence of highest judicial instance in Bosnia and Herzegovina remains unclear, since the Court of Bosnia and Herzegovina does not have appellate jurisdiction over entity courts and the courts of Brčko District. It is evident that this situation leads to differences in application of criminal codes and lack of uniformity of judicial practice in Bosnia and Herzegovina, which can have inequality of the citizens living in Bosnia and Herzegovina as a consequence.<sup>121</sup> This is why in the forthcoming reform of the Constitution of BiH it would be necessary to determine or establish the highest judicial instance in Bosnia and Herzegovina in order to avoid the existing problems.

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and in the FBiH on 1 December 2006, by newly established minor offence sections in their basic/municipal courts. Cantonal courts are designated to act as the second-instance courts in FBiH, while in RS, this competence was taken over by district courts.

<sup>120</sup> (Official Gazette of RS, No. 119/08).

<sup>121</sup> See the Resolution of the Parliamentary Assembly of the Council of Europe, No. 1626 of 30 September 2008.

#### *4.6.2. Independence and impartiality of courts*

*4.6.2.1. Selection of judges* – The Constitution of Bosnia and Herzegovina does not contain provisions relating the body that would have jurisdiction over the selection of judges, nor does it have any provisions on the procedure of selection of judges of regular courts in Bosnia and Herzegovina<sup>122</sup>. The selection of judges and prosecutors in Bosnia and Herzegovina is regulated by the Law on High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina.<sup>123</sup> According to this Law, the High Judicial and Prosecutorial Council of BiH is an independent body of Bosnia and Herzegovina governed by the legislation that regulates the functioning of executive bodies in Bosnia and Herzegovina (Article 1, Paragraphs 2 and 3 of the Law on HJPC BiH), tasked with ensuring an independent, impartial and professional judiciary in Bosnia and Herzegovina (Article 3, Paragraph 1 of the Law on HJPC BiH). The independence of HJPC, as the body competent for the selection of judges and prosecutors, from legislative and executive branches of authority is reflected in the position taken by the members of HJPC. Out of 15 members HJPC, 11 are distinguished judges and prosecutors selected by their colleagues at the state, entity and Brčko District level. Out of the remaining 4 members of HJPC, 2 represent their entity bars, plus one that represents the executive and other representing legislative authorities at the level of Bosnia and Herzegovina. However, irrespective of the level or branch of authority, all members of HJPC are independent and impartial in the performance of their duties (Article 4, Paragraph 2 of the Law on HJPC BiH) and, during their tenure in HJPC, they are not allowed to perform any duty in political parties or associations

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<sup>122</sup> Article VI of the Constitution only prescribes the method of selection of judges to the Constitutional Court of BiH.

<sup>123</sup> Official Gazette of BiH, Nos. 25/04, 93/05 and 15/08,

and foundations linked with political parties<sup>124</sup> (Article 10, Paragraph 1 of the Law on HJPC BiH). The competence of HJPC (Article 17 of the Law on HJPC BiH) is set so broadly and encompasses all the necessary conditions for the achievement of the task for which HJPC had been formed in the first place, i.e. to ensure that judiciary in Bosnia and Herzegovina is independent, impartial and professional. The key competence of HJPC is to select judges and prosecutors to all the regular courts and prosecutorial offices in Bosnia and Herzegovina, as well as to the newly established commercial courts in Republika Srpska<sup>125</sup>. Furthermore, HJPC has the competence to make proposals to relevant bodies relating the appointment and selection of judges to the Constitutional Court of Republika Srpska and to the Constitutional Court of the Federation of Bosnia and Herzegovina. HJPC has no competence over the selection of judges, nor for making proposals for the selection of judges to the Constitutional Court of BiH, since the Constitution of BiH prescribes the procedure of selection of these judges. Given that jurisdiction of the Constitutional Court of BiH, contained in Article IV 3b of the Constitution of BiH, include the appellate jurisdiction over the issues stipulated in the Constitution, when they become subject of dispute because of rulings made by any court in Bosnia and Herzegovina and because of very frequent application of this constitutional provision in practice, in the

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<sup>124</sup> This prohibition is extended to the members of the HJPC's Commission, and even to the HJPC staff, thus additionally affirming the independence and impartiality of HJPC as the whole.

<sup>125</sup> HJPC BiH is in charge of selection of judges to the Court of Bosnia and Herzegovina, the supreme courts of entities, the Higher Commercial Court of RS, district courts in RS, district commercial courts in RS and cantonal courts in FBiH, basic courts in RS and municipal courts in FBiH, as well as the Appellate Court and the Basic Court of Brčko District, and of prosecutors to the Prosecutorial Office of Bosnia and Herzegovina, the Prosecutorial Office of RS, the Prosecutorial Office of FBiH, and district and cantonal prosecutorial offices and the Prosecutorial Office of Brčko District.



forthcoming constitutional reform, this will certainly be one of the issues that deserves attention. Namely, the Constitutional Court of BiH, according to the aforementioned jurisdiction, may abolish - as it often does – the rulings of any court in Bosnia and Herzegovina. Thus, we have the situation where the Constitutional Court of BiH, as the court whose majority of judges are selected by entity legislative bodies, abolishes the judgments of courts whose judges are selected by HJPC, i.e. the body whose work is independent from the legislative at all administrative levels in Bosnia and Herzegovina. Therefore, in the forthcoming constitutional reform and in relation to the selection of judges of the Constitutional Court of BiH, it would be desirable that HJPC be vested with the competence similar to those exercised in the selection of judges of entity constitutional courts.

The Law on HJPC BiH prescribes that judges and prosecutors are individuals possessing integrity, high moral standing, who have demonstrated professional ability with appropriate training and qualifications (Article 22 of the Law on HJPC BiH). In order to be selected to a judicial position, individuals must meet the prescribed general conditions as well as the specific conditions prescribed by the Law on HJPC BiH. General conditions<sup>126</sup> are identical for judges of all courts in Bosnia and Herzegovina, while special conditions depend of the judicial instance to which a judge is appointed.

4.6.2.2. *Judicial terms in office* – According to the Law on HJPC BiH, the mandate of the judges of the Court of BiH is for life,<sup>127</sup> while judges of all other courts in BiH are appointed for indefinite mandate<sup>128</sup>, whereby the mandate of all judges can

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<sup>126</sup> Article 21 of the Law on HJPC BiH.

<sup>127</sup> Article 23, the Law on HJPC BiH.

<sup>128</sup> Articles 25, 26, 27 and 28 of the Law on HJPC BiH.

terminate only in the manner envisaged by this Law. The Law does not prescribe reasons for which some judges are appointed for life and others for indefinite period. Also, the Law prescribes the possibility of appointment of additional judges,<sup>129</sup> who must meet professional conditions prescribed for judges of the Court to which they are appointed. However, the Law does not regulate the duration of mandate of additional judges, or the possibility and manner of extension of their mandate. According to the Rulebook of the High Judicial and Prosecutorial Council of BiH<sup>130</sup> (hereinafter: the Rulebook of HJPC BiH), additional judges are appointed at the proposal of president of their court, who provides explanation for his/her proposal and proposes the period for which additional judges are hired<sup>131</sup> If HJPC accepts the proposal of court's president, it then, inter alia, states the duration of mandate of the additional judge.<sup>132</sup> However, this solution leaves additional judges with uncertainty, particularly given that the Rulebook of HJPC BiH envisages that HJPC may, at the proposal of court president, or at its own initiative change the duration of mandate of additional judges without any obligation to provide reasons for which the mandate can be changed, i.e. extended or terminated. For the sake of security of judicial system, it would be good to adopt amendments to the Law on HJPC BiH, with detailed elaboration of procedure of selection and mandate of additional judges because that would provide additional guaranties for independence of judges who are not yet selected for an indefinite term. The same goes for the selection of expert associates into municipal and basic courts, who can adjudicate the non-litigation and executive disputes of minor

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<sup>129</sup> Article 33 of the Law on HJPC BiH.

<sup>130</sup> Official Gazette of BiH, Nos. 59/04 and 29/06.

<sup>131</sup> Article 33, Paragraph 1 of the Rules of Procedure of HJPC BiH.

<sup>132</sup> Article 33, Paragraph 2 of the Rules of Procedure of HJPC BiH.

financial implications, when it is envisaged by law, in the cases assigned to them by court presidents.<sup>133</sup>

4.6.2.3. *Termination of judicial mandate* – The Law on HJPC BiH prescribes that mandates of judges and prosecutors terminate at the age of 70<sup>134</sup>, in case of presidents of courts, chief prosecutors and their deputies, after the expiry of the period for which they are appointed<sup>135</sup>; in case of resignation and removal by HJPC as a consequence of disciplinary procedure, as well as in case of existence of medical documentation that demonstrates that a judge has permanently lost his/her working capacity to perform judicial or prosecutorial function (Article 88, Paragraph 1).

4.6.2.4. *Principles governing the assignment of judges* - The Law on HJPC BiH guarantees the so-called principle of non-assignment of judges (Article 50 and 51 of the Law on HJPC BiH). Judges can be assigned to another court, even for an indeterminate time, in case of their consent, whereas, without their consent, judges can be assigned to another court only for the period of maximum three months. Decision on assignment of

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<sup>133</sup>Article 43 of the Law on Courts in the Federation of Bosnia and Herzegovina (Official Gazette of FBiH No. 38/052), Article 50 of the Law on Courts in Republika Srpska (Official Gazette of RS No. 111/05, 109/05 and 37/06), Article 50 of the Law on Courts in Brčko District (Official Gazette of BD No. 19/07 and 20/07).

<sup>134</sup>Exceptionally, the mandate of additional judges may last until the age of 72 (Article 33, Paragraph 2 Law on HJPC BiH). Also, the mandate of lay judges lasts until the same age (Article 34, Paragraph 3 of the same Law).

<sup>135</sup>Even after the expiry of the period to which they are appointed, court presidents and their deputies, as well as chief prosecutors and their deputies, continue performing their duties of judges/prosecutors in the courts and prosecutorial offices to which they are appointed (Article 88, Paragraph 3 of the Law on HJPC BiH).

judges to another court can be made solely by HJPC (Article 17, Point 12, and Article 52 of the Law on HJPC BiH).

4.6.2.5. *Exemption of judges* – As a guarantee of judicial impartiality, procedural legislation applied in Bosnia and Herzegovina envisages several reasons for exemption of judges from proceedings. The Criminal Procedure Codes<sup>136</sup> stipulate identical grounds for exemption of judges: if the suspect or accused, his defence attorney, the Prosecutor, the injured party, his legal representative or power of attorney is his spouse or extramarital partner or direct blood relative to any degree whatsoever, and in a lateral line to the fourth degree, or relative by marriage to the second degree; if he is a guardian, ward, adoptive parent, adopted child, foster parent or foster child with respect to the suspect or accused, his defence attorney, the Prosecutor or the injured party; if he has participated in the same case as the preliminary proceeding judge or preliminary hearing judge or if he participated in the proceedings as prosecutor, defence attorney, his legal representative or power of attorney of the injured party or if he was heard as a witness or expert witness; if, in the same case, he participated in rendering a decision contested by a legal remedy; if circumstances exist that raise a reasonable suspicion as to his impartiality.

As it is evident, reasons for exemption are mainly related to the conflict of interests. Exemption may be requested by the judge him/herself, as well as by parties and their defence attorneys. Request for exemption of judges or of the President of the Court of Bosnia and Herzegovina and entity courts is decided upon at the court's general session,<sup>137</sup> while the exemption of

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<sup>136</sup>Article 29-34 of CPC BiH, Article 37-42 of CPC RS, Article 39-44 of CPC FBiH, Article 29-34 of CPC BD BiH.

<sup>137</sup>According to of CPC FBiH, general session or the Court Collegium.

judges of the Basic Court of Brčko District is decided by the President of the Basic Court; the exemption of presidents of the Basic Court and judges of the Appellate Court of Brčko District is decided by the President of the Appellate Court of Brčko District. Exemption of the President of the Appellate Court of Brčko District is decided at general session of that Court. If a judge who is, upon a final and valid decision, exempted from his/her trial, has already participated in the main trial, or if he/she had to exempt him/herself from his/her trial, that would represent a serious violation of provisions of the Criminal Procedure Code and the ground for appeal against the judgment made by that judge.<sup>138</sup>

It is evident that provisions on the exemption of judges are elaborated in detail in the Criminal Procedure Codes and that, as such, they provide guaranties for impartiality of judges. However, it would be good to consider the possibility of including into the exemption provisions the situation when a judge acts in the panel of three judges,<sup>139</sup> yet only in case of extension of custody during investigation.<sup>140</sup> Namely, for decision on custody, the Criminal Procedure Code of BiH prescribes both general and special conditions. The general condition is existence of grounded suspicion that a suspect has committed a criminal offence. When deciding as members of the panel of three judges, who, pursuant to the provisions of CPC BiH, CPC RS and CPC FBiH, are competent to decide on extension of custody during

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<sup>138</sup> Article 297, Points a and b of CPC BiH and of CPC BD BiH, Article 303, Points a and b of CPC RS, Article 312, Points a and b of CPC FBiH.

<sup>139</sup> Article 24, Paragraph 6 of CPC BiH, Article 24, Paragraph 5 of CPC RS, Article 25, Paragraph 6 of CPC FBiH.

<sup>140</sup> Article 135 of CPC BD BiH has resolved this situation so that pre-trial custody is prolonged by way of decision of preliminary hearing judge whereby this action is already included into the exemption provisions.

investigation,<sup>141</sup> judges must establish the existence of grounded suspicion that the suspect in question has committed a criminal offence. If, at a later stage of the same case, the judge who participated in the decision to extend custody<sup>142</sup> is appointed for the preliminary hearing judge to whom indictment is submitted for confirmation, that judge has no alternative but to confirm the indictment. Namely, when deciding on the indictment submitted by prosecutor, preliminary hearing judge has a duty to establish the existence of a grounded suspicion that the suspect has committed the criminal offence in question.<sup>143</sup> The text of the Criminal Procedure Code shows that the same degree of suspicion – “grounded suspicion” – is required for decision on custody and for decision on extension of custody of a suspect during investigation and for the confirmation of indictment. It is inevitable that in such cases judges possess previous knowledge on the evidence collected in the given case and that his/her impartiality can be questioned. The Law on Amendments to the Criminal Procedure Code of BiH<sup>144</sup> includes numerous changes that improve the CPC BiH and harmonise it with the standards set by the European Convention on Human Rights and Fundamental Freedoms and other international regulations, however, the amendments related to this issue have not been included.

4.6.2.6. *Control and protection* – HJPC ca hold judges accountable for their judicial performance. The Law on HJPC BiH has prescribed the existence of the Disciplinary Prosecutor’s

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<sup>141</sup>Article 135 of CPC BiH, Article 192, Paragraph 2 of CPC RS, Article 149, Paragraph 2 of CPC FBiH.

<sup>142</sup>This particularly relates to the case of extended pre-trial custody of suspects and when judge has voted for the extension of pre-trial custody.

<sup>143</sup>Article 228, Paragraph 2 of CPC BiH, Article 235, Paragraph 2 of CPC RS, Article 243, Paragraph 2 of CPC FBiH.

<sup>144</sup>Official Gazette of BiH, No. 58/08.

Office charged with control of conscientiousness of judges. The Disciplinary Prosecutor acts upon complaints, or at his/her own initiative, and is responsible for the assessment of legal validity of complaints, investigation of allegations against judges or prosecutors relating their breaches of duty and for initiating disciplinary procedure and representation of cases of disciplinary offences before its disciplinary panel.<sup>145</sup> Complaints may be submitted by any individual and in any form so that even anonymous complaints are taken into account, alongside allegations obtained by other means, such as articles published in newspaper articles.<sup>146</sup> If the three-member disciplinary panel of HJPC<sup>147</sup> establishes that a judge has committed a disciplinary offence,<sup>148</sup> they may pronounce one or more of the following disciplinary measures: a written warning which will not be made public; public reprimand; reduction in salary up to maximum 50 % for a period of up to one year; temporary or permanent reassignment to another court or prosecutorial office, demotion of a Court President to an ordinary judge or a Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor; and removal from office. There is possibility of submitting appeals against the decision of the first-instance disciplinary panel to the second-instance disciplinary panel, while, against the decision of the latter, appeal can be submitted to HJPC. The judge or prosecutor who is removed from office by the decision of HJPC can submit an appeal to the Court of Bosnia and Herzegovina.<sup>149</sup> During disciplinary proceedings, criminal proceedings or the proceedings with the purpose of removal, judges can be temporarily removed from office.<sup>150</sup> Decision of the second-instance disciplinary panel

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<sup>145</sup>Article 64, Paragraph 2 of the Law on HJPC BiH.

<sup>146</sup>Article 41 of the Rules of Procedure of HJPC BiH.

<sup>147</sup>There are the first and second-instance disciplinary commissions.

<sup>148</sup>Article 56 of the Law on HJPC BiH.

<sup>149</sup>Article 60 of the Law on HJPC BiH.

<sup>150</sup>Chapter VII of the Law on HJPC BiH.

can be challenged through submission of appeal to the Court of Bosnia and Herzegovina. What is of concern here is that the number of grounded accusations relating the work of judges and prosecutors, and, consequently, the number of disciplinary procedures that were initiated and of pronounced disciplinary measures was in increase in the period 2004 - 2007. It is, at the same time, encouraging that the number of received complaints in relation to the work of judges and prosecutors in 2007 was in decrease in comparison with the previous years and that the process of resolving those cases has been faster.<sup>151</sup>

4.6.2.7. *Incompatibility* – Just like the members of HJPC, judges of the courts in Bosnia and Herzegovina are not allowed to be members, or to perform any duty in the bodies of political parties, associations or foundations linked to political parties, while it is their duty to abstain from participation in the activities of political parties that are of public nature. Likewise, judges are prohibited from performing any other incompatible duty and are not permitted to be notaries, defence attorneys, or members of management or supervisory boards of public or private companies or other legal entities. Exceptionally, judges and prosecutors can be involved in academic, teaching or similar activities aimed at educating public and they can be rewarded for those activities. Also, judges may ask the opinion from HJPC whether their activities are compatible with their duty and with the provisions of the Law on HJPC BiH.<sup>152</sup> Provisions of incompatibility are very strictly stipulated in the Law on HJPC BiH and they add to the impartiality of judges, and – consequently - of courts in BiH.

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<sup>151</sup>Annual Report on the Work of HJPC BiH for 2007 can be found on the webpage of HJPC:

<http://www.hjpc.ba/intro/gizvjestaj/pdf/HJPCBiHGodisnjiIzvjestaj2007web.pdf>

<sup>152</sup>Chapter VIII of the Law on HJPC BiH.



4.6.2.8. *Right to random assignment of cases* – The Laws on Courts in Bosnia and Herzegovina do not regulate this right since it is regulated primarily by internal procedural rulebooks of courts and the HJPC's Rulebook. The Rules of Procedure of the Court of Bosnia and Herzegovina<sup>153</sup> prescribes that assignment of cases to panels of judges is done by computerised system established by the Case Management Chapter of the Registrar's Office for Divisions I and II, while in Division III, the method of assignment of cases to panels of judges/judges is done by the Court's Common Secretariat, as it is foreseen by the internal rules approved by the President of the Court. In entity courts, HJPC has invested enormous effort in introducing and developing a system of computerised case management (hereinafter: CCM). HJPC has adopted the Rulebook on Computerised Case Management<sup>154</sup> that prescribes that, in the courts which apply CCM, cases are assigned to judges by way of CCM. As of the end of 2007, CCM was fully or partially implemented in 19 courts, and HJPC has also recommended the introduction of CCM in all the courts in BiH by the end of 2008.<sup>155</sup>

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<sup>153</sup>(Official Gazette of BiH No. 82/05).

<sup>154</sup>This Rulebook can be found on the webpage of :

<http://www.hjpc.ba/docs/vstvdoks/?cid=3717,2,1>

<sup>155</sup>Annual Report on the Work of HJPC BiH for 2007 can be found on the webpage of HJPC:

<http://www.hjpc.ba/intro/gizvjestaj/pdf/HJPCBiHGodisnjiIzvjestaj2007web.pdf>

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#### 4.6.3. *Right to fair trial*

The Constitution of Bosnia and Herzegovina prescribes in Article II/3e the right to fair trial in criminal and civil cases as well as other rights related to criminal procedure. As for the fairness of court proceedings, it includes several procedural guarantees, such as: right to access to courts, public oral hearing conducted in an adversary procedure and pronouncement of judgment in reasonable time. Right to access to court is not explicitly envisaged by the European Convention, but it is incorporated in the provisions guarantying the right to fair trial.<sup>156</sup> However, it is not enough just to proclaim the right to access to court. Thus, if assistance of defence attorney is necessary for access to court to be truly ensured, the state is obliged to provide it.<sup>157</sup> Another problem is the immunity of individuals that can sometimes lead to violation of the right of access to court.<sup>158</sup>

Respect of the right to access to court must be provided also during the civil proceedings by limiting the arbitrariness of courts and judges in terms of suspension of proceedings. According to the Civil Procedure Code before the Court of BiH<sup>159</sup> and entity Civil Procedure Codes<sup>160</sup>, the court will, inter alia, suspend the proceedings in cases when it decides that preliminary issue is not in its jurisdiction, while it can decide on suspension of proceedings if decision on appeal cannot be taken before decision is taken in the procedure related to commercial offence or in

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<sup>156</sup>See *Golder v. United Kingdom*, ECHR, App. No. 4451/70 (1975).

<sup>157</sup>See *Airey v. Ireland*, ECHR, App. No. 6289/73 (1979), p. 26.

<sup>158</sup>See *Osman v. United Kingdom*, ECHR, App. No. 23452/94 (1998), and *Ashingdane v. United Kingdom* ECHR, App. No. 8225/78 (1985).

<sup>159</sup>Official Gazette of BiH Nos. 36/04 and 84/07.

<sup>160</sup>The Civil Procedure Code of RS was published in the Official Gazette of RS, Nos. 58/03, 85/03, 74/05 and 63/07, and the Civil Procedure Code of FBiH was published in the Official Gazette of FBiH, Nos. 53/03, 73/05 and 19/06.

criminal proceedings.<sup>161</sup> The Civil Procedure Code of Brčko District<sup>162</sup>, also envisages - in addition to the aforementioned reasons for suspension of the proceedings - the situation when decision on appeal depends on whether the criminal offence was committed, who is the perpetrator and whether he/she should be held accountable, and particularly when there is suspicion that a witness or an expert witness gives a false statement or presents a false identity document.<sup>163</sup> However, these laws prescribe also the method of continuation of suspended proceedings<sup>164</sup>, but it should be kept in mind that in case of unreasonably long suspension of proceedings, according to the Constitutional Court of BiH, there may be violation of the right stemming from Article 6, Paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms.<sup>165</sup> The Constitutional Court of BiH also decided that the violation of the right to fair trial, i.e. the right to access to court exists in case when courts in civil procedure suspend their proceedings due to extraordinary legal remedy induced in criminal procedure - i.e. request for repeated proceedings - that was completed with a final verdict.<sup>166</sup>

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<sup>161</sup>Article 315 Civil Procedure Code before the Court of Bosnia and Herzegovina, Article 154 Civil Procedure Code BD BiH, and Article 379 Civil Procedure Code RS and of Civil Procedure Code FBiH.

<sup>162</sup>Official Gazette of Brčko District, Nos. 5/00, 1/01, 6/02, and 11/05.

<sup>163</sup>Article 154, Civil Procedure Code Brčko District.

<sup>164</sup>Article 318, Paragraph 2 Civil Procedure Code before the Court of BiH, Article 156, Paragraph 2 Civil Procedure Code Brčko District, Article 381, Paragraph 2 Civil Procedure Code RS and FBiH.

<sup>165</sup>See Decision of the Constitutional Court of BiH No. U-32/02 of 24 October 2003 (Official Gazette of BiH, No. 6/ 04) and Decision on Admissibility and Merits of the Constitutional Court of BiH No. AP-1831/05 of 16 January 2007 (Official Gazette of BiH No. 34/07).

<sup>166</sup>See Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-70/05 of 22 April 2005, Paragraphs 22 to 27 (Official Gazette of BiH, No. 36/05).

One of the most important elements of the guarantee of fair trial is the application of adversary procedure, i.e. observance of the *audiatur et altera pars* principle. According to the Criminal Procedure Codes in BiH, the accused must be given an opportunity to have a say regarding all the facts and evidence favourable to him/her.<sup>167</sup> This principle is developed in a number of provisions. Preliminary hearing judge submits the indictment to the accused who is at large without delay, and if he/she is in custody within 24 hours from the confirmation of indictment.<sup>168</sup> Also, when appeals are made against the court decision, it must be submitted to the court in sufficient number of copies for the court, as well as for the accused and defence attorney to be able to prepare a response.<sup>169</sup> Once the court receives an appeal, its copy is submitted to the accused and defence attorney, who can submit - within eight days from the receipt of the appeal - their response to the appeal.<sup>170</sup> Failure to respect these provisions, i.e. failure to submit an appeal to the accused and his defence attorney so that their response could be prepared, would lead to serious violation of provisions of criminal procedure, since it would breach the right to defence. The principle of adversary procedure is envisaged also in the entity and Brčko District minor offence legislation.<sup>171</sup> The Civil Procedure Codes applied by the courts in Bosnia and Herzegovina also envisage the principle of adversary

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<sup>167</sup>Article 6, Paragraph 2 of CPC BiH, of CPC of Brčko District, of CPC RS, and of CPC FBiH.

<sup>168</sup>Article 228, Paragraph 5 of CPC BiH, Article 228, Paragraph 4 of CPC of Brčko District, Article 235, Paragraph 5 of CPC RS, and Article 243, Paragraph 4 of CPC FBiH.

<sup>169</sup>Article 301 of CPC BiH and of CPC of Brčko District, Article 307 of CPC RS, and Article 316 of CPC FBiH. Also, see Article 149 of CPC BiH and of CPC BD, Article 60 of CPC RS and Article 163 of CPC FBiH.

<sup>170</sup>Article 302 of CPC BiH and of CPC BD, Article 308 of CPC RS and Article 317 of CPC FBiH.

<sup>171</sup>Article 64 of the Law on Minor Offences of RS and FBiH, and Article 93, Paragraph 2 of the Law on Minor Offences of Brčko District.

procedure. These codes prescribe that each party is entitled to have a say on the motions made by the opposite party. It is also prescribed that courts have the jurisdiction to decide on motions to which the other party was not given the possibility to respond, but only when it is defined so by relevant codes. In the legislation of BiH entities, it is only when pronouncing injunctions as temporary measures of security and only in cases when the proponent of those measures provides grounds for belief that such measures are justified and urgent and that, if acting otherwise, the purpose of security measure would be lost. Thus, in the legislation of Brčko District it is done when there is risk of threat of unlawful damage or with the purpose of prevention of violence, or elimination of irreparable damage. In the Civil Procedure Code applied by the Court of BiH, it is done in cases of need to secure evidence, i.e. when there is risk for the security of evidence.<sup>172</sup> It is obvious that when injunctions, i.e. temporary security measures and measures of securing evidence are decided, the principle of urgency stands above the principle of adversary procedure, which is understandable, since if the court would act otherwise, the purpose of such measures, which are in line with law, temporary by nature and do not affect the outcome of the proceedings in relation to the merit of the case in question, would be lost.

#### *4.6.4. Reasonable time requirement*

Adoption of a court decision within reasonable time is one of the key elements of the right to fair trial. When assessing whether proceedings have been completed within reasonable

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<sup>172</sup>Articles 10 and 139 Civil Procedure Code before the Court of BiH, Articles 5 and 278 Civil Procedure Code RS and Civil Procedure Code FBiH, and Article 368 Civil Procedure Code Brčko District.

time, the following elements are taken into account: the complexity of case, the conduct of accused, i.e. of the party in the proceedings (whether he/she causes delays of the proceedings), as well as interests of the plaintiff to finish the proceedings as soon as possible. The speed of proceedings is particularly expected in criminal cases and in civil proceedings related to child custody, labour disputes, and those related to physical injuries and, generally, when speed is of essential importance, such as, e.g., cases involving persons infected by HIV by way of blood transfusion who have initiated the compensation of damages procedure.<sup>173</sup> One of the principles of CPCs in BiH is the principle that a suspect/accused is entitled to be brought before court within shortest reasonable time and that he/she will be tried without delay. These laws prescribe court's obligation to conduct proceedings without delay, and to prevent every violation of rights of involved parties.<sup>174</sup> This principle is developed in a number of provisions of the criminal procedure legislation. The civil procedure legislation also prescribes that it is the court's duty to conduct the proceedings without delay and with the minimum costs, and to prevent every possible violation of rights granted to involved parties.<sup>175</sup> The civil procedure codes enable the courts to act efficiently and timely given that, e.g. the first-instance proceedings consist of two hearings - a preparatory one, and another for the main hearing - and given that timeframe for submission of charges to defendant for his/her response as well as

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<sup>173</sup>See *X v. France*, ECHR, App. No. 18020/91 (1992), Paragraphs 47–49.

<sup>174</sup>Article 13, Paragraph 1 and 2 of CPC BiH, of CPC Brčko District, of CPC RS, and Article 14. Paragraphs 1 and 2 of CPC FBiH. of CPC FBiH gives a precise definition of time period related to the moment of confirmation of indictment and its relevant part reads as follows: "Suspect, i.e. accused is entitled to be brought, in the shortest possible time, to court and to be tried without delay and at the latest within one year from the day of confirmation of indictment."

<sup>175</sup>Article 15 Civil Procedure Code before the Court of BiH, Article 10 BD BiH, Civil Procedure Code RS and Civil Procedure Code FBiH.

for summoning the parties for main hearing, and since parties are obliged to bring to preparatory hearing their identity documents and objects they want to propose as evidence. Also, the law prescribes that court proposes to parties at preparatory hearing at the latest, if it deems it appropriate in view of the nature of dispute and other relevant circumstances, to resolve their dispute through mediation. For disrespect of procedural discipline, legislation on civil procedure envisages stringent fines for parties in dispute, their legal representatives, persons vested with power of attorney, implicated individuals, interpreters and expert witnesses, as well as third persons that obstruct the civil proceedings, both during hearing (e.g. audience), and outside the hearing (e.g. persons who consciously obstruct or prevent the application of provisions of the civil procedure code related to submission of summons and other communications).<sup>176</sup> Also, civil procedure legislation prescribes an obligation of urgent court action in civil cases related to labour relations and interference with one's property. The Family Law of FBiH<sup>177</sup> and the Family Law of Brčko District<sup>178</sup> also envisage that court will, particularly in determining deadlines and hearings, always pay special attention to the need of urgent resolution of disputes related to parent-children or marital relations for the purpose of protection of child's interests.<sup>179</sup> Although the Family Law of Republika Srpska<sup>180</sup> does not prescribe strictly the obligation of urgent

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<sup>176</sup>Articles 343-348 Civil Procedure Code before the Court of BiH, Articles 406-411 Civil Procedure Code RS and FBiH, Articles 58, 183, 190, 198, and 247-249 Civil Procedure Code BD. Civil Procedure Code BD do not prescribe the possibility of sanctioning individuals who deliberately obstruct or hinder the implementation of the delivery provisions of the Law on Civil Procedure.

<sup>177</sup>Official Gazette of FBiH, Nos. 35/05 and 41/05.

<sup>178</sup>Official Gazette of BD, No. 66/07.

<sup>179</sup>Article 245 of the Family Law of BD and Article 268 of the Family Law of FBiH.

<sup>180</sup>Official Gazette of RS, Nos. 54/02 and 41/08.

action, this law does prescribe that Republika Srpska should secure special protection for family, mother and child that is envisaged in internationally recognised documents on protection of human rights and fundamental freedoms, which, following the practice of the European Court for Human Rights, implies the obligation of urgent action in such disputes.<sup>181</sup> The aforementioned mediation procedure will help in resolving the problems related to the principle of trial within reasonable time. This procedure is conducted in line with provisions of the Law on Mediation Procedure in BiH<sup>182</sup> and involves parties and mediator, who is a member of the Association of Mediators in Bosnia and Herzegovina. In order to enable mediation, the Law on Referral of Mediation to the Association of Mediators was adopted as well.<sup>183</sup> This Law regulates the procedure of referral of mediation and decision on the association of citizens that conducts mediation in Bosnia and Herzegovina, in line with the Law on Mediation Procedure, as well as referral to relevant association of mediators. One of the purposes of mediation is to enable a speedy and efficient resolution of disputes, as well as to provide assistance to courts in dealing with backlog and, in the long run, the reduction of inflow of new cases that will ultimately reduce duration of trials before the courts in BiH.<sup>184</sup>

#### *4.6.5. Public nature of main trial, trial and judgment*

Each of the Criminal Procedure Codes applied in BiH prescribes that main trial is public and that only adults are

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<sup>181</sup>Article 3 of the Family Law of RS.

<sup>182</sup>Official Gazette of BiH, No. 37/04.

<sup>183</sup>Official Gazette of BiH, No. 52/05.

<sup>184</sup>See: [http://www.umbih.co.ba/bih/publikacije/Sud\\_i\\_medijacija\\_a.jpg](http://www.umbih.co.ba/bih/publikacije/Sud_i_medijacija_a.jpg)



allowed to attend it.<sup>185</sup> This is in line with the opinion of the Constitutional Court of BiH, since the public contributes to society's control of trial, serves general public interest and acts for the purpose of combating crime, advancing morality and social discipline of citizens.<sup>186</sup> These codes prescribe that courts can at any moment, from opening of hearing until the completion of main trial, either *ex officio* or at the proposal of parties (e.g. plaintiff and defendant) and their defence attorneys, yet always after their hearing, exclude the presence of public for entire main trial or one part thereof, if it is in the interest of state security, or if it is necessary in order to keep a secret, to maintain public order, or for the protection of moral in a democratic society, personal and private life of defendant, i.e. damaged party, or the protection of interests of minors or witnesses. Decision on exclusion of public must be reasoned and can be challenged only in an appeal against verdict. In case the public is excluded from main trial contrary to the provisions of criminal procedure legislation it would amount to major violation of provisions of criminal procedure and serve as the basis for appeal against the verdict.<sup>187</sup> The same principle is prescribed in the provisions of the civil procedure legislation applied in BiH. In the presence of parties and their defence attorneys, their legal representatives and persons vested with the power of attorney, the court publicly reads its decision and briefly presents the reason for the verdict. If

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<sup>185</sup>Article 234 of CPC BiH, Article 242 of CPC RS, Article 249 of CPC FBiH and Article 234 of CPC BD.

<sup>186</sup>Decision on Admissibility and Merits, AP-74/04 of 23 March 2005, Paragraph 25 (Official Gazette of BiH, No. 27/05). Although the Constitutional Court stated that, where provisions of the Criminal Procedure Code that had been valid before 2003 were applied, the same stance can be taken in relation to cases adjudicated pursuant to the Criminal Procedure Code adopted in 2003, because relevant provisions have not changed in the negative sense.

<sup>187</sup>Article 297, Point e of CPC BiH and of CPC BD, Article 303. Point d) of CPC RS, Article 312. Point e of CPC FBiH.

public was excluded from the main trial, the pronouncement of verdict will always be read at a public session, and “panel of judges decides whether and to what extent it will exclude public when reasons behind the verdict are stated.”<sup>188</sup> The Criminal Procedure Code prescribes that in case of criminal offences, the first instance verdict is adjudicated by the Criminal Division panel made of three judges, while criminal offences with the prescribed sentence is up to five years of imprisonment<sup>189</sup>, or where fine is the main sanction, are adjudicated by only one judge.<sup>190</sup> In the case of the latter, there is the issue of what the individual judge does when pronouncing verdict in the case he adjudicates himself when the public was excluded at the main trial, because the provisions of law do not envisage how to deal with such a situation. However, given that criminal procedure codes prescribe that public can be excluded in all cases irrespective of the gravity of the criminal offence involved and regardless of which sanction is prescribed (as required by Article 6, Paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms), it is obvious that there was an oversight made by the drafters of this legislation.<sup>191</sup>

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<sup>188</sup>Article 286, Points 2 and 4 of CPC BiH and of CPC BD, Article 292, Points 2 and 4 of CPC RS, Article 301, Points 2 and 4 of CPC FBiH.

<sup>189</sup>In the of CPC of BD up to 10 years, and the Law on Amendments to the Criminal Procedure Code of BiH, published in the Official Gazette of BiH, No. 58/08 also envisages that individual judges adjudicate the cases of criminal offences for which up to 10-year imprisonment is prescribed.

<sup>190</sup>Article 24 of CPC BiH, Article 23 of CPC BD, Article 24 of CPC RS, Article 25 of CPC FBiH.

<sup>191</sup>Although the Law on Amendments to the Criminal Procedure Code of BiH was adopted (Official Gazette of BiH, No. 58/08) envisaging certain modifications of Article 286 of CPC BiH, modifications with this effect were included.

#### *4.6.6. Guaranties granted to persons accused of criminal offences*

The European Court for Human Rights has established the criteria on which one can determine whether an indictment is „criminal” or not.<sup>192</sup> If national legislation classifies an indictment as criminal, Article 6 of ECHR is automatically applicable. However, this does not mean that the state can avoid the obligations that stem from Article 6, by simply deciding that some offences, according to national legislation, are not considered as criminal offences.<sup>193</sup> The same view was expressed by the Constitutional Court of BiH. Criminal indictment is an autonomous concept, i.e. if an offence is classified as minor offence in national legislation it can still raise the issue of criminal charges in the sense of Article 6, Paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms, although essential character of legislative scheme according to its nature is rather criminal than civil – in order to prevent the state from avoiding the obligation of securing a fair trial by simple classification of offence as minor in its legislation.<sup>194</sup> In addition to classification in national law, the nature of offence and severity of sanction also influence determination of an indictment as criminal indictment, rather than as minor offence indictment.<sup>195</sup>

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<sup>192</sup>These criteria were first established in the *Engel et al. v. The Netherlands* Case, ECHR, Apps. No. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (1974), and later in the Court’s practice.

<sup>193</sup>*Ibid*, p. 81.

<sup>194</sup>(Decision on Admissibility and Merits No. AP 2078/05 of 12 April 2006, Paragraph 25 (Official Gazette of BiH, No. 7/07).

<sup>195</sup>To determine the true character of a legislative scheme, the criminal courts must consider a number of factors, including in particular: a) is the goal or one of the goals of the relevant laws prevention or sanctioning of certain behaviour; b) if there is the goal of prevention or punishment, does the behaviour that needs to be prevented or sanctioned imply guilt (e.g. dishonesty or neglect);

The legislation of Bosnia and Herzegovina recognises two types of punishable acts. These are criminal offences and minor offences. Before the reform of minor offence courts was carried out in Bosnia and Herzegovina,<sup>196</sup> and before the adoption of new legislation in the area of minor offences, there were also commercial offences with the exception of Republika Srpska, which had prescribed, as early as in 1996, that commercial offences should be treated as minor offences,<sup>197</sup> while Brčko District prescribed it in its legislation in 2000.<sup>198</sup> With entry into force of the Law on Minor Offences of BiH, and the Law on Minor Offences of the Federation of Bosnia and Herzegovina,<sup>199</sup> commercial offences had not existed in the legislation of Bosnia and Herzegovina. While there is no doubt that criminal offences are, in line with international standards, subject to criminal charges, before the reform of the minor offence system, it was not the case with minor offences in BiH. Namely, given that minor offences are a special concept that is partly criminal and partly administrative in nature, minor offence courts had the jurisdiction over minor offences but were not part of regular judicial system of Bosnia and Herzegovina, although they were considered as administrative bodies and part of administrative branch of authorities. In addition to the first-instance minor

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and c) what is the gravity of sanction that can be imposed for sanctioned offence. See (Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-437/04 of 23 March 2005, Paragraph 18 (Official Gazette of BiH, No. 32/05).

<sup>196</sup>See the Project of reorganization of Minor Offence Courts in BiH – Final Report of HJPC BiH – June 2007.

<sup>197</sup>Article 20 of the Law on Amendments to the Law on Minor Offences of RS, published in the Official Gazette of RS, No. 21/96 and was put out of force with entry into force of the new Law on Minor Offences of RS published in the Official Gazette of RS, No. 34/06.

<sup>198</sup>Article 155 of the Law on Minor Offences of BD. (Official Gazette of BD, Nos. 8/00, 1/01, 6/02 and 37/05).

<sup>199</sup>Official Gazette of BiH, No. 41/07 and Official Gazette of FBiH, No. 31/06.

offence courts that adjudicated the customs and taxation cases, as well as foreign currency operations-related cases, there were numerous minor offence commissions attached to different ministries in the Federation of BiH,<sup>200</sup> and Republika Srpska<sup>201</sup> with jurisdiction over minor offences. At the second-instance judicial body, the Minor Offence Panel of FBiH adjudicated the appeals lodged by minor offence panels in the Federation of BiH; in Republika Srpska, district courts decided upon appeals lodged by the Tax Administration of Republika Srpska, while the second-instance commissions, or else the Customs Administration of Republika Srpska and the Inspectorate of Republika Srpska dealt with cases related to foreign currency operations upon appeals lodged in relation to customs and foreign currency operations-related cases. Commercial offences were adjudicated by minor offence courts of Republika Srpska following the procedure prescribed by Law on Commercial Offences of Republika Srpska.<sup>202</sup> In the Federation of BiH, these cases were solved by municipal courts located in the seats of cantonal courts.<sup>203</sup> Commercial offences were relatively minor offences in the field of economy and finances that included cases, such as failure of companies to meet certain obligations, e.g. company registration and payments of liabilities. However, given the types of cases adjudicated by minor offence courts and the number of sanctions pronounced – including imprisonment for certain type of

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<sup>200</sup>The first instance commissions in FBiH were established in numerous ministries and institutions, such as Tax Administration, Ministry of Trade, Ministry of Transport and Communications, etc.

<sup>201</sup>The first instance commissions in Republika Srpska were established in the Tax Administration of RS, Customs Administration of RS and the RS Foreign Currency Operations Inspectorate.

<sup>202</sup>Official Gazette of RS, No. 12/94.

<sup>203</sup>Official Gazette of FBiH, No. 6/95. Economic Offences Act of FBiH was put out of force on 1 December 2006, when the Law on Minor Offences of the Federation of BiH.

offences – it became evident that these courts perform a judicial function. The European Convention for the Protection of Human Rights and Fundamental Freedoms clearly requires for persons accused of such minor offences to have access to the first-instance and appellate courts. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms obliges the courts which perform judicial function to be “independent and impartial”, which led to the requirement to include these bodies into the judicial system of Bosnia and Herzegovina. This reorganised system of adjudication in minor offence cases implied the closing of 122 first-instance and second-instance minor offence courts and all minor offence commissions in the Federation of BiH and Republika Srpska. It also imposed an obligation to establish minor offence divisions in municipal and basic courts and to transfer second-instance competence to cantonal and district courts. The Law on Minor Offences of BiH prescribes that real jurisdiction over minor offences, as prescribed by laws and other regulations of Bosnia and Herzegovina, is on the existing courts in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District. New minor offence laws envisage the application of numerous provisions of Criminal Procedure Codes<sup>204</sup>. Thus organised system of judiciary in the domain of minor offences secures the adjudication of minor offence cases in a more efficient way and the use of a completely new procedure that is in line with all the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and jurisprudence of the European Court for Human Rights. District Brčko has merged its three minor offence courts with its Basic Court as early as in 2001<sup>205</sup>.

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<sup>204</sup>Article 16 of the Law on Minor Offences of BiH, Article 8 of the Law on Minor Offences of RS and Article 9 of the Law on Minor Offences of FBiH.

<sup>205</sup>See the Law on Minor Offences of Brčko District.

4.6.6.1. *Presumption of innocence* – The fundamental principles of the Criminal Procedure Code are the presumption of innocence and doubt that is favourable for the accused.<sup>206</sup> The consequence of these two principles is that the accused are relieved from the burden of proof. The burden of proof rests fully on prosecution, while court is obliged, if it establishes guilt of the accused with reasonable certainty, to act in the way that is most favourable for the accused. Due to the application of *in dubio pro reo* principle, facts that incriminate the accused must be established with certainty, which is not the case with the facts favourable for the accused which are considered to have been established even when they are only plausible, i.e. when there is a certain doubt regarding their existence.<sup>207</sup> The Criminal Procedure Codes in force in BiH are aligned with international standards since they stipulate that everyone is considered innocent until final verdict which establishes his/her guilt. However, in order to avoid any possibility of objection, it would be desirable to formulate more precisely the principle of presumption of innocence in order to determine that it is not only courts and prosecutors that are obliged to respect this principle, but also all public bodies, media, citizens' associations, public figures and other persons whose duty is not to violate in their public statements the rights of suspects/accused, and that sanctions pronounced need to be foreseen for such violations.<sup>208</sup>

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<sup>206</sup>Article 3 of CPC BiH, of CPC RS, of CPC FBiH and of CPC BD.

<sup>207</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP 1603/05 of 21 December 2006, Paragraph 41 (Official Gazette of BiH No. 34/07).

<sup>208</sup>Adopted Criminal Procedure Code of Serbia that was expected to be applied as of 1 January 2009 in Article 3 prescribes the obligation of presumption of innocence, but not sanction for failure to respect this obligation. This Code was published in the Official Gazette of the Republic of Serbia, Nos. 46/06 and 49/07. However, the National Assembly of the Republic of Serbia at its extraordinary session, held on 30 December 2008, adopted amendments to this Code postponing its application until 31 December 2010. See:

4.6.6.2. *Information on indictment provided without delay and in a language understandable for the accused* – Persons deprived of liberty must be informed promptly in his/her mother tongue or the language he/she understands on the reasons for deprivation of liberty, while suspects must be informed at the first interview about the offence he/she is suspected of and about the grounds for suspicion thereof.<sup>209</sup> Although laws prescribe that persons deprived of liberty must be promptly informed about the reasons for deprivations of liberty, the Constitution of BiH has taken the position that there is no violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms if that information is not given promptly, i.e. is that information does not have to be explicitly mentioned in the arrest order, but that a suspect must be informed about it in the shortest possible time after his/her deprivation of liberty.<sup>210</sup> When prosecutor issues an order for investigation, this order has to contain references, inter alia, to the description of the offence with legal characteristics of the criminal offence in question, legal title of the criminal offence, circumstances that corroborate grounds for suspicion upon which investigation is ordered, as well as the existing evidence.<sup>211</sup> Indictment is submitted to „accused who is not detained with the indictment without delay, and if the accused is already detained, the preliminary proceeding judge will present him with the indictment within 24 hours after

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<http://www.parlament.sr.gov.yu/content/lat/akta/Lawi.asp>. See, also, *Allenet de Ribemont v. France*, ECHR, App. No. 15175/89 (1995).

<sup>209</sup>Articles 5 and 6 of CPC BiH, of CPC BD, of CPC RS and of CPC FBiH.

<sup>210</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-86/05 of 13 October 2005, p. 11, Paragraph 29 (Official Gazette of BiH, No. 17/06).

<sup>211</sup>Article 216, Paragraph 2 of CPC BiH, of CPC BD, of CPC RS and Article 231, Paragraph 2 of CPC FBiH.



the confirmation of the indictment.”<sup>212</sup> Indictment must contain, inter alia, full name of the suspect and his/her personal data; a description of the act with an indication of legal elements that amount to the criminal offense, the time and place of the criminal offense, the object on which and the means with which the criminal offense was committed, and other circumstances necessary for the criminal offense to be defined as precisely as possible; the legal name of the criminal offense accompanied by the relevant provisions of the Criminal Code; proposal of evidence to be presented, including list of names of witnesses and expert witnesses, documents to be read and objects that serve as evidence; the results of the investigation; material supporting the charges in the indictment.<sup>213</sup>

#### *4.6.6.3. Sufficient time and opportunity to prepare defence*

– One of the fundamental principles of criminal procedure legislation is obligation to provide to the suspect /accused with sufficient time to prepare his/her defence<sup>214</sup>. CPCs do not prescribe how much time is sufficient for the suspect/accused to prepare defence, so that they leave it to courts to decide it for each specific case and at the request of defence attorney, which is in full compliance of standards and practice of the European Commission for Human Rights and the Constitutional Court of BiH.<sup>215</sup> If prosecutor changes indictment at the main trial, the trial may be postponed for the preparation of defence.<sup>216</sup> If the accused

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<sup>212</sup>Article 228, Paragraph 4 of CPC BiH, of CPC BD, Article 235, Paragraph 4 of CPC RS and Article 243, Paragraph 4 of CPC FBiH.

<sup>213</sup>Article 227 of CPC BiH, of CPC BD, Article 234 of CPC RS and Article 242 of CPC FBiH.

<sup>214</sup>Article 7, Paragraph 3 of CPC BiH, of CPC BD, of CPC RS and of CPC FBiH.

<sup>215</sup>See, Decision of the European Human Rights Commission X and U v. Austria, Application No. 7909/77, Decisions and Reports 15, p. 162 (1979).

<sup>216</sup>Article 275 of CPC BiH, of CPC BD, Article 282 of CPC RS and Article 290 of CPC FBiH.

and his defence attorney state that they do not need additional time to prepare defence, there is no violation of rights stemming from Article 6.3/b of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>217</sup> If court does not give enough time for preparation of defence, it can amount to the violation of provisions of criminal procedure,<sup>218</sup> given that the right to defence is one of the fundamental rights of the suspect/accused, which per se leads to the abolition of the first-instance verdict. In relation to the second-instance procedure, CPCs prescribe that provisions related to the main trial in first-instance procedure are equally applied on the trial in second-instance court.<sup>219</sup> Likewise, it is envisaged that courts are obliged to submit a copy of appeal to defendant and to defence attorney who may submit objection to the appeal within eight days from its receipt, whereby additional time for preparation of defence is provided.<sup>220</sup>

*4.6.6.4. Prohibition of trial in absentia and the right to defence* – CPCs explicitly prescribe that the accused cannot be tried in absence.<sup>221</sup> As one of the fundamental principles of CPC, the suspect/accused is guaranteed the right to defence,<sup>222</sup> which envisages that he/she is entitled to defend him/herself, or with

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<sup>217</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-639/03 of 14 October 2004, Paragraph 30 (Official Gazette of BiH, No. 8/05).

<sup>218</sup>Article 297, Paragraph 1, Point d of CPC BiH, of CPC BD, Article 303, Paragraph 1, Point g of CPC RS and Article 312, Paragraph 1, Point d of CPC FBiH.

<sup>219</sup>Article 317, Paragraph 1 of CPC BiH, of CPC BD, Article 323, Paragraph 1 of CPC RS and Article 332, Paragraph 1 of CPC FBiH.

<sup>220</sup>Article 302 of CPC BiH, of CPC BD, Article 308 of CPC RS and Article 317 of CPC FBiH.

<sup>221</sup>Article 247 of CPC BiH and of CPC BD, Article 254 of CPC RS and Article 262 of CPC FBiH.

<sup>222</sup>Article 7 of CPC BiH, RS, FBiH and BD.

professional assistance of an attorney of his own choosing. The goal of this legally guaranteed right to defence is to provide to the suspect/accused with an opportunity to have legal assistance throughout the proceedings. The suspect/accused may waive the right to „adequate legal assistance“ during the proceedings,<sup>223</sup> and the right to defend him/herself is not an absolute right and may be limited.<sup>224</sup> CPCs prescribe that the suspect/accused must have a defence attorney already at the first hearing, if he/she is deaf or mute, or if he/she is suspected of the criminal offence with the prescribed sanction of long-term imprisonment, while it must be done promptly after custody is ordered, during custody, as well as after the issuance of indictment for criminal offences punishable with ten years of imprisonment, or a more stringent punishment, and, finally, upon submission of indictment.<sup>225</sup> The CPC of BiH prescribes that the suspect/accused must have defence attorney already "when decision on proposed custody is taken", which only additionally strengthens the principle of the right to defence. In these cases, it is a mandatory defence and the suspect/accused cannot waive the right to “adequate legal assistance.” If the suspect/accused does not hire a defence attorney, or if it is not done by his/her legal representative, spouse or out-of-wedlock partner, custodian, adoptee, sister or foster parent, defence attorney must be appointed by court. Court will appoint an ex officio defence attorney to the suspect/accused also if it establishes that it is necessary in the interest of justice due to the complexity of case, or because of mental state of the suspect/accused. In case of mandatory defence, court first summons the suspect/accused to select a defence attorney from

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<sup>223</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-502/04 of 30 November 2004, Paragraph 21 (Official Gazette of BiH No. 19/05)

<sup>224</sup>See *Croissant v. Germany*, ECHR, App. No. 13611/88 (1992).

<sup>225</sup>Article 45 of CPC BiH and BD, Article 53 of CPC RS, Article 59 of CPC FBiH.

the presented official list. If the suspect/accused does not select a defence attorney from that list, court will appoint one on its own. Court will appoint defence attorney also when the suspect/accused claims the so-called “poor person’s right.” CPCs prescribes that in case there are no conditions for mandatory defence, and where the procedure relates to criminal offence punishable by three-year imprisonment or a more stringent sanction, or when the interests of justice and fairness require it, irrespective of the prescribed sanction, court will provide the suspect/accused, at his/her request, a defence attorney free-of-charge, if he/she cannot bear the costs of defence due to his/her financial situation.<sup>226</sup> Instead of the ex officio defence attorney, the suspect/accused can hire another defence attorney; in that case the ex officio defence attorney will be dismissed from duty. Also, depending on the stage of criminal proceedings, preliminary hearing judge, or preliminary hearing panel of judges, may, at the request of suspect/accused, or with his/her consent, dismiss the defence attorney who does not perform his/her duty conscientiously. In this case, court will replace the dismissed defence attorney with another and the dismissal will promptly be notified to the bar association the dismissed defence attorney is member of.<sup>227</sup> In the course of investigation, defence attorney is entitled to inspect the evidence favourable to his client. This right may be denied to defence attorney if these are the evidence and objects whose disclosure may jeopardise the goals of investigation. However, when the suspect/accused is in custody,

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<sup>226</sup>Article 46 of CPC BiH and BD, Article 54 of CPC RS and Article 60 of CPC FBiH.

<sup>227</sup>This is in line with the jurisprudence of the European Court of Human Rights that requires from authorities to ensure not only defence, but effective defence as well, and if assigned defence attorney does not offer effective defence, authorities are required to intervene. See *Kamasinski v. Austria*, ECHR, App. No. 9783/82 (1989) and *Artico v. Italy*, ECHR, App. No. 6694/74 (1980).

prosecutor will submit to the preliminary hearing judge the evidence in order to have them submitted to defence attorney. When indictment is issued, defence attorney of the suspect/accused is entitled to inspect the file and the evidence contained therein. Preliminary hearing judge, trial judge, i.e. panel of judges, as well as prosecutor are obliged to submit to defence attorney all pieces of evidence or any information or facts that can serve as evidence at trial.<sup>228</sup> These provisions of CPC are not clear enough. Namely, the legal text implies that the suspect/accused does not have the right to inspect the file and evidence which undoubtedly limits his/her right to defence. Likewise, some provisions of relevant laws that relate to the duty of preliminary proceedings judge and prosecutor in the segment of the procedure related to investigation and their duty to present to defence attorney each new piece of evidence, information or facts that may serve as evidence at trial are in contravention to the provision that grants defence attorney the right to consider the file and collected objects that are favourable to his/her client. This right of defence attorney may be denied if these are the evidence and objects whose disclosure would jeopardise the goals of investigation. The last adopted amendments to CPC of BiH have resolved these dilemmas. Namely, it is envisaged that the suspect/accused is entitled to have, after issuance of indictment, an insight into the file and evidence and that court and prosecutor, when they obtain new evidence or any other information or facts that may serve as evidence at the trial, will provide an insight into those evidence to defence attorney and the suspect/accuse. These new amendments stipulate that this duty relates to evidence that is obtained in the course of the trial.<sup>229</sup> There are still dilemmas relating the entity CPCs and the CPC of

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<sup>228</sup>Article 47 of CPC BiH and BD, Article 55 of CPC RS and Article 61 of CPC FBiH.

<sup>229</sup>Official Gazette of BiH, No. 58/08.

Brčko District. As for communication between the suspect/accused and his/her defence attorney, CPC prescribes that the suspect/accused, while in custody, is entitled to promptly communicate with his/her defence attorney, either orally or in writing. During that communications, the suspect/accused and his/her defence attorney may be observed but their conversation cannot be listened to. The way of communication of the suspect/accused with defence attorney does not represent a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>230</sup>

4.6.6.5. *Right to summon and examine witnesses* – CPCs prescribe that the accused and his/her defence attorney is entitled to summon witnesses and to present evidence.<sup>231</sup> The accused and his/her defence attorney are allowed to examine witnesses, be they their own witnesses (direct examinations), or those summoned by prosecutor (cross examination), and even those summoned by court.<sup>232</sup> When presenting their defence, the accused must have the opportunity to summon and examine witnesses he/she considers relevant for his/her defence. However, according to the provisions of CPCs, the issue of summoning and examining witnesses by the accused and his/her defence attorney during investigation is not regulated and this can lead to the problem relating the right to defence and to the principle of

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<sup>230</sup>Decision of the Constitutional Court of BiH, No. U-2/02 of 27 June 2003, Paragraph 29 (Official Gazette of BiH, No. 41/03). Although the Constitutional Court stated that, where provisions of the Criminal Procedure Code that had been valid before 2003 were applied, the same stance can be taken in relation to cases adjudicated pursuant to the Criminal Procedure Code adopted in 2003, because relevant provisions have not changed in the negative sense.

<sup>231</sup>Article 261 of CPC BiH and of CPC BD, Article 268 of CPC RS and Article 276 of CPC FBiH.

<sup>232</sup>Article 262 of CPC BiH and of CPC BD, Article 269 of CPC RS and Article 277 of CPC FBiH.

equality of arms. The rule is that witnesses make their statements directly before the court, yet CPCs also prescribe the cases when it is possible to read minutes of statements of witnesses made at the main trial, if they are deceased, if they cannot be found, or if their appearance before the court is impossible or made significantly difficult due to relevant reasons.<sup>233</sup> The right to summon and examine witnesses is not an absolute right, however. International standards allow a limitation of this right by way of allowing to certain persons, e.g. family members of the suspect/accused, to refuse to testify. Such exemptions are envisaged in the criminal procedure laws that recognise two types of exemptions to the effect that there are persons who cannot be heard as witnesses and those who can refuse to testify. The former<sup>234</sup> includes persons whose statement would violate their duty to keep a state, military or official secret, as long as the relevant body does not relieve the witness of that duty; the duty of defence attorney of the suspect/accused in relation to the facts he has learnt in the capacity of defence attorney; the duty of persons whose statements would violate professional secret duty (a priest to whom confession is made, a journalist - for the purpose of protecting sources of information, defence attorney, notary, medical doctor, mid-wife, etc.), unless he/she is relieved from this duty by special regulations or statement made by the person for whose benefit the secret is kept; minor, who is incapable, in view of his/her age and mental development, of understanding the importance of his/her right not to testify. The CPC of BiH contains an explicit provision according to which, in case of examination of persons who cannot be examined as witnesses, court decision cannot be based on such a testimony. The second

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<sup>233</sup>Article 273 of CPC BiH and of CPC BD, Article 280 of CPC RS and Article 288 of CPC FBiH.

<sup>234</sup>Article 82 of CPC BiH and of CPC BD, Article 146 of CPC RS and Article 96 of CPC FBiH.

group of persons, i.e. those that can refuse to testify,<sup>235</sup> includes spouses, out-of-wedlock partners of the suspect/accused, parents or children, adoptive parent or adoptee of suspect/accused. It should be noted that the CPC of Brčko District has expanded the list of such persons. Also, CPCs envisage the possibility of the right of witnesses not to answer to some questions, if truthful answer would expose them to criminal prosecution. In this case, witnesses may answer such questions if prosecutor grants them immunity from criminal prosecution. When such a testimony is made, witnesses will be warned in advanced that they are obliged to tell the truth, that they cannot avoid answering any questions and that false testimony amounts to criminal offence,<sup>236</sup> as it is prescribed by criminal legislation<sup>237</sup>.

The CPCs do not envisage the measures of protection of witnesses, but rather prescribe that the status of protected witness in judicial procedure are subject to a *lex specialis*<sup>238</sup>. This special law referred to in the CPC of BiH and the CPC of the Federation of BiH is the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, while the CPC of Republika Srpska that regulates this matter is the Law on Protection of Witnesses in Criminal Procedure.<sup>239</sup> These laws prescribe that the measures of protection may be pronounced only with the consent of witnesses themselves and envisage the following three categories of witnesses entitled to the measures of protection: witnesses under

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<sup>235</sup>Article 83 of CPC BiH and of CPC BD, Article 147 of CPC RS and Article 97 of CPC FBiH.

<sup>236</sup>Article 86 of CPC BiH and of CPC BD, Article 150 of CPC RS and Article 100 of CPC FBiH.

<sup>237</sup>Article 235 CC BiH, Article 342 CC BD, Article 365 CC RS and Article 348 CC FBiH.

<sup>238</sup>Article 91 of CPC BiH and of CPC BD, Article 155 of CPC RS and Article 105 of CPC FBiH.

<sup>239</sup>Official Gazette of, BiH Nos. 3/03, 21/03,61/04 and 55/05, Official Gazette of FBiH, Nos. 36/03 and Official Gazette of RS, Nos. 48/03 and 102/04 .



threat, vulnerable witnesses and protected witnesses. Witnesses under threat are those witnesses whose personal security, or the security of their families is exposed to threat due to their participation in the proceedings, as a result of threat, intimidation or similar acts related to their testimonies, and according to the law in application at the Court of BiH, it includes the witnesses who consider that there is a reasonable ground for concern that such a threat would probably result from their testimonies. Vulnerable witnesses are those witnesses who are seriously physically or psychologically traumatised by the circumstance of criminal offence, or who suffer from serious psychological disturbances that make them extremely sensitive, i.e. children and minors. The law prescribes that vulnerable witnesses and witnesses under threat can be subject to measures of protection in the form of protection of personal data by way of granting a pseudonym to witness, or making testimony from special premises, i.e. behind a partition screen, or using electronic devices for voice and image modification or by transmitting witness's voice and image. Protected witnesses are those witnesses who, at the proposal of parties or defence attorneys, and in exceptional circumstances, when there is an evident threat for their personal security to them or to their families, and when this threat is so serious that there are justified reasons to believe that there is no way to reduce the threat once the witness has testified, or when it is probable that the threat would be increased due to the testimony, are examined by the panel of three judges of the competent court. The testimony made by a protected witness is read in the courtroom during main trial so that the witness does not have to appear in the courtroom before the parties and defence attorney during the main trial. This measure represents the highest degree of witness protection, given that identity or details of identity and testimony of witnesses under threat and vulnerable witnesses must be disclosed to the accused and his/her defence attorney at the time of witness' testimony at the main trial at the latest so that they can prepare defence. In order to avoid, or

at least to reduce the risk of influencing the right to defence of the accused, the law envisages that protected witnesses may be additionally examined at the proposal of the accused and defence attorney, and even ex officio. It is important to emphasise that the law applied by the Court of BiH prescribes that the Court cannot make their sentence of the accused only or to the decisive extent on the basis of the testimony of protected witnesses; instead, the Court should take into account other evidence when making such a verdict. This provision is in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with the practice of the Constitutional Court of BiH.<sup>240</sup> However, it is evident that the laws on protection of witnesses under threat and vulnerable witnesses contain several categories of witnesses who can be subject to one or more measures of protection, and that the relevant provision of CPCs should contain not only the term “protected witness”, but also the terms “vulnerable witness” and “witness under threat”, since that would provide for the proper understanding of the scope of measures of protection available to citizens who are heard, i.e. examined as witnesses during criminal proceedings. Likewise, a special concern needs to be expressed in relation to the practice of entity courts that, due to their material-technical resources, in most of the cases decide to apply the highest measures of protection to witnesses, i.e. their examination in the capacity of protected witnesses. It seems that because of such practice the entity laws on protection of witnesses under threat and vulnerable witnesses have not undergone the amendments as it was the case with the law in application at the Court of BiH. Due to the aforementioned facts, and because of the level of material-technical equipment, the Court of BiH is able to secure all measures of protection

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<sup>240</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-506/04 of 23 September 2005, Paragraph 30 (Official Gazette of BiH, No. 80/05).

envisaged for vulnerable witnesses and witnesses under threat. Thus, in the procedures before the Court of BiH there was not a case of use of the highest degree of protection of witnesses in recent years– i.e. protected witnesses whose statement was read at the main trial. In addition to the protection envisaged by the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, some measures of protection of witnesses in the proceedings before the Court of BiH are envisaged under certain conditions by the Law on Witness Protection Program in Bosnia and Herzegovina.<sup>241</sup> When attempts were made to apply the provisions of this Law, a number of drawbacks and unclear solutions were noticed, which have proven to be a limiting factor in the application of this Law, so that a new Draft Law on Witness Protection Program in Bosnia and Herzegovina was proposed to the Parliamentary Assembly of BiH.<sup>242</sup> This legal draft envisages the measures of protection to be applied in the procedures before all the courts in Bosnia and Herzegovina, and not only before the Court of BiH, as it is the case with the law that is currently in force.

4.6.6.6. *Right to interpreter* – One of the principles of CPCs in BiH is the principle of language and alphabet<sup>243</sup>. This principle prescribes that parties, witnesses and other participants in proceedings have the right to use their own language. If a person does not understand one of the official languages, oral interpretation of the proceedings will be ensured to him/her, alongside written translation of all the evidentiary material presented during the procedure. The duty of prosecutor and of court is to instruct the suspect/accused about his/her right to

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<sup>241</sup>Official Gazette of BiH, No. 29/04.

<sup>242</sup>Proposal of this Law can be seen on the webpage of the Parliamentary Assembly of Bosnia and Herzegovina [www.parlament.ba](http://www.parlament.ba)

<sup>243</sup>Article 8 of CPC BiH, of CPC RS, and of CPC BD, and Articles 8 and 9 of CPC FBiH.

translation. However, the latter can waive their right to translation if he/she knows the language of proceedings. In case of need for translation, it is done by official court translator/interpreter. Likewise, if a witness is deaf or mute, hearing is done with the help of an interpreter with questions asked in writing, and if the witness is only mute, he/she will be asked to answer in writing. If the procedure cannot be conducted in this way, a person capable to communicate and understand the witness will be provided. If interpreter did not take an oath at an earlier stage, he/she will do so by stating that he/she will faithfully translate questions and answers asked and answered during the proceedings.<sup>244</sup> If the accused, defence attorney or damaged party is denied the right to use his/her own language at the main trial, this would amount to major violation of criminal procedure.<sup>245</sup>

4.6.6.7. *Prohibition of self-incrimination* – The suspect/accused has the explicitly recognised right to defend him/herself by keeping silent, because CPCs prescribe that a person deprived of liberty must, prior to any examination, be instructed that he/she is not obliged to testify, and that, at the first examination, he/she must be instructed that he/she is not bound to make the statement related to his/her defence, or to answer to the questions ask at the proceedings.<sup>246</sup> CPCs prohibit the use of force, threat, manipulation, narcotics or other means that may influence the freedom of decision and expression of will in the

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<sup>244</sup>Article 87 of CPC BiH and BD, Article 151 of CPC RS and Article 101 of CPC FBiH.

<sup>245</sup>Article 297, Paragraph 1, Point c of CPC BiH and BD, Article 303 Paragraph 1, Point v of CPC RS and Article 312, Paragraph 1, Point c of CPC FBiH.

<sup>246</sup>Article 5 and 6 of CPC BiH, of CPC BD, of CPC RS, and of CPC FBiH. The formulation „before the authorized law enforcement agency official proceeds with the gathering of information from the suspect“ are contained in of CPC RS and of CPC FBiH, while of CPC BiH and of CPC BD does not have such a formulation, but it is evident that the meaning of these provisions is identical.

course making testimony or admission of guilt. Court decision can not be based on the statement obtained in the manner that is subject to these prohibitions.<sup>247</sup> Likewise, a suspect/accused will be given an opportunity to make a statement relating all facts and self-incriminating evidence and to present all the fact and evidence in his/her favour. In the jurisprudence of BiH, primarily that of the Court of BiH, there is a formulation “to hear the accused in the capacity of witness.” It is important to say that the Constitutional Court of BiH has taken the position that the Criminal Procedure Code of FBiH does not envisage the possibility of hearing the accused as a witness in his/her own criminal case and that there are no explicit provisions on how such evidence may be presented to the court. Therefore, statement of the accused, following the instruction of his/her defence attorney, who decides, without and force used, to make a statement at the main trial should be considered as his/her waiver of the right to defend him/herself by keeping silent and should, instead, be considered as his/her defence. The accused should not be warned that he/she must testify truthfully, and that he/she may be criminally prosecuted for making false statements, and that he/she may be asked to take an oath since it would be in essential contravention to the right of the accused not to self-incriminate him/herself.<sup>248</sup> Neither the Criminal Procedure Code of Republika Srpska, nor the Criminal Procedure Code of Brčko District envisages the possibility of hearing the accused as witness. Before the latest amendments, CPC BiH did not contain such provisions. The latest amendments of CPC BiH prescribe that judges, i.e. president of the panel of judges, will instruct the accused that he/she may make a statement during evidentiary procedure in the

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<sup>247</sup>Article 77 of CPC BiH, of CPC BD, Article 141 of CPC RS and Article 91 of CPC FBiH.

<sup>248</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-2632/05 of 20 September 2006, Paragraph 25 (Official Gazette of BiH, No. 9/07)

capacity of a witness and, in case he/she decides to make such a statement, he/she will be subject to direct and cross-examination, i.e. warned of the implications of Article 86 of the Criminal Procedure Code of BiH that stipulates that it is his/her duty to tell the truth and that he/she cannot withhold any fact and that making false statement amounts to criminal offence. It is also prescribed that in such cases the accused acting as witness does not take an oath and that Court will enable the accused to consult his/her defence attorney relating this right, whereas, if he/she does not have one, the court will carefully establish whether he/she needs a defence attorney.

4.6.6.8. *Right to appeal* – There is no exception to the rule regarding the right to the second-instant procedure, i.e. the right to appeal against the first-instance court decisions. According to CPC of District, Republika Srpska and the Federation of BiH, under certain conditions, the three-instance procedure is also allowed. This is possible when the court that adjudicates as the second-instance court changes the first-instance decision by which the accused was acquitted of charges and pronounces the accused guilty.<sup>249</sup> The Criminal Procedure Code of BiH did not envisage this possibility before the latest amendment that now provides for the possibility of the third-instance procedure.<sup>250</sup> However, although CPC BiH did not envisage this possibility, the Constitutional Court of BiH took the position that there is no violation of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 2 of Protocol No. 7 to the European Convention for

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<sup>249</sup>Article 317 of CPC BD, Article 324 of CPC RS and Article 333 of CPC FBiH.

<sup>250</sup>Official Gazette of BiH, No. 58/08.

criminal offences stipulated in the Criminal Code of BiH<sup>251</sup>. In addition to appeal against court decision as regular legal remedy, sentenced persons are entitled to an extraordinary legal remedy: repeated criminal proceedings,<sup>252</sup> and with the draft of amendments to CPC BiH proposed in February 2008, the renewal of possibility to make a request for protection of legality is introduced as another extraordinary legal remedy. However, this amendment to CPC BiH was rejected.<sup>253</sup>

*4.6.6.9. Right to compensation* – CPCs have determined in which cases and under what procedures this right can be realised.<sup>254</sup> Thus, the right to compensation of damages caused by an unjustified judgment is granted to the person against whom an effective criminal sanction was pronounced, or who was found guilty but relieved from sanction, and where, at a later stage and on the basis of an extraordinary remedy, new proceedings were effectively suspended or an effective verdict was pronounced acquitting the person of charges, or if charges against a person were rejected, then the person will be entitled to compensation of damages on grounds of unjust convicted, except in the following cases: if the suspension of proceedings, or the verdict rejecting the charges resulted from the fact that prosecutor gave up his/her prosecution in the new proceedings, and if this has taken place on the basis of an agreement with the suspect/accused; if in the new

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<sup>251</sup>Decision on Admissibility and Merits of the Constitutional Court of BiH, No. AP-2281/05 of 6 July 2007, Paragraph 42 and 43 (Official Gazette of BiH, No. 79/07).

<sup>252</sup> Chapter XXIV of CPC BiH, of CPC BD, of CPC RS and of CPC FBiH.

<sup>253</sup> Proposal of this Law can be seen on the webpage of the Parliamentary Assembly of Bosnia and Herzegovina [www.parlament.ba/http://www.parlament.ba/files/docs/Lawi\\_u\\_parl\\_proceduri/Prijedlog\\_Zakona\\_o\\_izmjenama\\_i\\_dopunama\\_ZKP-a\\_B-H\\_februar\\_2008.pdf](http://www.parlament.ba/files/docs/Lawi_u_parl_proceduri/Prijedlog_Zakona_o_izmjenama_i_dopunama_ZKP-a_B-H_februar_2008.pdf)

<sup>254</sup>Chapter XXXII of CPC BiH, of CPC RS, and of CPC FBiH and Chapter XXXI of CPC BD.

proceedings a verdict was pronounced rejecting the charges due to the lack of jurisdiction of the court, and if the authorized prosecutor has instituted prosecution before a competent court. The convicted person is not entitled to compensation of damages if he intentionally caused such conviction by false admission or in another way, unless he was forcefully induced to do so.

4.6.6.10. *Ne bis in idem* – International standards prescribe that „no person can either be tried or punished ***again for an offence for which he has already been acquitted of guilt or punished.*** The European Convention for the Protection of Human Rights and Fundamental Freedoms allows for derogation of this principle – i.e. does not prevent the repetition of proceedings in accordance to national law, if there is evidence of the existence of new or newly discovered facts, or if, in earlier proceedings, there was a major violation that could have affected the final outcome. The *ne bis in idem* principle is one of the fundamental principles of the CPCs applied in BiH, and it is prescribed that no person will be tried again for the criminal offense he was already tried for and for which the legally binding decision was already rendered.<sup>255</sup>

#### 4.7. *Right to protection of private life, family, home and correspondence*

Article 17 of ICCPR:

1. No one will be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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<sup>255</sup> Article 4 of CPC BiH, of CPC BD, of CPC RS and of CPC FBiH.



2. Everyone has the right to the protection of the law against such interference or attacks

*(Official Gazette of SFRY, No. 7/71)*

Article 8 of the ECHR:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There will be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*(Official Gazette of RBiH (International agreements), No. 5/96)*

#### *4.7.1. Constitutional provisions*

Article II/3f of the Constitution of Bosnia and Herzegovina, in the relevant segment reads as follows:

*“All persons within the territory of Bosnia and Herzegovina will enjoy the human rights and fundamental freedoms referred to in paragraph 2 above, these include:*

*f) The right to private and family life, home, and correspondence.”*

Article II/A2 of the Constitution of the Federation of BiH, in the relevant segment reads as follows:

*“All persons within the territory of the Federation will enjoy the rights:*

*g) To privacy.”*

Article 13 of the Constitution of Republika Srpska reads:

*“Human dignity, physical and spiritual integrity, personal privacy, personal and family life will be inviolable.”*

The protection of the right to privacy and family life, home and correspondence is one of the fundamental rights whose enjoyment is a precondition for appropriate functioning of every democratic society.

The provisions of all the aforementioned documents explicitly state that this right can be divided into the following three main segments:

- Private life;
- Family life;
- Home, and
- Correspondence.

#### *4.7.2. Right to privacy*

The key standards for the protection of privacy are defined in United Nation’s Universal Declaration on Human Rights and in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its accompanying protocols, which are directly applicable in Bosnia and Herzegovina and have priority over all other law.

Development of information and communication technologies has brought about new ways of gathering, processing and transfer of personal data, which implies an obligation to provide for the highest possible degree of protection of privacy and other individual rights related to the gathering and keeping of personal data in computer databases.

In July 2004, Bosnia and Herzegovina ratified the Council of Europe Convention on the Protection of Individuals with

Regard to Automated Processing of Personal Data and amendments to this Convention (of 15 June 1999) as well as the Protocol attached to this Convention (of 8 November 2001).

The jurisprudence of the European Court of Human Rights was instrumental to the protection of the right to privacy. According to the European Court, private life is a broad concept that evades any definite and conclusive definition.<sup>256</sup> Respect for private life must contain a certain degree of the right to establish and develop relations with other human beings.<sup>257</sup> Generally, the European Court's jurisprudence led to the broadening of the concept of privacy to include also:

- Physical and moral integrity of person<sup>258</sup>
- Gathering of data required by the state<sup>259</sup>
- Access to personal information<sup>260</sup>
- Right to name<sup>261</sup>

*4.7.2.1. Physical and moral integrity of person* – Both physical and moral integrity of persons enjoys protection in the legislation of Bosnia and Herzegovina. Regarding the protection of physical integrity of persons, it is important to emphasize that

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<sup>256</sup>Costello-Roberts v. United Kingdom, Judgement of 25 March 1993, Paragraph 36.

<sup>257</sup>Neimez v. Germany, Judgement of 16 December 1992.

<sup>258</sup>European Court, in the Case X and Y v. The Netherlands (X and Y v. The Netherlands, Judgements of 26 March 1985, Paragraph 22, concluded that private life is a concept that encompasses physical and moral integrity of person, including his/her sexual life.

<sup>259</sup>The European Court, in its jurisprudence, considered various issues related to collection of data required by the state, e.g., depositing of fingerprints, photographs and other personal data by police, even when these are confidential data, as well as medical data and medical records.

<sup>260</sup>A significant case adjudicated by the European Court relating this aspect of Article 8 of the ECHR is Gaskin v. United Kingdom

<sup>261</sup>Stjerna v. Finland, Judgement of 25 November 1994, Series, No. 299-B.

the criminal and criminal procedure legislation in BiH provide for significant protection of the right to physical integrity of persons. Provisions of CPC that regulate the operations of search of persons envisage that searches can be conducted when it is probable that objects or leads of relevance for the criminal procedure would be found.<sup>262</sup> In each of the CPCs in BiH, it is envisaged that the search of persons can be done only by persons of the same sex. Other provisions of these laws regulate the procedure of search for which issuance of written orders is required, while, only exceptionally, issuance of oral order is permitted. They also regulate the time when searches can be conducted so that only a clearly formulated search order at any time of day or night can be executed and that witnesses of the same sex must be present at the search in order to sign the minutes of the search.<sup>263</sup> CPCs similarly (with the exceptions mentioned below) regulate the issue of search without an order and presence of witnesses and they limit such searches to the situations related to arrest orders, if it is suspected that the person in question possesses firearms or cold steel arms, and if there is a risk that the person in question would conceal, destroy or throw away objects that need to be seized in order to be used as pieces of evidence in the criminal proceedings.<sup>264</sup> In the second paragraph of the aforementioned articles, it is envisaged that, after the search conducted without an order, authorized officials must promptly report to prosecutor stating why such a search had to be undertaken. Prosecutor will promptly forward this information promptly to preliminary hearing judge.

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<sup>262</sup>Article 52 of CPC BiH, Article 116 of CPC RS, Article 66 of CPC FBiH and Article 52 of CPC BD BiH.

<sup>263</sup>Article 53-64 of CPC BiH, Article 117-128 of CPC RS, Article 67-78 of CPC FBiH, and Article 53-64 of CPC of Brčko District BiH.

<sup>264</sup>Article 64 of CPC BiH, Article 128 of CPC RS, Article 78 of CPC FBiH, and Article 64 of CPC Brčko District.

In relation to the protection of physical and moral integrity of minors and children, the Family Law of the Federation of BiH and Republika Srpska envisage in addition to the existence of criminal offences committed by minors and children that are punishable, the procedure of denial of parental care or denial of right of parent to live with the child.<sup>265</sup>

Protection of moral integrity of persons is secured by the anti-defamation laws that are in force in the entities and in Brčko District. They are mutually harmonized and envisage civil responsibility for defamation,<sup>266</sup> whereas earlier legislation defined defamation as a criminal offence. These laws will be elaborated in detail in the segment of this report that provides an analysis of compliance of BiH legislation with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

*4.7.2.2. Gathering of data required by the state and access to personal information* – The Law on Protection of Personal Data in BiH,<sup>267</sup> which entered into force in 2001, created a legislative framework for the preservation of secrecy in relation to processing of personal data of persons in the territory of BiH, irrespective of their citizenship or place of residence. This Law secures the secrecy of personal data that relate to natural persons whose identity has been established, or can be established, particularly on the basis of personal identification number, i.e. on the basis of several characteristics that make one's physical, mental, economic, cultural and social identity. It is important that law protects special categories of data related to race, citizenship,

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<sup>265</sup>Articles 153 and 154 of the Family Law of FBiH.

<sup>266</sup>Law on Protection against Defamation (Official Gazette of RS, No. 37/01; Official Gazette of FBiH, No. 59/02 and Official Gazette of Brčko District, No. 14/03).

<sup>267</sup>Official Gazette of BiH, No. 32/01.

mental state and ethnic origin, political opinion, or party affiliation, religious or other beliefs, state of health, sexual life, and criminal judgments.

In the context of this Law, data processing implies activities such as gathering, entering, storing, processing and modifying, consulting, disclosing by way of transfer, deletion and destruction of data.<sup>268</sup>

On 25 October 2001, Bosnia and Herzegovina adopted the Law on Central Registering and Exchange of Data<sup>269</sup> that establishes the Centre for Keeping Records (records of individual identity numbers, passports, residence permits, and criminal records). The Law envisages that the Centre will keep records on behalf of the Ministry of Civil Affairs and other public bodies.<sup>270</sup> Article 10 of this Law prescribes that provisions of the Law on Protection of Personal Data are applied to all persons involved in the data processing operations.

The freedom of access to information in Bosnia and Herzegovina is regulated by the Law on the Freedom of Access to Information of Bosnia and Herzegovina, the Law on the Freedom of Access to Information of the Federation of BiH, and the Law on the Freedom of Access to Information of Republika Srpska.<sup>271</sup> In Brčko District, there is no *lex specialis* and the District applies, instead, the state-level Law on the Freedom of Access to Information pursuant to the Instruction on Application of this Law in Bosnia and Herzegovina.<sup>272</sup>

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<sup>268</sup> Articles 1 and 3 of the Law on Protection of Personal Data.

<sup>269</sup> Official Gazette of BiH, No. 32/01.

<sup>270</sup> Article 4 of the Law on Central Registering and Exchange of Data.

<sup>271</sup> Law on the Freedom of Access to Information in Bosnia and Herzegovina (Official Gazette of BiH, 28/00), Law on the Freedom of Access to Information in FBiH (Official Gazette of FBiH, No. 32/01), Law on the Freedom of Access to Information in RS (Official Gazette of RS, No. 20/01).

<sup>272</sup> Official Gazette of BD, No. 36/04.

The Criminal Procedure Codes of BiH and of Brčko District<sup>273</sup> contain the provision that regulates the area of transfer of data contained in criminal records, so that these data may be provided to courts, prosecutorial offices and the bodies of the Ministry of Interior in relation to criminal proceedings conducted against persons who were previously sentenced, as well as to the competent bodies participating in the procedure of granting amnesty, pardon or deletion of pronounced sentences.

The criminal codes in BiH prescribe the criminal offence of violation of the secrecy of proceedings<sup>274</sup> that criminalises persons who unlawfully disclose the information learned in judicial, minor offence or administrative proceedings that, according to law, can not be made public or are proclaimed as confidential by a decision of a competent body.

Both the criminal and civil procedure legislation prescribe the possibility of exclusion of public due to, *inter alia*, the protection of personal and private life of the accused or damaged party,<sup>275</sup> whereby guarantees are provided for the protection of information related to private life that may be disclosed in the criminal proceedings.

4.7.2.3. *Access to information on missing persons* – An aspect of the right to private (and family) life that is particularly important in the context of the post-war Bosnia and Herzegovina, is access to information on missing persons in Bosnia and Herzegovina. In order to secure a comprehensive solution of his

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<sup>273</sup>Article 212 of CPC BiH, Article 227 of CPC FBiH and Article 212 of CPC BD.

<sup>274</sup>Article 237 CCBiH, Article 350 CC FBiH, Article 367 CC RS and Article 344 CC BD.

<sup>275</sup>Article 235 of CPC BiH, Article 250 of CPC FBiH, Article 243 of CPC RS, Article 235 of CPC BD, Article 119 of the Law on Civil Procedure in FBiH and RS.

complex issue, Bosnia and Herzegovina adopted the Law on Missing Persons,<sup>276</sup> and, pursuant to Article 7 of this Law, the Institute for Missing Persons of Bosnia and Herzegovina was formed as an independent institution for search for missing persons in BiH, with the intention of advancement of the process of search for missing persons and a more efficient identification of their mortal remains.

The Constitutional Court of Bosnia and Herzegovina, in its decisions related to the right of family members of missing persons related to the respect of their private (and family) life, established the violation of Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and ordered to the Council of Ministers of BiH to provide, *inter alia*, the operational functioning of the institutions established in line with the Law on Missing Persons, i.e. the Institute for Missing Persons of BiH, the Fund for Assistance to the Families of Missing Persons in BiH and the Central Register of Missing Persons in BiH. In one of its decisions, the Constitutional Court of BiH has passed the following ruling:

“The fact that the war activities in Bosnia and Herzegovina ceased nearly ten years ago, and that the competent authorities have failed to release information to the appellant on the fate and whereabouts of the member of his family who disappeared during the war in Bosnia and Herzegovina is sufficient to the Constitutional Court to decide that there has been a violation of the rights of the family member of the missing person not to be subjected to inhuman treatment as well as a violation of the right to private and family life.”<sup>277</sup>

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<sup>276</sup>Official Gazette of BiH, No. 50/04.

<sup>277</sup>The Constitutional Court Decision No. AP 228/04 of 27 May 2005.



Therefore, the Constitutional Court in this case that was adjudicated in 2005, concluded<sup>278</sup> that its Decision No. AP 228/04 of 13 July 2005 was only partly executed.

*4.7.2.4. Sexual orientation and the right to privacy* – As it was mentioned in the introduction to this part of this report, sexual relations, i.e. sexual orientation, belong to the sphere of private life in the sense of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Legislation in Bosnia and Herzegovina does not treat homosexual relations as a criminal offence, and, generally, there are no provisions in the criminal law on the criminal prosecution of persons because of their sexual orientation. Furthermore, the aforementioned provisions of criminal codes in the entities and in Brčko District, that incriminate offenses against sexual freedom and morality, do not make any sexual freedoms and morality, do not make any distinction in relation to the sex of perpetrators.

An unavoidable issue related to sexual orientation is the change of sex. In BiH, there is no legislation regulating medical aspects of the change of sex, although there is information that such surgeries are performed in BiH. There are no obstacles in the provisions related to personal name of the relevant laws applied in FBiH, RS and BD<sup>279</sup> to carry out the change of name or surname, since this right is guaranteed to all citizens. Likewise, the aforementioned laws do not set any special conditions for the change of data on sex in official records, since there is no explicit provision that regulates it.

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<sup>278</sup>Decision on non-enforcement of Decision No. AP 228/04.

<sup>279</sup>FBiH applies the Law on Personal Name of SRBiH (Official Gazette of SRBiH, Nos. 35/71, 38/86, 37/88 and 33/90), RS - the Law on Personal Name (Official Gazette of RS, Nos. 27/93 and 15/00) and Brčko District applies the Law on Personal Name (Official Gazette of Brčko District, Nos. 8/02 and 29/05).

Another aspect of the protection of the right to privacy related to sexual orientation is linked to potential discrimination of homosexuals in the enjoyment of their rights, particularly the right to work. The labour-related codes of FBiH, Republika Srpska and Brčko District do not contain provisions discriminating homosexuals in terms of the right to work, and the laws that regulate labour relations in public services in the entities and in Bosnia and Herzegovina do not contain such discriminatory provisions. On the contrary, all the aforementioned laws contain explicit provisions that prohibit discrimination in the enjoyment of the right to work on any grounds, including sex of a person.<sup>280</sup>

4.7.2.5. *Right to name* – In the Federation of BiH, the issue of registration of personal name, as well as changes of personal name and surname, is regulated by the Law on Personal Name,<sup>281</sup> adopted in 1971 by the then Socialist Republic of Bosnia and Herzegovina, and taken over by the Federation of Bosnia and Herzegovina. In Republika Srpska, the Law on Personal Name<sup>282</sup> was adopted in December 1993; in Brčko District, the Law on Personal Name of Brčko District<sup>283</sup> was adopted in June 2002. All the three laws treat identically the issue of personal name that consists of name and surname.<sup>284</sup> Namely, the laws envisage that child's personal name is decided by child's parents by consent, and that the child gets the surname of one or both parents. If

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<sup>280</sup>See, e.g. Article 5 of the Labour Code of FBiH (Official Gazette of FBiH, No. 43/99).

<sup>281</sup>Official Gazette of SRBiH, Nos. 35/71, 38/86 and 33/90.

<sup>282</sup>Official Gazette of RS, Nos. 27/93 and 15/00.

<sup>283</sup>Official Gazette of Brčko District, Nos. 8/02 and 29/05.

<sup>284</sup>Article 2 of the Law on Personal Name (FBiH), the Law on Personal Name (RS) and the Law on Law on Personal Name (Brčko District).

parents cannot agree on the name of their child, the name will be decided by the competent custodian body.

The aforementioned laws prescribe the right to change personal name and surname. Furthermore, they foresee that a minor will have his/her name, or name and surname changed at the request of his/her parents or his/her adoptive parents with the consent of the competent bodies. The only limitation of the right to change of personal name is prescribed identically in all the relevant laws and relates to a person against whom there is a pending criminal procedure for an offence prosecuted *ex officio*, or if a person is sentenced for such an offence as long as the sanction is not executed, and for a person for who it has been established that he/she has submitted an application to change his/her name with the purpose of evasion of legal obligations<sup>285</sup>, which is all in line with the jurisprudence of the European Court of Human Rights.

Pursuant to the relevant laws, and for the purpose of data protection, the Commission for Data Protection has been established to supervise the access to personal data and their transfer.

The Commission for Data Protection is the only institutional framework within which the protection of human rights in the process of personal data processing, as well as their use by public bodies in Bosnia and Herzegovina, is provided. The Council of Ministers of BiH nominated in November 2002 members of this Commission upon which it became operational.

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<sup>285</sup> Article 9 of the Law on Personal Name (FBiH), Article 10 of the Law on Personal Name (RS) and Article 9 of the Law on Personal Name (Brčko District).

#### 4.7.3. Right to family life

From the provisions of the Constitution of BiH and the Constitution of Republika Srpska cited above it arises that the right to family life is fully protected by those paragraphs. In addition to this, the Constitution of the Federation of Bosnia and Herzegovina, in Article II/A2, Point j prescribes the right to the protection of family and children as one of the constitutionally guaranteed rights.

The European Court for Human Rights, having taken into account social and legislative changes that occurred in the countries signatories of the European Convention for the Protection of Human Rights and Fundamental Freedoms, expanded the concept of family life beyond the boundaries of formal relations, i.e. the concept of family life *de iure*, so that the concept of family life in the sense of Article 8 of ECHR is the *de facto* family life.<sup>286</sup> Therefore, the concept of family life encompasses:

- Parental rights
- Custody
- Child adoption

4.7.3.1. *Parental rights* – Parental care, as envisaged in the Family Law in FBiH and the family rights as stipulated in the Family Law in Republika Srpska, represents a set of responsibilities, duties and rights of parents aimed at the protection of personal and property rights and interests of children. Both parents agree to exercise this right and are obliged to carry it out in the best interest of the child. The right to care for children lasts until the age of 18, when they are legally considered

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<sup>286</sup>Johnston et al. v. Ireland, 18 December 1986, Series A, No. 112, and Marckx v. Belgium, 13 June 1979, Series A, No. 31.

as adults, i.e. at an earlier age, if a child gets married with the consent of his/her parents.

According to the Family Law in FBiH, only one parent carries out the parental care if the other parent dies, is pronounced dead, is prevented from caring for the child, if his/her residence is unknown, if parental care is denied to him/her, or if his/her ability to work is denied or restricted,<sup>287</sup> while, according to the Family Law in Republika Srpska, the list of these conditions is somewhat longer and relates to the parent who is prevented from exercising parental right, or if this right is denied to him/her, i.e. if his/her ability to work is limited.<sup>288</sup>

4.7.3.2. *Child adoption* - The Family Law in the Federation in BiH and the Family Law of Republika Srpska regulate the procedure of adoption.

The Family Law in the FBiH and the Family Law in Republika Srpska prescribe two types of adoption: full and partial adoption. Essential difference between the two lies in the fact that with full adoption, mutual rights and duties of adoptees and their blood relatives terminates,<sup>289</sup> except if child is adopted by its step-mother or step-father.<sup>290</sup> What is important here is that both laws prescribe that parents, i.e. custodians of an adopted child,<sup>291</sup> both parents, or a single parent,<sup>292</sup> must give consent for adoption. Statements on granting consent for adoption are entered into the records that must be signed by parents, i.e. custodians.

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<sup>287</sup>Article 141, Paragraph 2 of the Family Law in FBiH.

<sup>288</sup>Article 86, Paragraph 1 of the Family Law in RS.

<sup>289</sup>Article 160 of the Family Law in RS.

<sup>290</sup>Article 114 of the Family Law in FBiH.

<sup>291</sup>Article 145 of the Family Law in RS.

<sup>292</sup>Article 98 of the Family Law in FBiH.

Neither the provisions of the Family Law in the Federation of BiH, nor of the Family Law in Republika Srpska make any difference in the procedure of adoption of children born in wedlock or out-of-wedlock; therefore the provisions on child adoption are applied to the procedure of adoption of both kinds of children.

4.7.3.3. *Child custody* - The Family Law in FBiH and the Family Law in Republika Srpska prescribe an active participation of the institutions for social care in the protection of the rights and interests of children.<sup>293</sup> Both laws prescribe the possibility of denial of parental rights, and a number of measures that may be taken before decision on removal of parental rights are taken. According to the aforementioned laws, the institutions for social care will provide assistance to parents in settling their social, material and personal circumstances, and, if interests of the child require it, they will refer them to an adequate counselling service.<sup>294</sup>

The provisions of the Family Law of FBiH stipulate that, as long as the measure of denial of parental care is in force, parents will lose all their rights related to the child, including the right of contact. According to the jurisprudence of the European Court of Human Rights „in view of the fundamental family relations between parents and children, removal order must be of temporary nature and its execution must always lead to the ultimate goal – that family reunion.”<sup>295</sup> It is true that the aforementioned Family Law envisages the possibility of abolition of the measure of removal of family care so that this right is

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<sup>293</sup> Article 150, Paragraph 1 of the Family Law in FBiH and Article 94 of the Family Law in RS.

<sup>294</sup> Article 151 of the Family Law in FBiH and Article 95 of the Family Law in RS.

<sup>295</sup> *Olsson v. Sweden*, Judgement of 24 March 1988, Paragraph 81.

granted back to parent/s once the reasons for such a measure has terminated. However, what is disputed is that the parent whose right of parental care was removed loses all the rights related to his/her child as long as the measure is in force.

4.7.3.4. *Right to respect of home* – Generally, „home”, as defined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is the place where someone permanently lives. In the Niemietz<sup>296</sup> Case, the European Court of Human Rights concluded that business premises can also be one’s “home.” Deciding whether a disputed house represents applicants’ home, the European Court of Human Rights took into account in the Gillow Case<sup>297</sup> the fact that the applicant had built the house with an intention to return to it one day and continue living there.

#### 4.7.3.5. *Protection of home*

Article II/3f of the Constitution Bosnia and Herzegovina, in its relevant part stipulates that:

*“All persons within the territory of Bosnia and Herzegovina will enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*

*f) The right to private and family life, home, and correspondence”*

Since, according to Article II/A1 of the Constitution of FBiH, the principles, rights and freedoms defined in the instruments cited in the Annex to the Constitution are applied throughout the territory of BiH, there is no doubt that the rights defined in the European Convention for the Protection of Human

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<sup>296</sup>Niemietz v. Germany, Judgement of 16 December 1992, A.256-B.

<sup>297</sup>Gillow v. United Kingdom, Judgement of 24 November 1986, A-109, pp. 22-23.

Rights and Fundamental Freedoms are, pursuant to the aforementioned provision, applied in FBiH. However, the Constitution of FBiH does not contain an explicit provision that guaranties the right to the respect of home.

Article 24 of the Constitution of Republika Srpska reads:

*“Homes will be inviolable.*

*On the basis of a court warrant as prescribed by law may an official person enter a home or other premises without consent from the tenant and carry out a search. The search will be carried out in the presence of two. “*

Neither the Constitution of BiH, nor the entity constitutions or some of the country’s laws, for that matter, define the concept of “home.” However, as it has already been mentioned in our analysis, in line with Article II/2 of the Constitution of Bosnia and Herzegovina, the rights and freedoms envisaged in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly applicable in Bosnia and Herzegovina and have priority over all other law. According to Article II/6 of the Constitution of BiH, Bosnia and Herzegovina, all courts, institutions, bodies of authority, and those that are directly governed by the entities or function within the entities, are obliged to apply the human rights and freedoms referred to in Paragraph 2.

The most important limitation of the right to respect of home as defined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the context of the post-war BiH that has been for years the most important and burning issue, both politically and legally, is the repossession of privately owned property to the previous tenants or owners who had fled from their homes due to the war. Namely,



there were laws adopted during the war that gave to the holders of occupancy right<sup>298</sup> an extremely short deadline to apply for the repossession of their apartments that had been given out to other persons in the meantime.

*4.7.3.6. Protection against interference in one's property –*

As stated above, there are no provisions protecting the right to the respect of home in the legislation of Bosnia and Herzegovina. However, for the purpose of this analysis, in the segment that relates to the protection of the right to have one's home protected from interferences, the relevant legal provisions are those that regulate the issues of ownership and other property rights, i.e. the provisions related to property relations that are applied in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District.<sup>299</sup> These laws regulate the conditions under which one can acquire, use, protect, as well as terminate the right to ownership over an object (movable and immovable). A draft is now being prepared to regulate the issues of ownership and other property rights in Bosnia and Herzegovina.

*4.7.3.7. Protection of environment –*

The Constitution of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina do not contain any explicit provision that regulates the issue of protection of human environment, while the Constitution of Republika Srpska prescribes, in Article 35, that human beings are entitled to healthy environment. Every

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<sup>298</sup>The tenancy right is the right of permanent and unobstructed use of publicly owned apartment, as it is prescribed by the Law on Tenancy Relations (Official Gazette of SRBiH, Nos. 14/84, 12/87, 2/93).

<sup>299</sup>Law on Ownership Legal Relations (Official Gazette of FBiH, No. 6/98), Law on Basic Ownership Legal Relations (Official Gazette of SFRY, No. 6/80) – the Law applied in RS and the Law on Ownership and Other Real Rights (Official Gazette of BD BiH, Nos. 11/01, 8/03 and 40/04).

individual is obliged, in accordance with the law and his/her capacities, to protect and improve environment.

Law on Environmental Protection<sup>300</sup> in application in the Federation of Bosnia and Herzegovina prescribes that every individual is entitled to healthy and ecologically acceptable environment as one of basic constitutional rights. Likewise, it is prescribed that every human being is entitled to live in an environment adequate for his/her health and well-being and that, consequently, it is both individual and collective duty to ensure protection and improvement of environment for the benefit of the present and future generations.

4.7.3.8. *Searches* – Only the Constitution of Republika Srpska has an explicit provision that prescribes the manner in which searches of home or other premises can be conducted. The procedure of search, i.e. the conditions under which search can be conducted, is regulated in the criminal procedure codes in force in Bosnia and Herzegovina.

Article 51 of the Criminal Procedure Code of BiH prescribes that the „a search of dwellings and other premises of the suspect, accused or other persons, as well as his personal property outside the dwelling may be conducted only when there are sufficient grounds for suspicion that the perpetrator, the accessory, traces of a criminal offense or objects relevant to the criminal proceedings might be found there.”

One of the fundamental formal preconditions for conducting of search is the order issued by relevant court, as it is prescribed in Article 53 of CPC BiH. Paragraph 2 of this Article prescribes that „a search warrant may be issued by the Court on the request of the Prosecutor or on the request of authorized officials who have been approved by the Prosecutor.”

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<sup>300</sup>Official Gazette of FBiH, No. 33/03.

Article 185 of the Criminal Code of FBiH (Article 171 of the Criminal Code of Republika Srpska and Article 182 of the Criminal Code of Brčko District, respectively) prescribes the criminal offence of illegal search that is punishable by 3 months to 3 years of imprisonment for official persons who, while performing their duty, conduct an illegal search of an apartment, other premises or persons. The criminal code provisions are formulated precisely enough in the segment related to the procedure of search so that conditions relating the time when a search can be conducted without an order and the mandatory presence of a witness during the search are very clear.

#### *4.7.4. Right to respect of correspondence*

The right to respect of correspondence is the right to an unobstructed and unrestricted communication with others. Literal meaning of this notion of „correspondence” is extended so that it implies also telephone<sup>301</sup> and fax<sup>302</sup> communications. Development of new technologies may lead to further broadening of this concept. There are two particularly relevant issues in this context: the monitoring of correspondence and telephone tapping.

The right to respect one’s correspondence is particularly important in relation to prisoners. In the *Golder v United Kingdom Case*<sup>303</sup>, the European Court of Human Rights concluded that decision to prevent the prisoner in question from keeping correspondence with his defence attorney amounted to

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<sup>301</sup>Klass v. Germany, Judgement of 6 September 1978, Series A, No. 28, Paragraph 41.

<sup>302</sup> Christie v. United Kingdom, 27 June 1994, No. 21482/93, 78-A DR 119.

<sup>303</sup>Judgment of 21 February 1975, Series A, No. 18.

violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the *Krusslin v France* Case, related to telephone tapping, the European Court of Human Rights concluded, *inter alia*, that “tapping and other forms of interception of telephone talks represents a serious interference into private life or correspondence.”

In the catalogue of rights included in its Article II/3, the Constitution of BiH guarantees the “right to... correspondence.”

The Constitution of FBiH does not have an explicit provision that guarantees the right to correspondence, but reiterates that, according to Article II/A1 of the Constitution of FBiH, the principles, rights and freedoms established in the instruments cited in Annex to the Constitution, are applicable across the territory of BiH, and that, consequently, it is undisputable that the rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms are directly applicable.

Article 22 of the Constitution of Republika Srpska prescribes that: „Freedom and secrecy of correspondence and other forms of communication will be inviolable. Exception from the principle of inviolability of freedom and secrecy of correspondence and other forms of communication may only be prescribed by law, subject to a court decision, if it is indispensable for the purpose of the conduct of criminal proceedings or for reasons of the safety of the Republic.“

Detailed provisions on conditions under which telephone tapping can be done are contained in the criminal procedure legislation. Some actions of telephone tapping are also prescribed in the Law on Intelligence and Security Agency of Bosnia and Herzegovina. In the CPCs applied in BiH, telephone tapping is envisaged as a special investigative action. Special investigative actions must be ordered by preliminary procedure judges upon a

reasoned proposal made by prosecutors. Such proposals must contain: the data on the person against which the measure is to be applied, the grounds for suspicion referred to in Paragraphs 1 or 3 of Article 116 of this Code, the reasons for its undertaking and other important circumstances necessitating the application of the measures, the reference to the type of required measure and the method of its implementation and the extent and duration of the measure (Article 118, Paragraph 1). For the purpose of this analysis, it is important to mention Article 67 of the Criminal Procedure Code of BiH<sup>304</sup> that envisages the measure of temporary seizure of mail and telegrams and other consignments. According to Paragraph 1 of this Article, „seizure may be performed with respect to the mail and telegrams that are addressed to or sent by the suspect or the accused and that are found with a company or persons engaged in postal and telecommunication activities.“ In Paragraph 6 of this Article, it is stipulated that „the measures undertaken as provided under this Article will not apply to the mail exchanged between the suspect or the accused and his or her defence attorney.” It is also stipulated that delivered mail will be opened by prosecutor in the presence of two witnesses. When mail is being opened, care will be taken not to break the seal and the packaging, while address will be kept and a record of the act of opening made. In addition to CPCs, the surveillance actions are also regulated by the Law on Intelligence and Security Agency of BiH.<sup>305</sup> Article 1 of this Law prescribes that the Agency „will conduct its work in accordance with the Constitution of Bosnia and Herzegovina, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols referenced therein and

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<sup>304</sup>Article 81 of CPC FBiH, Article 131 of CPC RS and Article 67 of CPC of Brčko District.

<sup>305</sup>Official Gazette of BiH, No. 12/04.

international treaties and agreements that Bosnia and Herzegovina has signed or entered into.”

Relevance of the protection of rights to privacy, i.e. rights to respect correspondence and communication is reflected in the fact that in the entity criminal legislation there are several criminal offences prescribed with the purpose of protecting the inviolability of secrecy of correspondence, i.e. prohibition of unauthorised recording and tapping and the issue of protection of the right to correspondence of prisoners is of particular importance in this context.

Here, again, we must recall the fact that, in Bosnia and Herzegovina, the execution of criminal sanctions and minor offence sanctions, i.e. custody, detention and other measures, are regulated by the Law on Execution of Criminal Sanctions, Detention and Other Measures of Bosnia and Herzegovina, the Law on Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, the Law on Execution of Criminal and Minor Offence Sanctions in Republika Srpska, the Law on Execution of Criminal and Minor Offence Sanctions in Brčko District, so that the rights to correspondence of prisoners and persons kept in detention and in pre-trial custody are encompassed by these laws and by the by-laws adopted pursuant to those laws.

In Article 85 of the Law on Execution of Criminal Sanctions of FBiH it is prescribed that sentenced persons are entitled to receive, without any restriction or scrutiny, letters from the bodies of authority and other institutions, and to send letters to those bodies for the purpose of protection of their rights to have legally protected interests secured. Article 86 prescribes that sentenced persons are entitled to correspondence with members of their family without any restriction.

#### *4.8. Right to freedom of thought, conscience and religion*

##### Article 18 of ICCPR:

1. Everyone will have the right to freedom of thought, conscience and religion. This right will include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one will be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

*(Official Gazette of SFRY, No. 7/71)*

##### Article 9 European Convention on Human Rights and Fundamental Freedoms:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs will be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals,

*(Official Gazette of BiH, No. 6/99)*

#### *4.8.1. General considerations*

*4.8.1.1. The constitutional framework* – The Constitution of Bosnia and Herzegovina, as well as the constitutions of the two of its Entities, the Federation of Bosnia and Herzegovina and Republika Srpska, contain international norms on the protection of human rights and fundamental freedoms, which makes them directly applicable in Bosnia and Herzegovina and assigns them priority over domestic law. The content of right to the freedom of thought, consciousness and religion was not elaborated in detail in the constitutions of BiH and FBiH. Instead, the appropriate international norms have been granted the power of constitutional norms, through relevant provisions in the constitution. Article II/2 of the Constitution of BiH guarantees direct application of rights and freedoms from the European Convention, while Article II/3 of the Constitution of BiH guarantees the freedom of thought, consciousness and religion, corresponding to Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Article II/4 of the Constitution of BiH guarantees to all the enjoyment of rights and freedoms without discrimination, including the rights provided by international agreements in Annex I, which contains in item 7 the International Covenant on Civil and Political Rights (ICCPR) and optional protocols, including in Article 18 the guarantees concerning the freedom of thought, consciousness and religion. Article II/2 of the Constitution of FBiH guarantees the fundamental freedoms including: freedom of thought, consciousness and belief; freedom of religion, private and public manifestation of religion. The Annex to the Constitution of FBiH prescribes, in items 4 and 10, that the provisions of the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights have the power of constitutional provisions.



The Constitution of Republika Srpska, like the constitutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, contains provisions whereby the freedom of thought, consciousness and religion, protected by international norms, is embedded in domestic law and acquires the property of constitutional norms, thus guaranteeing a more favourable constitutional and legal protection of human rights and fundamental freedoms, in case these rights and freedoms are regulated differently at the state and entity level. The chapter on human rights and fundamental freedoms of the Constitution of Republika Srpska is amended by items 1-3 of Amendment LVII, guaranteeing the application of more favourable provisions in case of differences in provisions on rights and freedoms between the Constitution of Republika Srpska and of Bosnia and Herzegovina. It is prescribed, *inter alia*, that provisions of Article 28 of the Constitution of Republika Srpska, which guarantee the freedom of thought, consciousness and religion, shall be exercised in accordance with relevant provisions of Article 9 of the European Convention on Human Rights and Fundamental Freedoms.

Unlike the Constitution of BiH and of FBiH, the Constitution of Republika Srpska elaborates in detail the content of the right to freedom of thought, consciousness and religion. Article 28 of the Constitution of Republika Srpska guarantees the freedom of manifestation of religion at individual level. This freedom is granted at collective level as well, through the constitutional and legal position of religious communities, equal before the law, as they are free to conduct religious ceremonies, establish religious schools and organize religious classes in all schools at all levels of education, undertake economic and other activities, receive gifts, establish and manage trusts, in accordance with the law. However, in spite of this definition on equal rights of all religious communities, in the original version of the Constitution of the RS, the Serb Orthodox Church (hereinafter

SOC) enjoyed the status of state religion. Following the decision of the Constitutional Court of BiH, no U-5/98, from 18 and 19 August 2000, which *inter alia*, declared unconstitutional Para 4 of Article 28 of the RS Constitution, granting the SOC state religion status. This unconstitutional paragraph was erased by Amendment LXXII, stripping Serb Orthodox Church of that status. There remained an earlier provision on the constitutional and legal status of this church in Para 3 of the said Article, which defined the Serb Orthodox Church as the church of the Serb people and other peoples of Orthodox Christian faith. Although the unconstitutional Para 4, which provided for state's material support to the Orthodox Church, cooperation in all fields, and especially in the field of preservation, cultivation and development of traditional and other cultural values, raises the issue of purpose to single out and afford constitutional attention to one of the collectively organized religious communities, as this exceptional status implies also a privileged position of this church in the constitutional and legal framework of Republika Srpska.

*4.8.1.2. Legal framework* – In addition to the constitutional framework afforded to religious freedoms in Bosnia and Herzegovina, the legal protection and restrictions to the freedom of religion are regulated at state level through the Law on Freedom of Religion and Legal Position of Churches and Religious Communities<sup>306</sup>. In essence, this law has taken on the principles of secular state organization, identified in the previous Law on the Legal Status of Religious Communities.<sup>307</sup> This law incorporates the provision of Article 9 of the European Convention on Human Rights and Fundamental Freedoms and elaborates the legal position of religious communities in the democratic and secular social order of Bosnia and Herzegovina.

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<sup>306</sup> (“Official Gazette of BiH”, no. 5/04)

<sup>307</sup> (“Official Gazette of SRBiH”, no. 36/76)

A bylaw - Rulebook on the Establishment and Management of Single Register for Registration of Churches, their Alliances and Organizations in Bosnia and Herzegovina<sup>308</sup> adopted under the provisions of the aforementioned law, is relevant for the exercise of the freedom of thought, consciousness and religion.

#### *4.8.2. Separation of Church and State*

The principle of separation of the state and church is two-sided, implying both the independence of religious communities vis-à-vis the state institutions, and the independence of state authorities vis-à-vis religious communities. Although the Constitution of BiH and the constitutions of its entities do not prescribe explicitly the principle of secular state, this principle is enshrined in Article 14 of the Law on Freedom of Religion and the Legal Position of Churches and Religious Communities. Namely, item 1 of this article prohibits the establishment of a state religion. Under Article 8, Para 1 of the Law on Freedom of Religion and Legal Position of Churches and Religious Communities, religious communities possess legal personality. Under Article 14 of the said law, declaring the principle of secular state organization, the state is separate from religious communities which enjoy internal autonomy of application of their religious norms. Again, under Article 11, Para 1 of the same law, the aforementioned enjoyment of internal autonomy “has no effect in terms of civil law”. The Law on Freedom of Religion and Legal Position of Churches and Religious Communities affords a high degree of autonomy to the religious communities, with a general clause under Article 10, item 5 that churches and religious

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<sup>308</sup> ("Official Gazette of BiH", no. 46/04)

communities are permitted everything that is not prohibited by law. Internal autonomy of churches and religious communities is guaranteed, given that interfering with the internal organization and business of churches and religious communities is prohibited. The public authorities are prohibited, under item 6 of Article 10, to interfere in the selection, appointment or removal or religious dignitaries, establishment of the structure of churches and religious communities or organizations performing Divine Service and other rituals. Item 7 of this Article prescribes that public manifestation of religion or beliefs may be restricted only on the basis of the law and in accordance with international standards, once a responsible body has proven that such restrictions are necessary in the interest of public safety, public health, public morale or if its serves to protect the rights and freedoms of other individuals, under international legal standards. The churches and religious communities are entitled to appeal in such cases. On the other hand, to ensure independence of state authorities from the religious communities, item 3 of this Article prescribes that no church or religious community or their officials may receive any special benefits from the state, with respect to other churches or religious communities and their officials, or can formally participate in the work of political institutions, except as it is prescribed in Para 4, Article 14 of the aforementioned Law. Item 4, Article 14 prescribes that “the State may, based on the principle of equality towards all, provide material support to churches and religious communities for the preservation of cultural and historic heritage, healthcare activities, educational, charitable and social services provided by churches and religious communities, provided that churches and religious communities perform such services without any discrimination, especially any discrimination on the basis of religion or belief.” Item 5 of Article 14 prescribes that churches and religious communities, within their internal autonomy, may provide humanitarian, social and healthcare assistance, upbringing and education in the field of family law, rights of parents and rights of

the child, but in compliance with the independence of public authority, i.e. according to the laws regulating these rights and matters. On the other hand, the provisions of this Law provide to religious communities and churches considerable independence from public authorities, as it is explicitly noted in Article 11 Para 1 that the internal autonomy behind the application of religious norms does not bear any civil law effect and that these communities are required to comply with the law in legal transactions. However, certain provisions of the law leave open the possibility to violate the principle whereby the order of religious communities does not coalesce with the religious order. Article 11, Para 2 prescribes that churches and religious communities may change and abolish their organizational units, bodies or forms or organization possessing legal personality, through their own regulations. In that, churches and religious communities, through internal regulations, determine which ones of their internal structures shall have legal personality, and be considered as such on the territory of Bosnia and Herzegovina. This kind of internal autonomy raises the issue of application of Para 1, Article 16, which establishes the obligation to enter churches and religious communities, their alliances and organizations into a single register, so as to recognize legal personality to these organizations in legal transactions. The correct interpretation of the said provisions would be to have this obligation apply to every change in status of organizational units. Still, it is important to remark that the text of Article 11, Para 2 of the said law reads that organizational units of religious communities acquire legal personality on the basis of autonomous regulations of the religious communities. This is unacceptable, given that state bodies responsible for the keeping of single register must assess the fulfilment of requirements to award legal personality status, while internal autonomy of religious communities cannot have a civil law effect and an organizational unit cannot have legal personality based on religious law, but exclusively on the basis of relevant laws and by-

laws. Article 15, Para 1, prescribes that questions of common interest to Bosnia and Herzegovina and of one or more churches and religious communities may be regulated with an agreement concluded by the Presidency of Bosnia and Herzegovina, the Council of Ministers, entity governments and the church or religious community. The first such contract concluded by Bosnia and Herzegovina and one of the religious communities was the Basic Agreement between the Holy See and Bosnia and Herzegovina, and an Additional Protocol<sup>309</sup>. Provisions of this Agreement do not deviate from the existing constitutional and legal framework within which the Catholic Church enjoys the internal autonomy of the religious law. In civil law, the Catholic Church, which has legal personality, may regulate its rights and responsibilities exclusively through the application of regulations in the civil justice system of BiH. However, some provisions of the said contract do not provide for a clear definition of the rapport between the religious and church law, leaving room for different interpretations and dilemmas. For example, church legal persons, whom the Catholic Church establishes, changes, abolishes or recognizes autonomously, may buy immovable or movable property, acquire or deny property rights “according to the provisions of the canon law and the legislation of BiH”. In this case, the fact that it is not noted which law shall be given priority in case of disagreement, may result in different interpretations, especially in light of Article 1 of this Agreement, which reads that Bosnia and Herzegovina and the Catholic Church affirm that both the State and the Church are independent and autonomous “each in its proper sphere”. However, in light of the constitutional and legal position of the Catholic Church, it is clear that the internal autonomy of a religious community has no civil law effect. For example, if a church legal person were to buy property under the canon law, it is still obliged to pay taxes under the

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<sup>309</sup> (Official Gazette of BiH-International Treaties, no.10/07)

appropriate laws of Bosnia and Herzegovina. Here is another example: the Agreement prescribes that police cannot take security measures in places of worship, without the previously obtained permission of the responsible church authorities. It is clear that such a provision may impact the application of relevant legislation of BiH in the field of security, but not to the extent by which the legislation is practically put out of effect, as religious communities are “permitted everything which is not prohibited by law”. That means that this contractual provision cannot be interpreted in such a manner that church authorities are empowered to suspend the application of relevant legislation of BiH. It is logical to expect that many interesting and serious questions will arise in the future. Answers to such questions will be critical to the future relationship between the religion and state in Bosnia and Herzegovina, as well as to the influence agreements concluded with religious communities may have on individual rights guaranteed in the Constitution of BiH.

#### *4.8.3. Religious organization and equality of religious communities*

The constitutions of Bosnia and Herzegovina and of the Federation do not elaborate on the legal position of religious communities. Instead, they have incorporated the rights and freedoms denoted in Article 9 of the ECHR and Article 18 of the ICCPR. The Constitution of Republika Srpska, in Article 28, elaborates on the legal position of religious communities, guaranteeing the equality of all religious communities, the freedom of religious association and collective manifestation of religion. The Law on Freedom of Religion and Legal Position of Churches and Religious Communities provides further detail to the constitutional provisions and international standards on the freedom of religious organization and equality of religious

communities. Although Article 1 of the Law guarantees the equality of all religious communities before the law, it however makes a difference between the three types of religious communities. The first category comprises “historically founded churches and religious communities in Bosnia and Herzegovina”, as follows: the Islamic Community in Bosnia and Herzegovina, the Serb Orthodox Church, the Catholic Church and the Jewish Community of Bosnia and Herzegovina, as well as all other churches and religious communities that have a recognized legal personality prior to the entry of this law into force. Those are all churches and religious communities whose legal status was regulated through registration, in compliance with the Law on the Position of Religious Communities.<sup>310</sup> The second category comprises new religious organizations. The third group, not mentioned in the law but implicitly identified, comprises all those religious communities which are not registered and which find themselves in an extremely disadvantageous position. It is uncertain whether these communities are allowed to perform any religious activities, while it is certain that they cannot possess any property or enjoy the benefits awarded to other religious organizations.

Every interpretation by which these organizations would be denied the right to religious activities would be contrary to the Constitution of BiH and the international standards.

The traditional churches and religious communities enjoy the most favourable position. At the registration, confirming the continuity of their legal personality, they are to submit an application containing the name of the church or religious community, the address of the main office of the church or religious community, the content, description and imprint of the stamp and logo, or sign, if it exists, as well as the name of person

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<sup>310</sup> (“Official Gazette of SRBiH”, no. 36/76)



authorized to represent that church or religious community. All other religious organizations belonging to the category of new religious communities must attach the statute, document on official religious learning, list of 300 residents-followers containing: names, place of birth, address, ID number and signatures. In addition, they should attach a founding act, adopted by at least 30 members of the founders of the church or religious community, the name of the head of the church or religious community, his/her deputy or other representatives authorized to represent the church or religious community before the public bodies (Article 15 of the Rulebook). The Article 18 of the Law prescribes that a new church or religious community may be founded by 300 full-age nationals of Bosnia and Herzegovina, regardless of their entity-linked citizenship. A new church or religious community may not be founded under the same or similar name. No one can use the official symbols, insignia and attributes without the consent of the responsible authorities of that church or religious community.

The Rulebook on Establishment and Keeping of Single Register of Churches and Religious Communities, Their Alliances and Organizations in Bosnia and Herzegovina, prescribes that 30 founders are necessary to enter a religious organization in the register, provided that the application contains the attachment with a list of 300 followers. Compared with the requirement of three residents necessary to register a citizens' association, under the Law on Associations and Foundations of BiH<sup>311</sup>, the above required number is too high. By definition, a citizens' association is founded on the basis of constitutionally-guaranteed freedom of association, with a view to achieving the founders' common goals. Religious communities represent, on the other hand, communities of citizens sharing the same religious beliefs, bringing together the followers of the same religion. In spite of

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<sup>311</sup> (Official Gazette of BiH, no.32/01 and 42/03)

similarities between them at concept and content level, the considerable difference in requirements for registration of citizens' associations and religious communities, is obvious. We think that this regulation discriminates against the new religious communities, placing them in a disadvantageous position, compared with the "historically founded churches and religious communities". In addition, the new legislation supplemented with the Rulebook on Establishment and Keeping of Single Register, all religious organizations – apart from the traditional ones – must attach to the application for entry, their statutes or other documents containing: the description of organizational structures, management method, rights and responsibilities of members, way of establishment and abolishing of an organizational unit, list of organizational units with legal personality and other information of importance to the organization. The provision requiring the communities to deliver descriptions of the fundamentals of the religious teaching, rituals, goals and principal activities of the religious organization is particularly problematic, given that the Law leaves to the administrative bodies the option to assess the quality of religious teachings and goals, which is absolutely impermissible from the perspective of the freedom of thought and religion. The inadequacy of religious teachings and goals may be cause for rejection of the registration application (Art. 18, Para 2, item 5). Another provision, denying the registration of religious organizations whose name contains the title or part of the title expressing the identity of a church, religious community or organization that is already registered or has filed a request for registration (Art. 18, Para 1) is disputable in the context of equality of religious communities. Once entered in the register, a religious organization acquires legal personality, so if it is denied this right, the religious community is deprived of participating in legal transactions. The equality of religious organizations is reversed by leaving extensive discretionary powers to the public bodies in deciding on different forms of cooperation between the

state and religious communities. For example, Article 13, Para 4, envisages the option of the state using separate regulations to regulate the pension, disability or healthcare insurance of religious officials, while Article 14, Para 4, identifies the option of material support by the state to churches and religious communities. As there were no criteria defined for these options, this opens the room for discrimination benefiting traditional churches and religious communities.

#### *4.8.4. Religious education*

According to the ICCPR, the content of the right to freedom of religion includes freedom to manifest religion, in worship, observance, practice and teaching. The constitutions of BiH and the Federation of BiH incorporate these provisions, assigning them the character of constitutional norm, while the Constitution of Republika Srpska explicitly guarantees, in Article 28, the right to religious education.

The Framework Law on Primary and Secondary Education<sup>312</sup> elaborates further on the issue of religious education by prescribing in Article 9 that a school shall promote and protect religious freedoms, tolerance and the culture of dialogue. In this, the legislator bore in mind the differences of convictions/beliefs in BiH, and left it to students to attend religious classes only if those classes comply with their convictions or the convictions of their parents. The same articles prescribe in Para 3 that a school cannot take any measures or activities to restrict the freedom of expression of one's own and meeting other and different religious beliefs. Para 4 reads that students not wishing to attend religious classes will not in any way be in inferior position to others. This

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<sup>312</sup> ("Official Gazette of BiH", no. 18/03)

provision of the Framework Law contains the highest standards noted in Article 18 of the ICCPR and Article 9 of the European Convention on Human Rights and Fundamental Freedoms. The FBiH Constitution prescribes that cantons have the responsibility over education issues. That means that there exist, in addition to the framework law for the entire country, laws on primary and secondary education in Republika Srpska, the ten cantons of the Federation and Brčko District, as a separate unit in Bosnia and Herzegovina. All laws have transposed the model used in the framework law, meaning that religious education is not compulsory. Students have the choice to attend religious classes, provided that it suits theirs and the beliefs of their parents. The law prohibits that children who, at the request of their parents, do not attend religious classes, are placed in an inferior position with respect to other students. Thus, the existing legal solutions in Bosnia and Herzegovina, when it comes to religious education, are harmonized with international standards of the freedom of thought, consciousness and religion.

#### *4.8.5. Right to conscientious objection*

The right to conscientious objection represents the right of every individual to deny, on moral, religious, ethical or philosophical grounds, service in military units or carry weapons. Conscientious objection was not directly mentioned in international instruments, but it derives from the freedom of thought, consciousness and religion. The right to conscientious objection is contained and recognized in the recommendations and resolutions of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe<sup>313</sup>. However, the

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<sup>313</sup> The Council of Europe's documents which relate to conscientious objection are: Resolution 337 (1967); Recommendations no. 478 (1967) on the right to

European Human Rights Committee, in its practice, has identified that conscientious objection is not protected by the European Convention on Human Rights and Fundamental Freedoms. Article 4, Para 3b of the Convention reads that „any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service“ does not represent forced labour; this clearly points that member states can decide whether they will embed conscientious objection in their legal order or not.<sup>314</sup>

The conscientious objection and civil service were previously defined in the FBiH Law on Defence, the RS Law on Defence, which covered this issue in several articles. Committees on conscientious objection were set up at entity level. There were organizations in all ten cantons of the Federation and four regions of Republika Srpska where one could serve civil service. In January 2006, the Law on Defence of Bosnia and Herzegovina entered into force.<sup>315</sup> The entity parliaments passed laws putting entity defence laws out of force on 1 January 2006.<sup>316</sup> Thus, provisions, governing the procedure to exercise the right to conscientious objection, were abolished. One of the most important novelties was introduced by Article 79 of the new law,

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conscientious objection; Recommendation no. 816 (1977) and Recommendation no. 1518 to Member States (2001) on the Right to Conscientious Objection to Military Service; Recommendation no. R (87) 8 of the Council of Europe's Committee of Ministers to Member States on the Right to Conscientious Objection to Compulsory Military Service, dated 9 April 1987

<sup>313</sup> See *Autio v. Finland*, 72 DR 241, ECmHR, App. No. 17086/90 (1991) and *X. v. Austria*, ECmHR, App. No. 5591/72, 43 Coll. 161.

<sup>314</sup> See *Autio v. Finland*, 72 DR 241, ECmHR, App. No. 17086/90 (1991) and *X. v. Austria*, ECmHR, App. No. 5591/72, 43 Coll. 161.

<sup>315</sup> (Official Gazette of BiH, 88/05)

<sup>316</sup> The Law on Cessation of Application of the Law on Defense of Republika Srpska (RS Official Gazette, 117/05) and the Law on Cessation of Application of the FBiH Law on Defense (FBiH Official Gazette, no. 2/06)

which envisaged the abolishment of conscription, which was regulated by entity legislation. Starting with 1 January 2006, compulsory military service was abolished in Bosnia and Herzegovina, paving the ground for professional armed forces. However, this law envisaged the reserve forces as a component of the armed forces of Bosnia and Herzegovina. The reserve forces were tasked to support active peace-time forces, maintain operational readiness, act as supplement to operational resources and improve the sustainability of the active forces. Article 36(1) of the Law envisages that reserve forces personnel comprises soldiers, NCOs and officers whose professional contractual service has expired. Article 26, Para 2 reads that a minister of defence may recruit additional reserve force personnel, who may have no prior military experience, in order to fill positions that require special expertise or experience. Reserve force personnel without prior military experience shall be required to undergo military training in accordance with the assigned military occupational specialty and/or position. All reserve force personnel shall be required to attend regular training in fulfilment of their legal obligation. This means that in spite of abolishment of compulsory military service and the establishment of professional army in BiH, there still exists the option to have, in addition to professional military personnel, individuals who cannot be members of the armed forces for their moral, religious, philosophical and other beliefs, recruited in the reserve forces. Therefore, we think that it is necessary to establish in Bosnia and Herzegovina those legal mechanisms to exercise this right to all those who may in any way be assigned duties related to the armed forces of Bosnia and Herzegovina, either reserve or professional forces.

#### *4.8.6. Restitution of property of religious organizations*

Article 12, Para 3 of the Law on Freedom of Religion and the Legal Status of Churches and Religious Communities, entitled religious communities to restitution (“in accordance with the law”), without discrimination, of all property removed in the entire country. However, the Law on Denationalization-Restitution has not been adopted as yet, meaning there are no legal mechanisms to enable religious communities to exercise their right to restitution of property. The property of the Catholic Church represents a specific case. It was also confiscated, like that of other religious communities, and transferred into the fund of the general peoples’ property of the former Yugoslavia. Article 10, Para 3 of the Basic Agreement between the Holy See and BiH regulates that: “Bosnia and Herzegovina will restore to the Catholic Church within ten years from the entry into effect of this Agreement all immoveable goods nationalized or seized without adequate compensation. For goods which cannot be restored, Bosnia and Herzegovina will give just compensation, to be agreed upon by the authorities and those with legitimate title to the properties“. This would mean that the authorities have, by concluding a separate agreement with one of the religious communities, prior to adopting a law on denationalization-restitution that would deal with the issue of denationalization in general fashion and in public’s interest, regulated this issue in its rapport with one of the churches and religious communities in Bosnia and Herzegovina. That would put the Catholic Church in a more favourable position with respect to all other religious communities in Bosnia and Herzegovina. To harmonize the provisions of the agreement with constitutional and legal position of religious communities in Bosnia and Herzegovina, which guarantees their equality and prescribes that they should exercise their rights in accordance with the law, an Additional Protocol was signed, as related to the disputable paragraph from the

aforementioned contract. The three items in this Protocol state that the restitution of the property of the Catholic Church shall take place and observe the timelines anticipated by a separate law to be passed by Bosnia and Herzegovina. The Basic Agreement with Additional Protocol was ratified and entered into force on 25 October 2007. Bearing in mind the above, it can be concluded that Bosnia and Herzegovina is obliged to deal with the restitution issue in such fashion that all religious communities are in the equal position, in accordance with the constitution, the law and international standards.

#### *4.9. Freedom of expression*

Article 19 of the International Covenant of Civil and Political Rights (ICCPR) reads:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;



(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

*(Official Gazette of SFRY, no. 7/71)*

Article 10 of the European Convention on Human Rights and Fundamental Freedoms:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*(Official Gazette of BiH, no. 6/99)*

#### *4.9.1. Constitutional provisions*

Article II/3h of the Constitution of Bosnia and Herzegovina reads:

*All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*

*h) freedom of expression.*

Article II/A2 of the Constitution of the Federation of BiH reads:

*The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution.*<sup>317</sup> In particular:

(1) All persons within the territory of the Federation shall enjoy the rights:

(l) To fundamental freedoms: free speech and press;

Corresponding articles in the Constitution of Republika Srpska read:

*Article 32*

Citizens shall have the right to publicly express their opinion on the work of State agencies and other bodies, to submit petitions, complaints and proposals to them and to receive answers thereto.

No one may be held responsible or suffer other adverse consequences because of the public expression of his opinion on the work of State agencies or his statements publicly presented in a complaint, petition and proposal, unless thus committing a criminal offence.

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<sup>317</sup> Am. V, originally, “The Federation shall ensure the application of the highest level of internationally recognized rights and freedoms provided in the instruments listed in the Annex”.

*Article 34*

Citizens shall be guaranteed freedom of profession of national affiliation and culture and the right to use their language and alphabet.  
No one shall be obliged to declare national affiliation.

*4.9.2. General considerations*

There exist in Bosnia and Herzegovina regulations which govern the freedom of expression in a satisfactory manner, and in particular in the way this was envisaged in the provisions of ICCPR, ECHR and the jurisprudence of the European Human Rights Court. In the Freedom of the Media in BiH Report it is stated<sup>318</sup>: "BiH has an advanced legal regime governing freedom of the media." The Council of Europe Parliamentary Assembly noted freedom of expression and information in the media as main indicators of democracy<sup>319</sup>. That is it is important to know that Bosnia and Herzegovina ranked 34<sup>th</sup> on the world's freedom of the media ranking list<sup>320</sup>, and that in 2008 it ranked 19<sup>th</sup>.

The right to freedom of expression is regulated by the constitution at the state and entity level. The Constitution of Bosnia and Herzegovina does not explicitly regulate the right to free access to information. However, given the fact that the European Convention on Human Rights and Fundamental Freedoms is directly applied in Bosnia and Herzegovina, this right is also embedded in Article II/3h of the BiH Constitution. Per this

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<sup>318</sup> The State of Media Freedom in Bosnia and Herzegovina, OSCE, Freedom of the Media Representative, Miklós Haraszi, 29 March 2007, page 2

<sup>319</sup> Indicators to assess media freedom in Council of Europe member states (Decision 1636 (2008))

<sup>320</sup> Report prepared by Reporters Without Borders

interpretation, Bosnia and Herzegovina also passed its Freedom of Access to Information Act (Official Gazette of BiH, 28/00 and 45/06)<sup>321</sup>.

The laws which regulate freedom of access to information comprise a legal framework whereby “each person is entitled to access to this information to the greatest extent possible, according to the public interest, and that the public agencies have a corresponding obligation to publish information.” This solution is compliant with the jurisprudence of the European Human Rights Court, which confirmed the right of access to information in cases *Observer and Guardian v. Great Britain*<sup>322</sup> and *Autronic v. Switzerland*<sup>323</sup>, while the responsibility to publish information was confirmed in the case of *Guerra et al. v. Italy*<sup>324</sup>, when the court determined:

*that freedom to receive information, referred to in paragraph 2 of Article 10 of the Convention, basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him.*

However, the Court’s jurisprudence does not provide for a commitment on the part of the state to publish information on one’s own, but it determines the commitment to publish information at individual’s request. This can, of course, be subject to restrictions envisaged in the continuation of Article 10, Para 2 of the European Convention on Human Rights and Fundamental Freedoms. These restrictions and exemptions, which may be identified from the point of information’s publication, are determined on the basis of exemptions envisaged in Articles 6

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<sup>321</sup> The Freedom of Access to Information acts in Republika Srpska and the Federation of BiH share a similar approach to regulating this matter

<sup>322</sup> *Observer and Guardian v. Great Britain* (26 November 1991, series A, no. 216)

<sup>323</sup> *Autronic v. Switzerland* (22 May 1990, series A, no. 178)

<sup>324</sup> *Guerra et al. v. Italy* (19 February 1998)

and 7. These restrictions include cases which involve detriment to legitimate goals in case the information was revealed<sup>325</sup>, which corresponds to the possibility envisaged in exceptions to Article 10.2 of the European Convention on Human Rights and Fundamental Freedoms<sup>326</sup>. Legitimate goals envisaged by this article include foreign policy, defence and security interest, as well as the protection of public safety, monetary policy interests, prevention and detection of crime, protection of the public institution's decision-making process in giving opinions, advices or recommendations by a public body, persons employed in a public institution, or any person conducting activities for or on behalf of a public institution, which does not encompass factual, statistical, scientific or information of technical nature. Among the restrictions envisaged in Article 10.2 of the European Convention on Human Rights and Fundamental Freedoms, this Article does not include only the restriction with respect to the protection of health and morale. Article 7 envisages exceptions when it comes to confidential commercial information, while Article 8 relates to exceptions in protection of privacy.

A separate legal framework was designed in Bosnia and Herzegovina, governing the exception from Article 10.2 of the European Convention on Human Rights and Fundamental Freedoms, relating to the protection of personal data. With regards to the protection of personal data, reference is made to the section relating to the right to protection of private life of the family, accommodation and correspondence.

The FBiH Law on Protection Against Defamation and the RS Law on Protection against Defamation regulate the part relating to restricting freedom of expression, and envisage that

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<sup>325</sup> Article 6 of the Freedom of Access to Information Act.

<sup>326</sup> Although this Para of the European Convention on Human Rights and Fundamental Freedoms envisages „restrictions necessary in a democratic society“.

these laws shall define: “...acceptable restrictions to the freedom of expression ...<sup>327</sup>” from Article 10, Para 2, of the European Convention on Human Rights and Fundamental Freedoms<sup>328</sup>, providing for “...civil responsibility for damage caused to the reputation of a natural or legal person, through revelation or conveyance of untruthful facts ...<sup>329</sup>” committing to the interpretation of these provisions “so as to ensure, to the greatest extent possible, the principle of freedom of expression<sup>330</sup>”. Both laws take a uniform stand in regulating this matter. Most importantly, they do not contain mechanisms of criminal prosecution for defamation. These were, prior to the High Representative’s decision<sup>331</sup> enshrined in the entity criminal legislation, directly affecting the freedom of expression in BiH.

#### *4.9.3. Establishment and functioning of electronic media*

The Law on Communications<sup>332</sup> regulates the field of communications, and lays the foundation for the Communications Regulatory Agency of Bosnia and Herzegovina (hereinafter the Agency). The Agency is an independent, non-

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<sup>327</sup> Law on the Protection against Defamation of Republika Srpska, Article 1, Para 1.

<sup>328</sup> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests... the reputation or rights of others...

<sup>329</sup> FBiH Law on the Protection against Defamation (Official Gazette of FBiH, no. 19/03 and 73/05) Article 1, Para 1.

<sup>330</sup> Article 2 of the RS Law on the Protection against Defamation and Article 3 of the FBiH Law on the Protection against Defamation.

<sup>331</sup> Decision on the freedom of information and abolishing criminal sentence for defamation (Official Gazette of Bosnia and Herzegovina, 14/99)

<sup>332</sup> Official Gazette of BiH", no. 31/03 and 75/06

profit institution, enjoying the status of legal entity, per the laws of Bosnia and Herzegovina. In terms of this law “Communications shall include telecommunications, radio, broadcasting (including cable television) and associated services and facilities”, which means that this law created a framework to regulate the telecommunications field, as well as the field of establishment and functioning of electronic media.

A Director General manages the Communications Regulatory Agency, and that person is responsible for all the regulatory functions of the Agency. S/he is nominated by the Agency’s Council, and confirmed by the BiH Council of Ministers. The Agency’s Council is a body which manages the Agency when it comes to strategic questions of legal implementation. The Agency’s Council also adopts the working code, as well as the rules for broadcasting and telecommunications, and acts as an appellate body for decisions made by the Director General.

*4.9.3.1. Licensing and the procedure of awarding broadcasting licenses* – The Communications Regulatory Agency of Bosnia and Herzegovina (the Agency) is responsible for proclamation of broadcasting and telecommunications rules and ensuring their compliance, issuance of licenses to broadcasters and telecom operators, per the provisions of this law, as well as monitoring the compliance with requirements related to issued licenses, as well as other responsibilities. Given that the law did not provide for complete regulation of establishment of the media, the Agency’s Council adopted the Rule 36/2008 on Methods of Licensing and Conditions of the License for Distribution of Radio and TV Programs. All legal persons, which have been legally registered for activities in the

telecommunications sector, are obliged to acquire a license prior to rendering any such services<sup>333</sup>.

This Rule foresees non-exclusive awarding of licenses, two months from the delivery of application to the Agency. The Request for License for Distribution of Radio and Television Program is submitted using the L – 23 form, integrated in this Rule. A request may be denied only if it is found that the applicant has provided incorrect information or has not paid the necessary fee. Rule 21/2003 contains other restrictions related to the establishment of media<sup>334</sup>. This Rule aims at achieving media plurality, that is preventing concentration of media ownership. This Rule prohibits concentration of media ownership<sup>335</sup>. Accordingly, one person cannot own two or more radio stations, or two or more television stations with the same population coverage<sup>336</sup>. The Rule allows for restricted combined ownership of one print and one electronic medium, that is one radio and one television station, for the population coverage ratio<sup>337</sup>.

Code on Radio and Television Broadcasting<sup>338</sup> regulates elementary principles of programs aired by radio and television

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<sup>333</sup> Law on Communications, Article 3, Para 1.

<sup>334</sup> Rule of Media Concentration and Ownership of Electronic and Print Media.

<sup>335</sup> Attachment to the Recommendation of the Council of Europe, no.. R (99) 1, Article 1: Member States should consider the introduction of legislation designed to prevent or counteract concentrations that might endanger media pluralism at the national, regional or local levels. Member States should examine the possibility of defining thresholds — in their law or authorisation, licensing or similar procedures — to limit the influence which a single commercial company or group may have in one or more media sectors.

<sup>336</sup> With regards to this law, ownership implies ownership by a natural or legal person, greater than 10 per cent share in electronic or print media, and the population coverage ratio is the population living within the area served by the radio and television stations signal, in accordance with technical requirements of the license issued by the Agency.

<sup>337</sup> Article 3 of the Rule 21/2003

<sup>338</sup> Official Gazette of BiH, 20/08



stations, as well as rules ensuring conditions for the freedom of expression. This code sets general program standards<sup>339</sup>, provides for special protection of children and minors, protects privacy, and sets special program standards<sup>340</sup>.

#### *4.9.4. Criminal legislation provisions*

The criminal codes in Bosnia and Herzegovina contain provisions restricting behaviour which is a result of the exercise of the right to freedom of expression in three domains covered by Article 10, Para 2 of the European Convention on Human Rights and Fundamental Freedoms, especially when it comes to the protection of territorial integrity, preventing publication of information received in secrecy, maintaining the authority and neutrality of the court. Complete decriminalization was done in full compliance with the jurisprudence of the European Human Rights Court<sup>341</sup> with respect to offences causing harm to one's reputation in defamation.

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<sup>339</sup> Here the Code regulates hate speech, decency, fairness and impartiality, false or deceitful material, violence and dangerous behavior, nudity, eroticism and pornography, and the obligation to introduce warning to the audience.

<sup>340</sup> With respect to special program standards, the Code regulates religious programs and representation of religion in programs, right to response, reporting on court proceedings, paranormal abilities, exorcism, occult activities, alternative medicine and general ban on broadcasting of quackery.

<sup>341</sup> See conclusions in the Report by the Special Rapporteur of the United Nations Freedom of Expression Committee, E/CN.4/2000/63, Para 205; for the stance that criminal responsibility for defamation is not a proportional measure for the protection of reputation, see the decision of the European Court of Human Rights, *Dalban v. Romania*, ECHR, App. No. 28144/95 (1999).

4.9.4.1. *Protection of territorial integrity* – The Criminal Code of Republika Srpska<sup>342</sup> is the only law that provides for a criminal act related to forced changes of the constitutional order of Republika Srpska. This permitted restriction is a result of the jurisprudence of the European Court of Human Rights, which admitted in the *Piermont* case that the infringement of the right occurred for reasons of two goals, prevention of disorder and in the interest of territorial integrity<sup>343</sup>.

4.9.4.2. *Preventing publication of information received in confidence* - Para 2, Article 10 of the European Convention on Human Rights and Fundamental Freedoms provided an extensive formulation related to permitted restrictions to the freedom of expression, when it comes to disclosing information received in confidence. The criminal offences referred to in all three criminal codes, relating to espionage<sup>344</sup>, disclosing state secret<sup>345</sup>, disclosing the secret of the Federation of BiH<sup>346</sup>, disclosing secret of Republika Srpska<sup>347</sup>, disclosing official secret<sup>348</sup> and disclosing military secrets<sup>349</sup>, obviously foresee restrictions in the interest of national security, territorial integrity or public safety”.

4.9.4.3. *Maintaining authority and impartiality of the court* – Our criminal legislation was right in using a narrow definition of this restriction specific to Article 10 of the European Convention on Human Rights and Fundamental Freedoms. The

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<sup>342</sup> Criminal Code (CC) of Republika Srpska, Article 307, Para 1.2 and 3.

<sup>343</sup> Decision dated 27 April 1995, A.314, page 25.

<sup>344</sup> CC BIH Article 163, CC FBIH Article 157 and CC RS Article 304.

<sup>345</sup> CC BIH Article 164.

<sup>346</sup> CC FBIH Article 158.

<sup>347</sup> CC RS Article 305.

<sup>348</sup> CC BIH Article 225, CC FBIH Article 388 and CC RS Article 355.

<sup>349</sup> CC FBIH Article 415 and CC RS Article 329.

only restrictions related to this exception concern disclosure of protected witness' identity<sup>350</sup> and abuse of confidentiality of proceedings<sup>351</sup>. Both restrictions can be justified by the interest of "national security, territorial integrity or public safety", that is by the protection of "reputation or rights of others".

#### *4.9.5. Prohibition of war propaganda and advocacy of national, racial or religious hatred*

Article 20 of the ICCPR:

Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

*(Official Gazette of SFRY, no. 7/71)*

In Bosnia and Herzegovina, the prohibition of war propaganda and advocacy of national, racial or religious hatred represents a criminal act, as regulated by entity criminal codes. Unfortunately, this prohibition is not incorporated in the Constitution of BiH or the Criminal Code of BiH, although it would have been, in that way, additionally emphasized as impermissible in the legal order of BiH. These two criminal codes do not treat this criminal act in the same fashion, but it appears that both provisions, with certain derogations, encompass the sense of Article 20 of the ICCPR. In the sense of Para 2, Article 20 of the ICCPR, both entity criminal laws prohibit "causing or

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<sup>350</sup> CC BiH Article 240, CC FBiH Article 352 and CC RS Article 368.

<sup>351</sup> CC BiH Article 237, CC FBiH Article 367 and CC RS Article 350.

inciting national, racial or religious hatred, divisions or intolerance”<sup>352</sup>, however in defining the offence, these two laws introduce different elements of the offense. The FBiH Criminal Code foresees that the offence must be committed in “public”, which is an unnecessary narrowing of the focus of Para 2 of Article 20 of the ICCPR. Furthermore, the consequence of this action may also be the causing or inciting *intolerance among constituent peoples and others living in the Federation*, which again unnecessarily narrows the sense of Para 2, Article 20 of the ICCPR, which explicitly requires that this offence relates to “any advocacy to national, racial or religious hatred”, regardless of where these persons may reside. This provision may be problematic if it is narrowly interpreted in its application. However, if it will be interpreted according to Article 3, Para 1 of the FBiH Criminal Code<sup>353</sup>, which prescribes explicit linkage of criminal offences, prescribed in the law, and the international law, therefore the responsible institution should interpret this offence in accordance with international legal standards, which is Article 20, Para 2 of the ICCPR in this case. The RS Criminal Code expands on the sense of Para 2, Article 20 of the ICCPR in that it introduces a new manner of commission of offence “by spreading ideas on the superiority of one race or people above the other” without the introduction of any restrictions.

The criminal framework for this criminal offence is different in the case of the two entity laws. In the Federation, the envisaged prison sentence ranges from one to five years, while the

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<sup>352</sup> Article 163, Para 1 of the FBiH Criminal Code (CC) and Article 390, Para 1 of the RS Criminal Code

<sup>353</sup> Article 3, Para 1 of the FBiH Criminal Code: Criminal offenses and criminal sanctions are prescribed for the behavior endangering or violating the individual freedoms and human rights, protected and guaranteed by the Constitution of the Federation and the international law, where they cannot be ensured without criminal justice compulsion.”

lowest legal minimum in Republika Srpska envisages a fine or prison sentence of up to two years.

Three other provisions also treat the prohibition of war propaganda and advocacy of national, racial or religious hatred. These provisions regulate the qualified forms of perpetration of this act, by *coercion, molestation, jeopardizing of safety, exposing to derision of national, ethnic or religious symbols, damaging belongings of another, desecrating monuments or graves*<sup>354</sup>, *i.e. abuse of office or powers*, defining the implications for the perpetrator if that offences results in consequences, that is if it causes unrest, violence or other grave consequences for the living together of (constituent) peoples and others living in the Federation/Republika Srpska<sup>355</sup>.

In Para 4, the RS Criminal Code adds the obligation to remove the materials and items, carrying the messages referred to in Para 1 of this Article, including the means of their production, reproduction or dissemination.

In Article 363, Para 2, the FBiH Criminal Code criminalizes the perpetration of this offence by the media or journalists by which they violate the professional attitude standards in the use of inflammatory, hate speech or speech which clearly calls to violence, people's or ethnic conflicts, thus undermining public peace or order. Envisaged sentence ranges from a fine to a prison sentence of up to three years, which makes this offence a less egregious commission of an offence prohibited in the ICCPR. This or similar articles cannot be found in the BiH or the RS criminal codes.

Article 4 of the Code on Radio and Television Broadcasting prohibits the broadcast any programs which convey a clear and immediate risk from inciting ethnic or religious hatred

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<sup>354</sup> Article 163, Para 2 CC FBiH and Article 390, Para 2 CC RS

<sup>355</sup> Article 163, Para 3 CC FBiH and Article 390, Para 3 CC RS

among the communities in Bosnia and Herzegovina, or which can be interpreted as incitement to violence, disorder or unrest, prohibiting the program of radio and televisions stations directed at the violation of guaranteed freedoms and rights of individual and citizen or the causing of national, racial and sexual intolerance or hatred. The Code prohibits the broadcast of programs containing or instilling discrimination and/or violence on the grounds of ethnic background, gender/sex, sexual orientation, instilling to harassment or sexual harassment. The only exception to prohibition of incitement to hatred, hate speech and incitement of discrimination relates to programs which are part of scientific, authorship or documentary work and/or represent a part of objective journalistic report and were published without the intention to incite to those actions, i.e. wishing to critically highlight such actions.

#### *4.10. The right to peaceful assembly and freedom of association*

Article 21 of ICPPR:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 of ICPPR:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice,

or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

*(Official Gazette of SFRY, no. 7/71)*

Article 11 ECHR:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the

protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

*(Official Gazette of BiH, no. 6/99)*

#### *4.10.1. General*

The right to peaceful assembly and freedom of association, as political rights, are regulated and guaranteed in Bosnia and Herzegovina through the legal framework: the Constitution of Bosnia and Herzegovina<sup>356</sup> and the Entities (the Federation of BiH<sup>357</sup> and Republika Srpska<sup>358</sup>), the Statute of Brčko District<sup>359</sup>, laws on public assemblies (earlier law of SR BiH<sup>360</sup>, of Republika Srpska<sup>361</sup>, of cantons<sup>362</sup> and of Brčko District<sup>363</sup>), laws on associations and foundations<sup>364</sup>, Law on Political Organizations<sup>365</sup>,

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<sup>356</sup> Article II/3 of the Constitution of BiH

<sup>357</sup> Article II/2.1 and 2 of the Constitution of FBiH

<sup>358</sup> Article 30 and 31 of the Constitution of RS

<sup>359</sup> Article 15 of Statute of Brčko District

<sup>360</sup> Law on Public Assemblies, Official Gazette of SR BiH no. 41/90, 19/01 and 38/01, Legally-binding Decree on Changes and Amendments to the Law on Public Assemblies, Official Gazette of RBiH no. 13/93, Law on Affirmation of Decrees with Legal Effect, Official Gazette of RBiH 13/94.

<sup>361</sup> Law on Public Assembly, Official Gazette of RS no. 118/08

<sup>362</sup> e.g. Law on Public Assembly, People's Gazette of Herzegovina-Neretva Canton, no. 4/00.

<sup>363</sup> Official Gazette of Brčko District no. 26/04.

<sup>364</sup> Law on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH no. 32/01, 42/03 and 63/08, Law on Associations and Foundations, Official Gazette of FBiH no. 45/02, Law on Associations and Foundations of Republika Srpska, Official Gazette of RS no. 52/01 and 42/05,



other laws relevant for the political<sup>366</sup>, union<sup>367</sup>, youth<sup>368</sup> and religious<sup>369</sup> organization and activities, national minorities<sup>370</sup>, as well as certain business associations, such as professional associations<sup>371</sup>, and international documents recognized by the legal system of Bosnia and Herzegovina, in particular: General Declaration of Human Rights<sup>372</sup>, European Convention on Human Rights and Fundamental Freedoms<sup>373</sup>, International

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Law on Associations and Foundations of District Brčko, Official Gazette of District Brčko no. 12/02 and from 2008.

<sup>365</sup> Law on Political Organizations, Official Gazette of SR BiH no. 27/91, Law on Political Organizations, Official Gazette of District Brčko no. 12/02 and from 2008.

<sup>366</sup> Election Law of BiH, Official Gazette of BiH no. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08 and 37/08.

<sup>367</sup> E.g. Labor Law of FBiH, Official Gazette of FBiH no. 43/99, 43/99, 32/00 and 29/03, Labor Law, Official Gazette of RS no. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07, Labor Law of Brčko District, Official Gazette of Brčko District no. 7/00, 8/03 and 33/04, 29/05.

<sup>368</sup> Law on Youth Organizations, Official Gazette of Republika Srpska no. 98/04 and 119/08

<sup>369</sup> E.g. Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina, Official Gazette of BiH no. 5/04, as well as the associated Rulebook on Establishment and Maintenance of Uniform Register of Churches and Religious Communities, Their Alliances and Organizational Formats in Bosnia and Herzegovina, (Official Gazette of BiH, no. 46/04)

<sup>370</sup> Law on the Protection of Rights of National Minorities, „Official Gazette of BiH“ no. 12/03 and 76/05, Law on the Protection of National Minorities' Rights in the Federation of Bosnia and Herzegovina, „Official Gazette of Federation of BiH“ no. 70/08, Law on Protection of National Minorities' Rights, Official Gazette of RS no. 2/04

<sup>371</sup> E.g. Law on Enterprises in RS, Official Gazette of RS no. 24/98, 62/02, 38/03, 97/04 and 34/06,

Law on Commercial Entities in FBiH, Official Gazette of FBiH” no. 23/99, 45/00, 2/02, 6/02, 29/03, 68/05 and 91/07 and 84/08

<sup>372</sup> Article 20

<sup>373</sup> Article 11

Covenant on Civil and Political Rights<sup>374</sup>, and the International Covenant on Economic, Social and Cultural Rights<sup>375</sup>.

The rights to political association, and free expression of citizens' will through elections, establishment and activities of political parties, formulation of political programs, accession to political parties, electoral procedures and campaigns, are regulated in the Constitution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and of Republika Srpska, of the Statute of Brčko District, laws on political organizations and the Election Law of BiH.<sup>376</sup>

The International Covenant on Civic and Political Rights does not guarantee „to everyone“ the right of peaceful assembly, but it only „recognizes“ this right, which a more restrictive formulation, embedded as a result of compromise during the Cold War.

The modern standards providing for exercise of this right and enjoyment of this freedom do not imply a passive only approach by the state towards peaceful assemblies, but require of the state:

- active involvement even after notification of the assembly, i.e. granting related permission (depending on the regime applied in individual countries),
- protection of groups exercising the right to peaceful assembly,

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<sup>374</sup> Article 21 and 22

<sup>375</sup> Article 8

<sup>376</sup> Election Law of BiH, Official Gazette of BiH no. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08 and 37/08

- securing the assembly during which the public expression of certain groups does not suit or is not acceptable to some other groups.<sup>377</sup>

Article 11 of the European Convention on Human Rights and Fundamental Freedoms relates only to peaceful assembly. Therefore, an assembly having a special or main goal of causing unrest is not treated by Article 11. However, if any disruption caused by the assembly happens unintentionally, then the assembly shall enjoy the protection of Article 11. The court finds that Article 11 imposes positive obligations on states to protect the right to freedom of association. That is why a state is obliged to take measures and protect from violence a peaceful assembly which others wish to interrupt. States are left with extensive scope of freedom in identifying measures to that end.<sup>378</sup>

The genuine, effective freedom of peaceful assembly cannot be reduced to the mere obligation by the state not to interfere: a purely negative concept would not be compliant with the objective and purpose of Article 11. Like Article 8, Article 11 requires on occasion the taking of positive measures, and if necessary, measures in the domain of relations among individuals.<sup>379</sup>

The constitutional and legal framework in Bosnia and Herzegovina, encompassing the constitutions of BiH, FBiH, RS

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<sup>377</sup> See: Dr Vojin Dimitrijević, Dr Milan Paunović, in cooperation with Mr Vladimirom Đerićem, „Human Rights“, Belgrade Human Rights Center, „Dosije“, Belgrade, 1997.

<sup>378</sup> Christopher Harland, Ralph Roche, Ekkehard Strauss, „Komentar Evropske konvencije o ljudskim pravima prema praksi u Bosni i Hercegovini i Strasbourgu“, Sarajevo, 2003, pp 267 and 268

<sup>379</sup> P. van Dijk, G.J.H. van Hoof, in cooperation with... „Teorija i praksa Evropske konvencije o ljudskim pravima“, Sarajevo, 2001, p. 555.

and District Brcko Statute and international agreements applicable in BiH, guarantees the enjoyment of rights and freedoms to all persons in Bosnia and Herzegovina, without discrimination on the grounds of sex, race, language, religion, political or other opinion, national or social background, association with a national minority, property, birth or other status.

The Constitution of BiH dictates that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.

Rights and freedoms envisaged in the European Convention on Human Rights and Fundamental Freedoms and associated protocols are directly applied in Bosnia and Herzegovina. These documents have priority over all other laws.

All persons on the territory of Bosnia and Herzegovina enjoy human rights and freedoms from the Bill of Rights, including the freedom of peaceful assembly and freedom of association with others.

The Constitution of Bosnia and Herzegovina stresses the direct application of human rights and freedoms, guaranteed by the European Convention on Human Rights and Fundamental freedoms and associated protocols, for all persons on the territory of BiH, having effect above all other laws.

The Constitution of FBiH prescribes that the Federation shall ensure the application of the highest level of internationally recognized rights and freedoms, identified in the constitution and international documents listed in the Annex to the constitution. In particular, this includes fundamental freedoms: freedom of assembly, freedom of association, including the freedom to form and join unions, and the freedom of non-association.

The European Convention on Human Rights and Fundamental Freedoms, and associated Protocol, as well as the Universal Declaration on Human Rights, and the International Covenant on Civic and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are instruments of protection of human rights, according to the Annex of the Constitution of FBiH, and have the effect of constitutional provisions.

The Constitution of RS prescribed that citizens have the right to peaceful assembly and public protest. The freedom of assembly can be limited by law only to protect the personal safety and security of property. The freedom of political organization and action is guaranteed by law. Political organization and actions aimed at undermining democracy, integrity of the Republic, abusing constitutionally-guaranteed freedoms and inciting national, racial or religious hatred and intolerance are prohibited.

Rights and freedoms, guaranteed by this constitution, cannot be denied or restricted. The chapter on human rights and fundamental freedoms in the Constitution of Republika Srpska was amended with items 1 through 3 of Amendment LVII, reading:

*"In the case there are differences between the provisions on rights and freedoms of the Constitution of Republika Srpska and those of the Constitution of Bosnia and Herzegovina, the provisions which are more favourable for the individual shall be applied.*

*The provisions of Articles 10, 21, 30, 32, 33, 34, 38 and 43 of the Constitution on rights and freedoms of citizens shall be considered the provisions on human rights and fundamental freedoms and shall apply to all, not only to citizens.*

*The provisions of Articles 13, 22, 23, 24, 25, 26, 28 and 30 of the Constitution on rights and freedoms shall be exercised in conformity with related provisions of Articles 8 through 11 of the*

*European Convention for the Protection of Human Rights and Fundamental Freedoms.”*

Therefore, the amendments to the Constitution of RS directly refer to the exercise of right to peaceful assembly, public protest and freedom of assembly, in compliance with the European Convention on Human Rights and Fundamental Freedoms.

The Statute of Brčko District (Article 15) prescribes that all persons are entitled to freedom of peaceful assembly.

The European Convention on Human Rights and Fundamental Freedoms and the jurisprudence of the European Human Rights Court in Strasbourg stipulate that the right to freedom of association also guarantees the right to forming and joining associations, political parties, religious communities, unions, employers' associations, commercial business and any other forms of association. The European Court of Human Rights in Strasbourg reiterated on several occasions the importance of political parties that, under Article 11, enjoy particular protection given their key role in a democracy.

As in the case of political parties, the European Human Rights Court dedicated special attention to national minority associations wishing to exercise their right to free association.

The Law on Protection of National Minority Rights regulates that “persons belonging to national minorities are entitled to freedom of assembly for the purpose of expressing their cultural, religious, educational, social, economic and political freedoms, rights, interests, needs and identities”.

Article 11 of the European Convention on Human Rights and Fundamental Freedoms protects “the freedom of association with others” in positive and negative contexts. It encompasses the right to form an association or join an existing one (positive

aspect), but also the right not to be a member of an association (negative aspect).

The Constitution of FBiH makes explicit reference to the freedom of non-association. The legislation relevant for (political) and union association, organization and action, contains provisions on voluntary association. It, therefore, excludes the element of obligation to associate, leaving space to the negative aspect of right to association.

The constitutional and legal framework, as well as the relevant implementing regulations and provisions of inferior legal effect, clearly stipulate that restrictions to freedom of association can only be imposed in compliance with the law and observing the principles of international documents on human rights, applicable in Bosnia and Herzegovina.

The European Convention on Human Rights and Fundamental Freedoms dictates that the freedom of association does not constitute an absolute right. Accordingly, this right can be restricted under specific circumstances. Article 11, Para 2 of the Convention sets certain conditions to possible restrictions of rights to freedom of association, and the restriction of right to freedom of association can be permitted only if it:

- a) Is prescribed by law (the Convention stipulates that a 'law' is not only a law in formal terms; that may also be another form of regulation (e.g. a by-law), by the constitution, an international treaty the member state is a party to, as well as the European law)
- b) Has a legitimate goal (the Convention dictates that the freedom of association may be restricted only: in the interest national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, such as the provisions incorporated in

constitutional, legal or documents of inferior legal effect in BiH), and

- c) Is necessary in a democratic society (the freedom of association may not be restricted more than necessary, to meet the need of attaining legitimate goals).

According to the Convention, legitimate restrictions of right to freedom of association, next to cases where circumstances provide for legally prescribed restrictions, have a legitimate goal and are necessary in a democratic society, exist also on the basis of:

Article 15 of the Convention - In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Article 16 of the Convention - Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens. Article 11 does not prevent restrictions on political action of aliens;

Article 17 of the Convention - Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 11 of the Convention prescribes that this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.



States may take measures they find necessary to protect legal certainty and the constitutional rights of citizens, but they must do so in compliance with the Convention, while the measures taken shall be subject to the supervision by the Court.

Article 11:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### *4.10.2. Restrictions to the freedom of assembly*

The applicable regulations in Bosnia and Herzegovina, the constitutions and international documents, all stipulate that the guaranteed freedom of peaceful assembly can only be restricted by law.

In Republika Srpska, the legislation on the freedom of peaceful assembly was adopted at entity level, while that was done at cantonal level in the Federation of BiH.

Under the previously applicable state level law, the Law on Public Assembly<sup>380</sup> envisaged under public assemblies the meetings, rallies and other assemblies called for the creation or expression of public opinion or development of political consciousness and activities of citizens in public, as well as street marches, political rallies, as well as assemblies organized to deliver cultural and entertainment shows, sports competition and similar assemblies (performances) in public.

A religious community cannot convene or organize a political gathering.<sup>381</sup>

It is required to provide timely, complete and proper notice of public assembly to the police station, unless this concerns student performances in schools or other appropriate institutions, other performances in closed premises, fenced space or another location free of public traffic, if that performance shall not include a sports competition, dance parties or similar entertainment shows.<sup>382</sup>

Aliens (physical and legal persons) may convene and hold a public assembly, after obtaining approval by the station - administration.<sup>383</sup>

A person against whom the court has ordered a security measure prohibiting public speaking cannot convene or speak at a public assembly.<sup>384</sup>

The Law on Public assembly<sup>385</sup> prescribes that a public assembly of citizens is any organized assembly of citizens, taking

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<sup>380</sup> Law on Public Assembly, Official Gazette of SR BiH no. 41/90, 19/01, 38/01,13/93 and 13/94

<sup>381</sup> Ibid, article 2

<sup>382</sup> Ibid, article 3

<sup>383</sup> Ibid, article 4

<sup>384</sup> Ibid, Article 5

<sup>385</sup> Law on Public Assembly, Official Gazette of RS no. 118/08

place in a designated area (for public assembly), and that public assemblies of citizens take place to publicly express political, social and other convictions and interests, as well as peaceful assemblies and protests, public performances as assemblies to collect profit within registered sector of operations, and which – given the expected number of participants of the character of public assembly, require the taking of special security measures, as well as other public assemblies such as assemblies of citizens for the purpose of fulfilling state-related, religious, humanitarian, cultural and artistic, sports or other interest, which are not for profit and are not notified except in exceptional cases. These assemblies are free and are organized in the manner prescribed by this law.

Restrictions to the right of public assembly may be prescribed with this law only, for the purpose of protecting the constitutional order, public morale and public health, as well as the protection of freedoms and rights of other individuals.

The freedom of speech and expression at public assembly is restricted by prohibiting any call and encouragement of the use of violence, national, racial, religious or other hatred or intolerance.

A person against whom the court has ordered a security measure prohibiting public speaking cannot convene or speak at a public assembly. As the RS Criminal Code<sup>386</sup> does not foresee a security measure against public speaking, this provision of the Law on Public Assembly should be duly harmonized.

The area appropriate for public assembly is a public place that is accessible and convenient for the assembly of persons whose number and identity is not pre-determined and at which the assembly of citizens does not lead to violation of rights of

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<sup>386</sup> Criminal Code of RS, "Official Gazette of Republika Srpska" no. 49, dated 25 June 2003

other individuals, public morale, personal safety and security of property, public health and disruption of public traffic.

A decision by the city or municipal administration identifies the space appropriate for public assembly.

Apart from spaces identified in the city or municipal administration's decision, peaceful assemblies cannot be held:

- a) in the vicinity of hospitals, so as to prevent access to emergency unit vehicles,
- b) in the vicinity of kindergartens and primary schools, while children stay there,
- c) in national parks and protected areas, with the exception of peaceful assemblies meant to promote the protection of nature and the environment or to mark significant historic dates,
- d) in the vicinity of cultural monuments, if that could cause the destruction or damage to protected common goods,
- e) on motorways, regional or local roads where traffic security would be endangered,
- f) in the vicinity of facilities provided special security, at a distance of at least 50 meters from them.

The provision that peaceful assembly can only take place “in the vicinity of facilities with special security, at a distance of 50 meters from them” leaves room for abuse, as the provision is not specific enough in referring to “facilities with special security”. It would, therefore, be necessary to elaborate this provision in greater detail, paying attention to democratic standards and principles of regulation when it comes to the exercise of right to peaceful assembly and public protest. Bearing in mind that the term ‘citizen’ in common use exclusively denotes a national of Bosnia and Herzegovina, it would be good to find a more adequate term and formulation that would express the equality of the right to peaceful assembly for nationals and aliens.

The Law on Public Assembly of the Herzegovina-Neretva Canton prescribes a number of restrictions in the sense that political organizations or citizens' associations, whose work has been banned, cannot organize public assemblies.

Participants in public assemblies or individuals moving in the direction of the location of public assembly are banned from carrying weapons or objects intended or suitable for inflicting injuries or damaging the property.

It is prohibited to carry insignia or other symbols instilling violence, national or religious hatred at public assemblies.<sup>387</sup>

The Law on Citizen Assemblies in Brčko District<sup>388</sup> prescribes additional restrictions:

- A public assembly cannot take place in front of schools, while teaching is ongoing, or in front of healthcare facilities.
- A public assembly cannot be notified or take place as movement of participants in a given space, if it is possible to ensure temporary changes in traffic regime, protection of public health, public safety and security of property, by ensuring continuous movement, except at the starting and ending point.
- A public assembly referred to in the previous paragraph cannot be held between 8 and 14:00 hours, or from 18 to 23:00 hours, lasting up to three hours at the longest.

The relevant provisions on peaceful assembly and association in BiH did not restrict the right to peaceful assembly and public protect of officers in the armed forces, the police and civil servants. International human

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<sup>387</sup> Law on Public Assembly, People's Gazette of Herzegovina-Neretva canton no. 4/00, articles 13,14 and 15.

<sup>388</sup> Official Gazette of Brčko District no. 26/04.

rights documents, applicable in BiH, prohibit legal restrictions in the exercise of these rights to armed forces offices, police officer or civil servants. That has been, for the most part, done through separate legislation.

*4.10.2.1. Political and union organization and actions and right to strike* - „General ban on strike is contrary to the right to freedom of association, however the international labour standards allow for prohibition and restriction of the right to strike to certain target groups of employees/civil servants. For example, national laws or other regulations identify the scope of the right to organization and the right to strike for the armed forces and the police.

Officials and appointees in public administration can exercise their right to strike only under the circumstances and within a procedure prescribed by the union rules.

When it comes to the right to strike, the analysis of applicable legal solutions in BiH shows that the option of admissibility of the right to strike can only in principle be regulated in another fashion within certain sectors.<sup>389</sup> The Law on Strike in the Federation of Bosnia and Herzegovina<sup>390</sup> regulates the right to strike, the right of the union to call for strike, the employer's right to remove an employee from his/her job post and other strike-related issues. In the Army of the Federation of Bosnia and Herzegovina, and as concerns the staff of the Ministry of Interior, the administrative bodies and the administration department in the Federation of Bosnia and

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<sup>389</sup> See: Jasminka Gradašćević - Sijerčić , Right to Strike in Vital Sectors, <http://www.pulsdemokratije.net/> , dated 20.6.2007

<sup>390</sup> Law on Strike in the Federation of Bosnia and Herzegovina, Official Gazette of FBiH no. 14/00

Herzegovina, the issue of strike will be regulated by a separate law. According to the provisions of this law, the union is entitled to call for strike and organize it to protect and promote economic and social rights and interests of its members.

A strike can be organized only in compliance with this or other law, following the union's rules on strike and the collective agreement. An employee freely decides on his/her participation in strike. The organization and participation in strike, organized in compliance with the provisions of this or other law, the collective agreement and the union's rules on strike, does not represent the abuse of employment contract.

In the RS, a law regulates strike in the sectors of particular and public interest. According to this law, the main precondition dictates that a strike in these sectors must not cause an interruption in minimum services providing for the protection of human life and public health as well as the material assets.

The RS Law on Strike<sup>391</sup> prescribes that if a strike is manifested through assembly of employees, the location of assembly cannot be outside the perimeter of the employer's working environment, which can be interpreted as a form of restriction on the right to peaceful assembly and public protest. This law also regulates the procedure of organized interruption of work by which workers can exercise the protection of their professional, economic and social rights, and which can be organized in a company, an institute or with other legal and natural person (employer). The organization of strike or participation in strike, under the terms identified in this law, does not represent a violation of work discipline, it cannot be a basis to

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<sup>391</sup> Law on Strike, Official Gazette of RS, Official Gazette of RS no. 111/ 08 dated 5.11.2008

initiate proceedings to establish disciplinary and material responsibility of the worker, it cannot be a basis to remove a worker from his/her position and cannot result in termination of worker's contract.

The Law on Strike<sup>392</sup> in Brčko District of Bosnia and Herzegovina regulates the procedure by which employees exercise their constitutional right to strike for the protection of their economic and social rights. In light of this law, a strike is an organized interruption of operation in a company, the institutions of Brčko District and with the local or foreign legal or natural person employing workers. Employees are free to decide on their participation in strike. The organization and participation in strike, organized according to the law's provisions and the collective agreement, is not a violation the employment contract.

The Law on Labour<sup>393</sup> in the Federation regulates the issue of formation, joining and leaving the union or the employer's association. The aforementioned law prescribes that the worker or the employer cannot be brought into an unfavourable position because he/she is or is not a member of the union or the employer's association. The legal activity of the union or the employers' association cannot be banned permanently or temporarily.

The RS Law on Labour<sup>394</sup> prescribes that a worker, or a person seeking employment, cannot be brought in an unequal position in exercising employment-based rights and the right to

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<sup>392</sup> Law on Strike, Official Gazette of Brčko District, December 2005.

<sup>393</sup> Official Gazette of FBiH no. 43/99, 32/00 and 29 /03.

<sup>394</sup> Law on Labor, Official Gazette of Republika Srpska, no. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07



employment due to their race, ethnic background, skin colour, sex, language, religion, political or other opinion and conviction, social background, property, membership or non-membership in a union or political organization, physical and mental health or other priorities that are not directly linked to the nature of employment.

Workers are entitled to freely organize themselves into unions or become members of unions, per the union's statute and rules. Employers are entitled to freely organize themselves into employers' associations or become members of such associations, per the association's statute and rules. The union and employers' association are founded without preceding approval from a state body. Workers or employer freely decide to leave the union, or an employers' association. When employers and employers' associations act on their behalf or through another person, a member or agent, they are banned from interfering with the organization and work of the union, or control the union's work by providing material or other support. When a union acts on its behalf or through another person, a member or an agent, it is banned from interfering in the organization, work and management of the employers' association. The legal activity of unions and employers' association cannot be permanently or temporarily banned. Union organization are enlisted in the register of union organizations, prescribed and maintained by the ministry responsible for labour affairs. A worker is entitled to strike, per the appropriate provisions of the Law on Strike.

Law on Employees in Public Institutions of the Federation of Bosnia and Herzegovina<sup>395</sup> prescribes that employees in public institutions are entitled to freely organize a union, join a union

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<sup>395</sup> Article 5 of the Law on Employees in Civil Service Institutions of the Federation, Official Gazette of FBiH no. 67/05, dated 30.11.2005.

according to the statute or rules of the union, and are entitled to organize a strike, under the law.

The Law on Civil Service in Institutions of Bosnia and Herzegovina<sup>396</sup> regulates the rights of civil servants to form or join, but not be obliged to join, a union or a professional association, or join a strike, in accordance with the law. A civil servant cannot be a member of administrative or other boards, or boards of political parties, and must not follow political party instructions.

The relevant provisions of the Law on Police Officers of the Federation of Bosnia and Herzegovina<sup>397</sup>, prescribe that a police officer on duty shall always abstain from public display of his/her political beliefs, and from public display or religious beliefs.

A police officer cannot take the position, fulfil duties or perform activities incompatible with his/her official duties, in particular he/she cannot:

- hold any public office;
- be a member of a political party or follow political party instructions, attend political rallies or other conferences in police uniform, unless if he/she is on duty.

A police officer shall resign when he/she enlists as candidate for elected office or from the moment he/she is appointed to a position at any level of government in Bosnia and Herzegovina.

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<sup>396</sup> Law on Civil Service in Institutions of Bosnia and Herzegovina, Official Gazette of BiH no. 12/02, 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06

<sup>397</sup> Law on Police Officers of the Federation of Bosnia and Herzegovina, Official Gazette of FBiH no. 28/05, dated 11.05.2005.

A police officer is entitled to founding and joining a union or a professional association, in accordance with the law;

The Law on Internal Affairs of the Federation of Bosnia and Herzegovina<sup>398</sup> prescribes that a political party member cannot run for the position of police director. Persons that hold or that held any position in a political party, or were appointed to a position by a political party, or were members of an executive or legislative body at any level, cannot be appointed to the position of police director, and cannot be members of an independent committee selecting the police director. This applies also to persons for whom IPTF as issued a non-compliance report.

The provisions of the Law on Internal Affairs<sup>399</sup> prescribe that members of the independent board (responsible for appointment of the police director) cannot be members of political parties. A police director cannot be a member of a political party. Candidates for the post of police director cannot be members of political party. This also includes persons that hold any position at any level in a political party were appointed to a position by a political party, or are members of an executive or legislative body at any level.

In their work, police officers cannot display their political convictions or be guided by those.

Ministry employees cannot hold position in legislative and executive bodies in the Republic, or be members of administrative or other bodies in companies or other legal entities and political parties.

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<sup>398</sup> Law on Internal Affairs of the Federation of BiH, Official Gazette of FBiH no. 49/05, dated 08.08.2005

<sup>399</sup> Law on Internal Affairs, "Official Gazette of Republika Srpska", no. 48, dated 24 June 2003

Ministry employees, except for police officers, exercise the right to strike in accordance with the Law on Strike.

Provision of the Law on Police of the Brčko District<sup>400</sup> regulate that police officers may form professional associations, but they cannot be members of political parties or support political candidates or political party platforms.

The Law on Defence of Bosnia and Herzegovina<sup>401</sup> prescribes a ban on political involvement of officers serving in the Armed Forces.

The Armed Forces cannot be used for political ends or political party activities. Political and public actions are regulated as follows:

Officers serving in the Armed Forces, including the generals, are neutral when it comes to political issues and shall not be involved in any type of political activity, or be elected or appointed to public office.

This Article does not prevent the Armed Forces officers from registering to vote or from voting or running in the elections, in compliance with the Election Law of Bosnia and Herzegovina.

An officer in the reserve, elected or appointed to public office, is not obliged to resign his/her duty if they are engaged at regular training, however he/she cannot act as a political party representative during his service in the Armed Forces.

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<sup>400</sup> Article 42 of the Law on Police of Brčko District, Official Gazette of Brčko District, no. 2/02, dated 8 June 2000

<sup>401</sup> Law on Defence of Bosnia and Herzegovina, Official Gazette of BiH no. 88/05

The Law on Service in the Armed Forces of Bosnia and Herzegovina<sup>402</sup> stipulates that professional officers are banned from union or political organization.

Military officers, in principle, are banned from delivering public statement on the situation and reports in the Armed Forces, without a written permission by the Minister of Defence, except in cases otherwise prescribed by law.

A military officer is entitled to performing religious rituals to exercise his/her religious freedom, in accordance with specific features of each of the religions.

The organization and fulfilment of religious rituals under Para 1 of this Article are based on the principle of the Armed Forces officers' individual freedom of expression and of conduct of religious service.

The organization of religious activities in the Armed Forces is based primarily on objective military needs.

The Ministry of Defence of BiH, in cooperation with recognized churches and religious communities, prescribes the organization and manner of functioning of religious activities in the Armed Forces, ensuring the exercise of religious freedoms, as prescribed by law.

A professional military officers, serving in the Armed Forces, can join associations and non-governmental organizations, only if these activities comply with this Law.

A professional military officer can become a member of a foreign professional association or an international organization only with the permission of the Minister of Defence.

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<sup>402</sup> Law on Service in the Armed Forces of Bosnia and Herzegovina, Official Gazette of BiH, no. 88/05, 53/07 and from 2008.

#### *4.10.3. Prohibition of public assembly*

A public assembly will be banned if it was convened for the purpose of performing activities, or if it contains activities directed at or if it includes manifestation of activities directed at, or if circumstances have been identified to show that the public assembly will endanger the constitutional order, or if criminal acts will be committed during the assembly or their perpetration will be encouraged, public peace and order will be disrupted or public morale violated, or if personal safety and security of property will be jeopardized.

A public assembly shall be banned, when appropriate, to protect public health. A public assembly will be banned if it was not properly notified, in cases when notification is mandatory.

Holding a public assembly may be banned if there are grounds to expect that this public assembly shall disrupt public traffic, and the convening party or the organizer of that public assembly are not able to ensure – in timely fashion – order and peace at the public assembly, that is the usual public traffic.

Also, a police station-administration shall take measures to prevent or disrupt a public assembly that was banned or not notified, in cases when notification is mandatory.<sup>403</sup>

The Law on Public Assemblies in Republika Srpska prescribes that a responsible body will prohibit a peaceful assembly, if:

- the assembly is directed at jeopardizing the constitutional order,
- the assembly was not notified on time and according to the procedure,

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<sup>403</sup> Law on Public Assemblies, Official Gazette of SR BiH no. 41/90, 19/01, 38/01, 13/93 and 13/94

- the assembly was notified to be held in a location at which it cannot be held, according to the law,
- the assembly's objectives are undeniably directed at abusing guaranteed freedoms and rights or because they can instil violence due to different national, racial, religious or cultural sentiments and affiliation,
- there exists real danger that this peaceful assembly would jeopardize the public and property security or would provoke danger or violence or large-scale endangerment of public order and peace and
- that was necessary to prevent harm to public health, at the request of administrative institutions responsible for public health.

A decision referred to in Para 1 of this Article must be made 24 hours at the latest from the time the peaceful assembly was notified.

The organizer may lodge an appeal against the decision on prohibition of the public assembly. The responsible institution is obliged to deliver immediately the appeal and supplementary documentation to the RS Minister of Interior. Decision on appeal must be made and delivered to the organizer 24 hours at the latest from the time of receipt of appeal. If the Minister does not decide on appeal within the prescribed deadline, the peaceful assembly can take place. Once the organizer receives a decision banning the peaceful assembly, the organizer is obliged to inform the public of that decision and, if possible, remove all publicly displayed notices about the peaceful assembly. An administrative proceeding may be initiated against this decision before a competent court.

The Law on Public Assemblies in Herzegovina-Neretva Canton<sup>404</sup> prescribes also that a peaceful assembly shall be banned:

1. if the public assembly is organized by a person against whom a security measure is in force, i.e. ban on public speaking for the duration of imposed measure,
2. if the public assembly is organized by a political organization or citizens' association whose work is prohibited<sup>405</sup>.

It is forbidden to speak at a public assembly if that assembly was not notified on time or if its organization was prohibited, as well as at an assembly which was interrupted according to the provisions of this law, unless the speaking was directed at mitigating unrests or breaking up the assembly, as well as speaking at a spontaneous assembly in locations where public traffic takes place.<sup>406</sup>

The law on citizen assembly in Brčko District<sup>407</sup> prescribes the following:

- The police shall prohibit a public assembly from taking place if the assembly was convened to conduct activities aimed at:

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<sup>404</sup> Law on Public Assemblies, People's Gazette of Herzegovina-Neretva Canton no. 4/00.

<sup>405</sup> Law on Public Assemblies, Official Gazette of SR BiH no. 41/90, 19/01, 38/01, 13/93 and 13/94, Law on Public Assemblies, Official Gazette of RS no. 118/08 and Law on Public Assemblies, People's Gazette of Herzegovina-Neretva Canton no. 4/00.

<sup>406</sup> Article 6 of the Law on Public Assemblies, Official Gazette of SR BiH no. 41/90, 19/01, 38/01, 13/93 and 13/94

<sup>407</sup> Law on Public Assembly in Brčko District, Official Gazette of Brčko District no. 26/04.



- Coercive change of the order determined in the Constitution of Bosnia and Herzegovina and the Statute of Brčko District;
  - jeopardizing the territorial integrity of Brčko District of BiH;
  - violating the rights and freedoms of persons and citizens, guaranteed by the Constitution of Bosnia and Herzegovina and the Statute of Brčko District;
  - provoking and instilling national, racial and religious intolerance and hatred;
  - performing criminal offences or inciting to perpetration of such offences;
  - violating public order and peace and violating public morale.
- A public assembly will be banned when that assembly has not been notified on time, in cases when notification is mandatory.
  - The police may prohibit a public assembly if there are grounds to expect that the public assembly will cause violation of public order and peace or jeopardize the life or security of people or property, or this public assembly will block or render public traffic considerably difficult.

#### *4.10.4. Freedom of Association*

The Constitution of BiH, entity constitutions in BiH and the endorsed international documents, all guarantee the right to association. This right understands the possibility of having all citizens associated to exercise their political, economic, social, cultural, sports, individual, collective and other needs and interests in the state. The right to association represents a legal

basis for the formation and activities of the citizens' associations and foundations.

The relevant provisions of the applicable Law on Associations and Foundations, published in the FBiH Official Gazette dated 20 September 2002, as well as the RS Law on Associations and Foundations (RS Official Gazette no. 52/01 and 42/05) an association comprises any form of voluntary association of more physical or legal persons for the purpose of advancement or exercise of a common or general interest or goal, in accordance with the Constitution or the law, with profit gain not being its primary purpose.

A foundation is a legal person without membership. The objective of its forming is to manage certain property in general or common interest.

If the association's statute envisages that the association shall operate on the territory of two or more cantons, then the Federation Ministry will maintain an associations' register. If the association will operate on the territory of one canton, then a cantonal body will maintain the associations' register.

A Federation ministry maintains the register of all foundations and foreign non-governmental organizations. The day this law enters into force, the following laws shall cease to be applicable: Law on Citizens' Associations ("Official Gazette of the Federation of BiH", no. 6/95), Law on Foundations and Trusts ("Official Gazette of the Federation of BiH", no. 16/98) and the Law on Humanitarian Activities and Humanitarian Organizations ("Official Gazette of the Federation of BiH", no. 35/98), apart from certain articles which are not vital to this work.

The Law on Associations and Foundations (Official Gazette of BiH no. 32/01, dated 28 December 2001), adopted by the Parliamentary Assembly of BiH, allows for the first time the registration of NGOs at state level. This law, *inter alia*, provides for:

- Introduction of the general principle of voluntary registration of the association;
- Having at the least three physical persons, citizens or residents of BiH, or three legal persons registered in BiH, to establish an association;
- The equal position of local and foreign entities as founders of a foundation;
- The equal position of local and foreign entities as members of the foundation's steering board;
- Allowing associations and foundations to directly engage in associated economic activities.

The main advantages of a state level Law on Citizens' Associations and Foundations as well as the laws on citizens associations and foundations adopted subsequently in the Federation and in Republika Srpska include the creation of a new, more harmonized legal framework for NGOs in both Entities and the state of Bosnia and Herzegovina, as well as greater harmonization with international standards and best practices in the region.

Associations and foundations set their objectives and activities independently, in accordance with the Constitution and the law.

The objectives and activities of an association or a foundation cannot contradict the constitutional order of Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina (hereinafter: the Federation), or be directed at its violent abolishment or instilment of national, racial, religious or other hatred or discrimination, prohibited by the Constitution and the law.

The objectives and activities of an association or a foundation cannot include involvement in a pre-electoral campaign or political parties and candidates, fund-raising for

political parties and their candidates and financing candidates, i.e. political parties.

*4.10.4.1. Forming and registering an association/foundation*

- The applicable legislation on associations and foundations in Bosnia and Herzegovina<sup>408</sup> prescribes that an association can be formed by at the least three physical persons who are nationals of BiH or three legal persons, or foreign nationals that have permanent residence status or have spent more than one year on the territory of the Federation. Foreign nationals enjoying such status can form associations alone or with citizens of the Federation.

Under the Law on Associations and Foundations of BiH, an association comprises any form of voluntary association of three or more physical or legal persons, in all combinations, for the purpose of advancing or attaining a common or general interest or goals, in accordance with the Constitution and the law, while profit gain is not their primary purpose.

Associations may form their unions or other forms of associations where their interests are linked at a higher level (higher-level associations), which enjoy all rights and freedoms guaranteed to associations and have the right to freely associate and cooperate with international organizations established for the purpose of advancing those rights and interests.

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<sup>408</sup> Law on Associations and Foundations, published in the Official Gazette of FBiH, 20 September 2002, Official Gazette of FBiH no. 45/02, Law on Associations and Foundations of RS (Official Gazette of Republika Srpska no. 52/01), Law on Associations and Foundations of BiH (Official Gazette of BiH no. 32/01, dated 28 December 2001)

Under the Law on Associations and Foundations<sup>409</sup> adoption of a founding act represents the establishment of an association.

Once the association is enlisted in a register, it acquires legal personality. Legal actions taken prior to enlistment in the register may result in obligations only for persons that took such actions.

The constituting assembly of the association adopts the founding act, the association's statute and appointment management bodies.

A foundation may be established by one or more local or foreign physical or legal persons.

A foundation may be established through unilateral expression of will, a decision, contract or any other legally applicable document.

It shall be considered that a foundation has been established for an undetermined duration, unless otherwise prescribed by the statute.

The founder adopts the founding act and the foundation's statute.

A foundation may be merged, separated or transformed into another foundation only.

A foundation may have its organizational units (branch offices, offices, etc), in accordance with the statute.

An association is enlisted in the register of associations and a foundation in a register of foundations.

The responsible ministry maintains the register of associations, depending on the fact whether the association's

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<sup>409</sup> Law on Associations and Foundations, Official Gazette of FBiH no. 45/02

statute envisages that the association will operate on the territory of one, two or more cantons, or at state level. A responsible ministry maintains the register of all foundations and foreign non-governmental organizations.

Under the Law on Associations and Foundations of BiH, the registration of associations and foundations of BiH, foreign and international associations and foundations and other non-profit organizations, was primarily the responsibility of the Ministry of Civil Affairs and then the Ministry of Justice.

The Law on Associations and Foundations of BiH and the Law on Administrative Procedure regulate the registration and cessation of associations and foundations.

Once the association or a foundation is enlisted in the register, it acquires legal personality.

The register of associations or foundations is open to public.

Under the provisions of this law, the Ministry maintains registries of associations and foundations.

Any person can request, in person or by mail, a copy of any listing in the register or any other document from the file, in accordance with the provisions of the Freedom of Access to Information Act.

In exceptional cases, an authorized representative of the association or a foundation may request from the Ministry that certain information, contained in the register, be made unavailable to the public, if such information may jeopardize the personal integrity of the founder(s) or members of the association or foundation. The Ministry makes a separate decision on this request.

The responsible minister prescribes the forms and the method of maintaining the register of associations and foundations.

The following documents are attached to the request for enlistment in the register of associations or foundations:

- 1) Founding act and the statute of the association or foundation;
- 2) List of members in the managing bodies, and
- 3) Decision of the responsible institution on the appointment of a person authorized to act as an agent and representative of the association or foundation.

The responsible ministry will decide on the request for enlistment within 30 days from the day the request was made.

The founding act of the association contains:

- a) full names and addresses, i.e. title and shortened title and seat of the founder(s),
- b) title, seat and address of the association,
- c) main goals behind the establishment of the association,
- d) full name of the person authorized to handle the enlistment procedure,
- e) signature(s) of founder(s) or persons authorized to act as agents on their behalf, their identification numbers, if they are nationals of Bosnia and Herzegovina.

Decision on entry in the register of associations or foundations contains the following:

- 1) The date of the entry;
- 2) The number of the entry;
- 3) The full name and, if there is any, abbreviated name, and the address of the association or foundation;
- 4) The logo of association or foundation, if there is any;
- 5) Goals and objectives of the association or foundation;  
and

- 6) The names and addresses of persons authorized to represent the association or foundation.

Provisions of this law on registration of associations and foundations are also applied in case of registration of offices, representative offices or other types of organizations of foreign or international associations or foundations, or other international organizations, unless otherwise prescribed by the law (hereinafter: foreign non-governmental organizations).

The following should be attached to the request for entry in the register:

- a) Proof that the organization has a status of a legal person in another jurisdiction;
- b) A statement describing the *activities* of the organization to be undertaken in Bosnia and Herzegovina;
- c) The name and address of a person in Bosnia and Herzegovina who is authorized by the organization to be its legal representative in Bosnia and Herzegovina (certified copy of the identity document of the authorized representative);
- d) Main office and office address in Bosnia and Herzegovina.

If the law of the domicile country of the foreign non-governmental organization prescribes that entry of the association is not required, then another written document certified by a responsible authority and proving that the organization has a status of legal persons in another jurisdiction, instead of the decision on registration in another jurisdiction, should be attached to the request for entry.

If the decision on entry in the register of another jurisdiction does not contain data on statutory goals and activities of the association, the statute and some other internal document showing the goals of the foreign non-governmental organization, should be attached to the request for entry.



*4.10.4.2. Economic activities of associations/foundations -*

Non-governmental organizations are allowed to engage in related economic activities (i.e. those activities only if the principal purpose of such activities is pursuing of statutory goals and profit generated from an association's or foundation's unrelated economic activities can only be used for advancing the principal (statutory) goals, and as in the case of every other type of income, the property of non-governmental organizations is subject to restrictions by which the distribution of income is prohibited, meaning that the non-governmental organization cannot distribute it, or use it for personal gain of persons connected to the organization.

An association or foundations may establish entities for economic and other activities, to pursue their statutory goals, under the terms determined in the law and the statute of the association or foundation.

An association or foundation may perform unrelated economic activities (economic activities that are not directly related to the realization of main statutory goals of an association or foundation) only through a separately established legal person.

Profit generated from an association's or foundation's unrelated economic activities can only be used for advancing statutory goals.

Founders, association members, members of managing bodies, responsible persons, employees or donors are not allowed to directly or indirectly obtain profits or other financial benefits gained through the activities of associations or foundations.

The limitation does not exclude reimbursements for work or for expenses related to the realization of lawful aims and activities, as determined by the statute of the association or foundation.

The limitations shall not influence the property of the association or foundation:

- 1) Membership fees for associations;
- 2) Voluntary contributions and gifts from physical and legal persons,
- 3) Public funding;
- 4) Revenue from interest, dividends, and profits generated from the capital, rents, fees and similar sources of passive revenue;
- 5) Revenue acquired through economic activities;
- 6) Revenue acquired in accordance with the Law and the Statute.

*4.10.4.3. Associations/foundations of public benefit and performing public competences* - The association or foundation may be granted by the Law the authority to perform public competences. (See also 4.10.4.5.)

The Law on Associations and Foundations at the level of Bosnia and Herzegovina prescribes a set of criteria which clarify the difference between organizations for public benefit and organizations for common/private benefit, ensuring a more favourable taxation policy for public benefit organizations, although acquiring this status is a rare phenomenon.

Similar provisions are contained in the RS Law on Associations and Foundations.

The Law on Changes and Amendments to the RS Law on Associations and Foundations<sup>410</sup> regulates that an “association or foundation entrusted with performing public competences is to ensure legitimate and undisturbed performance of public competences”.

An association may have the status of a public benefit association if its activity exceeds the interests of its members and if it is aimed primarily for the benefit of the public, or some segment thereof, in areas such as: healthcare; education; science; social welfare; civil society; human rights and minority rights; assistance to the poor and socially vulnerable; assistance to the disabled, children and elderly; environmental protection; tolerance; culture; amateur sports; religious freedoms; and assistance to the victims of natural disasters, consumer associations and other fields of public benefit.

It is considered that an association is pursuing charitable work if it was founded primarily to assist persons and groups in need.

Public benefit status is determined by the Republika Srpska Government, at the proposal of the Ministry of Administration and Local Self-government, with the opinion from the responsible ministry, on the basis of: 1) historic, 2) cultural, 3) multiethnic, 4) territorial and 5) social and humanitarian principle.

The Government will issue a decree to regulate the procedure by which an association is granted or stripped of the status of public benefit association. “In a given field, public benefit status may be determined for one association, in accordance with the legal criteria and on the basis of the association’s essential work program. A registered public benefit

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<sup>410</sup> Law on Changes and Amendments to the RS Law on Associations and Foundations, Official Gazette of RS no. 42/05

association may only be merged, separated or transformed into another public benefit association. Membership in an association performing public competences within their operations shall be proven with a membership card.”

Within 30 days from receipt of the court’s decision on registration of the association, the Ministry should inform the association of this decision in writing.

*4.10.4.4. Supervision of the work of association/foundation*

- The supervision of the legality of work of the work of associations and foundations shall be carried out by the administrative body whose competence encompasses monitoring the area of activities in which the association or foundation is engaged.

In exercising their administrative supervision of entrusted public competencies, the supervisory bodies, in particular, have the right and duty to:

- decide on appeals lodged against the administrative acts rendered in the course of performing entrusted public competencies,
- exercise other rights that the law confers on appellate bodies in administrative proceedings;
- provide expert guidelines and clarifications on applying laws, other regulations and general legal acts pertinent to the exercise of entrusted public competencies.

An association or a foundation entrusted with performing public competencies shall, at least once a year, submit a report on performance of entrusted public competencies to the administrative body supervising the activities of the association or foundation.

If an association or foundation that performs public competencies does not exercise entrusted activities in accordance with its duties, the competent supervisory administrative body shall notify in writing the managing organ of the association or foundation to that effect, propose measures to remedy perceived deficiencies and propose other measures falling within the scope of its competencies and duties.

The authorized body of the association or foundations, identified by the statute and this law, as well as responsible authorities, shall supervise the legality and purposeful use and management of association's or foundation's resources.

*4.10.4.5. Cessation of operation of the association/foundation* - The Law on Associations and Foundations of BiH regulate that associations and foundations are deleted from the register when the decision on suspension of association's or foundation's work, issued by the Ministry, becomes final and binding, or when the Court of BiH makes a decision to prohibit the work of that association or foundation.

The association or foundation may suspend their activities voluntarily or by force of law, under the terms identified in this law.

Unless otherwise envisaged in the statute, the decision on cessation of activities requires a qualified majority of two-thirds of the votes of association's members or two-thirds' majority of the foundation's steering board.

In case the registered association or foundation suspends its operations voluntarily, they will adopt a plan in accordance with the statute and this law.

An association or a foundation will suspend its operations if:

- a) the responsible institution of the association, i.e. foundation decides to suspend its work or makes a decision on merger, separation or transformation of the association, i.e. foundation;
- b) it is determined that an association or a foundation has stopped its activities.

2. It shall be considered that an association has ceased to work if:

- a) there elapsed twice as much time from the time defined in the statute to hold an assembly and the assembly was not convened;
- b) the number of members is reduced to less than three.

3. When the Ministry identifies the facts under paras 1 and 2 of this Article, it shall decide on the cessation of the association's or foundation's work.

1. The association or foundation shall be prohibited from operating if:

- a) they operate contrary to the provisions of Article 5, paras 2 and 3 of this Law (provisions on prohibited goals and activities);
- b) it continues to perform activities not compliant with the association's or foundation's statutory goals, following sanctions upon reoffending;
- c) it continues to work in contravention to this law, following sanctions upon reoffending;
- d) conditions under Article 30, Para 5 of this Law are met (provision on decision to remove the association or foundation from the register).

2. The Ministry or other bodies responsible for the control of the work of associations and foundations shall initiate before the Court of Bosnia and Herzegovina the proceeding to prohibit the work of an association or foundation.

1. The Court of Bosnia and Herzegovina decides on the prohibition of the association's or foundation's work.
2. In the decision prohibiting the work of an association or foundations, measures with respect to the property or any other necessary measures will be ordered.
3. Provisions of the criminal procedure code shall apply in the proceeding on prohibition of an association's or foundation's work, initiated under Article 5, Para 2 of this Law.

An association or foundation that does not have a public benefit status shall, upon dissolution and cessation of operation and after its debts are settled, distribute any remaining property and assets as determined in its Statute, or to another registered association or foundation which has been granted a public benefit status.

A registered association or foundation that has been granted the status a public benefit status shall, upon dissolution and after its debts are settled, distribute any remaining property and assets to another registered association or foundation of public benefit, whose aims and objectives are similar to those of the dissolving organization. This rule shall also apply to any association or foundation which has received state funds, public donations, or tax or fiscal benefits under any laws.

In case of involuntary dissolution, the Ministry shall determine the distribution of any remaining assets, according to the principles of this Article.

The decision of the Ministry on involuntary dissolution and distribution of assets and notice to all potential beneficiaries will be published in the "Official Gazette of Bosnia and Herzegovina" so that the beneficiaries may initiate an administrative proceeding before the Court of Bosnia and Herzegovina, under the relevant provisions of this Law.

The FBiH Law on Associations and Foundations prescribes that an association or foundation shall cease to operate:

- 1) if the responsible body of the association or foundation decides on cessation or operations or on merger, separation or transformation of the association or foundation;
- 2) if conditions prescribed by the law with respect of preventing the registration of two or more associations or foundations with the same name, or if it is determined that an association or a foundation have ceased to operate.

It shall be considered that an association or foundation has ceased to operate:

- 1) If the assembly of the association or the management board of the foundation has not convened regular meetings for a period twice as long as the period provided for in the statute for holding such meetings;
- 2) If the number of the association's members falls beyond the threshold prescribed by this Law for establishing an association, and the assembly has not decided on admitting new members within three months of the occurrence of this circumstance.

Notwithstanding the relevant provisions of this Article, the association shall not be dissolved if the admission of the new members is not possible because of objective circumstances caused by the nature of statutory goals of the association.

The responsible ministry shall issue a decision on cessation of the association's or foundation's work.

Association or foundation shall be prohibited from operating if:



- 1) it operates in contravention to the provisions on prohibited goals and activities;
- 2) continues to perform activity for which it has been fined pursuant to Article 47 Para 1, points 1 and 4.
- 3) it continues to perform activities not compliant with the association's or foundation's statutory goals, following sanctions upon reoffending;
- 4) it continues to work in contravention to this law, following sanctions upon reoffending.

The procedure to ban the association's or foundation's work is initiated by the Federation Prosecutor or a cantonal prosecutor.

*4.10.4.6. Specificities in the work of foundations* - Under the Law on Associations and Foundations of BiH, a foundation may be founded by one or more physical or legal persons (founders), provided that registration terms have been met. Founders cannot include the state of BiH, entities, cantons, cities, municipalities, local community boards, state institutions, public companies and funds. Nationals or legal persons from BiH do not have to be the founders.

A foundation may be founded through a unilateral declaration, contract, testament, legacy or other legal document. It must have a founding act, a statute and a steering board, i.e. substantial equivalents. For a foreign or international foundation, it suffices to have documents regardless of their name and bodies performing functions as defined by this law.

The foundation's founding act contains in particular:

- a. full names and addresses of founders;

- b. name of foundation, or acronym if it exists, and its seat and address;
- c. objections for which the foundation was established;
- d. amount of money or other types of property the founder is investing;
- e. full name and address of the person, acting as an agent for the foundation, and is authorized to complete registration activities;
- f. signatures of founders, and unique master citizen number (JMBG) for nationals of Bosnia and Herzegovina.

Provisions of the Law on Associations and Foundations prescribe that, unlike in the case of an association, a foundation may be founded by one or more local or foreign physical and legal person.

A foundation may be founded by a unilateral declaration, decision, contract or other appropriate legal document.

It will be considered that a foundation has been established for an indeterminate period of time, unless otherwise identified in the statute.

A founder will pass the founding act and statute of the foundation.

A foundation may be merged, separated or transformed only into another foundation.

Foundation may have its organizational units (branch offices, offices, etc.), in accordance with the statute.

A founding act contains, among others, the money or other forms of property the founder invests, which cannot be less than 2,000 KM;

Steering board is the managing body of the foundation.

The founder or person authorized by the founder shall appoint the steering board.

Other bodies of the foundation may be envisaged by the statute.

Steering board:

- 1) works to implement the objectives identified in the foundation's statute;
- 2) provides consent for legal actions taken on behalf of the foundation, prior to its registration in the register;
- 3) manages the foundation's property;
- 4) makes changes and amendments to the statute and other documents, unless otherwise prescribed in the statute;
- 5) appoints a person authorized to act as an agent and representative of the foundation;
- 6) decides on merger, separation, transformation and cessation of the foundation's work;
- 7) prepares financial and other reports;
- 8) performs other tasks in accordance with the law and the statute.

The steering board is composed of three members at least.

Members in the steering board are physical persons or legal persons represented by an authorized agent.

The following persons cannot be members of the steering board:

- 1) minors
- 2) persons employed in the foundation
- 3) members of other bodies of the foundation;
- 4) persons overseeing the foundation's work.

#### *4.11. Right to peaceful enjoyment of property*

Article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms reads:

*Protection of property*

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

*(Official Gazette of BiH, No. 6/99)*

*4.11.1. General considerations*

The right to peaceful enjoyment of property encompasses three specific rules: the first rule is of general nature and expresses the principle of peaceful enjoyment of property; the second rule, related to deprivation of property, is subject to certain conditions; the third rule allows to states signatories, inter alia, to control the use of property in relation to general interest of implementation of relevant laws they deem necessary for intended purpose.<sup>411</sup> In other words, interference into someone's right to peaceful

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<sup>411</sup> Judgements *Jahn et. al. v. Germany*, (<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=8802101&skin=hudoc-en&action=request>) and *Holy Monasteries v. Greece* (<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=8802101&skin=hudoc-en&action=request>).

enjoyment of property can not be imposed by legal provisions that only meet the conditions imposed by the rule of law and those that serve a legitimate goal of public interest, they also need to strike a reasonable proportionality between the means used and the intended goals by measures through which property is either confiscate or its use restricted.<sup>412</sup>

The assessment of proportionality between the means that are used and the intended goal depends on legal conditions for compensation; it help us answer to the question whether the undertaken measures respect the requirement of fair balance and answer to the question whether they have exposed the applicant to excessive burden. Jurisprudence does not guaranty the right to full compensation in all possible circumstances, given that the legitimate goal of public interest may justify the payment of the compensation that is below the market value. Furthermore, the absence of compensation does not necessarily represent disproportionate interference into the right to peaceful enjoyment of property; however, there must be exceptional circumstances to justify such a treatment.

The catalogue of rights referred to in Article II/3.k of the Constitution of BiH envisages that all persons in the territory of BiH enjoy the right to property, among other rights. At the same time, the Constitution of BiH does not contain any explicit provisions envisaging that confiscation of property is possible only if it is stipulated by law and if it serves public interest, alongside the compensation and establishment of fair balance between public and private interests. However, In Article II/3 of the Constitution of BiH,<sup>413</sup> it is stipulated that the rights and freedoms envisaged by the European Convention on Human

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<sup>412</sup> Sporrong and Lönnroth v. Sweden,  
(<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=sporrong&sessionid=8949928&skin=hudoc-en>).

<sup>413</sup> The Constitution of BiH, International standards.

Rights and Fundamental Freedoms and its accompanying Protocols are directly applicable in Bosnia and Herzegovina, whereby it is determined that these international legal instruments shall have priority over all other law. These provisions of the European Convention on Human Rights and Fundamental Freedoms are given priority in the implementation of regulations in BiH, stressing the importance of harmonization of national regulations with the standards contained in the European Convention.

Furthermore, the entity constitutions secure the protection of the right to property in line with the highest international standards. The Constitution of the Federation of BiH<sup>414</sup> guaranties explicitly the protection of the right to property in its Article II. 2k. The Constitution of Republika Srpska<sup>415</sup> prescribes in more detail the protection of the right to property.<sup>416</sup> This Constitution prescribes legal protection of all forms of ownership, while confiscation or restriction of this right may be prescribed only by law and with fair compensation secured. In this Constitution, the possibility of legal restriction on the use of property is prescribed, alongside the special ways in which property owned by natural or legal persons can be used in the state of imminent threat of war or the state of emergency. It contains general provisions on the acquisition of the right to property of foreign nationals and eventual limitations for foreign nationals when general interests require them. In case of legal limitation on the use or disposal of objects of particular cultural, scientific, artistic or historical importance, or of importance for the protection of environment and nature, full compensation to the property's owner is envisaged. In relation to the protection of

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<sup>414</sup> Official Gazette of FBiH, Nos. 1/94, 13/97 and 22/02.

<sup>415</sup> Official Gazette of Republika Srpska (RS), Nos. 3/92, 6/92, 8/92, 15/92 and 19/92.

<sup>416</sup> Constitution of Republika Srpska – Articles 54 - 60.

the right to immovable property, this Constitution protects ownership over agricultural land, forest and forest land within the boundaries of law.

Cantonal constitutions and the Statute of Brčko District provide for the measures of protection of those human rights and freedoms that are defined in the Constitution of BiH; at the same time, it means that these constitutions and the Statute of Brčko District do not contain any provisions on the protection of the right to property.

#### *4.11.2. Expropriation*

Expropriation means the deprivation or restriction of the right to immovable property, where compensation may be granted on the basis of market value of the expropriated property.

Given that expropriation *per se* represents serious confiscation or limitation of the right to peaceful enjoyment of property, the condition that needs to be met for such action to be lawful is a fair balance achieved between public and private interests. Compensation based on the market value of immovable property is an integral part of the concept of fair balance.

In Bosnia and Herzegovina, there are three laws that regulate the issue of expropriation. In Republika Srpska, it is the Law on Expropriation adopted in 1996.<sup>417</sup> In the Federation of BiH, after having the 1987 Law on Expropriation in force for years<sup>418</sup>, a new Law on Expropriation in FBiH<sup>419</sup> was adopted in 2007. This Law put out of force the previous one. In Brčko

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<sup>417</sup> Official Gazette of Republika Srpska, No. 8/96, 37/07 and 66/08.

<sup>418</sup> Official Gazette of SRBiH, Nos. 12/87 and 38/89 and Official Gazette of RBiH, Nos. 3/93 and 15/94.

<sup>419</sup> Official Gazette of FBiH, No. 70/07.

District, the Law on Expropriation of Immovable Property in Brčko District of BiH<sup>420</sup> was adopted on 22 July 2004.

The proposal for expropriation may be made by the beneficiary of expropriation upon determination of public interest for the purpose of construction or carrying out of construction works. Depending on whether a building or construction works are intended to be located on cantonal territory, in several municipalities, or within one municipality in the Federation of BiH, the establishment of public interest lies on the Government of the Federation of BiH, cantonal governments, or municipal councils. In Republika Srpska, the existence of public interest is determined by the Government of Republika Srpska. In Brčko District, the Assembly of Brčko District decides whether construction of a building, or construction works, is in public interest.

The Federation Law envisages that proposal for expropriation is submitted to municipal administrative service by the competent public attorney's office on behalf of legal entities it represents according to the relevant law. The Law that is in force in Republika Srpska prescribes that proposal on behalf of Republika Srpska is submitted by public attorney to the Institute for Geodetic and Property-related Legal Affairs. In Brčko District, the proposal is decided upon by its Expropriation Department. The Law in force in the Federation of BiH envisages that beneficiary of expropriation can submit his/her proposal for expropriation within two years from the day of entry into force of decision which establishes that there is public interest, while, in Republika Srpska and Brčko District, this deadline is one year.

Complaints are permitted against decisions on expropriation. In the Federation of BiH, the Federation Administration decides on such complaints, while in RS, it is the

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<sup>420</sup> Official Gazette of Brčko District, No. 26/04.



RS Administration. The Law on Expropriation of Brčko District also stipulates that complaints can be lodged, but the body that decides upon such complaints is not defined. In practice, however, complaints are submitted to an appellate commission of five jurists, through the first instance body that took the decision to which the complaint is made. This practice is prescribed by the Law on Administrative Procedure of Brčko District<sup>421</sup>.

The Laws on Expropriation envisage that beneficiaries of expropriation may acquire immovable property before final decision on expropriation is made, if at the request of such a beneficiary of expropriation, the Government of the Federation of BiH, the Government of Republika Srpska, or the Mayor of Brčko District, decides that it is necessary due to urgency, or in order to eliminate significant damage that could otherwise be caused.

Relevant laws prescribe that compensation for expropriated immovable property is done by granting another immovable property whose value corresponds to the value of expropriated property in the same municipality or the same city, in such a manner that the owner of immovable property is provided with identical conditions for the use of property as those related to the original property. The Law in the Federation of BiH envisages that the beneficiary of expropriation, before submitting his/her proposal for expropriation, is obliged to reach an agreement on property rights with the owner of that property.

If the owner of property does not accept another property as compensation, the fiduciary compensation is done on the basis of market value of the immovable property in question. This is a change vis-à-vis the years of practice in which compensation used to be far below the market value of expropriated immovable property. The European Court of Human Rights, in its

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<sup>421</sup> Official Gazette of Brčko District, Nos .3/00, 5/00, 9/02, 8/03, 8/04 and 25/05.

jurisprudence, is of the view that, by rule, full market value compensation should be paid, whereas the payment of lower compensation represents a violation of Article 1 of Protocol No. 1 to the ECHR and failure to pay the compensation can be justified only in exceptional circumstances.<sup>422</sup> The Law envisages specific method of calculation of compensation for different objects of expropriation.

In case when parties in an expropriation procedure fail to agree on compensation, the municipal administrative body in the Federation of BiH, i.e. regional unit of Administration of Republika Srpska, or the relevant Department in Brčko District, shall make final decision with all the documents on expropriation attached and forward it to the competent court on whose territory the expropriated immovable property is located. The competent court conducts extra-judicial proceedings to decide on the amount of compensation for expropriation. The proceedings for determining the amount of compensation for expropriated immovable property is conducted in a summary procedure.

#### *4.11.3. Restitution of unlawfully confiscated property and compensation to previous owners*

Restitution is the act of reinstatement of ownership of a nationalized property.<sup>423</sup> Denationalization as a legal concept implies „the procedure of elimination of all legal consequences of nationalization of property owned wither by legal or natural persons“.<sup>424</sup> Although denationalization, either as restitution of nationalized property in kind, or as compensation of the property

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<sup>422</sup> Jahn et. al. v. Germany, see above.

<sup>423</sup> Proposal of the Law on Denationalisation in BiH, Article 5, paragraph 1j.

<sup>424</sup> The Feasibility Study on Restitution in BiH, Institute of Economics in Sarajevo, p.12, [http://www.eis.ba/ei/download/studije/restitucija\\_ba.pdf](http://www.eis.ba/ei/download/studije/restitucija_ba.pdf).

with another property, or else by fiduciary compensation, has been subject of debate ever since the end of the recent war, there is still no law in BiH that regulate this issue in a uniform manner.

The Restitution Commission, formed by the Council of Ministers of BiH, by its Decision on Appointment of Restitution Commission<sup>425</sup> taken in July 2004, is competent for drafting a framework law on restitution in BiH.

The principles for conducting the restitution of property are based on the interest to rectify, in a just and objective fashion, the injustices done by the state and its bodies in the past by confiscating the property from their original owners, and to carry out the restitution in BiH in the way that does not jeopardize macroeconomic stability of the country and to eliminate this source of uncertainty that prevents the process of privatization and does not permit current owners from investing into the improvement of their property and thus support further development of market economy in the country,

So far, the Commission has drafted a proposal of Law on Denationalization in BiH. This legal draft envisages the regulation of basis and method of restitution or compensation for movable and immovable property, that was forcibly confiscated in the period between 1 January 1945 and the adoption of the new law, and transformed into the state, collective or social ownership on the basis of laws and regulations that were in force in that period, by way of decisions made by the state bodies, or by forcible legal operations that were done without any legal grounds. The main principles of denationalization, according to this legal draft are: restitution in kind of confiscated property to its original owner, substitution of confiscated property with another property of equal value and type; if for justified reasons it is not possible to repossess the property itself, compensation of the original owner

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<sup>425</sup> Official Gazette of BiH, No. 44/04.

with a fair compensation in fiduciary compensation, if the property can not be compensated in kind, or substituted with another property of equal value.

The House of Peoples of the Parliamentary Assembly of BiH considered for the first time on 31 January 2008 the proposed Law on Nationalization. The House postponed its decision for the session that was held on 26 February 2008 at which the proposed draft was rejected.

In addition to this, there is not a single law at the level of the state of BiH that regulates the issue of real rights as one of the priorities of legal reform in the country. Such a law, which would be the result of the reform of ownership relations, is expected to be one of the first steps, alongside the regulations on restitution and privatization. However, although a draft law on these rights at the state level was prepared three years ago, it has not been adopted yet. Consequently, there are no entity laws to regulate this matter.

The legislation on the construction land, that was imposed by the Decision of the High Representative in Bosnia and Herzegovina, dated 15 May 2003, provided for the start of the process of restitution. These laws were adopted in identical text in both entities.<sup>426</sup> The Decision of the High Representative put out of force the Law on Construction Land of BiH, which was adopted in 1986. One of the key novelties in the new Law is the division of construction land in state or private ownership, given that, according to the previous law, it was not possible to acquire private ownership over construction land in urban areas. Furthermore, holders of temporary right to use undeveloped urban land can sell that land, which represents a crucial difference to the previous law, according to which undeveloped urban land

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<sup>426</sup> Official Gazette of FBiH, No. 25/03, and Official Gazette of Republika Srpska, No. 86/03.

could not be subject to sale. Another novelty is the procedure of public competition as method of allocation of land. In addition to this, the pre-war users are now allowed to submit their request for revision of decisions on allocation of land for the purpose of construction, which was passed without their consent in the period from 6 April 1992 to the adoption of the new law.<sup>427</sup> These imposed laws prescribe that there is no state ownership over urban construction land any longer; namely, this land became publicly owned, i.e. state-owned by way of municipal decisions, but was never used for the purpose stated when those decisions were made; now, previous ownership relations are re-established and the state ownership over such land is terminated, so that the buildings that are constructed on such land have become the property of those who own them. Thus, undeveloped urban land that had become publicly owned, i.e. state-owned, according to the Law on Nationalization of Rented Buildings and Construction Land. Therefore, one cannot conclude that the restitution of urban construction land has been fully implemented with the adoption of these laws. Republika Srpska adopted in 2006, its Law on Construction Land<sup>428</sup> that put out of force the 2003 Law on Construction Land of Republika Srpska which envisaged that the state ownership over unconstructed urban land that had become state-owned pursuant to the 1958 Law on Nationalization was terminated with entry into force of the 2006 Law.

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<sup>427</sup> Prior to the adoption of these laws, urban construction land in Bosnia and Herzegovina was state-owned, pursuant to the Law on Nationalisation of Rented Buildings and Construction Land (Official Gazette of Federal Peoples Republic of Yugoslavia, No. 52/58) and the Law on Establishment of Construction Land and Settlement of Urban Characters (Official Gazette of SRBiH, No. 24/68) as well as municipal decisions.

<sup>428</sup> Official Gazette of Republika Srpska, No. 112/06.

*4.11.4. Establishment, allocation and management of the property owned by Bosnia and Herzegovina*

Bosnia and Herzegovina has ratified the Agreement on Succession (Official Gazette of BiH - Annex: International Agreements, No. 10/2001), which was concluded in Vienna on 29 June 2001 by the republics of the former SFRY. This Agreement regulates the issue of succession of property of the former Socialist Federal Republic of Yugoslavia; according to it, the newly established countries are equal successors of the property owned by SFRY. The issues regulated in this Agreement are divided into seven annexes (Movable and Immovable Property, Diplomatic and Consular Issues, Financial Claims and Liabilities, Archival Material, Other Rights, Benefits and Debts, Pensions, Private Property and Acquired Rights).

Due to the complexity of relations that developed in the decades of existence of SFRY, and because of the need to respect the principles related to acquired rights and private property, legal certainty and security, as well as establishment of grounds for future cooperation among the countries of the former SFRY, the successor states have decided to regulate this issue in a separate annex (Annex G) of the Agreement. Today, all forms of ownership in the countries-successors of SFRY, including the state ownership, are the property in legal and technical sense of the term. The states, just like other owners, are in charge of managing the state property on the basis of its competences. The states can, therefore, sell their property on the market and they can do so of their own, autonomous, will.

Given that this is an agreement signed by several countries, it cannot be used as basis for registering the right of ownership into relevant land registers. Pursuant to this Agreement, the issue of property that belongs to BiH is the internal issue of Bosnia and Herzegovina which can be decided upon only by the Parliamentary Assembly and the Council of

Ministers of BiH. The fact is that BiH is the legal owner of the succeeded property; however, there is no law on the state-owned property that regulates the final allocation of rights and obligations on movable and immovable property within the state itself. Although the Agreement explicitly stipulates that „the immovable property of the former SFRY shall belong to the successor state on whose territory the property is located”, it is envisaged that, in BiH, quite of bit of this property, when the territorial principle is applied, will be allocated to entities, cantons and municipalities. This method of allocation of state property leads us to the conclusion that the succession within BiH would be decided once the Law on State Property is adopted.

Since this is an internal issue, the Commission for State Property is tasked with drafting the Law on State Property of Bosnia and Herzegovina. In December 2004, the Council of Ministers of BiH established this Commission<sup>429</sup> with the primary task of drafting a piece of legislation that would regulate the allocation of property to different levels of governance in the country as well as to draft regulations for the future management of this property alongside the legislation on ownership and management rights over state property. In the meantime, and until this issue is resolved, the High Representative in BiH passed in March 2005 his Decision on Prohibition of Disposal of State Property in the Federation of BiH, Republika Srpska and Bosnia and Herzegovina<sup>430</sup>, which was delayed several times. Reason behind this Decision was to secure that ownership rights over public property are not breached by potential sale of the property, before the relevant law is adopted.

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<sup>429</sup> Official Gazette of BiH, Nos. 10/05, 18/05, 69/05 and 70/05.

<sup>430</sup> Official Gazette of FBiH, No. 20/05, Official Gazette of BiH, Nos. 18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07 and 58/08, Official Gazette of Republika Srpska, No. 32/05.

After more than three years of work on this Law, it seems that an agreement has been reached that each level of government in BiH, i.e. the entities and the state with their institutions, as well as other levels of government can be legal owners of this property. Sustainable development of BiH is possible only if conditions are met so that the property of Bosnia and Herzegovina has its legal owner. When performing its tasks, the Commission has applied a combination of functional and territorial principles. The draft Law envisages that the property outside Bosnia and Herzegovina, which was succeeded from the former SFRY, will be in exclusive ownership of the state of BiH, while all other property within the country, regardless of whether it is succeeded from the former SFRY or from the former SRBiH, will be subject to allocation to the state of BiH, its entities, cantons or even municipalities.

Adoption of this Law is of vital importance since the issue of allocation of state property is one of the key goals related to the termination of mandate of the Office of High Representative. It is, however, uncertain when the Law will be passed.

#### *4.11.5. Tenancy right*

Pursuant to Annex 7 of the General Framework Agreement for Peace in BiH, all refugees and displaced persons (DPs) are entitled to restitution of their property and to compensation for the property that cannot be repossessed. Therefore, the holders of tenancy rights for apartments that were proclaimed abandoned are entitled to repossess those apartments. Persons who had left their apartments in the Federation of BiH between 30 April 1991 and 4 April 1998, when the Law on



Termination of Application<sup>431</sup> entered into force, were considered as refugees and displaced persons. Pursuant to the Law on the Purchase of Apartments on which there were tenancy rights in the Federation of BiH,<sup>432</sup> holders of tenancy rights acquired the right to purchase those apartments and thus became their legal owners. In Republika Srpska, according to the Law on Termination of Application of the Law on Use of Abandoned Property of 19 December 1998, refugees and DPs could seek the restitution of publicly owned apartments on which they had tenancy rights. Holders of tenancy rights could purchase those apartments in accordance with the Law on Privatization of Apartments.<sup>433</sup> This Law regulates the conditions and terms of sale of apartments which were subject of tenancy rights, as well as the method of establishing a price and the termination of tenancy right. A tenancy right terminates on the day of conclusion of the contract on sale of apartment. Holders of tenancy rights lose this right if they fail to submit their requests as of 4 October 1999 in the Federation of BiH, and 19 February 2000 in Republika Srpska. In Brčko District, the restitution of property was carried out

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<sup>431</sup> In 1992, the Law on Abandoned Apartments was adopted in the Federation of BiH. This law stipulated that holders of tenancy rights shall lose their right to use those apartments if, together with the members of his household, they had abandoned those apartments after 30 April 1991. The apartments that were not used temporarily by their holders of tenancy right and members of their household were also considered as abandoned. This Law was put out of force with the entry into force of the Law on Termination of Application of the Law on Abandoned Apartments, that envisages that there will be no more decisions on proclaiming apartments as abandoned and that all administrative, judicial and other acts by which tenancy rights were terminated in accordance with this Law are to be pronounced null and void.

<sup>432</sup> Official Gazette of FBiH, Nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01, 15/02, 54/04, 36/06, 51/07 and 72/08.

<sup>433</sup> Official Gazette of Republika Srpska, Nos. 11/00, 18/01, 20/01, 35/01, 47/02, 65/03, 17/04, 70/04, 2/05, 67/05, 118/05, 70/06, 38/07, 60/07 and 59/08.

pursuant to the Law on Restitution of Abandoned Property<sup>434</sup>, while the purchase of property was done in accordance with the Law on Purchase of Apartments for which there was the tenancy right.

In relation to the Law on the Sale of Apartments in the Federation of BiH, those holders of tenancy rights who acquired new tenancy rights or related rights on apartments that belonged to the former Yugoslav People's Army or were part of the housing stock of any other newly established military forces in the territory of the former SFRY, were not considered as refugees.

There are specific problems related to the restitution of apartments for which holders of tenancy rights had purchase contracts concluded with the former Yugoslav Federal Secretariat for People's Defence (SSNO), according to the Law on Provision of Apartments in the Yugoslav People's Army,<sup>435</sup> which entered into force on 6 January 1991 and regulated the housing needs of military and civilian members of that Army. According to the currently applicable legislation, these persons are not considered refugees or DPs, and are not allowed to reconstitute their apartments. Instead of restitution, they are entitled to compensation<sup>436</sup> in the amount lower than the market value of

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<sup>434</sup> Official Gazette of Brčko District, Nos. 5/01 and 1/02.

<sup>435</sup> Official Gazette of SFRY, No. 84/90.

<sup>436</sup> The Law on Termination of Application of the Law on Abandoned Apartments and the Law on Purchase of Apartments on which there was Tenancy Right were modified on several occasions pursuant to the decision taken by the Human Right Chamber in which violations of the European Convention on the Protection of Human Rights and Fundamental Freedoms were found, so that they would finally be aligned with the standards contained in that Convention. In the procedure of establishment of abstract control of constitutionality, the Constitutional Court of BiH, in its Decision U-83/03 of 22 September 2004 concluded that provisions of the Law were in line with Article 1 of Protocol No. 1 to the ECHR and to the Constitution of BiH. New Article 39e of the Law on Purchase of Apartments refers exclusively to Articles

these apartments. The issue that needs to be resolved before any other is whether the tenancy right to an apartment owned by the Yugoslav People's Army can be considered as the right to „property“ in the sense of Article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms. In its decision, the Human Rights Chamber of BiH<sup>437</sup> established consistently that these rights, according to the contracts on purchase of apartments concluded with what was once the Yugoslav People's Army, in line with the aforementioned Law, are related to property in the sense of Article 1 of Protocol No. 1. Since the Law envisages compensation instead of restitution of such apartments, the issue that remains to be resolved is whether the payment of lower amounts of fiduciary compensation than the market value of such apartments is contrary to the principle of proportionality that needs to be achieved between the means used and the goal that is intended to be achieved. There are court proceedings pending before the European Court of Human Rights in case where an applicant asked the Court to determine that his right to peaceful enjoyment of property, as referred to in Article 1 of Protocol 1 to the European Convention, is breached because he

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3 and 3a of the Law on Termination of Application of the Law on Abandoned Apartments, where there were contracts on purchase concluded, since those persons were not considered as holders of tenancy right but as owners of those apartments. Amendments to this Law envisage that holders of tenancy rights on apartments that are proclaimed as abandoned in the territory of the Federation of BiH, which are managed by the Federal Ministry of Defence, who remained, after 19 May 1992, in the service, either military or civilian, of some of the armed forces outside the territory of Bosnia and Herzegovina, were not considered as refugees, nor did they have any right to restitution of apartments in the Federation of BIH. An exception to this rule relates to persons who were permitted to stay, in the status of refugees or those who were granted some other form of protection, before 14 December 1995, in one of the countries outside the territory of the former SFRY.

<sup>437</sup> CH/96/3 Medan et al., CH/97/60 Miholić et al.

is prevented from repossessing the apartment for which he had concluded a legally valid purchase contract with the former Yugoslav Ministry of Defence, as well as that he is prevented to enter this property into land register as its legal owner. This applicant also claims that a violation of his right to property lies in the fact that eventual compensation would be lower than the real value of the apartment. It remains to be seen how the European Court of Human Rights will adjudicate this case, i.e. whether it will accept the positions of the Constitutional Court of BiH, i.e. Human Rights Chamber of BiH that were modified in several cases. The present position of the Human Rights Chamber and the Constitutional Court of BiH relates to whether it is legal and justifiable to prevent a person from repossessing his/her apartment for which he/she had concluded a purchase contract, if that person has remained in the service of one of the armed forces outside the territory of BiH, given that they do not have the status of refugees. Persons who are vested with the status of refugees, or some other form of protection that corresponds to such status in one of the countries outside the territory of the former SFRY, are treated as an exception to this rule.

The Law on Restitution, Allocation and Sale of Apartments in the Federation of BiH<sup>438</sup> prescribes that the apartments referred to in Article 13 of the Law on Termination of Application of the Law on Abandoned Apartments are repossessed by the body that had given the apartment out to someone for use, under the condition that in the territory of the given municipality all decisions on restitution of apartments have been enforced already. This Article prescribes the termination of tenancy rights due to the fact that persons have failed to submit their requests for restitution within the legally binding deadline, or the cancellation of tenancy rights by force of law if persons

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<sup>438</sup> Official Gazette of FBiH, No. 28/05.

have not started using such apartments within the legally binding deadline. In those cases the body that has given the apartment out to such persons is entitled to dispose of the repossessed apartments and can give those apartments to families of its own employees who were killed in the recent war, its present employees, the war invalids or peace-time invalids, its employees who are demobilized soldiers, its retired employees who have not solved their housing problem in any other way by the day of entry of this Law into force. This Law also envisages that, exceptionally, if in the stock of repossessed apartments there are those that were nationalized, the allocating body shall not allocate such apartments until a *lex specialis* on restitution is adopted.

#### *4.11.6. Old foreign currency savings*

Old foreign currency savings are the savings that were deposited in the banks with the seat in the republics of the former SFRY. Internally, it is a debt succeeded by all those states after the dissolution of SFRY for which the guaranties were given by the former Federal State. The Republic of Bosnia and Herzegovina passed the Decision on Objectives and Purposes of Foreign Currency Policy,<sup>439</sup> on the basis of which it has explicitly accepted its responsibility and took over the guaranties for these saving accounts. This Decision envisaged that the issue of these savings and related interest rates “shall be solved by the adoption of legal regulations related to public debt”.

Legislation regulating the issue of public debt, which was adopted in the entities, generated an unequal treatment of the citizens of BiH and the violation of principle of equality of

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<sup>439</sup> Official Gazette of RBiH, Nos. 13/96 and 72/07.

citizens' rights. Several owners of foreign currency saving accounts addressed the Human Rights Chamber that ruled that there were breaches of the European Convention on Human Rights and Fundamental Freedom and the Constitution of BiH, and gave instruction to competent bodies to resolve the issue in a consistent fashion by way of adoption of the state level law. The Constitutional Court's Decision U-14/05 of 2 December 2005 stated that BiH should regulate its legislative framework for the purpose of solution of the issue of old foreign currency savings in a uniform manner for all its citizens, in accordance with the standards of Article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms.

In April 2006, Bosnia and Herzegovina finally adopted the Settlement of Obligations on the Basis of Foreign Currency Saving Accounts.<sup>440</sup> This Law envisages, inter alia, the verification of old foreign currency savings, upon which, by the end of 2007, each holder of such an account was to be paid the amount of maximum 1,000 KM. for the verified amount of saving, while the remaining debt was to be paid in state bonds and with a 2,5 % annual interest rate by 31 December 2020, at the latest. This Law also envisaged that enforceable judicial decisions according to which old foreign currency savings were to be paid were also subject to verification.<sup>441</sup> This article of the Law was subsequently modified so that those individuals who had such court rulings were required to submit such court decisions to the entity Ministries of Finance, i.e. to the Directorate for Finance of Brčko District. The deadline for payment of old foreign currency savings was reduced from 13 to 9 years, while the Council of Ministers additionally decided to reduce it to 7 years.

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<sup>440</sup> Official Gazette of BiH, Nos. 28/06, 76/06 and 72/07.

<sup>441</sup> Article 27 of the Law on the Settlement of Obligations on the Basis of Foreign Currency Saving Accounts in BiH.

By the end of 2007, Republika Srpska unexpectedly passed the Law on Conditions and Manner of Settlement of Debts Arising from Old Foreign Currency Savings by Issuance of Bonds in Republika Srpska<sup>442</sup>. These bonds have a 5-year maturity. Thus, Republika Srpska adopted the Law that offered more favourable conditions than those envisaged by the state Law. In addition to the shorter timeframe, this Law increased the cash payment to 2,000 KM and extended the deadline for the first issue of bonds from 31 March 2008 to 1 March 2008. This legal act was in contravention to the original intention to resolve the issue in a uniform and consistent manner across BiH, given that it had originally been envisaged that the state bonds should be issued by Bosnia and Herzegovina on behalf of its entities and Brcko District and that the competent institution for that operation was the Ministry of Finance and Treasury of BiH. With the adoption of the entity law, Republika Srpska assumed the obligation to issue entity bonds.

There were proceedings initiated before the Constitutional Court of BiH challenging some provisions of the Law adopted in Republika Srpska. The Constitutional Court of BiH ruled that all these claims should be merged in one case, given that they all related to the same or similar issue. The first application related to the inconsistency that existed between Articles 22 and 23 of the state Law on the Settlement of Obligations on the Basis of Foreign Currency Saving Accounts, because neither this Law nor the Law on Central Bank of BiH granted to the Central Bank of BiH the competence envisaged by the challenged provisions of the Law. Another application related to the provisions of Articles 8, 9, 10, 11, 12, 13, 14 and 16 of the Law on Conditions and Manner of Settlement of Debts Arising from Old Foreign Currency Savings by Issuance of Bonds in Republika Srpska that defines the issuer of bonds, conditions for issuance, plan of amortization and

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<sup>442</sup> Official Gazette of Republika Srpska, No. 1/08.

maturity dates, as well as guaranties for the payment of bonds upon the maturity.

On 4 October 2008, the Constitutional Court of BiH passed its Decision<sup>443</sup> in which it rejected as unfounded the request for assessment of constitutionality of the aforementioned provisions. The Constitutional Court first established that provisions of Articles 22 and 23 of the state aw on the Settlement of Obligations on the Basis of Foreign Currency Saving Accounts in BiH was in line with the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention, since the Central Bank of BiH was entitled to issue bonds when it deemed it necessary, given that the Constitution of BiH does not exclude the possibility to define the competences of the Central Bank of BiH by additional legal acts, whereby the condition was that legislator was at the state level. In this specific case, the Parliamentary Assembly of BiH was the body that adopted the Law on Settlement of Obligations on the Basis of Foreign Currency Saving Accounts and, therefore, thee provisions of Articles 22 and 23 of this Law were in full accordance with the Constitution of BiH.

Relating the second application, the Constitutional Court of BiH also established that the challenged articles of the Law on Conditions and Manner of Settlement of Debts Arising from Old Foreign Currency Savings by Issuance of Bonds in Republika Srpska were constitutional. The Constitutional Court pointed out that the protection of property rights in relation to the payment of old foreign currency saving falls under the competence of the state of BiH and its entities, and that this obligation arises from the Constitution of BiH, which means that the protection was to be secured by appropriate state and its entity regulations. Given

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<sup>443</sup> Decision of the Constitutional Court of BiH No. U 3/08, dated 4 October 2008.



that Republika Srpska used the opportunity envisaged by the state law and provided more favourable conditions for the payment of old foreign currency savings, it meant „positive discrimination“ for holders of those accounts, while the payment of that debt did not have an impact on the monetary policy of Bosnia and Herzegovina.

In view of the fact that the Constitutional Court of BiH did not dispute the competences of entities to make the payment of old foreign currency savings, the Federation of BiH will begin the issuance of bonds for the settlement of its debt soon in the same way as it was done by Republika Srpska.

Depositors with saving accounts in other republics of the former SFRY do not enjoy the protection under these laws; the payment of their savings is linked to the Agreement on Succession, according to which the responsibility for the settlement of this debt lies with republics in which the seats of relevant banks are located, while BiH has only the positive obligation to do everything in its capacity to protect the rights of its citizens who have their old foreign currency savings in those countries.

In adjudicating this issue related to BiH, the European Court of Human Rights took two decisions: the case of *Jeličić v. BiH*<sup>444</sup> of 31 October 2006, and the case of three applications made by *Pejaković, Pejić and Kusić*<sup>445</sup> of 18 December 2007. In these decisions, the European Court of Human Rights established that there were breaches of Article 6 of the European Convention on Human Rights and Fundamental Freedoms (the right to fair

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<sup>444</sup> *Jelicic v. Bosnia and Herzegovina*,

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=jelicic&sessionid=8948827&skin=hudoc-en>

<sup>445</sup> *Pejaković, Pejić and Kušić v. Bosnia and Herzegovina*

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=pejakovic&sessionid=8948827&skin=hudoc-en>

trial) and Article 1 of Protocol 1 to the European Convention (the right to peaceful enjoyment of property), due to the failure of BiH to enforce the final and enforceable decisions of domestic courts according to which the applicants in question were granted the right to the payment of the decided amounts as compensation for their old foreign currency savings. In these cases the Court found the violation of the right to peaceful enjoyment of property primarily because the final court decisions were not enforced, while it did not take into consideration the violation of this right that was allegedly committed by the failure of the state of BiH to pay the amount of savings held in banks. Although, when adjudicating other applications, the European Court of Human Rights had in mind the allegations relating the amount of public debt, and economic stability that would be threatened if full amounts of old foreign currency savings were to be paid, it still emphasized that it „does not see any reason to deviate from its well established jurisprudence according to which a state is not allowed to use the lack of funds as pretext for failure to pay its debt if such a decision is made by the court”. It also stated that the Pejaković, Pejić and Kusić Case is almost identical to the Jeličić Case and that the modification of Article 27 of the Law on Settlement of Obligations on the Basis of Foreign Currency Saving Accounts could “ultimately lead to full enforcement of the court decisions in question“, but that “apparently, it has not happened yet”.

#### *4.12. Rights of national minorities*

Article 27 of the ICCPR reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to

enjoy their own culture, to profess and practice their own religion, or to use their own language.

*(Official Gazette of SFRY, No. 7/71)*

#### *4.12.1 General considerations*

In the post-war period, BiH ratified a series of international conventions that secure the protection of fundamental as well as some specific rights of national minorities, e.g. International Covenant on Civil and Political Rights,<sup>446</sup> International Convention on the Elimination of All Forms of Racial Discrimination<sup>447</sup>; European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>448</sup> and its Protocol No. 12 (“General Prohibition of Discrimination”),<sup>449</sup> and the Framework Convention for the Protection of Rights of National Minorities (hereinafter: “Framework Convention”)<sup>450</sup>. Although enumerated in an Appendix to Annex 6 of Dayton Peace Agreement, the European Charter for Regional or Minority Languages has not been ratified yet.

The Preamble of the Constitution of BiH indicates that the country is inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights

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<sup>446</sup> BiH joined this Covenant by way of succession on 1 September 1993, Official Gazette of RBiH, 25/93.

<sup>447</sup> BiH joined this Convention by way of succession on 16 July 1993, Official Gazette of RBiH, 25/93.

<sup>448</sup> This Convention was signed on 24 April 2002, ratified on 12 July 2002, and entered into force on 12 July 2002.

<sup>449</sup> This Protocol was signed together with the Convention on 24 April 2002, and ratified on 29 July 2003.

<sup>450</sup> This Convention was signed and ratified on 24 February 2000 and entered into force on 1 June 2001.

and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments. The Constitution also guaranties, in addition to a number of specific human rights, the principle of non-discrimination.

There is no definition of national minority in the Constitution of BiH. Namely, in its Preamble, the Constitution refers to the Bosniaks, Croats and Serb, as constituent peoples, and to “Others”, and, generally, to “the citizens of BiH”. In addition to the problem of inequality of citizens that arises from this provision, there is also the problem of definition of “Others”, given that it is not clearly defined whether the members of “Others” declare themselves as such because they belong to one of minorities or because they do not want to be related to any of the three constituent peoples.

Since prior to the recent war, the status of minorities in BiH was not regulated by special legislation, the legislators started drafting relevant laws in this domain. The result of numerous initiatives undertaken, pursuant to Article IV 4a of the Constitution of BiH, by local institutions with strong support of international community, the Parliamentary Assembly of BiH adopted at its House of Representatives’ session held on 20 June 2002, and the House of Peoples’ session held on 1 April 2003, the Law on Protection of Rights of National Minorities. The Law that entered into force on 14 May 2003<sup>451</sup> has played an important role in providing a legal framework for the protection of national minorities as well as for raising awareness on their rights.

This Law was drafted by the Ministry of Human Rights and Refugees, upon which the High Representative’s Office in BiH requested from the Venice Commission, as an advisory body

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<sup>451</sup> Official Gazette of BiH, No. 12/03.

of the Council of Europe tasked with analyzing the constitutional rights' issues in member countries, to give its opinion on this legal draft in order to secure its compliance with fundamental regional instruments for the protection of rights of national minorities. The Venice Commission emphasized, *inter alia*, that some rights referred to in this legal draft guarantee even higher standards than those set by the international instruments for the protection of national minorities. This initiative is, according to the Commission, a positive one, but, given the complex structure of government in BiH, there could be problems with implementation of the law at local level. Namely, in view of the fact that very few competences lie with the state level in BiH, the implementation of these legal provisions would greatly depend on financial capacities of local authorities.

Thanks to strong pressure exerted by local NGO sector<sup>452</sup>, the Law on Amendments to the Law on Protection of Rights of National Minorities in BiH was adopted in 2005. Amendments that the NGO sector deemed necessary will be elaborated in the following section of this Report.

Article 7 of the Law on Protection of Rights of National Minorities in BiH stipulates that *entities, cantons, cities and municipalities in BiH, within the scope of their competencies, shall in detail regulate by their laws and other regulations rights and duties arising from the Law hereto and international conventions regulating the issues of importance for national minorities*. Pursuant to this provision, the National Assembly of Republika Srpska adopted in December 2004 the Law on Protection of Rights of National Minorities. This Law guarantees the same rights to national minorities as the homonymous state Law and contains several specific provisions that are favourable for the

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<sup>452</sup> Association of the Human Rights Bureau and Centres for Civil Initiatives initiated these activities.

national minorities living in the territory of Republika Srpska. One such provision is related to precisely defined fines for legal entities who fail to respect the provisions of the Law.<sup>453</sup> As for the Federation of BiH, the Law on Protection of Rights of National Minorities was adopted only recently and published in the Official Gazette in September this year,<sup>454</sup> so that it is premature to speak about the practical protection of rights and interests of national minorities in this entity. Due to complex structure of the Federation of BiH, it is interesting to note that in Article 23 this Law additionally prescribes that the lower bodies of authority are obliged to deal with the rights of national minorities within a precisely defined deadline: *Cantons, cities and municipalities shall in their regulations define more precisely the rights of national minorities in accordance with the provisions of this Law within six months as of the day of entry into force of this Law.*

Although the original version of the state Law mentions Brčko District in its closing provision (Article 27) that stipulates that the Law shall be published in the official gazettes of both entities and Brčko District, with the adoption of the Law on Amendments to the Law on Protection of Rights of National Minorities in 2005, this omission was “rectified”. Namely, these amendments in Article 26 stipulates that: *Republika Srpska and the Federation of BiH shall adopt and harmonize their regulations on the rights of national minorities, as well as other laws and regulations that regulate and protect the rights of national*

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<sup>453</sup> „A legal entity shall be punished with the fine amounting from 2.000,00 KM to 10.000,00 KM if: it fails to envisage in its program scheme special programs for national minorities (Article 13), or if it fails to enable the use of language of national minorities in accordance with Article 15 of this Law. For the offences referred to in Paragraph 1 of this Article, the responsible persons in legal entities shall be punished with fines amounting from 200,00 KM to 1.000,00 KM.“, Article 19 of the Law on Protection of Rights of National Minorities in Republika Srpska, Official Gazette of Republika Srpska, No. 2/04.

<sup>454</sup> Official Gazette of FBiH, No. 56/08 /8 September 2008/.

*minorities with this Law within six months as of the date of entry into force of this Law, wherein Brčko District was also included.. In Brčko District, this legal act has not been passed yet so that persons belong to national minorities have no choice but to refer to the state Law for the purpose of protection of their rights.*

#### *4.12.2. Definition of national minorities*

Although international community generally avoids making a general definition of “minority” due to different situations in different countries, the most acceptable definition is that minorities are *non-dominant groups of individuals who have certain national, ethnic, religious or linguistic characteristics, different from the characteristics of the majority population.*<sup>455</sup>

On the other hand, the state Law on Protection of Rights of National Minorities defines national minority as *a part of the population-citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics.*<sup>456</sup>

It is important to mention that in BiH the rights of national minorities are limited solely to nationals of Bosnia and Herzegovina.<sup>457</sup> As for international standards, the UN Committee for Human Rights in its General Commentary No. 23, interpreting the Article 27 of the International Covenant on Civil

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<sup>455</sup> Office of the UN High Commissioner for Human Rights, „Brochure No. 18: National Minorities“.

<sup>456</sup> Law on Protection of National Minorities in BiH, Article 3.

<sup>457</sup> Law on Protection of National Minorities in BiH, Article 3.

and Political Rights, pointed out that member countries cannot limit the rights guaranteed in Article 27 only to their own citizens.<sup>458</sup> Furthermore, in the Framework Convention for the Protection of National Minorities there are no provisions stipulating that persons belonging national minorities must be the nationals of the country in order to exercise their rights.

According to its Law, BiH protects the rights and equality of Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians and other peoples that meet the conditions stipulated in Paragraph 1 of Article 3 of the Law. This list of national minorities was taken from the 1991 Census, although, given the migrations that occurred in the last two decades, this Census does not reflect accurately the *de facto* situation in BiH.<sup>459</sup>

However, taking into account the problem with the outdated Census, the Advisory Committee of the Framework Convention for Protection of National Minorities,<sup>460</sup> expressed the opinion that it was necessary for authorities, particularly at local level, not to use the fact that there was not census since 1991

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<sup>458</sup> General Commentary No. 23, UN Committee for Human Rights, Paragraph 5.1, CCPR/C/21/Rev.1/Add.5.

<sup>459</sup> These are the official data on number of national minorities according to the 1991 Census: Albanians – 4,922; Montenegrins – 10,048; Czechs – 590; Italians – 732; Jews – 426; Hungarians – 893; Macedonians – 1,596; Germans – 470; Poles – 526; Roma – 8,864; Romanians – 162; Russians – 297; Ruthenians – 133; Slovaks – 297; Turks – 267; Ukrainians – 3,929.

<sup>460</sup> Implementation of the Framework Convention for the Protection of National Minorities is assessed by the Committee of Ministers of the Council of Europe, assisted by the Advisory Committee of the Framework Convention. The composition and procedures of the Advisory Committee are regulated by Resolution (97) 10 adopted by the Committee of Ministers of the Council of Europe in 1997.



as justification for lack of protection of rights of national minorities.<sup>461</sup>

In Article 2, the Law on Protection of Rights of National Minorities of Republika Srpska defines national minorities identically to the homonymous state Law.

Unlike the state law and the Law of Republika Srpska, the Law on Protection of Rights of National Minorities in the Federation of BiH does enumerate the same national minorities but defines them as part of the population-citizens *who do not declare themselves as members of one of the three constituent peoples*, and includes among them the peoples of the same or similar ethnic origin, the same or similar tradition, customs, religion, language, culture and spirituality and related or similar history and other characteristics.<sup>462</sup>

#### *4.12.3 Right to preserve national, cultural and other identities of minorities*

Article 5 of the Framework Convention for the Protection of National Minorities obliges member states of the Council of Europe and other signatories of this Convention, to improve the conditions necessary for the preservation and development of culture of national minorities and for the preservation of necessary elements of their identity: i.e. religion, language, tradition and cultural heritage.

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<sup>461</sup> Opinion on BiH of the Advisory Committee of the Framework Convention for the Protection of National Minorities was adopted on 27 May 2004, Points 14 and 15.

<sup>462</sup> Article 3, Law on Protection of National Minorities in the Federation of BiH.

In Article 5, the state Law on Protection of Rights of National Minorities envisages the right to preservation of national, cultural and other identities of minorities. The Law on Protection of Rights of National Minorities in Republika Srpska uses identical formulation as the state Law and its Article 4 envisages identical rights for citizens living in the territory of Republika Srpska. In the Law on Protection of Rights of National Minorities of the Federation of BiH, reference is made to the state Law and the Framework Convention for the Protection of National Minorities, so that this right is stipulated in Article 1, defining the objective and purpose of this Law and formulating it as an obligation of “bodies of authority to respect and protect, preserve and develop ethnic, cultural, linguistic and religious identity of every member of national minorities in the Federation who is the citizen of the Federation, i.e. of Bosnia and Herzegovina.”<sup>463</sup>

#### *4.12.4 Freedom of expression of national affiliation and prohibition of discrimination on the basis of national minority status*

The Constitution of BiH, in Article II („human rights and fundamental freedoms”), recognizes the principle of non-discrimination: *The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other*

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<sup>463</sup> Article 1, Law on Protection of National Minorities of FBiH.

*status.* <sup>464</sup> Furthermore, Annex 7 of the Dayton Agreement that relates to refugees and displaced persons, states that *the Parties shall secure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.*

In Article 4 of the Law on Protection of Rights of National Minorities in BiH it is stipulated that every member of national minorities is entitled to freely chose whether he/she wants to be treated as such, whereby they shall not be put in unfavourable position because of they way they have declared themselves and every other form of discrimination on that basis is prohibited. The same provision is repeated in Article 3 of the Law on Protection of Rights of National Minorities in Republika Srpska, as well as in Article 4 of the homonymous Law in the Federation of BiH.

Given the nature of international law on human rights, i.e. the fact that it is primarily the responsibility of state and its officials to protect human rights of their citizens, it is exceptionally important to mention in this context the Criminal Code of BiH, whose Article 145(1) stipulates that *“An official or responsible person in the institutions of Bosnia and Herzegovina, who on the ground of differences in race, skin colour, national or ethnic background, religion, political or other belief, sex, sexual orientation, language, education or social status or social origins, denies or restricts the civil rights as provided by the Constitution of Bosnia and Herzegovina, ratified international agreement, law of Bosnia and Herzegovina, some other regulation of Bosnia and Herzegovina or general act of Bosnia and Herzegovina or, whoever on the ground of these differences or background or other status*

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<sup>464</sup> Article II, Human Rights and Fundamental Freedoms, Constitution of BiH.

*grants unjustified privileges or does unjustified favours to individuals.”*

However, in the opinion of the Framework Convention’s Advisory Committee, institutional *as well as judicial and extra-judicial methods of fight against discrimination have been unstable for quite a long period of time in BiH.*<sup>465</sup> Furthermore, according to the local NGO sector, the existing constitutional and legal provisions are not sufficiently effective. This was the reason why a group of NGOs started drafting an anti-discrimination law in BiH<sup>466</sup>. After having an insight into the current *de iure* and *de facto* situation, the working group tasked with drafting this law found, inter alia, that vulnerable social groups do not have sufficient and effective legal instruments at their disposal that would secure equal opportunities and non-discrimination, and that, in the present legislation, there is no clear definition of direct and indirect discrimination. Unfortunately, despite the extensive efforts made by the NGO sector in BiH, an anti-discrimination law has not been adopted yet. Namely, the Council of Ministers of BiH included in its Work Program for 2008 the drafting of the anti-discrimination law as part of its legislative activities, and

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<sup>465</sup> Opinion on BiH of the Advisory Committee of the Framework Convention for the Protection of National Minorities, adopted on 27 May 2004, Point 35.

<sup>466</sup> „In 200, the year that was proclaimed by the European Commission as the Year of Equal Opportunities for All, the Helsinki Committee, supported by over 100 NGOs, presented and proposed to competent bodies the adoption of the Anti-discrimination Law of BiH. This Law is needed in BiH, primarily for the protection of its citizens against ubiquitous discrimination as it is reported in all the relevant surveys. Discrimination on different grounds is, as surveys show, the most frequent cause of violation of human rights in BiH. In view of legislation and the need to respect human rights, the proponents of this legal draft claim that the anti-discriminatory provisions of Dayton Constitution and entire legislation of the country are not effective enough.” Helsinki Committee for Human Rights; the text of this legal draft can be accessed on the webpage of the Helsinki Committee in BiH:

[http://www.bh-hchr.org/Saopstenja/Nacrt\\_zakona.pdf](http://www.bh-hchr.org/Saopstenja/Nacrt_zakona.pdf).

tasked the Ministry for Human Rights and Refugees of BiH to carry out this task. The deadline for tabling the legal draft to the Council of Ministers was November 2008.

#### *4.12.5. Protection of minorities from persecution and hatred*

According to the International Convention on Elimination of All Forms of Racial Discrimination, states are obliged to punish any form of violence motivated by person's affiliation to a racial, ethnic or national group. Article 4a of this Convention reads: *States Parties commit that they: a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.* However, there is still a dilemma in international law whether this type of violence should be regulated in national legislation by a special law, or, simply, through the existing criminal codes, given that the text of the Convention fails to provide a specific answer to this dilemma.

Article 25 of the BiH Law on National Minority Rights reads: *In accordance with the criminal laws of the entities in BiH, any action, encouragement, organization and aiding and abetting the activities that could endanger the survival of a national minority, instigate ethnic hatred, lead to discrimination or bring members of a national minority into unequal position, shall be prohibited.* In Article 13 of the Law on Amendments to the Law on Protection of Rights of National Minorities in BiH, the following part has been deleted: *based on the Criminal Codes of entities in BiH,* and, instead the following Paragraph 2 was inserted in this Article: *Criminal prosecution and sanctioning of*

*perpetrators of offences referred to in the previous paragraph are carried out according to the relevant criminal or minor offence legislation in BiH.*

The Criminal Code of BiH prescribes *the persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina*” is considered as criminal offence. This Law defines „persecution” as the *intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.*<sup>467</sup>

Furthermore, it is important to note that, in Bosnia and Herzegovina, there is no appropriate legislation prohibiting neo-fascist organizations.<sup>468</sup> However, in the course of this year, there were several initiatives to adopt such a law, particularly in view of the fact that, as it is stated in the reasoning *„our country must show political will to cope with the problem of public expression and dissemination of Fascism and discrimination, and in view of the fact that the country’s legislation has numerous drawbacks that prevent it from tackling these socially detrimental phenomena efficiently”.*<sup>469</sup> Naturally, such a law would - at least in legal terms - improve the assurance of protection to individuals and groups from persecution and hatred, particularly the persecution and

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<sup>467</sup> Criminal Code of BiH, Article 172, Official Gazette of BiH, No. 3/03.

<sup>468</sup> More information on the initiatives of the NGO sector in relation to the Law on Prohibition of Neo-fascist Organisations can be found on: <http://www.bh-hchr.org/Saopstenja/27-01-05.htm>

<sup>469</sup> <http://www.parlament.ba/index2.php?id=468&jezik=b>.

hatred targeting the members of vulnerable groups, such as national minorities.

In the specific situation of Bosnia and Herzegovina, where one cannot neglect the importance of return of refugees and displaced persons for the stabilization of peace and overall situation in the country and for the building of confidence, one needs to mention that the Dayton Peace Agreement, states, in Annex 7, the following measures as necessary for confidence-building: *the repeal of domestic legislation and administrative practices with discriminatory intent or effect; the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred; the protection of ethnic and/or minority populations wherever they are found... dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.*

#### *4.12.6. Right to information (i.e. public information) in the languages of national minorities*

Article 9 of the Framework Convention guarantees to national minorities the right to information in their languages. Accordingly, the state Law on Protection of Rights of National Minorities ensures, in Article 15, the right of national minorities to establish their radio and TV stations and to publish newspapers as well as other printed information in their languages. The same Law imposes on the radio and TV stations of BiH, founded by BiH, entities, cantons, cities and municipalities, which carry out public services, an obligation to provide for national minorities, in their programs, special programs and other materials in the languages of minorities (Article 16). These

institutions are also obliged to secure informative content for national minorities in their languages at least once a week. The Law on Amendments to the Law on Protection of Rights of National Minorities in BiH has amended to following provisions to its Article 16: *and programs, in the official languages of national minorities in BiH.*

The entity laws on protection of the rights of national minorities secure the same rights as the state-level law.

It is interesting to mention in this context that the application of this provision is conditioned by the percentage of national minorities, i.e. that: *entities and cantons shall adopt legislation determining the rights referred to in Paragraph 1 of this Article in proportion to the percentage of their participation in entity, canton, city and municipality* (Article 16), and it is almost needless to say that the 1991 Census represents a problem here as well, since it does not reflect the real demographic structure of the population of BiH, undermining the implementation of this provision. We should also add that the same provision exists in the homonymous entity laws.

*4.12.7. Freedom of use of language and alphabet, use of name and names of places in mother language and the right to use the symbols of national minorities in public places*

Pursuant to the Law on Protection of Rights of National Minorities in BiH, and in accordance with the Framework Convention for Protection of National Minorities (Articles 10 and 11), national minorities are entitled to use their own language freely and without any hold-ups, both in private and in public, both orally and in writing, including the right to use their names and surnames in their mother tongues.



Furthermore, in the Criminal Code of BiH, denial or restriction of the use of languages and alphabets of *constituent peoples and others living in the territory of BiH*, when they address the bodies of authority and institutions of BiH, companies and other legal entities, is punishable.<sup>470</sup>

Article 12 of the state Law on Protection of Rights of National Minorities in BiH enables that the use of topographic signs intended for public are also written and displayed in the language of minorities, and that minority languages are used between members of minorities and authorities. According to the original Law, which was passed in 2003, in order to enjoy this right, persons belonging to national minorities had to constitute an absolute or relative majority of population of a city, municipality or a populated area, but this provision was deleted in the Law on Amendments to the Law on Protection of Rights of National Minorities in BiH, adopted in 2005. Nevertheless, in places where minorities do not constitute majority, cities and municipalities may in their statutes provide them with this right.

Furthermore, the state Law enables the national minorities to freely display and bear their insignia and symbols, as well as those of their organizations, associations and institutions, the only condition being that, when they use the insignia and symbols referred to in Paragraph above, national minorities are also obliged to display the official insignia and symbols of BiH, as well as the symbols and insignia of their entity, canton and municipality, in accordance with the regulations of the corresponding government.

The homonymous entity laws contain identical provisions.

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<sup>470</sup> Criminal Code of BiH, Article 145(2).

#### 4.12.8 *Right to education in the languages of national minorities*

In the spirit of the Framework Convention for Protection of National Minorities (Articles 12 to 14), both the state and entity Laws on Protection of Rights of National Minorities in BiH regulate the issue of the right to education of national minorities in their mother tongue. Namely, the state Law provides for the possibility for persons belonging to national minorities to be educated, within respective educational programs, in their mother tongue in the cities, municipalities and inhabited places where they constitute an absolute or relative majority. In Article 13 of this Law, it is stated that the entities as well as the cantons in the Federation of BiH are obliged to secure this right. The Law on Protection of Rights of National Minorities in Republika Srpska contains identical provisions related to education in mother tongue.

Through these two laws, BiH minorities are granted the possibility to establish and run their own private institutions for education and vocational training. Due to complex structure of governance in the Federation of BiH, the state Law stipulates that cantons shall take care of this possibility, while, in Republika Srpska, this issue is regulated by the entity law.

Furthermore, in Article 14 of the Law on Protection of Rights of National Minorities in BiH, the original version stipulated that *regardless of the number of national minorities the entities and cantons shall be bound to secure that the national minority, if they request so, may have instructions on their language, literature, history, and culture in the language of minority they belong to as additional classes*. In the Law on Amendments to the Law on Protection of Rights of National Minorities in BiH, this Article was amended and became more specific so that now it reads as follows: *“Persons belonging to national minorities may study language, literature, history and*

*culture in their language. Educational authorities in BiH are obliged, within their educational programs (pre-school institutions and primary and secondary schools), to secure in the schools where students - members of a national minority make minimum one-third of all students - the education in the language of that minority, and if they make one-fifth of all students- they are obliged to secure additional training on the language, literature, history and culture of the minority they belong to, if that is demanded by most of their parents. In order to exercise the aforementioned rights, competent educational authorities are obliged to secure financial means for training of teacher who will perform the training in the language of national minorities, rooms and other conditions for additional training, as well as printing of textbooks in the languages of national minorities”.*

Finally, the state Law imposes an obligation on entities, cantons, cities and municipalities to secure financial means to cover the necessary costs; due to the lack of a more precise provision, this represents a problem in practice.

The Framework Law on Primary and Secondary Education in BiH, adopted in 2003, regulates, in its Article 8, the use of language and alphabet of national minorities and stipulates that: *the language and culture of any significant minority in BiH shall be respected and accommodated within the school to the greatest extent practicable, in accordance with the Framework Convention for Protection National Minorities.* However, as in other areas, Article 59 of this Law stipulates that *all state, entity, cantonal and Brčko District laws, as well as other relevant regulations in the field of education shall be harmonized with the provisions of this Law within six month at the latest as of the date of entry into force of this Law.* In the Report on the State of Human Rights in BiH, analysis for the period January – December 2007, the Helsinki Committee for Human Rights in BiH stated that *“harmonization of the existing, or drafting of new by-laws in this area, which would secure easier and faster*

*implementation of the principles and goals defined in the Framework Law, has not been completed yet*".<sup>471</sup> Furthermore, although this Law prescribes the bodies tasked with defining educational standards, their role in terms of respect of language and culture of national minorities is not clearly defined.

#### *4.12.9. Right to participation in public and political life*

The International Covenant on Civil and Political Rights, Article 25, reads: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

Article 15 of Framework Convention requires from the State Parties to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs in particular those affecting them.

Constitution of Bosnia and Herzegovina guarantees democratic principles: Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections (Article 1, Paragraph 2).

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<sup>471</sup> Report on the State of Human Rights in BiH, an analysis for the period January – December 2007; Helsinki Committee for Human Rights in BiH, No. 02-02/08.

However, despite democratic principles and aforementioned non-discrimination principles, the Constitution of Bosnia and Herzegovina contains several inconsistent provisions that stand as restrictions to persons belonging to national minorities, as already explained in the chapter on definition of national minorities.

Having in mind the importance of the Dayton Peace Agreement for maintaining peace and stability in Bosnia and Herzegovina, one can rightfully say that the Constitution and Election Law of Bosnia and Herzegovina 13 years after signing of the Peace Agreement are still restricting the citizens of Bosnia and Herzegovina who do not belong to one of the constituent peoples of BIH from taking equal part in government.<sup>472</sup>

Article IV of the Constitution of Bosnia and Herzegovina reads: *The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs)*. Also, Article IV of the Constitution enables only Serbs, Bosniacs and Croat to be elected a president and a vice-president to the House of Representatives and the House of peoples.

Article V of the BIH Constitution says that the Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska. This constitutional provision is reflected in the Election Law on BIH as well (Article 8.1).

In Article VII of the Constitution of Bosnia and Herzegovina it is said that the Governing Board of the Central Bank of Bosnia and Herzegovina shall consist of a Governor (who

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<sup>472</sup> See Opinion of Advisory Committee of the Framework Convention for the protection of national minorities dated May 27, 2004, Item 13

is not citizen of BiH) and three members appointed by the Presidency, one from each constituent peoples.

Constitution of the Federation of Bosnia and Herzegovina also recognizes the definition of three “constituent peoples” and “others.”<sup>473</sup> Article 11, Chapter IV A2 of the Federation Constitution reads: Each House shall elect a president and a vice-president from their respective membership, but the elected president and vice-president cannot be from the same constituent people. This provision itself excludes the possibility for a member of national minority to be elected a president or a vice-president of either House.<sup>474</sup>

Apart from the issue of legal possibility for national minorities to take part in the work of the House of Peoples of the Federation of BiH, there is also a problem related to 1991 census - realistic demographic picture in Bosnia and Herzegovina - which brings into question the realistic chances of national minorities to take part in the work of the House of Peoples. Also, Article 18 of the same chapter reads: *Decisions concerning the vital interest of any of the constituent peoples shall require approval of a majority of the Delegates in the House of Peoples, including a majority of the Bosniac Delegates and of a majority of the Croat Delegates.* With such a vague definition of “vital interest of constituent peoples”,

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<sup>473</sup> Article I of the FBiH Constitution

<sup>474</sup> In 2007 Helsinki Committee for Human Rights in BiH, with support of Heinrich Böll Foundation – Office in BiH, organized a series of public debates on „Constitution of BiH between individual and collective rights.“ As the most important conclusion from all debates the organizer highlighted the following: necessity to change provisions of the BiH Constitution which reserve positions of a president and a vice-president to Houses of Parliamentary Assembly exclusively for members of the three constituent peoples; necessity to change the BiH Constitution in order to guarantee the rights to national minorities and to other citizens who are neither constituent peoples nor national minorities.

this provision brings into question the matter of equality of the Federation citizens, which is guaranteed by international agreements on human rights.

When it comes to the executive authorities of the Federation of Bosnia and Herzegovina, Article 2, Chapter IV B reads: *In electing the President and Vice-presidents of the Federation, the delegates of the Bosniac and Croat caucuses in the House of Peoples shall separately nominate one person each ...President of the Federation cannot be elected from the same people two times consecutively.* Hereby the Constitution once more reiterates unequal treatment of citizens of the Federation of Bosnia and Herzegovina when it comes to participation in government, which is contrary to international treaties on human rights.

Article 12.3 of the BiH Election Law regulates the election of president and vice-president of Republika Srpska in the following manner: *The candidate from each constituent people receiving the highest number of votes shall be elected. Among these three (3) candidates, one from each constituent people, the candidate receiving the highest number of votes shall be elected President, and the two candidates receiving the second and third highest number of votes shall be elected Vice Presidents.*

Also, Article 11.1 of the BiH Election Law reads: *A minimum number of four (4) members of each constituent people shall be represented in the National Assembly of Republika Srpska.* Although it does not exclude participation of national minorities in the work of the Assembly, this provision indirectly discriminate national minorities given the fact that it ensures the right to participation to a minimum of members of constituent peoples only.

Notwithstanding the aforementioned constitutional restrictions, the Law on Protection of National Minorities of Bosnia and Herzegovina dedicated an entire chapter to the matter

of participation of national minorities in institutions of government.<sup>475</sup> Unfortunately, under the existing law there are at least two restrictions related to this right. The first one is in Article 19 of this Law, which reads: *Members of national minority referred to in Article 3 of this Law shall be entitled to the participation in the authorities and other public services at all levels in proportion to the percentage of their participation in the population in line with the latest census in BiH.* In other words, a proportionate participation of national minorities in the institutions of government will not be achieved until a new census is conducted.

The second restriction is reflected in Article 20 of the Law, which reads: *Manner and criteria of electing representatives of national minorities into parliaments, assemblies and councils in terms of Article above shall be closely regulated by the election laws of BiH and the Entities, as well as the Statutes and other regulations in cantons, cities and municipalities.* Having analyzed the constitutional framework and the Election Law, it is worth noting that this law failed to overcome the problem of inequality between constituent peoples and “others”. The latter, under the current legal framework, as mentioned earlier, fall under the category of national minorities.

As for the local level, since 2004, when changes and amendments to the Election Law were adopted, national minorities have *de iure* greater possibility to take part in institutions of government at the local level. *National minorities are entitled to representation in the Municipal Council or Municipal Assembly. National minorities which make up to 3% in the total number of population shall be guaranteed the minimum of one seat in the Municipal Council or Municipal Assembly. All national minorities which make over 3% in the total number of population shall be*

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<sup>475</sup> Similar provisions can be found in the RS Law on Protection of National Minorities (Articles 17-18)



*guaranteed the minimum of two (2) seats in the Municipal Council or Municipal Assembly.*<sup>476</sup> The problem occurred in the sense that the Election Law refers to 1991 census, which does not reflect the real demographic picture in Bosnia and Herzegovina.

However, in April 2008, the Parliamentary Assembly adopted a new Law on Changes and Amendments to the Election Law of Bosnia and Herzegovina, additionally reducing the chances of national minorities to take part in local level government. Namely, pursuant to the new Law, the right to participation is guaranteed only in places where national minorities make up over 3% in the total population.<sup>477</sup> In practice, according to currently used census, this right can be exercised only in a few municipalities.

*4.12.9.1. Councils of National Minorities* – In accordance with provisions of the Framework Convention for the Protection of National Minorities, the BiH Law on Protection of National Minorities anticipates that the BiH Parliamentary Assembly shall establish the BiH Council of National Minorities as a special advisory body that will consist of persons belonging to national minorities referred to in Article 3 of the Law. The Council may delegate an expert to work with the Constitutional-Legal Commission, the Human Rights Commission and other commissions and working bodies in both houses of the BiH Parliamentary Assembly. After a long-lasting process and a constant pressure exerted by international community in BiH to

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<sup>476</sup> BiH Election Law, Article 13.14, Chapter 13A

<sup>477</sup> „Number of persons belonging to national minorities, directly elected to Municipal Council, i.e. Municipal Assembly, i.e. City Assembly, shall be established by the Statute of Municipality, i.e. City, and persons belonging to all national minorities that make over 3% in the total number of population of that particular electorate according to last census shall be guaranteed the minimum of one seat.” Law on Changes and Amendments to the Election Law of BiH, Article 61.2, Official Gazette of BiH, 33/2008

adopt the Law on changes and amendments to the Law on protection of rights of national minorities in BiH, whereby the BiH Parliamentary Assembly was *obliged to establish the Council within 60 days from the entry into force of the Law*, the Parliamentary Assembly established *de facto* this body only in 2007. Unfortunately, the present experience has shown that this Council has not yet been functioning efficiently.

In Republika Srpska, the Council of National Minorities of the RS National Assembly was also established only in 2007, pursuant to Article 17 of the RS Law on Protection of Rights of National Minorities.<sup>478</sup>

The Federation Law on Protection of Rights of National Minorities does not contain any provisions concerning participation of national minorities in institutions of government. Instead, an entire chapter has been dedicated to the Council of National Minorities of the Federation (Articles 16-21). As the final adoption of the Federation Law and the drafting process behind was a result of dedicated efforts of the non-governmental sector, it is generally assumed that a detailed approach to the establishment of the Council of National Minorities and its functioning is a response to numerous obstacles encountered by national minorities in lobbying for the establishment of the National Minority Council at the state level. Having in mind that the state law was adopted in 2003 and that the state level council was established only in 2007, while its efficient functioning is still in its early days, national minorities worked with NGOs insisting on detailed provisions concerning the National Minority Council. This was the attempt

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<sup>478</sup> National Assembly of BIH shall establish a Council of national Minorities of Republika Srpska as a special advisory body that will consist of persons belonging to national minorities from Article 2 of this Law. National Assembly elects membership of the Council of National Minorities of RS among the candidates proposed by the Union of national minorities.

to prevent similar problems from occurring at the Federation level and ensure a faster and more efficient procedure of establishing the Council. Pursuant to the provisions of the Law on Protection of the Rights of National Minorities, the Council shall consist of persons belonging to national minorities, defined in this Law. Council members shall be delegated by the associations of national minorities, and the number of representatives shall be determined so that one representative can be elected on each 1000 members to the Council, but no national minority can have more than five (5) representatives in the Council, except for the Roma who can have a maximum of seven (7) representatives. The reason behind such detailed provisions on the number of representatives of national minorities is the fact that 1991 census is no longer relevant and these detailed provisions were an attempt to overcome the lack of a new census. The role of the Council is to *monitor the application of regulations, take positions, give proposals and recommendations to the authorities in the Federation on all matters relevant to the position and rights of all national minorities in the Federation.*<sup>479</sup> Having in mind that the Federation Law was just recently published in the Official Gazette and that the legal deadline for establishment of the Council is 60 days following the Law's entry into effect, it remains to be seen how successful all these efforts will be. This also bears on the extent to which the national minorities in the Federation will be given the opportunity to express and convey their opinions and positions to the relevant authorities, given that – from a legal point of view - there remain very few other opportunities for them to do so.

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<sup>479</sup> Article 18

### *4.13. Political rights*

Article 25 of the ICCPR reads:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

*(Official Gazette of SFRY, no. 7/71)*

Article 3 of Protocol no. 1 to the European Convention on Human Rights and Fundamental Freedoms reads:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature (*Official Gazette of BiH, no. 6/99*)

#### *4.13.1. General considerations*

Civil and political rights derive from the Universal Declaration on Human Rights and deal with the relations between an individual and the state. These rights include right to life, right to liberty and security, freedom from torture and

slavery, right to political participation, freedom of religion, freedom of expression, freedom of thought, conscience and religion, freedom of assembly and association, etc.

*Civil rights* emphasize the autonomy of a man in relation to the state and state authorities, which may “encroach” upon private life of an individual to the extent required for joint life in a community. *Political rights* are „the rights to participation“, that is, rights of individuals to participate in public (state) affairs. These rights are, for example, right to vote and be elected and right to access to public services. In order to really achieve a satisfactory level of protection of civil and political rights is a state one shall take into consideration some of the rights that are in between civil and political rights such as freedom of expression, freedom of assembly and association.

For the field of political rights, the most important right is so-called “*political participation*” or participation in the process of political decision-making, that is, decision-making at different levels of political organization within a social community – state. Bosnia and Herzegovina (BiH) is very specific in that sense – its unusual legal, political and territorial establishment makes it a unique state in the world. Namely, the state of Bosnia and Herzegovina consists of the two entities (Federation of Bosnia and Herzegovina and Republika Srpska) and a district (Brčko District of Bosnia and Herzegovina). Also, the fourth “level”<sup>480</sup> of

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<sup>480</sup> These are not the levels in a classical, hierarchical sense, where one level is subordinate to another, although this dimension is present too. In other words, the two entities existed when General Framework Agreement for Peace in Bosnia and Herzegovina, popularly called Dayton Peace Agreement, was signed in December 1995, whereby the constitutional establishment of the new state was completed and central government and its authorities were inaugurated. Brčko District of Bosnia and Herzegovina is also result of an “international” solution, whereby the former City of Brčko and its closest vicinity became a district pursuant to the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area.

administrative and political and territorial establishment is “the state level”. Each of these “levels” has a separate set of legal regulations (constitutions, laws, etc.), which sometimes similarly and sometimes quite differently regulate the overall life within their respective levels of “power”. Such unusual internal state structure, consisting of one “federation”, one “republic” and a district<sup>481</sup>, affected the contents of the legal framework concerning the elections.

Pursuant to Article 25 of the International Covenant on Civil and Political Rights<sup>482</sup>, every citizen shall have the right and the opportunity, without any discrimination or unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections, general one or held by secret ballot, guaranteeing the free expression of the will of the electors and to have access, on general terms of equality, to public service in his country.

Right to political participation is also regulated by Article 3 of the European Convention on protection of human rights and fundamental freedoms, which reads: the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

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<sup>481</sup> None of the entities is the state (neither the Federation of BIH is a federation nor Republika Srpska is a republic), although one could think so according to their names. They are both the «entities» in composition of the state of Bosnia and Herzegovina, which is a constitutional and legal «acrobatic» with no counterparty in either theory or practice of organization of modern states.

<sup>482</sup> The BIH Constitution refers to the Covenant in its Preamble. The Covenant is also an integral part of a set of international instruments for protection of human rights, which are an integral part the Constitution of BIH and applied in BIH pursuant to an explicit constitutional norm (Annex I, Additional human rights agreements to be applied in Bosnia and Herzegovina).

Constitution of Bosnia and Herzegovina in Article 2 (Human Rights and Fundamental Freedoms) establishes following:

*1. Human rights*

*Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms [...].*

*2. International standards*

*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. These shall have priority over all other law<sup>483</sup>.*

According to this regulation, the European Convention on Human Right and Fundamental Freedoms takes precedence over national (domestic) legislation. The provisions thereof are directly applicable and considered an integral part of domestic (applicable) law. All provisions of domestic law contrary to the provisions of the Convention are considered unconstitutional, unlawful and shall not be applied.

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<sup>483</sup> An accurate term would be «precedence». The error occurred due to lay translation of the Constitution of Bosnia and Herzegovina, which was, just as the Constitution of the Federation of BiH, imposed by international community. The text was originally written in English and later translated into languages in official use in the units to which it was imposed (state of BiH, Federation of BiH, Brčko District, the Statute of which has all elements of a constitution). The Constitution of Republika Srpska, however, has not been imposed.

#### 4.13.2. Restrictions in terms of holding a public function

Not even in BiH public functions can be held without certain restrictions, which in Bosnia and Herzegovina are stipulated in the Law on Conflict of Interest in governmental institutions of Bosnia and Herzegovina.<sup>484</sup> This Law governs special obligations of elected officials, executive officeholders and advisors in the institutions of government of Bosnia and Herzegovina in exercising their duties. Elected officials, executive officeholders and advisors exercising public duties shall conduct in a conscientious and responsible manner they shall not compromise the trust and confidence by citizens, and shall respect legal and other rules governing the rights, duties and responsibilities in the exercise of public duties. In exercising a public duty, elected officials, executive officeholders and advisors must apply the ethics of the profession and duties they are performing.<sup>485</sup>

The law defines *conflict of interest* as a situation where elected officials, executive officeholders and advisors have a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty.<sup>486</sup>

The Law also stipulates the *principles of work* of elected officials, executive officeholders and advisors,<sup>487</sup> who in exercise

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<sup>484</sup> Official Gazette of Bosnia and Herzegovina, no. 13/02, 16/02, 14/03 and 12/04.

<sup>485</sup> Article 1 of the Law on Conflict of Interest in institutions of Bosnia and Herzegovina.

<sup>486</sup> Ibid.

<sup>487</sup> Elected officials are members to the BiH Presidency, delegates and members to Parliamentary Assembly of BiH, directors, deputies and assistant directors of the state administration bodies, agencies and directorates and institutes appointed by Council of Ministers of BiH, Parliamentary Assembly of BiH or Presidency of BiH. Executive officeholders are ministers and deputies in the



of their duties must act legally, effectively, impartially, honourably, and shall adhere to the principles of responsibility, integrity, conscientiousness, transparency and credibility. They are held personally responsible for their conduct in the exercise of their appointed or elected public office, and shall be politically accountable to the authority or citizens who have appointed or elected them. These persons must not use the public duty for a personal gain of a person related to them and must not be in any relationship of dependence in respect of persons who might influence their objectivity. In their position as public persons, elected officials, executive officeholders and advisors must act in the interest of citizens. In the exercise of their duty elected officials, executive officeholders and advisors shall be bound to use the property, instruments of labour and financial resources entrusted to them for specified purposes only for the intended purpose and in an efficient manner. In the exercise of public duty elected officials, executive officeholders and advisors shall receive salary and allowances for the duty they exercise. Unless explicitly provided in this Law, elected officials, executive officeholders and advisors must not receive any other remuneration.<sup>488</sup>

The Law also anticipates the institute of *incompatibility of functions*. Serving on the management board, steering board, supervisory board, executive board, or acting in the capacity of an authorized person of a public enterprise is incompatible with the public duties of an elected official, executive officeholder or advisor. Serving on the management board, managing or steering board, or directorate, or holding the office of the Director of the

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Council of Ministers of BiH. Advisors include the advisors to the elected officials and to executive officeholders as defined under the Law on Civil Service in Governmental Institutions of BiH (Article 3 of the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina).

<sup>488</sup> Article 2, Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina.

Privatization Agency is incompatible with the public duties of an elected official, executive officeholder or advisor. Involvement in a private enterprise under circumstances that create a conflict of interest is incompatible with the public duties of an elected official, executive officeholder or advisor. The involvement of close relatives of elected officials, executive officeholders and advisors under aforementioned circumstances also creates situations of conflict of interest for the official, executive officeholder and advisor.<sup>489</sup>

Elected officials, executive officeholders and advisors shall not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorized person for a public enterprise.<sup>490</sup> Aforementioned persons shall not serve on the management board, steering or supervisory board, or the directorate or as the Director of the Privatization Agency.<sup>491</sup> These persons must resign from any such incompatible position before assuming the duties of their office.<sup>492</sup>

Elected officials shall not vote on any matter that directly affects a private enterprise in which the official, or his/her close relatives, has a financial interest. Officials in such situations shall abstain from voting, and shall announce the reason for their abstention in an open session. Executive officeholders and advisors shall not take any official action that would directly affect a private enterprise in which the executive officeholder or advisor, or his/her close relative, has a financial interest. In such cases, the executive officeholders and advisors shall refer the decision to

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<sup>489</sup> Article 4, Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina.

<sup>490</sup> This provision applies a year after the elected officials, executive officeholders and advisors leave the office.

<sup>491</sup> V. supra, footnote 11.

<sup>492</sup> Article 5, Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina.

another competent authority for action and shall state the reason of the referral in writing.<sup>493</sup>

The officials shall be, *inter alia*, prohibited from receiving or demanding gifts or any other gain or promise of a gift or of any other benefits for the purpose of the exercise of public duties; receiving an additional remuneration for the tasks performed in the exercise of public duties; promising an employment or another right in exchange for a gift or a promise of a gift; preferring persons on the ground of party and another affiliation or origin, personal or family relations, preferring persons on the ground of party and another affiliation or origin, personal or family relations, using in any manner their position in order to influence a decision of the legislative, executive or judicial power thereby obtaining a personal gain or a gain of a close relative, a privilege or a right, and closing a legal transaction or otherwise favouring his/her personal interests or interests of a close relative.<sup>494</sup>

The Election Commission (Central Election Commission of BIH) shall act on the basis of this Law in order to ensure political accountability and credibility of elected officials, executive officeholders and advisors, taking into account the need to protect the integrity of the office held rather than the person holding such office; issue instructions, prescribe forms and structure of the register for the purpose of applying provisions of this Law; adopt Rules of Procedure regulating the Register, the rules on forms, the implementation rules on handling the procedure and furnishing of decisions and compiling of reports; adopt decisions as to whether a certain action or an omission constitutes a violation of the provisions of this Law; submit a

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<sup>493</sup> Article 7 Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina.

<sup>494</sup> Article 9 Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina.

report on its work to the Presidency of Bosnia and Herzegovina every six months, whereas at least annually to the public; submit a report to the relevant prosecutor's office on any violation of this Law which might also constitute a violation of criminal law.<sup>495</sup>

#### *4.13.3. Political parties*

Political parties in the context of the Law on political party financing<sup>496</sup> are organizations into which citizens are freely and voluntarily organized and which are registered according to law with the relevant court in either entity in order to carry out political activities and pursue political goals. In order to

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<sup>495</sup> Article 17 Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina. A procedure before the Election Commission shall be initiated at the request of the Election Commission or at the request of the person concerned. The Election Commission may initiate the procedure on grounds of reporting made by another person. The Election Commission shall have the right to establish the facts by way of conducting its own investigation or to obtain facts and evidence through an action of other executive authorities. All authorities, institutions and courts of Bosnia and Herzegovina on all levels shall be obligated to provide the Election Commission with all necessary legal and other official assistance as requested. Should there be any doubt concerning the existence of violation of obligation under this Law, the Election Commission shall notify the concerned person with regard to whom there are reasonable doubts that he may have committed a violation of this Law, requesting a statement on the allegations contained in the report. Should there be any doubt as to the possible existence of a violation of this Law, the Election Commission shall provide its opinion at the request of any person requiring such an opinion. Prior to pronouncing the sanction, the Election Commission must obtain a statement from the person affected by the sanction (Article 18 of the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina). Appeals against decisions of the Election Commission may be made to the Administrative Division of the Court of Bosnia and Herzegovina. The sanctions pronounced by the Commission are monetary fines.

<sup>496</sup> Official Gazette of Bosnia and Herzegovina, no. 22/00.

participate in the elections, a political party must submit an application for verification to the Election Commission of Bosnia and Herzegovina<sup>497</sup> under the same name that is registered with the relevant court.

A political party may obtain funds from membership fees<sup>498</sup>, contributions from legal entities and natural persons, incomes generated by property owned by the political party, The budget of Bosnia and Herzegovina for financing parliamentary groups pursuant to provisions of this Law<sup>499</sup> as well as from the budgets of the entities and from all their lower units pursuant to the entity laws, profit from the income of enterprises owned by the political party.<sup>500</sup>

Legal entities and natural persons may give contributions to political parties or to the members acting on their behalf.<sup>501</sup> For the purpose of this Law, a contribution made to the political party

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<sup>497</sup> In this Law the term Election Commission stands for the Election Commission of Bosnia and Herzegovina, i.e. Central Election Commission of Bosnia and Herzegovina (CEC BiH).

<sup>498</sup> Membership fee is an amount of money that a member regularly pays pursuant to the provisions of the Statute of the political party. Contributions are payments that exceed the amount of aforementioned membership fee.

<sup>499</sup> The matter is regulated by Article 10 of the Law on Political Party Financing.

<sup>500</sup> An enterprise referred to in this Article may only carry out culture-related or publishing activities.

<sup>501</sup> The total amount of a single contribution referred to in paragraph 1, Article 4 shall not exceed eight (8) average worker's salaries according to official data by the Statistics Agency of Bosnia and Herzegovina in one calendar year and may not be made more than once a year (Article 5, Paragraph 1 of the Law on Political Party Financing). Budgetary allocations for political youth organization shall not be subject to the limitation of donations regulated by this Article (Article 5, Paragraph 2 of the Law on Political Party Financing). Budgetary allocations for political youth organizations shall be reported on forms by which a political party discloses its financial situation apart from other incomes of the party. (Article 5, Paragraph 3 of the Law on Political Party Financing).

or members acting on its behalf shall also mean gifts given to the party or the members, who act on its behalf, free services or provision of services to a political party or the members, who act on its behalf, under conditions by which that party is put in a favouring position with regard to other parties.<sup>502</sup> Legal entities or natural persons that provide a service or sell a product to a political party must issue an invoice to the party, without regard to who is paying for the service or product, and/or without regard to whether the service has been provided free of charge or the product given free of charge.<sup>503</sup> If the total amount of the contribution of one person referred to in paragraph 1, Article 4 exceeds one hundred Convertible Marks (100 KM), that contribution must be recorded in the financial report.<sup>504</sup>

State, entity and cantonal bodies, municipal and local community bodies, public institutions, public enterprises, humanitarian organizations, enterprises which are by the virtue of their activities exclusively non-profit, religious communities, as well as economic associations in which public capital has been invested in the amount of at least 25%, may not finance political parties. Private enterprises performing public services through a contract with the government may not financially support political parties.<sup>505</sup>

It shall be forbidden to exercise any political pressure on legal entities and natural persons when making contributions to political parties. It shall be forbidden to promise any privileges and personal gain to the donors of political parties.<sup>506</sup>

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<sup>502</sup> Article 4, Para 1 Law on Political Party Financing.

<sup>503</sup> Article 4, Para 2 Law on Political Party Financing.

<sup>504</sup> Article 6, Law on Political Party Financing.

<sup>505</sup> Article 8, Law on Political Party Financing.

<sup>506</sup> Article 9, Law on Political Party Financing.

The financing of parliamentary groups represented in the Parliamentary Assembly of Bosnia and Herzegovina shall be distributed in the manner that 30% of the funds is equally distributed to all parliamentary groups, while 70% of the total amount is distributed equivalent to the number of seats each parliamentary group holds at the time of allocation.<sup>507</sup>

Political parties keep a record on their incomes and expenditures. A political party shall be obliged to file with the Election commission of Bosnia and Herzegovina a financial report for each calendar year (accounting year). A political party shall submit a special financial report for the period of the election campaign in the manner set by the Election Law of Bosnia and Herzegovina.<sup>508</sup>

The Election Commission of Bosnia and Herzegovina shall establish an Audit Department responsible for conducting the examination and control of the financial reports submitted by political parties. The audit of political parties' financial reports shall include the reports from the party's national and Entity headquarters (including Brčko District) and from at least two regional offices chosen by the Audit Department. If there are no objections after the party receives the final written report, the auditor shall officially confirm the findings of the audit. After a duly conducted audit and on the basis of the political party's books and documents and information and evidence filed by the executive boards, this confirmation shall prove that the state of the financial transactions is in accordance with the provisions of this Law. If any complaints have been filed, the auditor must deny to officially confirming the audit, or he/she must modify it according to the complaints. The confirmation issued by the auditor must contain the names of the regional offices covered by

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<sup>507</sup> Article 10, Law on Political Party Financing.

<sup>508</sup> Article 11, Law on Political Party Financing.

the audit. The auditor's certificate must accompany the financial report to be submitted and published in "the Official Gazette of Bosnia and Herzegovina." The Election Commission of Bosnia and Herzegovina shall establish the Department for Auditing Financial Operations taking into account the professional qualifications of the auditors. The Election Commission of Bosnia and Herzegovina shall be responsible for the hiring and the dismissal of employees in the Audit Department.<sup>509</sup>

Any irregularity established by the Audit Department shall be submitted to the Election Commission of Bosnia and Herzegovina. If a political party fails to act in compliance with the provisions of this Law, the Election Commission shall be authorized to impose a financial penalty in accordance with the Election Law of Bosnia and Herzegovina (hereinafter referred to as EL BIH). Should a political party receive funds in an amount exceeding the highest established annual income set out in the Law or in an amount exceeding the highest amount of a donation set by the Law or in a prohibited manner, the Election Commission of Bosnia and Herzegovina shall penalize the political party in an amount not exceeding the amount of three times the illegally acquired sum. Such fines shall be permitted and imposed under this Article even if the total amount of the penalty exceeds ten thousand Convertible Marks (10.000 KM).<sup>510</sup> The Appeal Council shall be responsible for reviewing appeals to the decisions of the Election Commission of Bosnia and Herzegovina. The Appeal Council shall be authorized to impose financial penalties in accordance with the Election Law of Bosnia and Herzegovina.<sup>511</sup> The Election Commission of Bosnia and Herzegovina shall be obliged to annually submit a report on

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<sup>509</sup> Article 14, Law on Political Party Financing.

<sup>510</sup> Article 15, Law on Political Party Financing.

<sup>511</sup> Article 16, Law on Political Party Financing.



audited financial transaction to the Parliamentary Assembly of Bosnia and Herzegovina.<sup>512</sup>

All funds obtained from the penalties imposed by the Election Commission or by the Appeal Council, as well as illegally acquired contributions shall be distributed in the following manner: a) 70 % of the amount for the budgetary financing of parliamentary groups as set out in Article 10; and b) 30 % of the amount for the financing of the Election Commission of Bosnia and Herzegovina, the Audit Department and the Appeal Council.<sup>513</sup>

#### *4.13.4. Active and passive right to vote*

Each citizen of Bosnia and Herzegovina who has attained eighteen (18) years of age shall have the right to vote and to be elected (right to vote) pursuant to provisions of the Election Law of Bosnia and Herzegovina. To exercise his or her right to vote, a citizen must be registered as a voter in the Central Voters Register in line with the Election Law.<sup>514</sup>

All citizens of Bosnia and Herzegovina who have the right to vote shall have the right to register and to vote in person in the municipality where they have their permanent place of residence. A citizen of Bosnia and Herzegovina who temporarily resides abroad and has the right to vote, shall have the right to register and to vote in person or by mail, for the municipality where the person had a permanent place of residence prior to his or her departure abroad, provided he or she is registered as a permanent resident in that municipality at the moment of his or her

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<sup>512</sup> Article 17, Law on Political Party Financing.

<sup>513</sup> Article 18, Law on Political Party Financing.

<sup>514</sup> Article 1.4, Election Law (EL) of BiH.

application for registration. A citizen of Bosnia and Herzegovina who holds dual citizenship<sup>515</sup> pursuant to provisions of the Constitution, shall have the right to register and to vote, only if Bosnia and Herzegovina is the country of his or her permanent residence.<sup>516</sup>

No person who is serving a sentence imposed by the International Tribunal for the former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may register to vote or stand as a candidate (the candidate for the purpose of this Law refers to persons of both genders) or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina. As long as any political party or coalition maintains such a person in a political party position or function as established in the previous paragraph, that party or coalition shall be deemed ineligible to participate in the elections.<sup>517</sup>

No person who is serving a sentence imposed by a Court of Bosnia and Herzegovina, a Court of the Republika Srpska or a Court of the Federation of Bosnia and Herzegovina and the Court of the District of Brcko or has failed to comply with an order to appear before a Court of Bosnia and Herzegovina, a Court of the Republika Srpska or a Court of the Federation of Bosnia and Herzegovina and the Court of the District of Brcko for serious violations of humanitarian law where the International Criminal Tribunal for the Former Yugoslavia has reviewed the file prior to arrest and found that it meets international legal standards, may register to vote or stand as a candidate or hold any appointive,

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<sup>515</sup> In line with provision of Article I 7d of the Constitution of BiH.

<sup>516</sup> Article 1.5 EL BiH.

<sup>517</sup> Article 1.6 EL BiH.

elective or other public office in the territory of Bosnia and Herzegovina.<sup>518</sup>

A person may hold not more than one directly elected public duty or one directly and one indirectly appointed office at the same time, unless otherwise prescribed by this Law. It is incompatible to hold at the same time one directly or indirectly elected office and one position in an executive body of authority. It is also incompatible to hold more than one position in an executive body of authority. A person may not hold public elected office in Bosnia and Herzegovina and at the same time hold any public elected or politically appointed office in another country. A person who holds any public elected office in Bosnia and Herzegovina and is elected to or appointed to a politically appointed office in another country, shall be obliged to relinquish his or her mandate in Bosnia and Herzegovina, within forty-eight (48) hours after the election or appointment in another country.<sup>519</sup>

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<sup>518</sup> Article 1.7 EL BiH.

<sup>519</sup> Article 1.8 EL BiH. For the purpose of this article, an executive office notably includes the Presidency of Bosnia and Herzegovina, the Council of Ministers of Bosnia and Herzegovina, the President and Vice Presidents of the Federation of Bosnia and Herzegovina, the President and Vice Presidents of the Republika Srpska, the government of the Federation of Bosnia and Herzegovina including the Prime Minister, the government of the Republika Srpska including the Prime Minister, the government of the District of Brcko, the President of the Canton, the Cantonal government, the Mayor of a city, the Deputy Mayor of a city, the city government, the Mayor of a municipality, the Deputy Mayor of a municipality, the Mayor's cabinet, and other executive functions as defined by law.

#### 4.13.5. Election procedure

##### 4.13.5.1. Bodies responsible for the conduct of elections –

The competent authorities responsible for the conduct of elections are *the election commissions and the Polling Station Committees*. The election commissions and the Polling Station Committees shall be independent and impartial in their work. No member of an election commission or a Polling Station Committee shall participate in the decision of a case in which the member and/or a close family member has a personal or financial interest or other conflict of interest, which may raise doubt as to the ability of the member to act impartially.<sup>520</sup>

All bodies of authority at all levels, officials in Bosnia and Herzegovina and Embassies and Consulate Offices of Bosnia and Herzegovina shall be obliged to assist the competent authorities responsible for the conduct of elections.

Members of election commissions and Polling Station Committees shall be persons eligible to vote. Members of election commissions and Polling Station Committees shall be persons with appropriate expertise and experience in the administration of elections. The Central Election Commission of Bosnia and Herzegovina (CEC BiH) shall determine what the required qualifications are for members of election commissions and Polling Station Committees established in the previous paragraph. Members to the bodies in charge of the conduct of elections shall be continuously trained during their tenure in line with the curricula adopted by CEC BiH.<sup>521</sup>

No person can be appointed as a member of an election commission or Polling Station Committee who is not eligible to

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<sup>520</sup> Close family members include a spouse, children and members of household which the candidate is legally bound to support (Article 15.7, Paragraph 2 of EL BiH).

<sup>521</sup> Article 2.2 EL BiH.

stand as a candidate in accordance with provisions of the Election Law of BiH; is a member of the highest executive political body of a political party or coalition (a president, deputy president, the general secretary, secretary or members of the executive board or the central committee); holds an elected mandate or is a member of an executive body of authority except as provided for in the Election Law; stands as a candidate for the elections at any level of authority; or has been sanctioned for a serious violation of the electoral laws or regulations where the person was found to be personally responsible for the violation, in the previous four (4) years, starting from the day the decision became final. CEC BiH shall decide if the severity of the violation and the personal responsibility of the individual in this case prohibit the person from being a member of an election commission or a Polling Station Committee.<sup>522</sup>

The election commission members shall be appointed for a period of five (5) years and members may only be appointed to the same election commission for two (2) consecutive terms of office. Polling Station Committee members shall be appointed for each election.

*4.13.5.1.1. Composition of the Central Election Commission*

- The Central Election Commission of BiH shall consist of seven (7) members: two (2) Croats, two (2) Bosniacs, two (2) Serbs, and one (1) other member. The nominees for the Central Election Commission of BiH shall be jointly nominated by the members of the Commission for Selection and Nomination. The Central Election Commission of BiH nominees shall be legal experts with experience in the administration of elections and/or electoral experts and may not hold any office in the bodies of a political party, association or foundations organizationally or financially

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<sup>522</sup> Article 2.3 EL BiH.

related to the political party, and may not be involved in any political party activity.<sup>523</sup> The President of the Central Election Commission of BiH shall be elected from amongst its members. One Croat, one Bosniac, one Serb and the other member of the Central Election Commission of BiH shall each serve as the President for one fifteen (15) month rotation in a five (5) year period<sup>524</sup>

“Members of the Central Election Commission of Bosnia and Herzegovina shall not be held criminally or civilly liable for any acts carried out within the scope of their duties and obligations which are provided by this Law and other laws.

The immunity referred to in Paragraph 1 of this Article may be invoked by the members of the Central Election Commission of Bosnia and Herzegovina at any time for the acts committed within the scope of their duties and obligations in the Central Election Commission of Bosnia and Herzegovina, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings against them.”<sup>525</sup>

The composition of an election commission should be multiethnic, reflecting the population of the constituent peoples including others bearing in mind the most recent national census at the electoral unit for which it is formed. If the election commission is not composed in accordance with the previous paragraph, the Central Election Commission of BiH shall annul the appointment of the members and inform the appointing body. The appointing body shall within 15 days of the decision of the Central Election Commission of BiH reappoint the body in compliance with the criteria from previous paragraph. If the

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<sup>523</sup> Article 2.5 EL BiH.

<sup>524</sup> Article 2.6 EL BiH.

<sup>525</sup> Article 2.8 EL BiH.

election commission is not properly constituted again, the Central Election Commission of BiH shall appoint the members to the election commission.<sup>526</sup>

An anachronic and bizarre principle of “constituent peoples”, apart from being introduced in the Preamble of the BiH Constitution, is reiterated and elaborated in many provisions of the Constitution whereas “others” and “citizens” are not even formally mentioned. Composition of all joint institutions (Parliamentary Assembly, Presidency, Council of Ministers, national judges of the Constitutional court of BIH, etc.) is based on the equation “one state, two entities, three peoples”, which is a unique concept in both theory and practice of constitutional law and political systems in the world and as such unsustainable for it represents an “institutionalized discrimination” against those who are not constituent peoples.

*4.13.5.1.2. Authorities of the Central Election Commission -* The Central Election Commission of Bosnia and Herzegovina shall co-ordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees in accordance with the law; issue administrative Regulations for the implementation of this law; make decision on conduct of direct elections in BIH stipulated by the Election Law; propose a budget for the Election Commission of Bosnia and Herzegovina and report on its spending; be responsible for establishment, accuracy and maintenance of the Central Voters Register for the territory of Bosnia and Herzegovina; ensure statistics by gender for each part of the election process, certify the participation of political parties, coalitions, lists of independent candidates and independent candidates for all levels of elections in Bosnia and Herzegovina; verify and certify the lists of candidates for all levels of elections in Bosnia and Herzegovina; be responsible for the

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<sup>526</sup> Article 2.14 EL BiH.

timely printing, distribution and security of ballots and forms for all levels of elections in Bosnia and Herzegovina; define the contents and the form of the ballot for all levels of elections in Bosnia and Herzegovina; verify election results for all levels of elections included in the Election Law of Bosnia and Herzegovina; certify that the elections were conducted in line with the Election Law of BIH and publish the results of all levels of elections included in the Election law of BIH; issue certificates to persons who receive mandates at all levels of elections in Bosnia and Herzegovina; notify an election commission or Polling Station Committee that it does not comply with or violates a provision of this law and order the remedial action required to be taken by the competent body; publicize all Rules of Procedure, Regulations and election results, voter information and all other information necessary for the implementation of this law and all electoral laws, in the Official Gazettes and the media, both inside and outside Bosnia and Herzegovina as appropriate; conduct all election activities for the elections for the members of the Presidency of Bosnia and Herzegovina and the members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina; review the termination of a mandate of an elected official by the competent body of authority at all levels in order to ensure that the elected official's mandate was terminated in accordance with law and in the case where a member resigns that it is of his or her own volition; report annually to the Parliamentary Assembly of Bosnia and Herzegovina on the state of electoral administration in Bosnia and Herzegovina, the implementation of this law and any proposed amendments to this law; and perform all other duties as authorized by law.

1. co-ordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees in accordance with this law;



2. issue administrative Regulations for the implementation of this law;
  - 2.a *issue a decision to hold the direct elections in BiH, as provided by this Law;*
3. propose a budget for the Central Election Commission of BiH and report on its spending;
4. be responsible for *accuracy, update and overall integrity* of the Central Voters Register for the territory of BiH;
  - 4.a *ensure the statistical records classified by gender, age, classified by polling stations for each part of the election process;*
5. certify the participation of political parties, coalitions, lists of independent candidates and independent candidates for all levels of *direct* elections in BiH;
6. verify and certify the lists of candidates for all levels of *direct and indirect* elections in BiH *covered by this law;*
7. be responsible for the timely printing, distribution and security of ballots and forms for all levels of *direct* elections in BiH;
8. define the contents and the form of the ballot for all levels of *direct* elections in BiH;
9. determine and *verify election results for all direct and indirect elections covered by this Law, certify that elections were conducted in accordance with this Law and publish results of all direct and indirect elections covered by this Law;*
10. issue certificates to persons who receive mandates *at all levels of direct and indirect elections in BIH covered by this Law;*
11. notify an election commission or Polling Station Committee *or any other competent authority responsible for the conduct of elections* that it does not comply with or violates a provision of this law and order the remedial action required to be taken by the competent body;
12. publicize all Rules of Procedure, Regulations and election results *of the direct and indirect elections in BIH covered by*

- this Law*, voter information and all other information necessary for the implementation of this law and all electoral laws, in the Official Gazettes and the media, both inside and outside BiH as appropriate;
13. conduct all election activities for the elections for the members of the Presidency of BiH and the members of the House of Representatives of the Parliamentary Assembly of BiH;
  14. take the decision to terminate the mandate of an elected official at all levels of direct and indirect elections in BiH covered by this Law, but also where necessary conduct the preliminary fact-finding procedure (in the case where a member resigns, that it is done of his or her own volition);
  15. review the decision taken by the competent authority to terminate the mandate of an elected official by recall, in order to ensure that the elected official's mandate was terminated in accordance with this Law;
  16. report annually to the Parliamentary Assembly of BiH *on the electoral administration* in BiH, the implementation of this law *and initiates amendments* to this law; and
  17. perform all other duties as authorised by law.

The administrative, technical and professional duties for the Central Election Commission of BiH shall be conducted by the Secretariat of the Central Election Commission of BiH, established by the Central Election Commission of BiH.

The Central Election Commission of BiH Secretariat shall have a General Secretary who is appointed by the Election Commission of BiH and according to the procedure and in the way provided by the Law.

The Central Election Commission of BiH shall enact the Rulebook on Internal Organization of the Secretariat of the

Central Election Commission of BiH, following a proposal submitted by the Secretary General, subject to the approval of the Council of Ministers of BiH.<sup>527</sup>

*4.13.5.1.3. Municipal Election Commission* - This Commission shall consist of either three (3) or five (5) members. The Central Election Commission of Bosnia and Herzegovina shall determine the number of the Municipal Election Commission members in accordance with the number of the registered voters in the Central Voters Register and the size of a municipality, and it shall be authorized to use other criteria to determine the number of Municipal Election Commission members. The members of the Municipal Election Commission shall be appointed and dismissed by the Municipal Council/Municipal Assembly, subject to the approval of the Election Commission of Bosnia and Herzegovina.

*4.13.5.2. Termination of a mandate* - A mandate belongs to the elected office holder and not to the political party, coalition or list of independent candidates, which nominated him or her on the candidates list. The mandate cannot be terminated except where prescribed by law. Should an elected office holder, during his/her term of office, withdraw from a political party, coalition or list of independent candidates that participated in the elections or nominated him/her on its candidates list, the elected office holder shall become an independent representative.<sup>528</sup>

The term of office of an elected member of a body of authority at all levels shall terminate before the expiration of the mandate for which he or she was elected if: he/she resigns; he/she dies; a court

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<sup>527</sup> Article 2.11 EL BiH.

<sup>528</sup> Article 1.9 EL BiH.

judgment becomes final and binding by which he/she has been sentenced to a sentence of six (6) months or longer; when a court decision becomes final and binding by which he or she has been deprived of legal capacity (declared mentally incompetent); he or she is elected or appointed to an office which is incompatible with the office of an elected member of a certain body as stipulated by law; if he/she has cancelled his/her permanent residence in the territory of the electoral unit in which he/she was recorded as a voter in the Central Voters Register and from which he/she was elected, after the end of a six-month-period following the date of cancellation; or for a reason stipulated by law that he or she loses the right to be elected. The mandate of an elected member of a body of authority at any level shall terminate on the day when one of the reasons for termination established by law occurs. The Central Election Commission of BiH shall, within maximum fifteen (15) days after the reasons for termination have occurred or become known, take the decision to terminate the mandate of an elected member of a government authority and shall notify thereof the government authority in which the elected member had the mandate. If the member resigns, the resignation shall be completed on a form produced by the Central Election Commission of BiH.<sup>529</sup>

*4.13.5.3. Annulment of elections* - The Central Election Commission of BiH shall annul elections in an electoral unit or at an individual Polling Station should it establish that irregularities occurred, during the voting or counting of ballots, which may affect the election results.<sup>530</sup>

By-elections shall be conducted using the same candidate lists and the same excerpts from the Central Voters Register which were used in the annulled elections and shall be conducted

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<sup>529</sup> Article 1.10, EL BiH.

<sup>530</sup> Article 2.10, EL BiH.

on a date determined by the Central Election Commission of BiH which shall be no later than fourteen (14) days from the date when the decision of the Central Election Commission of BiH to annul the elections became final.<sup>531</sup>

#### *4.13.6. Legal protection*

*4.13.6.1. Complaint* – Electoral commissions and the Appellate Chamber of the Court of Bosnia and Herzegovina ensure the protection of election law.<sup>532</sup> A voter, political party or coalition, whose right – as defined by the Election Law of BiH – was violated, may file a complaint to the election commission, no later than 48 hours from the perpetration of violation. Electoral commissions may, upon learning of the abuse, initiate an *ex officio* proceeding against the political party or coalition and the employee of the electoral administration for violating the rules of conduct, identified in the Election Law of BiH. A legal or a physical person may request in writing the instigation of proceedings, through the responsible electoral commission. In the request, such a person must state the location, time and nature of violation as well as information about the perpetrator.<sup>533</sup>

The complaint is filed in writing. The complaint contains the description of the violation and the attachment – evidence corroborating the allegations made in the complaint. The complaint must be signed. If the complaint is lodged by a political party of a coalition, the complaint is signed by the president, authorized representative of the political party or the coalition, with the letter of authorization attached. An authorized representative of a political party is a president of the municipal

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<sup>531</sup> Article 14.1, EL BiH.

<sup>532</sup> Article 6.1, EL BiH.

<sup>533</sup> Article 6.2, EL BiH.

branch of the political party, or a person authorized by the statute. If there is no municipal branch office of the political part, then the president of one level higher branch is considered authorized representative of the party. An authorized representative of a coalition is the president of the municipal organization of one of the parties in the coalition, or a person authorized by the statute.

The complaint is delivered without delay to all parties named in the complaint. Parties referred to in the complaint may also respond to the complaint's allegations 24 hours from the receipt of the complaint. The responsible institution shall set the time to hear the parties. The Central Election Commission of BiH identifies procedural instructions to adjudicate complaints submitted to the electoral committees. A complaint submitted by an unauthorized person, or an objection submitted untimely, will be rejected. A complaint will also be rejected if the submitting party cannot be identified. The submitted complaint, i.e. appeal in the procedure to protect electoral rights, does not delay other electoral activities prescribed by this law.<sup>534</sup>

The Municipal Election Committee is the first-instance institution deciding on complaints lodged for violations of rules of conduct, except in cases decided by the Central Election Commission of BiH. The Municipal Election Committee is responsible to consider the complaint and decide on it within 48 hours. The Municipal Election Committee is obliged to inform the submitting party immediately of its decision, as well as other parties concerned. A complaint filed in untimely manner and by an unauthorized person shall be rejected.<sup>535</sup>

Appeals to the decisions of all electoral committees may be lodged to the Central Election Commission of BiH. The

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<sup>534</sup> Article 6.3 IZ BiH.

<sup>535</sup> Article 6.4 of the Election Law (EL) of BiH.

Commission is to consider the complaint and decide on it within 48 hours from the time the deadline prescribed by the Election Law expires. The Central Election Commission is to inform the submitting party, as well as other parties concerned, immediately of its decision. If the complaint was lodged untimely or by an unauthorized person, shall be rejected.<sup>536</sup>

*4.13.6.2. Sanctions* – When it decides on complaints and appeals, the Central Election Commission of BiH has the authority to instruct the electoral commission, the Voter List Centre or the voter committee to take measures and remove the identified irregularities. The Commission also has the authority to pronounce the following sanctions: (1) a fine not exceeding 10,000 KM; (2) removing the candidate's name from the candidates' list, if it is found that the candidate is personally responsible for the violation in question; (3) cancellation of certification of a political party, a coalition, a list of independent candidates or an independent candidate and (4) ban on involvement of a certain person to work in a polling station, the Voters' List Centre, the municipal electoral commission or another electoral commission, formed under the Election Law of BiH.<sup>537</sup>

If the election commission believes that a criminal offence was committed, as related to the electoral process, it ought to report that offence to the responsible prosecutor's office. When filing the claim, the election commission should state the evidence it is familiar with, and take measures necessary to preserve traces of the allegedly perpetrated criminal offences, as well as objects through which or with which the said offence was committed, including other evidence.<sup>538</sup>

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<sup>536</sup> Article 6.6 of the EL BiH.

<sup>537</sup> Article 6.7 of the EL BiH.

<sup>538</sup> Article 6.8 of the EL BiH.

4.13.6.3. *Jurisdiction of the Appellate Chamber of the Court of Bosnia and Herzegovina* – The Appellate Chamber of the Court of Bosnia and Herzegovina is responsible to decide on appeals to decisions of the Central Election Commission of BiH. An appeal is lodged with the Appellate Chamber of the Court of BiH two days from the day the Commission’s decision was received. The appeal is lodged through the Central Election Commission of BiH, and the Appellate Chamber of the Court of BiH is obliged to decide on appeal within 3 days from the day it received the appeal.

4.13.6.4. *Criminal law* - The specificity of state and administrative and territorial organization of BiH is reflected on its legal system. As in most other fields, in the field of criminal justice, this specificity has resulted in four separate codes: at state level, at the level of two entities and in the Brčko District. The issue of protection of electoral rights in criminal law is not regulated equally in these codes. Still, each of these codes is applicable depending on the “level” of authority the elections are for.<sup>539</sup>

The Criminal Code of Bosnia and Herzegovina<sup>540</sup> in chapter XV, titled “Criminal offences against the freedom and rights of individuals and citizens, provides for the protection of electoral rights in criminal law. The Code envisages the following criminal offences: denial of voting right (Article 150), violating the free decision-making of voters (Article 151), voting fraud

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<sup>539</sup> However, it remains unclear which law is applied in the case of general elections. Under legal principles which are "above the law" in terms of legal effect, it may be concluded that, depending on the territory where the act was committed, the law of that administrative and territorial unit (“level of government”) is applied, under the principle of location of commission of criminal offence (*lex loci delicti commissi*).

<sup>540</sup> Official Gazette of Bosnia and Herzegovina no. 37/03.



(Article 152), breach of vote secrecy (Article 153), election forgery (Article 154), and destroying election documents (Article 155).

The Criminal Code of Republika Srpska,<sup>541</sup> in chapter XVIII envisages "criminal offences against electoral rights " including: preventing elections and voting from taking place (Article 184), violation of the right to run in the elections (Article 185), violation of the right to vote (Article 186), violation of the free decision-making of voters (Article 187), abuse of the right to vote (Article 188), bribery during elections or voting (article 189), breach of vote secrecy (Article 190), election forgery (Article 191), and destroying election documents (Article 192).

In the Federation of Bosnia and Herzegovina, the protection is envisaged in the Criminal Code of FBiH<sup>542</sup>, chapter XIII, titled "Criminal offences against the freedom and rights of individuals and citizens". Those offences are as follows: denial of voting right (Article 194), violating the free decision-making of voters (Article 195), voting fraud (Article 196), breach of vote secrecy (Article 197), election forgery (Article 198), and destroying election documents (Article 199).

The Criminal Code of Brčko District<sup>543</sup>, chapter XVII, also envisages criminal offenses against the freedom and rights of individuals and citizens, encompassing the denial of voting right (Article 191), violation of the free decision-making of voters (Article 192), voting fraud (Article 193), breach of vote secrecy (Article 194), election forgery (Article 195) and destroying election documents (Article 196).

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<sup>541</sup> Official Gazette of Republika Srpska, no. 49/03.

<sup>542</sup> Official Gazette of the Federation of Bosnia and Herzegovina, no. 35/03.

<sup>543</sup> Official Gazette of Brčko District of Bosnia and Herzegovina, no. 10/03.

#### *4.14. Special protection of family and child*

Article 23 of the ICCPR reads:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24 of the ICCPR reads:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality

*(Official Gazette of SFRY, no. 7/71)*

Article 5 of the Protocol 7 to the European Convention on Human Rights and Fundamental Freedoms:

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

*(Official Gazette of BiH, no. 6/99)*

#### *4.14.1. Constitutional provisions*

Article II/3 f of the Constitution of Bosnia and Herzegovina, reads as follows in the part of concern:

*All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*

*j) the right to marry and to found a family.*

Article 36, Para 1, of the Constitution of Republika Srpska, reads:

The family, mother and child shall enjoy special protection.

Article II/A2 of the Constitution of FBiH, reads as follows in the part of concern:

All persons within the territory of the Federation shall enjoy the rights:

(j) To protection of the family and of children;

#### *4.14.2. The meaning of the term "family"*

Article 2 of the Family Law reads that in Bosnia and Herzegovina, the family is defined *as a lifetime union of parents, children and other relatives*. This has provided for an expanded definition of the family, as the family encompasses other relatives, in addition to parents and children. This constitutes a sound legal framework and definition, leaving room for a wider circle of people responsible for the enjoyment of child's right. Ultimately, this has a great significance for the child's emotional development.

Provisions of Article 2 of the Law on the Fundamentals of Social Welfare, Welfare of Civil Victims of War and Welfare of Families with Children, entail that a family consist of: married or unmarried spouses, child (born in wedlock, out of wedlock, adopted child, step child or child without parents, child in foster care), father, mother, grandfather, grandmother (fraternal, maternal) and brothers and sisters of spouses.

In determining rights and relationships, other legal regulations of Bosnia and Herzegovina, such as the Law on Inheritance, the Law on Housing Affairs, the Law on Pension and Disability Insurance and others, provide for such a definition of family, identifying a wider circle of persons.

#### *4.14.3. Special protection of the family*

Incentives to form a family in Bosnia and Herzegovina include:

- Compensation of pay during maternity leave;
- Maternity allowance to which every mother is entitled while she is on maternity leave, meaning

that every unemployed mother is entitled to this support until the child turns one year of age;

- Assistance to purchase newborn baby kit to which every family is entitled;
- Meals for children in school kitchens;
- Child allowance, paid to the family, in accordance with the law.

In addition to the rights listed above, laws in Bosnia and Herzegovina provide for additional rights to facilitate family formation, including: one-off assistance, lending, consultation in the field of family law, covering the costs of textbooks and toolkits, etc.

Special emphasis is placed on the protection of maternity. A woman is entitled to one year of uninterrupted maternity leave during pregnancy, child-birth and child care. The employee is entitled to salary compensation while on maternity leave. In Republika Srpska, the compensation is equal to the average of three last paid salaries, while cantonal regulations in the Federation provide for differences in the amounts paid. Only four cantons have passed regulations for women-new mothers, meaning that all women are not in an equal position to exercise these rights. Father of the child may exercise this right also. The RS labour Law prescribes that parents can take paternity leave provided that parents agree that once 60 days of leave expire from the day the child was born, the leave shall be used, in mother's stead, by the father. The Federation Labour Law prescribes that fathers may take advantage of paternity leave in case of death of mother, or if a mother abandons the children, or if she is prevented from enjoying this right for justified reasons.

#### 4.14.4. Marriage

In Article II/3 f, only the Constitution of Bosnia and Herzegovina explicitly guarantees the right to marriage:

*All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*

*j) The right to marry and to found a family.*

Both the FBiH and the RS family laws provide the same definition of marriage as a legally regulated life-time union of a woman and a man, setting as precondition to enter into marriage the difference in sexes of the future spouses. The explicit condition of difference in sexes is repeated also in the list of conditions to enter into marriage<sup>544</sup>.

The jurisprudence and decisions of the European Human Rights Court in cases of homosexual and transsexual marriages are not uniform.<sup>545</sup> However, although the Court did not, to date, rule in favour of the right of a homosexual to marry, the European Human Rights Court is showing increased flexibility in its interpretation of the Article 12 provisions, leaning towards allowing to transsexual persons the conclusion of marriage.

Both the FBiH and RS criminal codes, in chapter XX, list the criminal offences against marriage. The most significant criminal offences related to special protection of the family include domestic violence and criminal offence of avoidance to provide support.

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<sup>544</sup> Family Law of FBiH Article 8, Para 1, item a, and the Family Law of Republika Srpska Article 14, Para 1.

<sup>545</sup> See the case *Van Oosterwijck v. Belgium*, App. No. 7654/76 and *Cossey v. United Kingdom*, App. No. 10843/84).

The family legislation<sup>546</sup> envisages the duty of mutual support of family members and spouses, and prescribes that renouncing the right to support does not have legal effect.

#### *4.14.5. Special protection of the child*

*4.14.5.1. General considerations* – Bosnia and Herzegovina incorporated the Convention on Rights of the Child into its legal order, according to the Constitution (Annex I, Additional Agreement on Human Rights, Applicable in Bosnia and Herzegovina). Bosnia and Herzegovina ratified this Convention in 1993, as confirmed by the General Framework Agreement for Peace, i.e. Annex 4, Article II, item 7 (“International Agreements – Bosnia and Herzegovina shall remain or will become a signatory of international agreements listed in the Annex to this Constitution”).

In 2004, Bosnia and Herzegovina delivered its Initial Report to the Committee on the Rights of the Child. Data were collected on the basis of the Initial Report of the Federation of Bosnia and Herzegovina on the Implementation of the UN Convention on the Rights of the Child, from 1992 to 1998, and the Initial Report of Republika Srpska on the Implementation of the UN Convention on the Rights of the Child, from 1992 to 1998. In June 2005, the Committee presented its concluding observations and presented a general remark with respect to the political and administrative structure of the member state, which may represent a serious obstacle to the development and implementation of state policies, as well as comprehensive and

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<sup>546</sup> Family Law of FBiH, Article 213 and Family Law of Republika Srpska, Article 231.

coordinating legal documents that would be fully harmonized with the Convention's provisions.

Minors-children can work only after they have turned 15; having children work on dangerous posts, or under difficult circumstances, is prohibited. A minor is not a conscript and they cannot be mobilized as a conscript, before they turn 18. Bosnia and Herzegovina is a signatory to the Optional Protocol to the Convention on Rights of the Child on Participation of Children in Armed Conflicts.

In April 2002, Bosnia and Herzegovina adopted an Action Plan for Children of Bosnia and Herzegovina, covering the period from 2002 to 2010. The Council of Ministers established a permanent body at the level of Bosnia and Herzegovina – the Children Council of Bosnia and Herzegovina (hereinafter: Children Council of BiH)- to monitor the Action Plan's implementation. Unfortunately, although we are in the second half of the time period covered by the Action Plan, this Plan is not treated as priority by the Council of Ministers, and the appropriate mechanisms and resources to make this Children Council functional, have not been secured.<sup>547</sup>

In Bosnia and Herzegovina, entities are responsible to identify and ensure children's welfare, as well as children's social welfare.

The Law on Social Welfare envisages provision of assistance (material support, imparting them with skills to live and work, social services accommodation, house care, assistance in the household and daily care) to minors who require social welfare assistance. They include:

- Children without parental care;

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<sup>547</sup> Report of the Council of Europe's Human Rights Commissioner during the visit to BiH, Strasbourg, 20 February 2008.



- Children with physical or psychic disabilities;
- Neglected children;
- Children whose development was challenged due to family circumstances;
- Assistance to parents lacking sufficient resources to care after their minor children.

In the Federation of Bosnia and Herzegovina, the Federation authorities are responsible to identify and plan policies and laws in the field of social policy. Cantons and municipalities are responsible to implement the social policy and social welfare.

The Law on Protection of Children in Republika Srpska identified the right to compensation of costs for the daily stay in pre-school institutions for the third and fourth-born child. This aims to assist in the daily care of these children, while this kind of assistance is implemented only in those municipalities experiencing a negative population growth rate; including the right to pre-school education and education for children without parental care, children with development disabilities and children undergoing long-lasting hospital care, which encompasses education and pedagogical programs from three to five hours a day, while children are staying in a health clinic or a social welfare accommodation. In the year prior to starting school, this education and pedagogical program aims to provide quality preparation of children for the start of the school and involve them in the education process. The law envisages that the municipality is to ensure the exercise of these rights. Given the low level of development at municipality and republic level, very few children have the opportunity to exercise these rights.

Although social welfare budget allocations are set at regional level, the very structure of the resource disbursement from social welfare funds is such that it prevents access of families

with children to social assistance. In Republika Srpska, the protection of children is organized through the system of rights of parents and children, activities of institutions, departments and the Public Children Fund. In the Federation, this right is handled at cantonal level. The problem mainly relates to lack of budgetary resources. The child allowance is paid only in Sarajevo Canton, leading to unequal access to this right for children from other canton.

Children without parental care represent an additional issue of concern in Bosnia and Herzegovina. Estimates indicate that there are approximately 3,000 children without parental care in the country. They are, for the most part, housed in dedicated institutions. Unfortunately, the protection system is different in the two entities and amongst the cantons in the Federation. Most of these institutions employ undertrained staff and experience staff shortages as compared to the number of children. Children are not provided the environment in which to prepare for independent life once they leave the institution. Although 1,400 children are placed in adopting families, there is a higher number of children housed in institutions as compared to the European average where institutional care is used as a measure of last resort.

The explicit prohibition of physical discipline is not embedded in the BiH legal system. Still, children are protected from serious abuse and neglect, through a list of laws.<sup>548</sup> There are no data on the number of cases of violence over children, and the public awareness on preventing physical punishment of children in the family is not developed.

*4.14.5.2. Protection of minors in criminal law and procedure* – The criminal legislation in BiH takes a unique approach to regulating the protection of minors. The criminal

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<sup>548</sup> See above.

legislation provides for criminal offences of sexual abuse of children, exploitation of children and minors for pornography, and a separate criminal offence: production and presentation of child pornography. It is prohibited to enforce criminal sanctions against a minor who has not turned 14 years (child) at the time of perpetration of the criminal offense. Educational measures can be pronounced to a minor between 14 and 16 years, while to a minor who has turned 16 at the time of perpetration of the offence – but has not turned 18 (older minor) – pedagogical measures may be pronounced, under the terms envisaged by the law. In exceptional cases, the minor can be sentenced to juvenile imprisonment. In its first report, the Committee for the Prevention of Torture expressed its concern over the absence of appropriate institutions for minors in Bosnia and Herzegovina. Minors who have been ordered juvenile imprisonment are mostly referred to prisons and correctional institutions, where they are mainly spending time with older prisoners, which greatly jeopardizes their rehabilitation. In principle, they are treated like older prisoners, without a special visitation regime and without access to staff professionally trained to support them as necessary. In this field, the greatest step forward was made with the adoption of the National Strategy to Combat Juvenile Delinquency from 2006 to 2010. The strategy is supplemented with action plans envisaging legislative changes, alternative measures, institutional care, prevention and enforcement of criminal justice for minors. However, the measures envisaged in the strategy have not been implemented to date<sup>549</sup>. The Council of Europe's Human Rights Commission has made the most important remark about the fact that the Ministry of Security coordinates the strategy, although many measures contained therein require a multidisciplinary

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<sup>549</sup> The Commissioner observed that measures identified in the Strategy were not being applied, although their development was characterized by a high level of professionalism and an impressive consultation process.

approach, especially when it comes to human rights. It was recommended that the Ministry of Justice, as a more logical choice, should be tasked with strategy implementation.

4.14.5.3. *Violence over children* – Bosnia and Herzegovina adopted a State Strategy on Combating against Violence over Children, for the period from 2007 to 2010. - The criminal legislation in Bosnia and Herzegovina represents the most important framework for the protection of children from violence. Within the existing criminal codes, we can easily distinguish several criminal offences which criminalize violence over children, placing a legal ban on violence over children, including sexual abuse and exploitation, physical punishment and all other forms of humiliating punishment at and in all locations where this violence occurs, and in particular in the family.

In BiH, there are no specific laws related to preventing violence over children. In specific, entity laws on protection from domestic violence regulate: protection from domestic violence; concept of domestic violence; persons considered as family in the sense of this law; methods of protection of family members; as well as the type and purpose of sanctions for perpetrators of violence.

New family laws were adopted at entity level, which regulate the rights and duties of parents, as well as the rights of children and especially the rights of children to protection from all forms of violence, misuse, abuse and neglect in the family. Violent behaviour implies every form of violation of the physical and psychic integrity in light of Article 4 of the Law on Gender Equality in Bosnia and Herzegovina.<sup>550</sup> One of the novelties is a provision according to which parents are obliged to look after the

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<sup>550</sup> Article 4, Para 2 of the Family Law of FBiH

child, meet the child's needs and protect it from all forms of violence, harm, economic exploitation and sexual abuse by other persons. They are also obliged to control the child's behaviour, depending on its age and maturity. To secure as best a protection of the child as possible, there exist provisions whereby a guardianship body is to *ex officio* undertake necessary measures, based on immediate information available, to protect the rights and interests of the child.

These laws also regulate issues of termination of parental rights and guardianship of children exposed to violence, i.e. defines situations with respect to the neglect of children. If parents jeopardize the child's interests and largely neglect the upbringing, rearing and education of the child, the court shall in a non-contentious proceeding strip those parents of their rights to live with the child, and another person or institution shall be entrusted with the care and upbringing of the child. The parents' right shall be restored when that is deemed to be in the interest of the child. The pronouncement of this measure does not abolish other duties, responsibilities and rights of the parent towards the child.

4.14.5.4. *Children with Special Needs* – Children with special needs in BiH do not have adequate medical care or appropriate opportunities for education. Under the Framework Law on Primary and Secondary Education (“Official Gazette of BiH”, no. 18/03), children and youth with serious difficulties in development may educate themselves entirely or in part in special educational and pedagogical institutions, unless mainstream education cannot be provided to them. When it comes to social welfare, the Law on Changes and Amendments to the Law on Fundamentals of Social Welfare, the Welfare of Civil Victims of War and Welfare of Families with Children (“Official Gazette of FBiH, 54/04”) regulates the rights to: personal disability

assistance, care allowance and assistance by another person (of not granted on another basis) and allowance for orthopaedic aids.

#### *4.15. Nationality*

Article 15 of the Universal Declaration of Human Rights:

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality

Article 24, Para 3 of the ICCPR:

Every child has the right to acquire a nationality.

*(Official Gazette of SFRY, no. 7/71)*

##### *4.15.1. General considerations*

*The Universal Declaration of Human Rights envisages the right of every individual to nationality, as well as the prohibition of arbitrary removal of nationality and denial of right to change of nationality (Art. 15). The ICCPR makes no special reference to the right to nationality. However, Article 24 of the ICCPR treats the position of the child, guaranteeing in Para 3 the right of every child to acquire nationality. This provision commits states only to ensure to newborns the acquisition of nationality, but not necessarily grant their own nationality to every child. The manner and conditions for acquisition of nationality are regulated through*

*internal regulations of a state. In any case, discrimination among newborns must not be made.*<sup>551</sup>

The European Convention on Nationality<sup>552</sup> sets basic principles, rules and recommendations in the field of nationality.<sup>553</sup> Bosnia and Herzegovina has signed this convention on 31 March 2006, but it is yet to ratify it.

In Article 1, Para 7, the Constitution of Bosnia and Herzegovina prescribed the terms under which the Parliamentary Assembly of BiH and not the Entities, may regulate the no. of BiH nationality. The Constitution ensures that: *No person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him or her stateless. No person shall be deprived of Bosnia and Herzegovina or Entity citizenship on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.* (Art. 1, Para 7, item b). The Constitution also regulates that persons that were nationals

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<sup>551</sup> Ljudska prava u Srbiji, Beogradski centar za ljudska prava, Beograd, 2008.

<sup>552</sup> European Convention on Nationality, Strasbourg, 6. XI 1997, [www.coe.int](http://www.coe.int).

<sup>553</sup> Main principles of the European Convention on Nationality are that each State shall determine under its own law who are its nationals and that this law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality. (Art. 3). According to the Convention, everyone has the right to a nationality; statelessness shall be avoided; no one shall be arbitrarily deprived of his or her nationality; neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouses (Art. 4). The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color or national or ethnic origin and Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently (Art. 5).

of the Republic of BiH prior to the cessation of Bosnia and Herzegovina from the Socialist Federal Republic of Yugoslavia are the nationals of Bosnia and Herzegovina. Similarly, the Parliamentary Assembly of BiH is to regulate the nationality of persons naturalized after 6 April 1992 (Art. 1, Para 7, item c).

The Law on Nationality of Bosnia and Herzegovina is in force in Bosnia and Herzegovina.<sup>554</sup> In accordance with the Constitution, the law regulates the issues of acquisition and cessation of BiH nationality. Also, bearing in mind the two-entity organization of BiH, the laws on nationality exist also at entity level, harmonized with the Law on Nationality of BiH. Provisions of the Law on Nationality do not deviate from the principles prescribed in the European Convention on Nationality.

#### *4.15.2. Acquiring the nationality of Bosnia and Herzegovina*

Under Article 5 of the Law on Nationality, the nationality of Bosnia and Herzegovina is acquired by origin, birth on the territory of BiH, adoption, naturalization and international agreement.

A child shall acquire the nationality of Bosnia and Herzegovina by origin regardless of the territory where the child was born, if both parents were nationals of BiH at the time of the child's birth. In case one parent is a national of BiH, a child shall acquire the nationality by origin, if the child was born on the territory of BiH (Art. 6, paras 1 and 2). Also, to avoid statelessness, the legislator has regulated the acquisition of nationality in cases where one parent is a national of BiH and a child was born abroad. Then, the nationality of Bosnia and

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<sup>554</sup> Official Gazette of BiH, no. 4/97, 13/99, 6/03 and 14/03



Herzegovina is acquired only if the child would otherwise be left without nationality. In that case, the condition stipulates that by the age of 23, the child should be registered with the responsible authorities in BiH and have a permanent residence on the territory of Bosnia and Herzegovina (Art. 6, paras 3 and 4).

Article 9 of the Law regulates the acquisition of nationality through naturalization. A foreigner may acquire the nationality of Bosnia and Herzegovina if they are 18 years of age, have a registered permanent residence in Bosnia and Herzegovina for at least eight years prior to submitting the application, is familiar with one of the languages of the constituent peoples of Bosnia and Herzegovina, provided that no expulsion measures were pronounced against him/her, that the he/she has not been sentenced for criminal offences with premeditation for longer than three years within eight years from the submission of application.

Article 10 of the Law regulates the acquisition of nationality through facilitated naturalization when a foreigner is a spouse of the national of Bosnia and Herzegovina. In that case, a foreigner may acquire the nationality of Bosnia and Herzegovina if the marriage with the national of Bosnia and Herzegovina lasts for five years already prior to the submission of application and if the individual has had a permanent resident in BiH for the last three years at the least. At the same time, it is prescribed that a foreigner renounces his/her earlier nationality once he/she acquires the BiH nationality, if a bilateral agreement between Bosnia and Herzegovina and the country of his former nationality does not exist.

Emigrants that have returned to BiH, as well as the first and second generation of their descendants that have returned to BiH, are entitled to acquiring the nationality of Bosnia and Herzegovina without fulfilling the condition of registered

permanent residence on the territory of BiH for eight years prior to submitting the application (Art. 12).

#### *4.15.3. Cessation of nationality of Bosnia and Herzegovina*

The Law ensures that the nationality of Bosnia and Herzegovina cannot be lost under any terms, if that would leave a person without nationality, i.e. if the person would become stateless. Thus, the legislator has regulated the question of statelessness and avoided the possibility of its occurrence, which is compliant with the European Convention on Nationality. Article 16 of the Law prescribes possible ways in which the nationality of Bosnia and Herzegovina ceases, by force of law, renouncement, release, removal and international agreement.

Cessation of nationality by force of law occurs when the individual voluntarily acquires another nationality, while a bilateral agreement between Bosnia and Herzegovina and that country is not concluded (Art. 17). However, certain political forces in BiH consider this article disputable, given the status of BiH Diaspora and bearing in mind that a significant number of BiH nationals living abroad have also the nationality of countries with which BiH has not concluded bilateral agreements. A full-age person is entitled to renounce the nationality of Bosnia and Herzegovina if they live abroad and is acquiring the nationality of another country. A child is entitled to cessation of nationality of Bosnia and Herzegovina at the request of both parents (or one parent in case the other parent is deceased or has lost parental rights over the child) whose nationality has ceased through renouncement (Art. 19).

The nationality of Bosnia and Herzegovina is removed in cases when the nationality was acquired through fraud, false information or concealing important facts about the applicant.

Also, it is removed when a national is sentenced by a legal and binding decision of a court in BiH for violating the constitutional order and security of Bosnia and Herzegovina, or if they have been sentenced for membership in an organization taking measures which undermine vital interests of Bosnia and Herzegovina. The nationality of Bosnia and Herzegovina is removed in cases when a national has been sentenced in a legal and binding decision of a court in BiH for the criminal offence of arms, drugs, explosive and smuggling of radioactive material, illegal transport and trade in materials and equipment for the production of arms and weapons of mass destruction, illegal entry in BiH, human smuggling and trafficking, if such activities undermine vital interest of Bosnia and Herzegovina (Art. 23). A committee for the review of decisions on naturalization of foreign nationals in BiH has been tasked with reviewing the nationalities awarded to aliens in BiH, between 6 April 1992 and 31 September 2006. In reviewing 1808 cases, the committee removed the nationality of 681 persons, out of which 41 have lodged appeals to the Court of Bosnia and Herzegovina. At present, 34 cases are ongoing before the court. The case of Imad al-Husin (Abu Hamza) is one of the cases that was considered before the Constitutional Court of BiH (AP-1222/07), as an appeal to the decision of the Court of BiH (Decision of the Court of Bosnia and Herzegovina, no. U-1172/07 and Decision of the Court of Bosnia and Herzegovina, no. Uvl-03/08).

#### *4.16. Freedom of movement*

Article 12 of the ICCPR reads:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

*(Official Gazette of SFRY, no. 7/71)*

Article 2 of Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms, reads:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4

Collective expulsion of aliens is prohibited.

Article 1 of Protocol 7 to the European Convention on Human Rights and Fundamental Freedoms, reads:

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
  - a. to submit reasons against his expulsion,
  - b. to have his case reviewed, and
  - c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.
2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

*(Official Gazette of BiH, no. 6/99)*

#### 4.16.1. Asylum

Asylum implies the protection a state provides to an alien (foreign national or stateless person). It consists of refusal to extradite this person to a country demanding the person's extradition<sup>555</sup>.

The Convention relating to the Status of Refugees from 1951 and the Protocol on the Status of Refugees from 1967 comprise the integral part of the Constitution of BiH. Also, Bosnia and Herzegovina is a signatory of international documents (Article 2, Para 7) listed in the Annex I of the Constitution. They include: the International Covenant on Civic and Political Rights, the United National Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, United Nations Convention on Rights of the Child.

4.16.1.1. *Constitutional framework* – Under the Constitution of BiH: *All persons on the territory of Bosnia and Herzegovina shall enjoy human rights and fundamental freedoms (...) including: (...) m) right to freedom of movement and residence* (Art. 2, Para 3). This Article relates indirectly to the issue of asylum. However, the Constitution establishes that institutions of Bosnia and Herzegovina are responsible for policy related to immigration, refugees and asylum<sup>556</sup>. The responsibility of individual institutions of BiH is defined more closely by the Law on Ministries and other Administrative Bodies of BiH<sup>557</sup>. Under

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<sup>555</sup> Krivokapić, Boris. „Leksikon međunarodnog prava“ (Belgrade: Radnička štampa: Institute of Comparative Law,1998), p. 33

<sup>556</sup> Article 3, Para 1 of the Constitution of BiH

<sup>557</sup> Official Gazette of BiH no. 5/03, 42/03, 26/04, 42/04 and 45/06

this law, the no. of asylum and international protection in BiH is a shared responsibility of the Ministry of Security, Ministry of Human Rights and Refugees and the Ministry of Civil Affairs of BiH.

4.16.1.2. *Legislative framework* – Law on Movement and Stay of Aliens and Asylum<sup>558</sup> regulates asylum issues within chapter VII – from the moment asylum request is made, to the granting of asylum or cessation of asylum, the responsibilities of authorities in implementing the law and other asylum-related issues. The law determines general questions of asylum, while a more detailed elaboration is left to the Ministry of Security that should regulate all other asylum-related issues, resulting from the applicable legal provisions, through by-laws

Article 72 of the Law on Movement and Stay of Aliens and Asylum defines exactly to which persons asylum in BiH is granted. In this Article, the legislator relies on the Convention relates to the Status of Refugees from 1951 and the Protocol on the Status of Refugees from 1967, based on which an alien<sup>559</sup> enjoys refugee status. Accordingly, asylum is granted to an alien with refugee status, for reasons of justified fear from persecution based on individual's race, religion, nationality or affiliation with a social group, or because of individual's political opinion is found outside the country he/she is a national of and cannot, out of fear, or will not seek the protection of that country (Article 72, item a). Also, asylum is granted to an alien without nationality, located outside of a country where the individual usually resides but to which the individual cannot return out of fear or does not want to return for the aforementioned reasons (Article 72, item b).

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<sup>558</sup> Official Gazette of BiH no. 29/03, 04/04 and 53/07

<sup>559</sup> An alien is any individual without BiH nationality, or an individual without nationality (Article 4, item (a) of the Law)

The Law on Movement and Stay of Aliens and Asylum provides that permit for temporary stay on humanitarian grounds may be granted to an alien who has not met the conditions in the aforementioned Convention and Protocol, if the individual is a victim of organized crime, human trafficking, minor alien, if they are abandoned or have no nationality (Article 35), and if their life or freedom would be jeopardized due to their race, religions, nationality or affiliation with a certain group, or because of their political opinions, regardless whether they have been granted asylum formally (Article 60). Also, the Law observes the principle of “prohibition to return“ (Article 60), as well as non-application of sanctions for illegal entry or stay in a country if the alien arrived directly from a territory where the individual’s life or freedom were jeopardized (Article 75), in accordance with international standards.

Under the Law on Movement and Stay of Aliens and Asylum, the state uses the concept of third secure country in determining that an asylum may be denied to an alien to whom asylum or refugee status has been granted in another country, and if this individual is able to return to that country and benefit from the protection resulting from that status (Article 73, Para 2). However, it is imperative that the state, in that case, questions in detail the terms and level of security for that individual, should h/she return to another country where they were granted asylum previously, if there are chances that they will be subject to persecution.

It is very important to emphasize the legislator’s efforts to harmonize the legal provisions with the Convention related to the Status of Refugees from 1951, ensuring the application of international asylum standards in BiH. Also, the legislator aims to ensure the maximum level of observance of refugee rights by prescribing that the provisions of this law, or other relevant national laws or international documents applicable in BiH, shall have preference over the provisions of the aforementioned



Convention, if they are more favorable to the alien with a recognized refugee status (Article 81, Para 2). However, caution should be exercised here as the question arises in terms of what is interpreted as “a more favorable provision” in this case.

*Responsible bodies.* – The law makes reference to the Ministry of Security and its unit responsible for asylum, completely set up to handle asylum and refugee law (Article 76, Para 1) as the body responsible for asylum issues (consideration of requests and issuance of decisions). Under Article 2 of the Law on Movement and Stay of Aliens and Asylum, the Ministry determines the number of organizational units and their organization for the purpose of application and enforcement of the law. The Sector for Asylum is the responsible unit within the Ministry of Security<sup>560</sup>.

*Procedure.* – When it comes to the asylum procedure, the law sets a framework for the regulation of the procedure and responsibilities behind the decision on asylum. The Rulebook on Asylum in BiH<sup>561</sup> regulates in detail all issues related to asylum procedure, the rights and obligations of asylum seekers and refugees, as well as other relevant issues in this domain.

An alien will deliver an asylum request directly to the responsible field unit of the Alien Affairs Service, the Asylum

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<sup>560</sup> “The Sector for Asylum performs administrative and other professional duties related to the enforcement and implementation of asylum policy and procedure in Bosnia and Herzegovina, coordinating the work of responsible organizational units, preparing pre-drafts and drafts of related laws and by-laws, ensuring intake, accommodation and support to asylum seekers, monitoring the situation related to the achievement of European standards in this field, analyzing and reporting, as well as all other duties that, by their nature, fall under this sector.”

([http://www.msb.gov.ba/home/index.php?option=com\\_content&task=view&id=20&Itemid=36](http://www.msb.gov.ba/home/index.php?option=com_content&task=view&id=20&Itemid=36)) (accessed on 05.06.2008)

<sup>561</sup> Official Gazette of BiH no. 26/04

Sector or the entity ministries of interior/the police of Brčko District. Upon receipt of the request, an authorized official in the Asylum Sector shall register the asylum seeker. Once the interview is conducted and facts and circumstances reviewed, the Asylum Sector shall make a decision on the asylum request. Unfortunately, there is no option to appeal the granting or non-granting of the asylum. Moreover, the Law on Movement and Stay of Aliens and Asylum makes explicit emphasis that appeal against the decision is not permitted (Article 78, Para 1). At the same time, there exists the option to lodge a complaint which delays the enforcement of the decision (Article 78, Para 2). The complaint is lodged through an administrative proceeding before the Court of BiH, two months from the day asylum decision has been delivered<sup>562</sup>.

The Law on Movement and Stay of Aliens and Asylum envisages that asylum shall be denied to persons for whom there are grounds to believe that they have committed a crime against humanity, a war crime as determined in international documents, or if they have committed a serious non-political crime outside of the country of refuge, prior to entering in that country (Article 73, Para 1).

*Rights of asylum seekers, refugees and persons granted subsidiary protection.* – Article 6 of the Law on Movement and Stay of Aliens and Asylum ensure equal treatment of aliens and prohibits discrimination on any grounds. At the same time, Article 81 regulates that the rights of refugees are the ones as prescribed by the Convention relating to the Status of Refugees from 1951. The law prescribes that an alien, granted a refugee status, will be able to work, educate, and be provided health and social insures, under the same terms as for the nationals of BiH

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<sup>562</sup> Article 19 of the Law on Administrative Disputes of BiH (Official Gazette of BiH no. 19/02)

(Article 81, Para 3). However, the rights of asylum seekers and refugees have been regulated in greater detail in a bylaw, i.e. the Rulebook on Asylum. Chapter IV of the Rulebook defines the rights of asylum seekers. An asylum seeker is ensured the right to stay in BiH during the asylum procedure, as well as the right to receiving basic health care if necessary, accommodation in an asylum center, food meeting international nutrition standards, primary education, free legal aid related to the procedure, social welfare, clothes, footwear and basic personal hygiene items (Article 32). The Rulebook sets that refugee rights are to be regulated in greater detail through an implementing regulation of the Ministry of Human Rights and Refugees of BiH. When it comes to by-laws regulating certain refugee rights, rulebooks currently in force include the Rulebook on the Manner of Exercising Health Insurance and Healthcare or other form of International Legal Protection of Persons with Recognized in BiH<sup>563</sup>, as well as the Rulebook on Personal Condition and Entry into Registers of Information related to Births, Weddings and Deaths of Refugees and persons under International Protection in BiH<sup>564</sup>.

*Right to family reunification.* – In identifying the rights of refugees, the Law on Movement and Stay of Aliens and Asylum prescribes that refugee status is granted also to the spouse and children who are minors, as well as other members of the immediate family, if they live in the same household (Article 81, Para 3). The right to family unity and the principle of the best interest of the child are regulated by the Rulebook on Asylum, as well as the Rulebook on Personal Condition and entry into registers of information about births, weddings and deaths of refugees and persons under international protection in BiH

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<sup>563</sup> Official Gazette of BiH no. 24/07

<sup>564</sup> Official Gazette of BiH no. 51/07

(hereinafter: Rulebook on Personal Condition). Rulebook on Asylum prescribes that the Ministry of Security, as well as all other responsible bodies, are to be guided by the principle of the best interest of the child and ensure the protection of child's rights in all activities concerning children. When it comes to asylum seekers, refugees or persons enjoying subsidiary protection on the territory of BiH, they are to ensure the observance of the right family unity (Article 6). Article 6 of the Rulebook on Asylum prescribes also the right of refugees to family reunification. In that, special attention is devoted to the best interest of the child, while the article makes reference to members of the immediate family that are entitled to family reunification (spouse, children who are minors, as well as dependant members living in the same household). Like the Rulebook on Asylum, the Rulebook on Personal Condition, identifies the obligation to observe the best interest of the child and maintain family unity when it comes to the registration of information related to births, weddings and deaths.

*Restriction of movement.* – The Law on Movement and Stay of Aliens and Asylum does not strictly prescribe the terms under which movement of aliens staying in BiH may be restricted. The law only states that the restriction may be defined by this or other separate law (Article 5). Therefore, the law ensures the enjoyment of freedom of movement within the country and the free choice of place of stay, unless otherwise identified.

*United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations.* – The Law prescribes the cooperation with UNHCR, stating that communication with UNHCR or other organizations dealing with refugee issues should be ensured to asylum seekers during the asylum procedure (Article 86, Para 1). The same article of this Law on Movement and Stay of Aliens and Asylum prescribes that an UNHCR

representative will be kept informed about developments in the asylum procedure, as well as the decisions of responsible bodies. The UNHCR representative may also make own remarks. In addition, a Free Legal Aid Protocol<sup>565</sup> was signed between the Ministry of Security and the Association *Vaša prava Bosne i Hercegovine* (eng. Your Rights) to assist in the exercise of rights of asylum seekers and refugees. This Protocol regulates the provision of free legal aid to asylum seekers, refugees and persons granted temporary residence for humanitarian reasons.

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<sup>565</sup> Concluded on 05.12.2005 in Sarajevo.



## II HUMAN RIGHTS IN PRACTICE

### 1. Introduction

Reporting on human rights in media in Bosnia and Herzegovina and perception of different forms of discrimination, within the media discourse, can be observed, analysed and read on different levels: starting from (non)presence of discriminatory language, comprehensiveness of topics and modalities of covering specific issues, (non)strengthening of violence, (dis)encouraging of discriminatory practices, as well as (non)existence of different, or specific, mechanisms for true sensibility of media space.

Due to the lack of sufficient amount of research material, concrete media research on annual basis and previously mentioned characteristics of media reporting on human rights in B&H, the Human Right Centre of the University of Sarajevo has initiated the „Human Rights in Bosnia and Herzegovina – Annual Report with Public Opinion Research for Year 2008“. The focus of the project is reporting of main media in Bosnia and Herzegovina with special attention on human rights as provided by the European Convention for the Protection of Human Rights

and Fundamental Freedoms<sup>566</sup> that came into force in B&H on 01 November 1998.

Focus of analysis was to determine the scope of reporting on: specific topics within categories clearly stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, styles, presence of number of articles and specificities of media discourses.

For the purposes of this report, we have analysed printed media in B&H, that is, their reporting on this specific topics during the year 2008. Characteristics of media scene in B&H are polarisation and orientation of media, based on specific political and social milieu. A large number of media houses exist in B&H: more than 180 television and radio stations, eight daily printed media and 40 periodical printed media<sup>567</sup>. This makes a small market, like B&H, satiated. Unified and consistent media policies do not exist at the state level. According to numerous recent analyses, media freedom is marked as satisfying, but still it is very hard to speak about existence of independent media.

### *1.1. Research Methodology*

Research team of the Human Rights Centre University of Sarajevo has conducted a twelvemonth research on printed media sample. This method was chosen because objective map of state of art in human rights reporting in B&H media can be done through printed media analysis. Electronic and printed media correspond

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<sup>566</sup>European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe [www.coe.ba](http://www.coe.ba)

<sup>567</sup>Report on the status of freedom of media in B&H – Public Radio-television Service of B&H, [www.osce.org](http://www.osce.org), and pages of Communications Regulatory Agency, [www.cra.ba](http://www.cra.ba), and Press Council of B&H, [www.vzs.ba](http://www.vzs.ba)



with similar discourse depending on political and social context/environment.

*Media as data source* – Research of B&H media covers period from January to December 2008 and following daily, weekly and bi-weekly newspapers: Dnevni avaz (Sarajevo), Glas Srpske (Banjaluka), Dnevni list (Mostar), Nezavisne novine (Banjaluka/Sarajevo), Oslobođenje (Sarajevo), BH Dani (Sarajevo), Slobodna Bosna (Sarajevo), Novi reporter (Banjaluka), SAFF (Sarajevo) and Start BiH (Sarajevo). Majority of these newspapers are distributed on larger part of B&H territory, depending on locations of its head offices. For example, Dnevni list is being distributed mainly in FB&H, as do most of newspapers with head offices situated in Sarajevo. Exception is Nezavisne novine with head offices in Sarajevo and Banjaluka and distribution at almost entire B&H territory. Glas Srpske is distributed at Republic of Srpska territory. Consortium Nezavisne novine bought Glas Srpske in January 2008.<sup>568</sup>

During 2008, nine daily newspapers, with daily number of copies less than 250.000, were published in Bosnia and Herzegovina. There are also four political magazines existing in B&H.

*Other data sources* – Other reliable texts, researches and analyses published in other newspapers, that were not used as primary sources, such are: reports of relevant institutions like ombudsman for human rights or international organisations on state of human rights were also taken into consideration:

- Analysis on implementation of state Law on Protection of Minority Rights in B&H, Bureau for Human Rights, Tuzla;

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<sup>568</sup>Regional business portal SEEBiz, 2008, [www.seebiz.eu](http://www.seebiz.eu)

- Annual report of Ombudsman of Federation of B&H on status of human rights for 2007;
- Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives (ALDI);
- Monitoring and analysis of media treatment of Roma in Bosnia and Herzegovina and region (15 May – 15 November 2007), Media plan institute;
- Monitoring and analysis of media treatment of Roma in Bosnia and Herzegovina and region (1 January – 1 September 2008), Media plan institute;
- Gender stereotypes: Women representation in South-East Europe media (Mediacentar Sarajevo, 2006);
- Annual reports of Helsinki Committee for Human Rights in Bosnia and Herzegovina;
- Report on state of human rights in context of political and social events in Bosnia and Herzegovina for 2007, Commission “Justitia at Pax”, Bishops Conference in B&H,
- Report on situation of trafficking in human beings and illegal immigration in Bosnia and Herzegovina for 2006. Sarajevo: State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina;
- Rights and freedoms of LGBTIQ persons in Bosnia and Herzegovina: analysis of relevant legal documents. Sarajevo: Organisation Q, 2006;
- Narrowing the Impunity Gap: Trials before Bosnia's War Crime Chamber, Human Rights Watch 2006;

- State Department report on B&H for 2007;
- State Department report on state of human rights for 2008: Bosnia and Herzegovina, Bureau for Democracy, Human Rights and Labour, 25 February 2009.

*Structure / content of the report* – Reporting on human rights in B&H media was analysed through 14 categories determined by European Convention for the Protection of Human Rights and Fundamental Freedoms. Following main categories were used, based on articles and protocols of the Convention:

- discrimination (Article 14 – prohibition of discrimination),  
rights of minorities (Article 14 – prohibition of discrimination),
- prohibition of slavery and similar positions (Article 4 – prohibition of slavery and forced labour),
- right to fair trial and state of judiciary (Article 6 – right to fair trial),
- freedom of thought, conscious and religion (Article 9 – freedom of thought, conscious and religion), freedom of expression (Article 10 – freedom of expression),
- right to property (Article 1 Protocol 1 – protection of property),
- political rights (Article 14 – prohibition of discrimination, Article 16 – limitations of political activities of strangers, Article 3 Protocol 1 – Right to free elections),
- women’s rights (Article 14 – prohibition of discrimination),

- children's rights (Article 14 – prohibition of discrimination) and
- economic (Article 14 – prohibition of discrimination), social and cultural rights.

Additional or open categories defined for the purposes of the research are:

- right to life and human dignity (Article 2 – Right to Life),
- right to protection of privacy, family, home and correspondence (Article 8 – right to respect of privacy and family life) and
- right to freedom of peaceful assembly (Article 11 – freedom of assembly and association).

Some of previously stated categories are mentioned in several articles and protocols of the Convention. For example, children's rights comprise the prohibition of discrimination (Article 14) as well as right to life (Article 2), right to education (Article 2 Protocol 1). Right to fair trial comprises categories of right to trial (Article 6), prohibition of imprisonment for debt (Article 1 Protocol 4), no punishment without law (Article 7), right to liberty and security (Article 5), right of appeal in criminal matters (Article 2 Protocol 7). Women's rights, except prohibition of discrimination (Article 14), are related also to right to life (Article 2), prohibition of slavery and forced labour (Article 4), right to education (Article 2 Protocol 1), equality between spouses (Article 5 Protocol 7) etc.

Main and additional/open categories were defined, based on previous and present reporting in media through mechanism of most frequent categories within which the research team allocated concrete topics/problems/cases present in media. Additional/open categories were monitored equally and continuously as the main categories, but they were set on another

level because of their less frequency and presence in media in comparison to main categories.

Analysis was conducted in two steps. First step was to record statistical number of articles published within one category and key words orientations like, for example, for category of discrimination (sexual minorities, persons with disabilities, drug addicts, retired persons, demobilised soldiers and others), women's rights (violence, political and social participation, social status and other) etc. Second step of the analysis was focusing on concrete cases, based on the continuity of monitoring media and dealing with qualitative analysis of the content of articles through presence of basic key words, for example, drug addict/junkie, Roma/Gypsy, killer/behemoth and similar.

### *1.2. General results/observations*

For the purposes of this report analysts team has extracted 12.962 of newspapers articles. Most articles (2.535 or 21 %) relate to economic, social and cultural rights, followed by right to fair trial (2.505 or 19 %), right to life (1.777 or 14 %), rights of minorities (1.535 or 12 %), political justice (1.182 or 9 %), rights of child (939 or 7 %) and freedom of thought, conscious and religion (689 or 5 %). All other categories were represented with less than three percent.

The fact that (endangered) economic, cultural and social rights are the most present ones in media reporting is an illustrative example of general state of B&H society, where most endangered social categories are: working class, persons with disabilities, demobilised soldiers, and pensioners. Moreover, problems with which members of these populations are facing are growing larger because responsible levels of authority (state, entities, cantonal) are not capable to fulfil their obligations.

Reasons for this are numerous. In this analysis, the most frequent ones appear to be widespread corruption in all spheres of B&H society, large number of political affairs, misuse of authority, as well as the very fact that, in B&H, collective rights are above individual rights. Therefore, it seems that B&H people are “minorities” depending on in which part of B&H they live. State Department Report for 2007 says that State of B&H poorly respects human rights and the issues of concern are:

*... misuse of authority by the police, inadequate conditions in prisons, mistreatment and intimidation of journalists, discrimination and violence against women and ethnic and religious minorities, obstruction of return of refugees, trafficking in human beings and limitation of rights in employment.*<sup>569</sup>

When it comes to reporting on court procedures, it is interesting that the most common topics in reporting were trials and judgments for various criminal acts like robberies and misuse of authority. There were 941 articles on those topics followed by war-crime trials (882), trials and judgments for murders (376), while there were 306 articles concerning the courts work. Media do not report correctly enough on court procedures. Writings (articles) on court procedures for committed war crimes are characterised with visible political intonation in most of the analysed media. Very often articles that suppose to disseminate information on court procedures are being based on strong reflection of the past, manipulating the numbers of victims of war and general distrust towards the judiciary and centralisation of judicial institutions in Sarajevo. This is especially the case with Glas Srpske with indicative titles of some articles: *Investigations Lead only against Serbs* (28 Feb), *Serb Victims Are Being Denied in*

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<sup>569</sup>Sources: „Dnevni avaz“, 12 March 2008, page 2 and “Oslobođenje”, 12 March 2008, page 10

*BeH* (25 Feb) et al. This is separately elaborated in the part of this report dealing with right to a fair trial.

Within the analysis, some of the topics were analysed within different categories. For example, murder of young Denis Mrnjavac in Sarajevo, on which media reported a lot, is placed and analysed in the context of murders, juvenile delinquency, murder trials, right to freedom of assembly (citizens of Sarajevo organised several protests in first half of 2008 as reaction to the murder and increase of juvenile delinquency). Such overlapping was simply impossible to avoid.

Qualitative part of media analysis has shown that there is still strong discriminatory practice existing in B&H of majority of media. It is visible in large scale as the usage of inadequate terminology, politically “coloured” reporting, lack of relevant sources and collocutors, sensationalistic approach especially regarding political issues and nationalistic rhetoric. When speaking about violation of human rights on the basis of European Convention for the Protection of Human Rights and Fundamental Freedoms, media reporting can be presented with following characteristics:

- a) Lack of sensitivity for adequate terminology (media often report on certain problems using colloquial terminology and naming, which in certain contexts could be discriminating: junkie, juvenile prostitution, monster, mentally retarded, psychically ill);
- b) Sensationalistic approach (media report sensationalistic on topics such as war crimes or juvenile delinquency, but also about murders, suicides and similar, using titles in which before any court procedure or reaching judgement the accused or suspect is already titled as “monster”, “villain”, “murderer” and similar. Here could also be mentioned publishing of photographs of children whether

they committed a deed or they've suffered certain damage/violence);

- c) Using unacceptable and discriminatory terminology, as the case was with media reporting on LGBTIQ population: “abnormal, sick and deviant behaviour” (Dnevni avaz, 28 Aug); “they need medical help” (Dnevni avaz, 28 Aug); “immoral and dissipated indulge”, “gays and their donors and promoters” (SAFF, 22 Aug); “if we speak about masculine variation of that, those are the ones that don't mind when moustaches are itching and those that heal haemorrhoids by sticking. Regarding women, that phenomenon is explained by cats hygiene where you need a lot of licking to reach the perfection in cleanness” (Novi Reporter, 03 Sept);
- d) Violation of ethical codex of profession, as defined by Press Council of B&H,(problem of respect of the Codex is daily one either when speaking about discriminatory practices towards certain national, sexual, gender minorities or taking opinion of judge where media “passes the verdict” before the court does, inadequate protection of children especially when it comes to publishing photographs, address, school et al.).

Apart from the European Convention for the Protection of Human Rights and Fundamental Freedoms useful documents and mechanisms for monitoring the respect and violation of human rights are also United Nations Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).



## 2. Human Rights in Bosnia and Herzegovina – General

During 2007, a large number of reports on state of human rights in Bosnia and Herzegovina have been published – from Helsinki Committee for Human Rights in Bosnia and Herzegovina annual report, Office of Ombudsman FB&H report, State Department report to reports of various commissions and other organisations. In introduction we'll cite only the most significant parts, observations and problems listed in these reports and reported by media.

In its Report on the Status of Human Rights in Context of Political and Social Events in Bosnia and Herzegovina for 2007, the Bishops' Conference in B&H Commission Justitia at Pax pointed out to:

*... general deprivation of rights of almost all categories of Bosnian and Herzegovina population. By that, deprivation of rights of refugees and displaced persons, returnees, women, children, employed and unemployed persons, retired persons, ill and injured is especially pointed out, but also other phenomenon in society that directly influence to preservation of condition of general deprivation of rights.*<sup>570</sup>

In U.S. State Department's Bureau of Democracy, Human Rights and Labour Human Rights Report in B&H (Country Reports on Human Rights Practices 2007) it is said that:

*... Violence against women, including domestic violence and sexual assault, remained a widespread and underreported problem. According to general NGO estimates, one out of every three Bosnian women was a victim of domestic violence. In the Federation's Herzegovina-Neretva Canton, one NGO reported an increase of domestic violence cases during the year. Of 89 reported*

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<sup>570</sup>Portal Necenzurirano.com, 2008, <http://www.necenzurirano.com>

cases, 24 cases involved victims who were juveniles, 42 violators received criminal charges, and eight violators received misdemeanour charges. Both the Federation and RS have adopted laws on domestic violence that require police to remove the offender from the family home; however, domestic violence often is not reported to the authorities. Experts estimated that only one in 10 cases of domestic violence was reported to the police. As of October, the RS domestic violence hotline received 1,973 reports of domestic violence.<sup>571</sup>

According to Report on Status of Human Rights in Bosnia and Herzegovina (January – December 2006), made by *Helsinki Committee for human rights in Bosnia and Herzegovina*, the children's rights do not lag far behind discrimination and violation of fundamental rights. In the Report stands:

*... Children in Bosnia and Herzegovina are exposed to different kinds of discrimination and are unequal in exercising of their rights” and „ children are constantly confronted with obstacles in attempts to exercise their rights to health and social protection”. Report further states: „according to some estimates, 60% of population in B&H do not have regular health care. This implies that the same percentage of children is also deprived in this regard. This problem is particularly expressed with children of pre-school age. Records indicate that a number of new-borns and deceased population is almost even in both entities- thus, we can say that the population of Bosnia and Herzegovina is stagnating. The state failed to adopt policies and strategies or programmes for demographic development of Bosnia and Herzegovina”.*<sup>572</sup>

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<sup>571</sup>“Bosnia and Herzegovina- Country Reports on Human Rights Practices 2007, U.S. Department of State, [www.state.gov](http://www.state.gov)

<sup>572</sup>Report on the Status of Human Rights in Bosnia and Herzegovina (Analysis for the period January – December 2006) – Helsinki Committee for Human Rights in Bosnia and Herzegovina, [www.bh-hchr.org](http://www.bh-hchr.org)

Report of Organisation Q for promotion and protection of culture, identities and human rights of queer persons mentions that

*LGBTIQ community in B&H is stigmatised, closed and inert in many ways. Neither society nor the state offer any support to persons that don't fit in social standards of sex, gender, sexual orientation, sexual identity, gender identity and/or expression. In environment like this, it is much more difficult for LGBTIQ persons to accept themselves and actively participate in creation of society and state where human rights and freedoms of entire B&H population are respected, protected and built up.*<sup>573</sup>

According to the U.S. State Department report, B&H is among 15 countries in the world with the worse situation when it comes to trafficking in human beings. Report of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina says that during 2006

*... The trend of using the territory of Bosnia and Herzegovina as transit route for illegal migrations to Western Europe countries continued. The European Commission Progress Report for 2006 states that although the 2005-2007 State Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina is being implemented in practice, there are still problems concerning effective prosecution of these criminal offences owing to inconsistencies between the laws at state and entity levels and lenient penal policy.*<sup>574</sup>

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<sup>573</sup>Rights and Freedoms of LGBTIQ Persons in Bosnia and Herzegovina: Analysis of Relevant Legal Documents. Sarajevo: Organisation Q, 2006, page 5

<sup>574</sup>Report on the status of trafficking in human beings and illegal immigration in Bosnia and Herzegovina and Report on the implementation of the action plan for combating trafficking in human beings and illegal immigration in Bosnia and Herzegovina in 2006. Sarajevo: State Coordinator for Combating

Human Rights Watch organisation states that in the area of transparency of war-crimes trials

*... Significant progress is done in fulfilment of mandate and realisation of important role in bringing the justice for crimes committed during the war. Problems persist in judicial policy for case selection as well as the wide utilisation of closed sessions and negative implications that this lack of transparency influences on public trust to the chamber as a whole. Inadequate outreach and communication efforts to explain the work of the court and make it meaningful for the community, most affected by violation of what has been done, can impact further on the influence of chamber to rule of law.*<sup>575</sup>

In introduction of its Report on Status of Human Rights for 2007, Office of Ombudsman FB&H cites that

*... bad condition of human rights, that is, violation of almost all provisions on human rights in the Constitution of Federation of B&H, lead to conclusion that national ideologies in entire B&H managed to boycott the Dayton Agreement and particularly Annex VII and by that distorting it and divide the society already ruined during the war and in 13 years of peace. By fostering and preserving ill status with mass traumas the leading national structures of authorities – which mostly didn't change and whose relation towards democratic changes is more than questionable – manage to stay in power and hold voting body under constant tensions of fear, distrust and endangered from others.*<sup>576</sup>

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Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina, 2006, page 4

<sup>575</sup>Narrowing the Impunity Gap: Trials before Bosnia's War Crime Chamber, Human Rights Watch 2006, <http://hrw.org/report>

<sup>576</sup>Ombudsman of Federation of B&H Annual report on status of human rights for 2007, page 1

Because of the constant reactions and interventions of the High Representative, Bosnia and Herzegovina is degraded in American agency Freedom House annual report on status of freedoms. Bosnia and Herzegovina is graded with four for the respect of political rights, while for civil freedoms the grade is three.<sup>577</sup>

In February, the Helsinki Committee for Human Rights in Bosnia and Herzegovina presented its' report for 2007. The report stated that "B&H doesn't protect its' citizens" illustrating the statement with data that "out of 135 planned laws only 27 has been adopted while the Ministry for Human Rights and Refugees on B&H directed only 13 percent of planned acts to the procedure". In the same report Helsinki Committee warns on discrimination of returnees as well as on sophisticated methods of ethnic cleansing in peacetime period.<sup>578</sup> This is also confirmed by the Report of Ombudsman FB&H:

*... at the end of 2007 the plan and aim taken over by signing the Dayton Agreement (with dissatisfaction and maximal conditions from each side) that signatories of the Agreement, i.e. all three parties, are continuing the war by political means has definitely succeeded. In lack of exact indicators of ethnic cleansing done even later in peace, it is evident that all three parties have succeeded in dividing B&H on religious and national criteria by tricking Annex VII and by other political means. They managed each on "their" territories to make other two nations in minorities with minor percentage up to 10%.*<sup>579</sup>

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<sup>577</sup>"Nezavisne novine", 18 January 2008, page 6

<sup>578</sup>Sources are: "Oslobođenje", 18 February 2008, page 6 and "Nezavisne novine", 12 February 2008, page 5

<sup>579</sup>Ombudsman of Federation of B&H Annual report on status of human rights for 2007, page 2

“Even though governments in B&H have ratified key European and international documents on protection of human rights and adopted necessary legislation and plans in many areas, it is about time for active measures to change the existing status”, states Report of Council of Europe Commissioner for Human Rights, Thomas Hammarberg, presented at European Union Capital at the beginning of the year. Report especially points out to endangering human rights of displaced and minority returnees, Roma, children, poor and socially excluded persons, and as primary measure cites ensuring accommodation and infrastructure for return of internally displaced persons. Segregation in schools, inefficient judiciary, and significant number of war crimes suspects that are in public functions are also listed as problems. Along with rights of minorities and rights of Roma, combating violence against women and children is also marked as urgent issue.<sup>580</sup>

European Court of Human Rights in Strasbourg passed eight decisions and four judgements against Bosnia and Herzegovina by today, but annually there are approx. 500 appeals against B&H.<sup>581</sup>

Repeated procedure for election of three B&H ombudsman for human rights started by establishment of the Joint ad hoc Commission at the Parliament of B&H. Last year the process failed because of lack of support to Serbs from Federation B&H and Bosniaks from Republic of Srpska. Ombudsman for Human Rights in B&H, Safet Pašić, pointed out that human rights in Bosnia and Herzegovina are at the lowest possible level. In his press release, he opposed to judgments stated by officials which represent attempt to blame the state institution of

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<sup>580</sup>Parts of the report are cited by following newspapers – “Dnevni avaz“, 23 February 2008, page 6; “SAN“, 23 February, page 17; and ”Večernji list“, 23 February 2008, page 6

<sup>581</sup>”Slobodna Bosna“, 7 February 2008, pages 44 – 47

ombudsman for reform failure, that is joining of institution of ombudsman in B&H. Pašić also warned to “unacceptable delay in reforming the institutions of ombudsman in accordance with the Law on Changes and Supplement of the Law on Ombudsman B&H, by which this process should have been completed by the end of 2006”. Pašić considers that by this incalculable damage is being done to the protection and unification of human rights on territory of B&H.<sup>582</sup>

Harmonisation of Constitution of B&H with European Convention for Human Rights, signing the Convention on Minority Languages and Ratification of Social Charter are the most important obligations after accession that B&H has to fulfil in order to exit the monitoring phase and become full member of Council of Europe.<sup>583</sup>

Mentioned reports represent only a part of mapped situation in general estimation of status of respect of human rights in Bosnia and Herzegovina reviewed during 2006 and 2007. Categories following in continuation of the report provide overview of specific events marking the period from January until August 2008.

### 3. Discrimination

Category of discrimination relates to large part of B&H population. Most represented articles in media reporting were on retired persons, Roma, LGBTIQ persons, students, families of missing and murdered persons during the war, disabled persons

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<sup>582</sup>“Oslobođenje“ reported on this in several times - 6 February 2008, pages 8 and 9; 5 March 2008, page 11; and 11 March 2008, page 10

<sup>583</sup>Glas Srpske, 22 April 2008, page 3

and others. Analysis of specific cases monitored in certain period in media was conducted based on 256 reviewed articles.

During the analysis, attention was also paid on terminology used by journalists in reporting on specific categories of jeopardised persons. Discriminating terminology dominates when it comes to LGBTIQ persons, missing persons, persons with disabilities, addicts, and in reporting on economic and social rights. Here we're bringing an example from Dnevni avaz comparing salaries in certain professions:

*Salaries of police officers and cleaning women equalized: According to new Regulation for determination of salary basis, salary levels and coefficients of ranks for police officers in Herzegovina-Neretva Canton made by the Government on session of 28 March soon to be before parliamentarians, salaries of policemen and non-qualified workers like cleaning women, are almost equal! Salary of assistant worker is higher for 36 percent and will be 492 KM, while the policeman salary is only 16 KM higher and will be only 508 marks.<sup>584</sup>*

Magazine BH Dani reported on the protocol of (non-) adoption of Law against Discrimination:

*Draft Law against Discrimination, that supposed to enter the parliamentary procedure in November last year, met obstructions from Ministry for Human Rights and Refugees headed by Safet Halilović. Even though Council of Ministers supported the idea that non-governmental organisations work on it exclusively, which is quite rare case, as soon as the draft was submitted to competent ministry, supposed to be promoter of the law, Halilović contested all fundamental subsections.<sup>585</sup>*

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<sup>584</sup>Dnevni avaz, 10 April 2008

<sup>585</sup>BH Dani, 27 June



Ognjen Delibegović, member of Steering Board of Union of Paraplegics and People with Infantile Paralysis of FB&H, has directed open letter to parliamentarians of Federation of B&H regarding the actual suggestion of law on changes and supplement of Law on Fundamentals of Social Protection, Protection of Civil Victims of War and Protection of Families with Children. In his letter he asks “how can anyone claim that persons with disabilities agree that the main criteria for realisation of fundamental rights, on the basis of disability, be property census and not consequences of disability.”<sup>586</sup>

### *3.1. LGBTIQ Persons*

Media rhetoric “coloured” by hate speech, homophobia, nationalism, religious fanaticism and other forms of discriminating and agitating language provided an epilogue in 2008 and real illustration of status of respect of fundamental human rights and freedoms in Bosnia and Herzegovina society. Motive for reckless media campaign was organisation and attempt of having first Queer Sarajevo Festival (24-28 October 2008), which was interrupted already on the first evening at the very opening of the Festival because of escalation of violence lead by several months of media campaign.

Comments on such writing of media were published in weekly “Slobodna Bosna”:

*... Taliban 'crystal night' in centre of Sarajevo: For weeks official structures of Islam Community in B&H, ruling Bosniak political parties and their media primarily xenophobic and primitive 'Dnevni avaz' announced, instigated and desired violence and terror over organisers and sympathisers of Sarajevo Queer*

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<sup>586</sup>Oslobođenje, 21 July 2008

*Festival; and to their joy and misfortune of the rest of the normal people in B&H violence did happen and blood of innocent people ran down the streets of Sarajevo; Vehabia fanatic bullies have shown who actually rules over Sarajevo by beating journalists, artists and police officers!*<sup>587</sup>

In August and September, media have intensively reported on preparations for the first Queer Sarajevo Festival and certain media, like Dnevni avaz and SAFF used hate speech against members of LGBTIQ population. With their discriminatory language and homophobic rhetoric they violated several articles of Press Council in B&H Press Code, among which most visible is breach of article 3 – agitation (examples: “trash from the West”, “they’re doing this deliberately at the time of Ramadan”, “promotion of abnormal ideas”, “they’re trying to activate something not common for human nature”, “B&H public against organisation of Queer Festival” et al., as well as article 4 – discrimination (examples: “they need medical assistance”, “unnatural, sick and deviant behaviour”, “promotion of abnormal ideas”).<sup>588</sup>

“B&H public against organisation of Queer Festival: Who’s foisting gay gathering on Bosniaks during the Ramadan? What is the point of public exposure and promotion of such ideas alien to all religions...? It is unnatural, sick and deviant behaviour...”<sup>589</sup> Dnevni avaz in several times used completely unacceptable terminology like “they need medical assistance”, “deviant behaviour”, “homosexual’s disease”, “provocative gay gathering in month of Ramadan”, “promotion of ideas that are not fundamental values”<sup>590</sup>, “it’s immoral, scum”, “we have to

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<sup>587</sup>Slobodna Bosna, 25 September 2008

<sup>588</sup>Dnevni avaz, 2 September 2008, 28 August 2008

<sup>589</sup>Dnevni avaz, 28 August 2008

<sup>590</sup>Dnevni avaz, 28 August 2008

condemn it”<sup>591</sup>, “freedom shouldn’t be used for promotion of that trash from the West”<sup>592</sup>.

*... Dangerous playing with religious feelings of Bosniaks: Festival of homosexuals in honourable Ramadan... yet Ramadan joy could be disturbed with unseen provocation which Bosnian and Herzegovina faggots plan to do in this holly month...<sup>593</sup>*

*Gay-men and Gay-women: Like a true cosmopolitan city, Sarajevo is preparing for one more magnificent and of course cosmopolitan and multiethnic manifestation. It is festival of so-called gay population. For those less familiar, they are those that do not mind “when moustaches heat to glow” and that heal haemorrhoids by sticking, if it’s ‘man’ variation of the issue. In case of women, that phenomenon is explained by cat hygiene where you need a lot of licking to reach perfection in purity. The problem of Sarajevo cosmopolites is in religion. Islam does not recognise ‘gays’ during the Ramadan, Muslim religious holiday. Then there was a misinterpretation. Aghas and beys, sultans and viziers were famous through history for their weakness to paedophilia and healing haemorrhoids by acupuncture, while their beauties from harem were famous by their favour to reach for the cats hygiene in lack of sultan’s or vizier’s love. What today is called pederasty or lesbianism is expression of ‘rotting West’ and narrow-minded Balkans. In addition, everything would be ok if entire manifestation is not planned during the Ramadan. Maybe it is not a problem after all. Maybe the problem is the fact that “gay-man” and “gay-women” will walk through fresh green painted streets of one of Islamic centres in the world. That is not such a good commercial. On the other hand, not even Koran clarified if Ramadan fasting means abstinence of sex. No matter how*

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<sup>591</sup>Dnevni avaz, 05 September 2008

<sup>592</sup>Dnevni avaz, 02 September 2008

<sup>593</sup>SAFF, 22 August 2008

*unnatural it is. Interpreters are on the move now. For the time being, “gay-man” and “gay-women” are feeling comfortable in Sarajevo in line with “cosmopolitan” and “multiethnic” government. True, “gays” are not in positions in that city. More like common faggots. However non-European it may sound.*<sup>594</sup>

Additional example of media self-will is ignoring press releases coming from associations and organisations like Amnesty International, Association B&H Journalists, and Alumni Association of Centre for Interdisciplinary Postgraduate Studies – ACIPS, Pravo ljudski and other organisations and associations.

*Association B&H Journalists expressed its concern because of threats directed towards certain number of media in Sarajevo who have impartially and with full respect of ethical standards informed their listeners and readers on events related to Queer Sarajevo festival. Sending threatening letters to redactions of Student eFM radio, Radio Sarajevo, BH Radio 1 and magazine BH Dani represents repulsive and very dangerous attack on freedom of expression and right of media to inform citizens on actual events and happenings of interest for B&H public. By content and very rough and open threats, these letters represent attack also to personal security of employees in mentioned media, safety of their family members and their property. We have to conclude with regrets that sending these letters, death threats to media workers and manipulation of Sarajevo war past are direct consequence of numerous homophobic stand outs in B&H public related to announced Queer festival.*<sup>595</sup>

*“Sarajevo Queer Festival must be protected: Many publications, including the popular SAFF and Dnevni Avaz, used derogatory language in relation to lesbian and gay people. They have called for the organizers of the festival to be lynched, stoned,*

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<sup>594</sup>Reporter, 03 September 2008

<sup>595</sup>Press release, Sarajevo: Association BH Journalists, 5 September 2008

*doused with petrol or expelled from the country. Death threats have been issued on the Internet against individual gay rights activists. Appeals have also been made to the public to disrupt the festival. "We do not feel safe for ourselves or for our families. Some of us had to find new accommodation because our names and addresses were made publicly known. We are afraid to use public transport or go out alone. Our dogs are our best protection now. We feel isolated," an activist of Association Q told Amnesty International. Amnesty International strongly condemns the use of homophobic language by the media and calls for it to recognise its' responsibility in fostering a climate of intolerance and to play a constructive role in dismantling prejudices.."* <sup>596</sup>

Another example of reporting on this event is in reporting of media like BH Dani and Start BiH:

*...“I’m gay not a thief: Four girls from Organisation Q started with plans for 1<sup>st</sup> Queer Sarajevo Festival last summer. They were brave enough even with minimum budget and almost no support to believe that there is place in this city even for LGBTIQ population. After announcement of this event, they ask if they believed too ambitiously that Sarajevo is the city it likes to represent – multiethnic, multicultural, multi-tolerant... Threats at portals and media propaganda of open homophobia place a fear among members of gay population”* <sup>597</sup>

“Faggots against gay population: There’s nothing that isn’t there. From calling homosexuals sick, abnormal, and deviant persons, by political sluts and extremists, through attacks on secular arrangement of the country, up to call for lynch and horrifying crimes directed by local bin-laden descendants.” <sup>598</sup>

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<sup>596</sup>Bosnia and Herzegovina: “Sarajevo Queer Festival” must be protected, Amnesty International Press Release, 18 September 2008

<sup>597</sup>BH Dani, 29 August 2008

<sup>598</sup>Start BiH, 02 September 2008

(Nezavisne novine, 05.09., 14.09., 19.09., BH Dani 05.09., 12.09. – three articles, 19.09., Start BiH 16.09., Oslobođenje, 29.08., 30.08., 04.09. – two articles).

Unfortunately, media reporting on Queer Sarajevo Festival is just one of illustrations of discriminatory reporting on LGBTIQ population as well as inexistence of real mechanisms to sanction and punish such media practice.

### *3.2. Camp Inmates*

Camp inmates represent suppressed population, discriminated mostly through disabling recognition of certain percent of disability and their economic providing for. Even though Bosnia and Herzegovina passed the Law on Protection of Victims of Torture (November 2005) the implementation lags behind making former camp inmates unsatisfied.

Slobodna Bosna reported on preventing camp inmates to mark the sufferings in Bratunac:

*... Government of Milorad Dodik prohibited on Tuesday, 6 May, by decision of Minister of Education and Culture, Anton Kasipović, setting up Exhibition of Documentary Photographs 'Survived Camp Inmates Bratunac 1992', whose opening was planned for Saturday, 10 May 2008 at gym of Vuk S. Karadžić primary school in Bratunac. In this very gym, 120 civilians were killed in the period between 17 April and 17 May 1992, and on territory around school 150 more of them.*<sup>599</sup>

Accusation of camp inmates of Republic of Srpska against Federation of B&H regarding realisation of rights to reparation

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<sup>599</sup>Slobodna Bosna, 8 May 2008.

for material damage, suffered during the imprisonment in camps on FB&H territory, was actual during the media reporting in 2008.

*... Camp inmates of Birač asked authorities at Prosecutor's Office and Court of B&H why did this torture chamber for Serb people lasted longer than the war in B&H... Serb camp inmates were put in place that was practically skeleton of concrete in which living conditions weren't even suitable for animals, Slavko Jovičić remembers...<sup>600</sup>*

Nezavisne novine wrote on 26 April 2008 on processing of charges for war crimes committed over Serbs:

*President of Union of Camp Inmates of RS, Branislav Dukić, and president of Veterans Organisation of RS, Pantelija Ćurguz, delivered nine criminal applications against several persons of Bosniak nationality for the crimes committed against Serbs in Brčko in 1992 and 1993, during to war in B&H, to War Crimes Prosecutor in Serbia, Vladimir Vukčević. In the War Crimes Prosecutor's Office of Serbia press release stands that Vukčević promised Dukić and Ćurguz to undertake all activities within his power.*

Bosnia and Herzegovina still has not adopted the United Nations Convention on the Protection of Rights of Persons with Disabilities. Media reported on estimating the level of disability of camp inmates as well as on persons suffering from the post-traumatic stress disorder (PTSP):

*...Commission for Labour and Social Policy of Federal Ministry for Issues of Veterans deleted the limit 12 March 1997 until when veterans of B&H Army and HVO could realize their disability pension based on post-traumatic stress disorder (PTSP). Alija Muratović, president of Association 'Stećak' from Tuzla who*

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<sup>600</sup>Glas Srpske, 26 - 27 January 2008

*initiated the change of limit, has confirmed this for „Oslobođenje“. Namely, out of five amendments to unique draft law on rights of veterans, submitted by this association, two are accepted.*<sup>601</sup>

*Judge Davorin Jukić, who came in prison camp “Silos” in Tarčin during the war and passed judgments to imprisoned Serb civilians, is employed at Court of B&H, stated 58 years old Radojka Pandurević from Bratunac for Glas Srpske. President of Union of Camp Inmates of Republic of Srpska, Branislav Dukić, claims that there are “couple of more judges, that tried to Serbs in Silos and Viktor Bubanj barracks, now sitting in Court of B&H” among which are Amir Jaganjac, Miso Salem and Idriz Kamenica.*<sup>602</sup>

### 3.3. Missing Persons

*Out of cca 28.000 people, estimated as missing during the war, cca 20.000 remains are found. There are still 8.000 bodies or remains left to be found, but unfortunately a certain number will be impossible to found having in mind that the bodies are burned, buried at places difficult to reach, said Amor Mašović, director of Institute on Missing Persons in B&H.*<sup>603</sup>

Based on data of International Commission on Missing Persons in B&H, around 13.500 persons are considered to be missing in Bosnia and Herzegovina. Families looking for their missing ones, within the complex post-war political and administrative system, are in quite difficult position. There are no centralised politic or mechanism that would ease and make search for the missing persons more successful. Media have mainly

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<sup>601</sup>Oslobođenje, 2 April 2008

<sup>602</sup>Glas Srpske, 18 August, page 3

<sup>603</sup>Oslobođenje, 18 November 2008, page 5



published on individual cases of families of persons missing during the war.

*“For over a decade, Majda Ćupina, one of those women who like Esma Palić unremittingly and persistently fight for the justice of their murdered ones without any representatives and associations, appeals again to governments to help her in finding remains of her husband – Mustafa Ćupina. He was first man of SDA in Nevesinje, president of Municipal Committee of SDA in Nevesinje, member of Main Board of SDA B&H, commander of Patriots’ League and Territorial Defence in Nevesinje murdered on 17 June 1992.”*<sup>604</sup>

In period from year 2000 until the end of 2008, International Commission on Missing Persons determined congruence of blood samples and bones through DNK analysis in 15.066 cases, out of which 11.935 is country related. It also collected over 86.759 blood samples from persons in relationship with 28.694 missing persons, out of which 68.763 samples linked to 23.168 persons, are country relevant.<sup>605</sup>

As Dnevni avaz wrote:

*...Esma Palić, spouse of Avdo Palić, commander of defence of Žepa, expects judgment from Court of Human Rights in Strasbourg. She asked for help of this institution in implementation of decision of Human Rights Chamber and Constitutional Court of B&H according to which the Government of RS was due to establish facts, find the body of colonel Palić and punish his murderers a long time ago. She hopes that last year’s search in Rasadnik near Rogatica did not influence the decision. For this*

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<sup>604</sup>Oslobođenje, 12 January 2008; Dnevni avaz, 12 January 2008

<sup>605</sup>Report on Status of Human Rights in 2008: Bosnia and Herzegovina, Bureau for Democracy, Human Rights and Labour, 25 February 2009

search, she claims to be well-directed show of Government's Commission.

### 3.4. Sick Persons

According to "Nezavisne novine" from Banja Luka dated 24 August:

*...Bosnia and Herzegovina is missing Law on the Rights of Patients that would define not only rights of users of health care services but also obligations of doctors. That's why passing this law is necessary, consider experts in this field". For their ignorance and indifference, citizens are currently not using their belonging rights by existing laws in health care.*

We have selected couple of articles in which term *junky/ies* is used several times. "Junky with guns and bombs"<sup>606</sup>, "Exit for medical treatment of junkies"<sup>607</sup>, "Two junkies brought in"<sup>608</sup>, "75 percent of junkies hasn't been tested to HIV"<sup>609</sup> and "Locals don't want junkies nearby". Nezavisne novine ,dated 15 January, wrote

*...on building of women department of Centre for Drug Addicts Treatment Smoluća in that village, which was stopped two months ago because of disapproval of local population. Workers at the Centre have resigned without conflict so the Tuzla Canton police had no reason to intervene. Villagers are pursuant in their opinion not to*

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<sup>606</sup>Dnevni avaz, 31 January 2008

<sup>607</sup>Dnevni avaz, 29 February 2008

<sup>608</sup>Oslobođenje, 12 March 2008

<sup>609</sup>Nezavisne novine, 11 April 2008

*allow opening of the department for treatment of drug addicts near their houses having fear for their own security.*

Apart from using inadequate terminology while reporting on drug addicts, similar discriminatory practice is present when speaking on persons with special needs, that is, persons with disabilities. Nezavisne novine published an article titled "Support to Socialisation of Mentally Retarded Persons" on 19 April. In this article stands that women's active from City Committee of DNS, Banja Luka, visited Association for Mentally Retarded Persons in Banja Luka -settlement Starčevica and delivered presents on the occasion: Easter eggs, food and juices for beneficiaries of this daily centre.

## 4. Minority Rights

### *4.1. Rights and Discrimination of Roma*

Problems of Roma, as the largest minority in Bosnia and Herzegovina that is socially, economically and politically marginalised group, are numerous. Problems are going from issues of education and discrimination in employment, through accommodation and property issues, question of preservation of Roma culture – tradition and language. Roma in post-war B&H are facing with set of difficulties in realization of vast number of fundamental human rights provided by Constitution of B&H. These difficulties are more complex due to the displacement caused by war suffering in B&H in past decade. Question of property rights and possibility of having personal documents is especially important for Roma population.

During 2008, Media Plan Institute from Sarajevo did an analysis of media reporting of Roma community problems related activities. Analysis was done on a sample of 656 texts, published in printed media in the period 01 January to 31 August 2008. 41 printed media, out of which 13 were daily newspapers and 28 periodical magazines, were analysed in that period. Results of the analysis are summed up in following paragraph.

According to media reporting and judging by conclusions of various platforms on position of national minorities, statements of Roma official and state officials, Roma are still the most endangered minority community in Bosnia and Herzegovina. In comparison to last year when Media Plan Institute also did a content analysis of media reporting in B&H, attitude of media towards this community did not improve. We can say that it is even worse in qualitative sense. Absolute domination of articles placed in black chronicles, making 23 percent of total number of published articles, is something disturbing. Disturbing is also the fact that media and journalists are more likely to point out nationality of Roma when reporting on criminal deeds while at the same time calling upon professional standards and journalist ethics. All daily media, without exceptions, have done this. The attitude of media towards Roma community is also problematic. It is passive and states actual condition. Lack of more engaged media reporting on Roma problems and deficit of analytical journalistic forms to look at problems more realistic and make responsible ones “stand out” and do something, is present also.<sup>610</sup>

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<sup>610</sup>Monitoring and Analysis of Treatment of Roma in Media in Bosnia and Herzegovina and Region (1 January – 1 September 2008), Media plan institute analysis and monitoring centre and Media initiatives, <http://www.mediaonline.ba/ba/?ID=448>

#### *4.2. Rights of National Minorities*

Bosnia and Herzegovina ratified the Framework Convention for the Protection of National Minorities in March 2003. It also adopted Law on the Protection of Rights of National Minorities that was adopted in 2005 with changes and supplements in both Houses of Parliamentary Assembly of Bosnia and Herzegovina due to efforts of non-governmental organisations and representatives of national minorities in B&H, National Assembly of Republic of Srpska adopted the law on entity level while at federal level it was adopted in mid 2008 as the last in a row.

There are 17 national minorities admitted by Law in Bosnia and Herzegovina. Roma national minority is the largest one (estimates are that are between 80.000 and 100.000 members of Roma population living in B&H). However, in some of their researches, Council of Europe and OSCE consider the number is between 30.000 and 60.000 Roma.

“Members of national minorities in RS are not discriminated, they feel like they’re on their own ground and completely share the faith of the people living with”, stated Stevo Havreljuk, president of Association of National Minorities of Republic of Srpska, in interview for Glas Srpske. Haverljuk pointed out unemployment as one of the largest problems of minorities, also affecting majority population, as well as specific problems like preservation of language, literature and culture because there is lack of adequate personnel who could teach in these languages.<sup>611</sup> Haverljuk stated that Governments in B&H should incorporate national minorities as category in the Constitution. According to him, Constitution of B&H does not recognise term national minorities but they are placed under

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<sup>611</sup>Glas Srpske, 12 April 2008, page 4

“others”. He added that the Law on National Minorities contributed to the establishment of Council for National Minorities within National Assembly of Republic of Srpska as advisory body of the Assembly. <sup>612</sup>

OSCE presented Manual on National Minorities in B&H, designed for pupils from fourth to sixth grade, which will provide national minorities with extraordinary opportunity to present their rich cultural heritage to young people. <sup>613</sup>

At seminar for journalists, “National minorities in media in B&H” held in Bijeljina during the May, participants remarked that minorities are mostly presented in media as cause of problems in social system and that they are mostly represented in negative context accordingly with stereotypes existing here. Most common, they are represented in folkloristic manner, on certain traditional events. <sup>614</sup>

Most recent changes of Election Law in B&H estimate that national minorities will have one or two mandates in local parliaments, depending on representation in percents. <sup>615</sup> Minorities got one secured place in institutions of local authorities through changes of the Statute of Municipality of Kozarska Dubica. <sup>616</sup> Unlike Kozarska Dubica, at Parliament of Bijeljina Municipality colleagues members of others are not wanted there – parliamentarians did not adopt suggestion of changes of the Statute of this municipality for the second time this year. The suggestion was to reserve two out of 31 seats for representatives of minorities i.e. representatives of “others”. <sup>617</sup>

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<sup>612</sup>Glas Srpske, 24 July 2008, page 7

<sup>613</sup>Dnevni list, 29 February 2008, page 5

<sup>614</sup>Glas Srpske, 24 – 25 May 2008, page 16

<sup>615</sup>Dnevni list, 31 January 2008, page 4

<sup>616</sup>Glas Srpske, 10 March 2008, page 15

<sup>617</sup>Dnevni avaz, 24 April 2008, page 8

*Albanian minority* – Right at the beginning of 1990 and introducing multi-party system in B&H, this population established its' political party called Albanian Democratic Party. Because it did not have support of its own community, it “shut down” itself and remained as Association called Union of Albanians in B&H, working like such today. Estimates are that there are around 12.000 members of Albanian national minority living in Federation of B&H. In addition, according to data cited in the Bureau for Human Rights from Tuzla Report, around 10.000 Albanians live in Sarajevo. The number decreased during the war through displacement, so the estimates are that in FB&H there are around 4.000 to 5.000 Albanians. General impression is that rights of Albanians are now far bellow the ones they had in Socialist Republic of Bosnia and Herzegovina. At that time, they had various qualifications and were positioned at certain high levels and different occupations. In addition, they were deans of faculties, directors of institutes and institutions, directors of clinics etc. Today they have none of this and governments relate to them quite incorrectly. According to statements of members of this minority, their representatives are discriminated in some life segments, especially in employment, and representatives of political parties have no interest in protecting them.<sup>618</sup>

*Slovenian minority* – Around 800 to 1.200 members of Slovenian national minority live in Bosnia and Herzegovina and around 3.900 members of Association of Slovenians. Number of members of association comes from the fact that large number of mixed marriages children is in association. There are 350 to 500 Slovenians living in Sarajevo now. Association “Cankar” organises cultural, human, sports, traditional activities and acts completely independently in protection of all rights deriving from

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<sup>618</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, pages 10 and 11

the state Law.<sup>619</sup> The beginning of 2008 marked the 15<sup>th</sup> anniversary of renewal of Slovenian cultural society “Cankar” that contributed to preservation of Slovenian language and culture in B&H.<sup>620</sup>

*Italian minority* – Around 70 members of Italian national minority live in Sarajevo Canton. Only two associations of Italians exist in B&H – one in Sarajevo, second in Tuzla. Data state that this minority has no problems regarding the economic-social rights in Sarajevo. Certain number of elderly members of Italian national minority moved to Italy during the war. Some of them returned and some regulated their status by permanent residence in Italy.<sup>621</sup>

*Macedonian minority* – Association of citizens of Macedonian national minority works in Sarajevo. Weakly organised work of association is consequence of indifference of minority representatives on issues of realization of rights of Macedonians. Around 800 Macedonians lived in Sarajevo before the last war (1992-1995). However, today, according to free estimates, lives around 200 to 300. Among Macedonians that lived and still live in Sarajevo the most are craftsmen. Before the war in B&H there were Macedonians employed in various institutions as doctors, medical staff with high school qualifications in Sarajevo hospitals etc. Members of Association of Macedonians in Sarajevo are not satisfied with their relations with their embassy because no help is provided for them, while they have very correct relations with the governments. Before the war, they had their Association’s magazine “Macedonian” but because of small interest, it no longer exists. The impression is

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<sup>619</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, pages 8 and 9

<sup>620</sup>Oslobodjenje, 16 March 2008, page 43

<sup>621</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, page 9



that this association works disorganised, does not have firm leadership, and it might be said that like most of associations of national minorities in Sarajevo they are “vegetating”.<sup>622</sup>

*Minorities in Republic of Srpska* – According to estimates, around 11.000 members of national minorities live in Republic of Srpska, excluding members of Roma national minority. When it comes to Roma, estimates are drastically different. It supposed that there are around 11.000 to 15.000. Data from Helsinki Parliament of Citizens, Banja Luka, are partial for both B&H entities and relate to national minorities: Jews (850), Hungarians (130), Italians (around 300) and Ukrainians (40). According to this non-governmental organisation from Banja Luka, 89 associations of national minorities works in both entities, out of which around 50 are Roma organisations.<sup>623</sup> Encouraging data is that building of Jewish cultural centre is soon to begin in Banja Luka. City of Banja Luka awarded Jewish municipality of Banja Luka parcel of 5000 square metres. This was result of long lasting negotiations between Jewish Association and governments of Banja Luka and Republic of Srpska and it resulted also in solving the issue of return of place where Jewish cemetery was. City of Banja Luka recently opened Club of National Minorities on 200 square metres place as residence of most of Banja Luka’s associations and Association of National Minorities of Republic of Srpska. City invested 20.000 convertible marks in renewal of this Club. Annually it supports associations with 65.000 convertible marks, the sum awarded in 2007. At Association of National Minorities say that positive trends of budget financing are also in municipalities like Prijedor, Gradiška, Prnjavor, Dobo

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<sup>622</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, page 10

<sup>623</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, page14

and Bijeljina, while eastern part of Republic of Srpska is completely neglected.<sup>624</sup>

Even though foundation stone for synagogue was placed on 23 April 2001, Jewish municipality of Mostar did not get permission until today for construction of religious building in this city. The reason is that in the meantime the location at Bulevar, assigned to be a place for synagogue seven years ago, found itself in area nearby UNESCO heritage protected area.<sup>625</sup>

Because of the fact it's bordering upon Serbia and Croatia whose majority people are also constituent in B&H, Bosnia and Herzegovina, for large number of legally recognized national minorities and their small numbers (apart from Roma) never got the feeling to solve minority issues more quality. It mostly deducted in post war period to regulating position of constituent peoples being minority on certain territories while "real" minorities were forgotten (the word is about members of 17 national minorities in B&H).<sup>626</sup>

### *4.3. Right of Constituent Peoples*

According to present Constitution and laws three constituent peoples (Bosniaks, Croats and Serbs), members of 17 legally recognised national minorities, and citizens- members of others live in B&H. Even though, in 2000, the Constitutional Court of B&H passed a decision on constituency of all people in B&H in its entire territory, practical implementation of this

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<sup>624</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, page15

<sup>625</sup>Dnevni avaz, 16 November 2008, page 6

<sup>626</sup>Analysis on Application of State Law on Protection of Rights of Minorities, Bureau for Human Rights, Tuzla, page6

decision remains problematic. Reports and media reporting show that beside the existing legal guarantees, those nations that are minority in their environment suffer specific sort of discrimination. At the same time in accordance with their orientation, media favour specific national group in their reporting and point out partial endangered of one of constituent peoples.

So for example, Dnevni list from Mostar published a press release of county board of HSS-NHI stating that abuses, robberies, threats, beating up and murders of people that are minority happen too often in B&H, and lately it became more expressed in Sarajevo.<sup>627</sup>

Regarding the rights of constituent peoples, it is interesting that out of 984 texts, analysed in 2008, majority related to Croats (340), then to returnees in general and national balance (223), then Serbs (219) and the least, 150 articles, related to Bosniaks.

#### *4.3.1. National Balance*

Glas Srpske, dated 19 March, reports on disrespect of principle on national representation of constituent peoples in institutions of B&H stating “Serbs are the least employed” in state government institutions. “Three Serbs out of 30 employed work in Official Gazette of B&H”, Glas Srpske quotes Lazar Prodanović, SNSD representative at Parliament of B&H. Furthermore, “878 Bosniaks, 689 Croats and – 498 Serbs are employed in B&H Border Police”, while on the other hand, PDP executive director, Gavriilo Antičić, considers that “statements

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<sup>627</sup>Dnevni list, 9 February 2008, page 3

that there are most Serbs among government officials in B&H are arbitrary”.

Dnevni avaz also wrote on unequal representation in state institutions. According to this newspaper the problem is that 42, 3 percent of directors are Serbs, followed by Bosniaks with 30, 8 percent, while Croats hold the third place with 23 percent of representation. This is the result of analysis made for international organisations. According to this analysis, Bosniaks are most represented as secretaries of state ministries.<sup>628</sup>

It is necessary to establish national balance in Cantonal Institute for Public Health from Mostar, wrote Dnevni list, dated 15 January, and adds – out of 42 employed at Institute 38 are Bosniaks, even though the real problem is that out of entire number of employed persons only three are doctors while others are with lower qualifications.

769 Bosniaks, 244 Croats, 61 Serbs and 22 persons declaring as others are employed in 16 ministries at Government of FB&H. According to Glas Srpske, these data are the best evidence that Constitution of B&H and decisions of Constitutional Court of B&H on constituency of peoples are not respected in FB&H. Moreover, devastating data is that “less than 2 percent of Serbs is working in FB&H”.<sup>629</sup>

Out of 210 employed in headquarters of Ministry of Foreign Affairs of B&H, 108 are Bosniaks, 54 Serbs, 41 Croats and seven are members of others, as stated in information of General Affairs Division at MFA B&H.<sup>630</sup>

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<sup>628</sup>Dnevni avaz, 17 March 2008, page 4

<sup>629</sup>Glas Srpske, 28 July 2008, cover

<sup>630</sup>Nezavisne novine, 18 November, page 3

#### *4.3.2. Position of Croats*

In the beginning of January, columnist of daily newspaper *Oslobođenje* re-examines position of constituent peoples in B&H. “More and more serious problem for Croats, the third people, represents the fact that large number of them moved out and there are less and less of them in comparison to Bosniaks and Serbs.”<sup>631</sup>

Agency for Assistance to Croats in B&H is being established in Bosnia and Herzegovina due to crushing data that 92, 62 percent of Croats is missing in Republic of Srpska comparing to pre-war period, 84 percent returned to Federation of B&H while 86.298 Croats is exiled. Croatian educated personnel from Sarajevo are unwanted in the government but also in party bodies. The ones in government come from parties that don't have Croatian sign and Željko Komšić is the strongest in such personnel.<sup>632</sup>

Bosniak children in Central Bosnia Canton are in subordinated position. This is illustrated by data that education of one pupil who is Bosniak nationality costs 1.189 convertible marks while Croats have to give 5.702 convertible marks for their children, claims Munir Karić, representative at Central Bosnia Canton Parliament.<sup>633</sup>

Club of Croatian representatives at House of Peoples of B&H rejected statement of Haris Silajdžić in which he declared decision on ratification of agreement on dual nationality of B&H and Croatia as destructive for vital interest of Federation of B&H. The Club accused Silajdžić that he is conducting ethnic cleansing of Croats. Franjo Topić, director of Croatian Cultural Society

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<sup>631</sup>*Oslobođenje*, 2 January 2008, page 7

<sup>632</sup>*Dnevni list*, 3 January 2008, page 6; and 6 January 2008, page 5

<sup>633</sup>*Dnevni avaz*, 19 January 2008, page 12

Napredak, warned Croatian state on this case by letter and pointed out to noxiousness of abrogation of dual citizenship.<sup>634</sup>

In Parliament, Government and institutions of Canton Tuzla majority are Bosniaks while there are no Croats at head positions.<sup>635</sup>

During first six months of 2008, 800 citizens sought help from Office of Ombudsman of FB&H in Herzegovina-Neretva Canton for violation of human rights and freedoms. In 48 percent of cases, Croats sought help most often, then Bosniaks, 29 percent, and Serbs, Slovenians and others were represented with 23 percent. Citizens complained mostly on various forms of discrimination (51 percent), then 32 percent complained on work of judiciary and 14 percent on social protection, labour and property.<sup>636</sup>

Numerous media reported on problems at Ministry of Foreign Affairs of B&H. "Great Personnel Clean-up", Alakalaj is conducting according to his own judgment without any logic and criteria. Case of Nada Zdravič, advisor at the Public Relations Office, could reach court epilogue. Everything started with the arrival of Zlatan Burzić to position of advisor to the Minister of Foreign Affairs of B&H, Sven Alkalaj, placing the work of Public Relations Office under direct control. "I don't like taking of blood count, but this is all happening because I'm Croatian and I was appointed regularly through public competition in 2000. Out of 1.200 candidates, I was 28<sup>th</sup> by successfulness. It is not a secret that Minister Alkalaj sometimes uses small provocations. For example, during one official lunch he ironically asked me what kind of Croat am I when my last name ends with "ć". Under the circumstances, my father was born in Umag and he was

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<sup>634</sup>Dnevni list, 14 March 2008, pages 2 and 4

<sup>635</sup>Dnevni list, 29 January 2008, page 10

<sup>636</sup>Dnevni list, 25 July 2008, page 8

respectable Sarajevo doctor, graduated at Faculty of Medicine in Zagreb and died in car accident in Croatia where he was buried, in town of his birth – Umag. This “hard č” was in birth certificates ever since my grandfather’s time and it remained like that until today. While presenting Burzić to colleague Došljak and advisor Nada Zdravič, Alkalaj said in sharp tone ‘Zlatan Burzić is me’. This was probably supposed to be a clear message what will be coming in future”, cites Zdravič.<sup>637</sup>

Non-governmental organisation Croatia Libertas informs that largest municipalities and cities in Federation of B&H are completely ethnically cleansed thanks to Bosniak parties politics that “intimidate non-Bosniaks and violate their fundamental human rights by denying them the right to work.”<sup>638</sup>

#### *4.3.3. Position of Serbs*

As reaction to attack, Ljubica Đokić-Spasojević from Sarajevo who was burned by two minors in front of her building, the Regional Committee of SNSD called for the “protection of Serbs in Sarajevo”. Authorised investigative bodies established that this crime was not nationally motivated. On the same day, within article on horrifying crime in Sarajevo, Glas Srpske brings introduction titled “Hatred towards Serbs”. The article says. “...horrifying crime in Sarajevo committed over old woman Ljubica Đokić Spasojević, who was burned in front of her

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<sup>637</sup>News published at portal

<http://www.sarajevo-x.com/forum/viewtopic.php?f=3&t=56793>

<sup>638</sup>Glas Srpske, 20 August, page 3

apartment by minors full of hatred, and only a small number of Sarajevo media stated this”.<sup>639</sup>

The same newspaper publishes article “Serb Hunt Continues in Vlasenica”, pointing out that the Prosecutor’s Office of B&H accuses and arrests Serbs with no aversion and at the same time covers up numerous crimes committed over Serbian people.<sup>640</sup>

Serbs in Sarajevo do not have basic human rights and according to Democratic initiatives of Serbs’ data, 25 to 30 thousand Serbs live today in Canton Sarajevo and they do not manage to realize, first, right to work illustrating this with the data that in public sector companies is less than five percent Serbs employed.<sup>641</sup>

Seventeen Serb families cannot return to Jasike at Sarajevo periphery because local authorities do not allow them to. The reason is, as claimed by the local government, that their houses are in water-protection zone, neglecting the fact that around 500 other facilities were illegally built in the same zone.<sup>642</sup>

Glas Srpske, in its double issue of 8/9 March, reported that symbols of Republic of Srpska on entity borders are more often target of vandals. In less than two months, mast with flag of Republic of Srpska, near the Pelagićevo-Gradačac highway. was damaged twice.

Ministry of Foreign Affairs of B&H is the only institution in B&H not respecting constituency of peoples. Not only they do

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<sup>639</sup>Sources: Dnevni avaz, 23 January 2008, pages 9 and 17; Glas Srpske, 23 January 2008, page 8

<sup>640</sup>Glas Srpske, 30 January 2008, page 9

<sup>641</sup>Glas Srpske, 4 February 2008, page 2

<sup>642</sup>Nezavisne novine, 13 March 2008, page 9



not have Serbs on leading positions but also they do not have Serbian language and Cyrillic on web site. <sup>643</sup>

“Mile Stanojević, Serb, Beaten” in Srebrenica settlement Soloćuša (Glas Srpske dated 16/17 August, front page). Two unidentified young men beaten this taxi driver telling: “We know you’re Chetnik from Zalazje, we’ll cut your throat in Potočari”.

#### *4.3.4. Position of Serbs – right to self-determination / referendum in Republic of Srpska*

During 2008, large number of media reported, in deflection, on announcements of some politicians and non-governmental organisations on possibility to have referendum in Republic of Srpska on its separation from Bosnia and Herzegovina. One of the reasons for such announcements is also declaration of Kosovo’s independence in first half of the year.

Prime minister of Republic of Srpska and President of SNSD, Milorad Dodik, stated “that the principle of self-determination for separation is supreme principle of UN Charter and he would like if that right is incorporated in B&H Constitution as possibility”. High Representative, Miroslav Lajčak, responded that Republic of Srpska does not have that right. <sup>644</sup>

Association of non-governmental organisations SPONA requested from National Assembly of Republic of Srpska to use the right to self-determination of the people and declare independence of Republic of Srpska because Kosovo was allowed to do that too. In case the Assembly do not do that, SPONA will

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<sup>643</sup>Glas Srpske, 11 March 2008, page 3

<sup>644</sup>Sources: Dnevni avaz, 30 January, page 8; and Oslobođenje, 31 January 2008, page 4

start that activity because, as stated in its press release, it represents 70 percent of citizens of Republic of Srpska.<sup>645</sup>

At the meeting in Brussels, Steering Board of Peace Implementation Committee (PIC) adopted Declaration saying that none of entities has the right to secession. In its' Declaration PIC points out "the importance of freedom of expression, including free and independent media, and concluding that Dayton Peace Agreement obliges B&H, including both entities, to ensure the highest level of internationally recognized human rights and fundamental freedoms."<sup>646</sup>

President of Parliament of Montenegro, Ranko Krivokapić, stated during his visit to Banja Luka that "RS is directly recognising Kosovo when seeking secession".<sup>647</sup>

"Although it is considered to be non-constitutional act, the referendum for independence of RS could find its' legitimacy in the right to self-determination. Even when the latter breaks the principle of sovereignty and territorial integrity of B&H. Kosovo is the ace card of secessionists when objecting to implementation of double standards in regards to usage and realization of this elementary right of peoples", writes Dennis Gratz and adds "however, referendum on Republic of Srpska independence, apart from its political attraction and promoted justification, is just not possible. Beside inexistence of adequate legislation, obstacles are mainly functional and ethical by character".<sup>648</sup>

Council of Serbian National Minority from Benkovac, city in Croatia, asked Banja Luka for help due to frequent Croats'

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<sup>645</sup>Dnevni avaz, 19 February 2008, page 11

<sup>646</sup>Dnevni avaz, 28 February 2008, page 2

<sup>647</sup>Nezavisne novine, 21 February 2008, page 9

<sup>648</sup>BH Dani, 21 March 2008, pages 26 and 27

attacks, making their lives and property endangered, as stated in the letter.<sup>649</sup>

#### *4.3.5. Position of Bosniaks*

Bosniaks are selling their property again and moving out from east Herzegovina. In the latest row of attacks, in Bihovo settlement, vandals entered the house of Murat Alijagić and broken joinery and windows. Troubles of Bosniaks in Srebrenica are visible also in education. School curricula being implemented there are the one of smaller entity and children talk in ekavian dialect and don't know Latin characters.<sup>650</sup> More than 600 pupils of Bosniak nationality in primary and secondary schools in Livno attend classes in Croatian language for 15 years.<sup>651</sup>

Faruk Vele writes in his column on disappearance of Bosniaks, pointing out that out of 4.000 Bosniaks that lived in urban part of Gacko before the war only one Bosniak woman lives today, while in Bileća out of pre-war 2.000 there are only 13 of them. "East Herzegovina is painful confirmation that the project of ethnic cleansing succeeded in complete", concludes Vele.<sup>652</sup>

As pointed out by International Red Cross in B&H, out of total number of missing persons in B&H 87, 8 percent are Bosniaks.<sup>653</sup>

There are no Bosniaks on the list of police officers in charge in Srebrenica, while at the same police station several Serbs are employed as police officers, being at the same time on

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<sup>649</sup>Nezavisne novine, 14 May 2008, page 4

<sup>650</sup>Dnevni avaz, 15 January 2008, page 10; and 22 January, page 11

<sup>651</sup>Nezavisne novine, 14 March 2008, page 6

<sup>652</sup>Dnevni avaz, 16 January 2008, page 3

<sup>653</sup>Dnevni avaz, 28 January 2008, page 8

the list of suspects for war crimes committed in 1995 in Srebrenica.<sup>654</sup>

Serb boys in Vlasenica made their Bosniak coevals to “kiss flag of Draža”, which is “product of educational system developing for 12 years now in Republic of Srpska”, stands in commentary of *Dnevni avaz*, dated 4 March.

At beginning of September, couple of Bosniak students attending police course at the Centre for Police Education in Banja Luka, telephoned asking for help from representative of SDA at National Assembly of Republic of Srpska, Ramiz Salkić. The reason was frequent nationalistic provocations coming from colleagues of Serbian nationality, also attending this course.<sup>655</sup>

#### *4.3.6. Return in general*

Ombudsmen of Federation B&H estimated that the right to return is the most violated right in Federation. It is only “right on the paper” while “authorities ignore ombudsmen recommendations”. According to Esad Muhibić, ombudsman, “in 2007, the ruling political parties gradually boycotted Annex 7 of Dayton Peace Agreement guaranteeing the right to return. Through this they managed to divide B&H on religious and national criteria and turn other two peoples in their territory to minority with minimum percent up to 10 percent.”<sup>656</sup>

Minister for Human Rights and Refugees of B&H, Safet Halilović, stated that 4.977 persons returned to Republic of Srpska and 1.888 persons to Federation of B&H. The revision of

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<sup>654</sup>Oslobođenje, 7 March 2008, page 11

<sup>655</sup>Dnevni avaz, 3 September 2008, page 8

<sup>656</sup>Nezavisne novine, 28 February 2008, page 8

number and status of displaced persons in B&H confirmed that status for about 125.000 persons.<sup>657</sup>

Around 8.000 returnees of Serbian nationality and around 700 Croats live in Drvar. Every eighth returnee is employed.<sup>658</sup> Out of 7.000 returnees in Sanski Most, only 76 are employed, as stated from Serbian Civil Council. Most of them work in police, 25, while only four work in municipality administration.<sup>659</sup>

In the interview for *Nezavisne novine*, dated 5 April, Banja Luka's Bishop, Franjo Komarica pointed out that there is no political will for return and that the most of returnees' troubles are basic material issues, lack of home, infrastructure, employment and social care.

Ministry for Human Rights and Refugees of B&H, Federal Ministry of Displaced Persons and Refugees, Ministry for Refugees and Displaced Persons of Republic of Srpska and Brčko District signed the Agreement on Association and Manner of Realization of Funds for Support to Process of Return in B&H, in 2008, in the amount of 38, 8 millions of convertible marks. Out of this amount, 21,8 millions convertible marks will be for joint project for housing reconstruction.<sup>660</sup>

#### *4.4. Deprivation of Citizenship (Abu Hamza and Algerian Group Cases)*

During the citizenship revision process, competent B&H Commission passed a decision to deprive 660 persons of citizenship, mainly afro-Asian origin, who received their

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<sup>657</sup>Glas Srpske, 28 February 2008, page 4

<sup>658</sup>Dnevni list, 5 February 2008, page 7

<sup>659</sup>Nezavisne novine, 22 February 2008, page 5

<sup>660</sup>Dnevni avaz, 15 April 2008, page 9

citizenship under suspicious circumstances. The B&H Commission also deprived Syrian Abu Hamza, the head of ex-mujaheedins group, of citizenship by which, together with others from the group, he lost his right to asylum. Bosnia and Herzegovina citizenship was taken away from Mohammed Maktouf, citizen of Iraq, who was found guilty for crimes against humanity and Kamel Ben Karray from Tunisia, for providing false information while signing up to register of citizens of B&H. In case that Hamza cannot be deported to the country of origin, due to the threat of being sentenced to death penalty in Syria, B&H government would deport him to the country he came from to B&H, and in this case, it is Croatia. Syrian Imad al-Husein, known as Abu Hamza, stated to media that Sulejman Tihić and Mirsad Kebo, both high officials of SDA, are banishing him from Bosnia and Herzegovina and that it is country with no human rights. He refused request of the State Office for Foreigners to leave the B&H voluntarily. Dragan Mektić, Head of Office for Foreigners at Ministry of Security of B&H, reacted on this and for this case judged the system as inefficient. "This means that apart from all regulations and laws in B&H, Abu Hamza is currently staying in our country without any status, i.e. illegally", said Mektić. Human Rights Watch directed a letter to Minister of Security of B&H, Tarik Sadović, expressing its concern for deportation of Attou Mimoun from B&H to Algeria on 9 December last year and possible further deportations caused by deprivation of B&H citizenship. Helsinki Committee for Human Rights in B&H requested from Constitutional Court of B&H to suspend the work of State Commission for Revision of Decisions on Naturalised Citizenships in B&H until its' mandate is harmonised with the Constitution of B&H. The Joint Commission for Human Rights, Rights of Child, Youth, Immigration, Refugees, Asylum and Ethics of both Houses of Parliamentary Assembly of B&H adopted the Report on Work of the Commission for Revision of Naturalised Citizenships in B&H and stated that human rights were not violated during the process

of revision and checking. It also stated that all procedures were in accordance with the law. European Court of Human Rights in Strasbourg passed a decision to stop deportation of Abu Hamza from B&H until further notice. Around 2.500 people gathered in Zenica at support meeting for Abu Hamza titled "Forgive us Hamza". "We did not do anything wrong. Therefore don't leave these children without their fathers", said on the occasion Aiman Avad, president of Association "Ensarije". Winners of highest war acknowledgments from Zenica-Doboj Canton participated at this event and invited B&H citizens to raise their voice against banishing former members of Army of B&H. Glas Srpske on front page of its double issue of 2/3 February also published a fair article on support meeting to Abu Hamza in Zenica. Following day, 4 February, Glas Srpske transmits message of participants of the meeting that "Dodik is bigger threat for B&H than Abu Hamza" and that "Islam is their visa for future".<sup>661</sup>

If the state would take care of its' citizens as it does of those that enter our country illegally, then even the western living standard could not parry us, concludes journalist of Dnevni avaz after the visit to recently opened Immigration Centre in Sarajevo, which has been compared with the five stars hotel.<sup>662</sup> Journalists of Oslobođenje who established that the centre is surrounded with wire and is in the forest denied this. He also stated that Imad al-Husin, known as Abu Hamza, lost ten kilograms since he's in the Immigration centre in East Sarajevo. This happened because, as reported by Oslobođenje, he does not trust in the quality of

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<sup>661</sup>Sources: Dnevni list, 24 January, page 3; 26 January, page 3; 30 January, page 2; 4 March, page 7; Oslobođenje, 29 January, page 10; 1 February, page 4; 5 February, page 8; 7 March, page 4; Nezavisne novine, 3 February, page 2; Glas Srpske, 4 February, page 3; 22 – 23 March, page 4; and Dnevni avaz, 28 March 2008, page 10

<sup>662</sup>Dnevni avaz, 28 October 2008, page 9

meals given to him and eats only when his family comes to visit bringing halal-food. <sup>663</sup>

Five of six members of “Algerian group” will be released out of Guantanamo jail in first half of 2009. This is because American Court in Washington established that there are no evidences that they have planned hostile activities to American targets in B&H in any way. <sup>664</sup> Let us remind that in January 2002 six B&H citizens – Mustafa Idir, Mohamed Necla, Hadž Boudella, Lakhdar Boumedienne, Belkacem Bensayah and Saber Lahmar – were extradited to American military forces under suspicious that they were connected with international terrorist groups – Al Qaida and Osama Bin Laden. They were suspect for planning the attack to American and British targets in B&H. Even though at the first instance the Supreme Court of Federation of B&H ordered their release with explanation of lack of elements for their further detention, Washington demanded from B&H government to extradite them to military forces of United States of America considering that United States still consider them as threat to American interests. At the time, officials pointed out that Mr Belkacem still had the number of key Al Qaida operative in his cell phone memory when he was arrested, and that he made dozen calls to Afghanistan in September and October. <sup>665</sup>

## 5. Right to Life and Human Dignity

We found 1.777 articles published in this category in 2008. Most of the articles related to murders (600), rights of victims

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<sup>663</sup>Oslobođenje, 15 November 2008, page 6

<sup>664</sup>Oslobođenje, 3 November and 21 November 2008

<sup>665</sup>Source: Voice of America, <http://www.voanews.com/bosnian/archive/2002-01/a-2002-01-18-5-1.cfm>



(487), danger of brucellosis epidemics (166), suicides (148), death threats to public personalities (129), problem of pollution in environment (104), inadequate living conditions that are often cause of death (56), unconscious and unprofessional medical treatment (48), as well as humanity and (non-)violation of human dignity (39) in general.

On several occasions, media reported **on inadequate and often brutal police methods**. Glas Srpske reported on event of 5 January 2006 in Bjelogorci, village near Rogatica, when during the EUFOR action for arresting Drago Abazović, suspected for war crimes, his wife Rada (47) was killed and his nine years old son Dragoljub got severe injuries – damaged part of his backbone, left foot, abdomen and small intestine.<sup>666</sup> Brothers Vrančić from Banja Luka reported that some 20 police officers in civilian have beaten them brutally by hitting them in head with guns. According to them, there was no specific cause for this violence and police patrol who accidentally came saved them (Nezavisne novine, 6 February, page 5). After the accusation from Vrančić brothers from Banja Luka that they were brutally beaten by the police, the case came to District Prosecutor's Office in Banja Luka (Nezavisne novine, 8 February, page 13). Miljan Pucar, attorney of orthodox priests, Jeremija and Aleksandar Starovlah, asked the Deputy High Representative in B&H, Raffi Gregorian, to help them charge the damage, since Radovan Karadžić has been arrested and evidence showed that both Starovlah were not part of the support network. Both Starovlah were severely injured during the SFOR action, aiming to arrest Karadžić on 1 April 2004, at Parish home in Pale. In the report of the Parliamentary Assembly of B&H Commission for establishing the truth about events in Pale stands, "Starovlahs were injured by SFOR's excessive use of force". SFOR paid 6.150 EUR to Church municipality of Pale for damaging Parish house, while for medical

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<sup>666</sup>Glas Srpske, 5- 7 January, page 2

treatment of Starovlahs they offered 70.000 convertible marks but as act of good will and not as remuneration.<sup>667</sup>

In the beginning of March 2008, Samid Sinanović from Visoko went to the unit of undertaker service of Public communal company City cemeteries Visoko, to report death and request to organise funeral for his brother's child who was born dead. However, when deputy director of public service City cemeteries Visoko, Sabahudin Ćosović, made a contact with employee of mortuary at Clinical Centre of the University of Sarajevo, he was informed that City cemetery Visoko cannot take the body of dead born child. This is due to the contract between the Clinical Centre and Pokop Company from Visoko (under ownership of Muslim priest from Visoko, Mehmed Omanović) on taking and burying dead born babies, amputated body parts and other pathological waste.<sup>668</sup>

### *5.1. Murders*

Murders were frequent topic in media reporting, mainly filling columns of black chronicles of analysed media. Mostly it was mafia and various groups close to crime encounter and less were murders for robbery. Couple of juvenile delinquency cases also were reported. Murders were one of the most represented topics in printed media. It is visible that reporting on murders of men is more present than reporting on murders of women. Based on the analysis of articles, conclusion is that most of the media tend to be sensationalistic and then violate fundamental codes of ethics of journalism. By citing violent scenes in detail they encourage violence and break the article 3 of Press Codex in

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<sup>667</sup>Glas Srpske, 26 – 27 July 2008, page 2

<sup>668</sup>Slobodna Bosna, 22 May 2008, pages 36 - 38

B&H.<sup>669</sup> Dnevni avaz, for example, published article on woman killed by her spouse: “He tried to strangle his wife with laces and then killed her with an axe... According to statements of police inspectors in charge, there was blood everywhere in the room where the woman was killed”.<sup>670</sup>

The event receiving most media attention in past period was the murder of a boy, Denis Mrnjavac: “Because of case of Denis Mrnjavac, boy who died after being attacked in the tram without any cause, many are worried for their safety and safety of their children.”<sup>671</sup> “One of them pulled a knife and stabbed Denis in his stomach after what all three ran from tram. Police took Nermin Sikirić (17) in custody because evidence shows that he stabbed Denis Mrnjavac. Later on, Ademir Lelović (18) and Berin Talić, who participated in beating and murder of Denis Mrnjavac, were arrested in Stari Grad. It is established that Ademir Lelović just entered his 18 and is allegedly student of Catering school.”<sup>672</sup>

Moreover, media tend to stigmatise person who committed a murder and by that additionally encourage violence in the society. Dnevni avaz reported on multiple murders in village Lipinica: “Monster killed six: Yesterday morning, couple of minutes before six o'clock, in Lipnica village, Trstije hamlet near Tuzla, forty-five years old Tomislav Petrović from Trstije, killed six persons and severely injured one in his murderous raid on his cousins and neighbours. According to neighbours, witnesses of the massacre.”<sup>673</sup>

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<sup>669</sup>“Press will not under any circumstances encourage criminal acts or violence“, Article 3, Press Codex, Sarajevo: BH Press Council, 2006

<sup>670</sup>Dnevni avaz, 26 January 2008

<sup>671</sup>Nezavisne novine, 17 February 2008

<sup>672</sup>Dnevni avaz, 07 February 2008

<sup>673</sup>Dnevni avaz, 01 June, 03 June., 04 June., 06 June, 07 June, 13 June., 24 June, 28 June, 02 August., Oslobođenje, 01 June, 23 June., 25 June, 28 June, 14 August., Nezavisne novine 07 August

A murder, about which media wrote a lot, was bomb explosion at Pale killing Vlatko Mačar and Mladen Vlaški. Media paid much attention on murder of Mačar claimed to be one of the episodes in Pale mafia encounters. Milan Vlaškić (25) was killed too. As media reported:

*...in early morning hours, on Wednesday, 30 January, Vladimir Vlatko Mačar, powerful local criminal was liquidated by activated car bomb at Pale. Accidental passenger Milan Vlaškić was killed on the occasion and five more citizens that are innocent were injured.*

After the murder at Pale, Nezavisne novine report sad confession of Mara Vlaškić, mother of innocent Milan:

*Milan was everything to me and now I am all alone.*<sup>674</sup>

Apart from individual murder cases, media regularly monitored reports on committed murders published by Ministry of Internal Affairs (MIA):

*...Last year there were 29 murder cases in Federation and all were resolved. Number of criminal acts and misdemeanour decreased but we are not satisfied with the safety conditions in highway traffic because the number of car accidents increased in 11,6 percent.”, said Alić during the break at the working meeting of Ministers and police commissars for improvement of coordination of police.*<sup>675</sup>

Nezavisne novine (05.01.2008.) and Dnevni list (06.01.2008) published report on registered murders committed in Republic of Srpska.

“Only one murder case hasn’t been resolved: In first half of the year 122 suicides were registered, seven more than in

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<sup>674</sup>Sources: Slobodna Bosna, 31 January, pages 6 – 9; “Nezavisne novine“, 1 February, page 3; and 2 February, page 3

<sup>675</sup>Nezavisne novine, 12 March 2008

previous period. There were nine assaults to senior police officers and 121 member of MIA found...”<sup>676</sup>

“137 unsolved murders: ... is from revenge, argue, interest, unresolved property-legal relations, and often murders committed in classical mafia encounters. According to data, Dnevni avaz got from ... 2000, when this police agency was established. Since that time, we have had three unresolved murder cases in District. Among those was the murder of a girl Suzana Simikić, committed in 2001. ... stated Emkić. From 1 January 1996 till 30 June this year there were 744 murders committed in FB&H, out of which 77 weren't yet resolved.”<sup>677</sup>

“Murders, robberies, rapes, car stealing: Murders, robberies, rapes, car stealing... In first six months of 2008 five people were killed in Canton Sarajevo, eight survived attempt of murder and 65 passed... in acts against property stealing, burglaries, robberies; then life and body murders, attempts of murders, severe injuries...”<sup>678</sup>

During 2008, media reported a lot on murder of Milan Vukelić in the end of 2007 in Banja Luka settlement Starčevica, in Jug Bogdan Street, near MIA of Republic of Srpska headquarters. Some media, mainly from Republic of Srpska, considered this as encounter of people related to underground, while media from Federation, predominantly magazines, claimed it to be politically motivated murder. American FBI engaged also in solving this murder<sup>679</sup>, while the Government and MIA RS officially published reward offering 100.000 convertible marks for information on murder of Vukelić.<sup>680</sup>

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<sup>676</sup>Dnevni avaz, 31 July 2008

<sup>677</sup>Dnevni avaz, 01 August 2008

<sup>678</sup>Start BH, 05 August 2008

<sup>679</sup>Oslobođenje, 12 February, page 21

<sup>680</sup>Dnevni avaz, 24 May 2008, page 9

## 5.2. *Suicides*

Reporting on suicides represented a large part of articles in this category. Mostly those were short news or reports without going into motives of committers.

On several occasions, media reported on trends of suicide using the statistics, apart from reporting on individual suicide cases. Dnevni list stated, in the beginning of February, that there were two suicides in four days in Mostar. This concerned their fellow-citizens because the statistics showed that 102 persons committed suicide during the past four years in this town.

As Oslobođenje reported, statistical data concerning Federation of B&H showed that recession (as claimed in the article) caused larger number of suicides in this part of the state, at least in compare to the same period (January) of last year. Only in January 2009, some 20 suicides were registered in Federation of B&H, while during 2008 there were 225 suicides registered in Federation of B&H and 266 in Republic of Srpska. Majority of the suicides are older than 50 (in Republic of Srpska 171 persons of that age died in this way and 122 in Federation) while the least suicides in both entities are the youngest up to 18 (in Republic of Srpska four juveniles raised a hand against themselves and three in Federation).

Statistics for the first half of 2008 is also worrying, the same newspaper warns couple of months later. It showed that even three persons younger than eighteen raised a hand against themselves in that period. By the end of June 2008, 155 persons committed suicide out of which 133 men and 42 women. Most of them aged over 50 (95), while 35 suicides were between 30 and 50. Most of the people committed suicide by hanging (79), then firearms (34), hand grenade (15), drowning (14) while 13 persons

committed suicide by some other means.<sup>681</sup> In first six months of 2008, 155 suicides were registered in Republic of Srpska what is 11, 5 percent more comparing to the same period in 2007. MIA RS data show that most of the suicides (113) are male.<sup>682</sup>

### *5.3. Victims of War*

War in Bosnia and Herzegovina in the beginning of nineties left a large number of civil victims of war behind whose status and existence are questionable even 14 years after the peace agreement.

Marking of date of suffering represents here a significant issue, as the case of 11 July, in Bosnia and Herezegovina, when 8.000 civilians of Bosniak nationality were killed in Srebrenica, in 1995. All media reported in large scale on the event and on marking this tragedy. At the beginning of 2009, the European Parliament proclaimed 11 July as the day of Remembrance on Genocide in Srebrenica. The European Commission also supported the initiative.<sup>683</sup>

Media with Croatian and Serbian sign stressed in their reporting that in B&H there were victims of other nationalities too. Glas Srpske from Banja Luka reported on 17 January that a year of suffering of Serbs in past war in B&H was marked in Skelani. The title of this article published at the front page of Glas Srpske was "Hidden Genocide". Dnevni list from Mostar wrote about platform on victims of World War II held in HKD

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<sup>681</sup>Dnevni list, 28 September, page 20

<sup>682</sup>Dnevni avaz, 25 August 2008, page 8

<sup>683</sup>Source: Deutsche Welle,

<http://www.dw-world.de/dw/article/0,,3947922,00.html>

Napredak citing that “Destruction of Croats from Herzegovina was planned and according to data more than 18.000 were killed”.

Oslobođenje wrote on 3 April that finally, after 63 years, there would be a memorial for victims in Sarajevo. The case is about 55 hanged persons who opposed to Independent State of Croatia (NDH).

Following example testifies that discrimination of victims and their families happens every day in B&H. Police of Republic of Srpska prevented mothers of Srebrenica to put flowers in the building of redemption store in Kravica, on 15 July, in remembrance of 1.500 people from Srebrenica killed in that place in the night of 13 July 1995. Some fifty officers of MIA of Republic of Srpska in village Sandići stopped a hundred of Srebrenica women, headed in two buses and one minibus towards Kravica. Women were told that Police station in Bratunac passed temporary decision on prohibition of their visit to Kravica.<sup>684</sup> Chief of the Police of Republic of Srpska, Uroš Pena, considers that entity police was extremely professional in this case. In interview for Dnevni avaz, Pena rejected any claim that members of Special Unit participated in this, citing that during his three years of mandate he engaged them only in three cases, mainly for searches. He cited that marking of sufferings of Bosniaks in Kravica was for the first time reported this year and it cause some tensions – self-organising of citizens of Kravica on one side and possible participants. In order to prevent the worsening of the situation, especially inter-ethnic relations, police prohibited the gathering, Pena explained.<sup>685</sup>

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<sup>684</sup>Dnevni avaz, 16 July 2008, front page

<sup>685</sup>Dnevni avaz, 20 July 2008, page 5



#### *5.4. Negligent and unprofessional medical treatment*

Inadequate conditions of treatment and especially doctors' mistakes causing death of patients were common topic in media. While Americans publicly admit that they lose 100.000 lives annually due to negligence and mistakes in treatment, here reporting of the mistakes is often hidden for fear from consequences on reputation of institution and doctor. Banja Luka Clinical Centre confirmed that there is no Protocol obliging them to report mistakes and negligence.<sup>686</sup>

Nezavisne novine wrote on 6 February on medical treatment conditions in general, pointing out that private medical institutions in FB&H don't have adequate working conditions and operations are executed without ensured blood.

World Health Organisation allowed usage of child vaccine "euvaks B" against hepatitis B in B&H in the period 2002 to 2007. Jagoda Savić from "SOS telephone 1209" claims that usage of these vaccines was stopped in 2002. However, it was continued with their import in B&H from India. Savić owns photographs of babies with visible deformations of large scale caused by this vaccine.<sup>687</sup>

*Dnevni avaz researches cause of Senada Sadiković death and if mistake of doctor in Hadžići was to blame for her death.*<sup>688</sup>

Police started investigation against doctors from Clinical Centre in Banja Luka, Tomislav Zrilić and Milan Jevtović, for illegal cease of pregnancy of E.Ž. from Jajce by negligent

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<sup>686</sup>Nezavisne novine, 26 May 2008, page 7

<sup>687</sup>Glas Srpske, 22 May 2008, front page

<sup>688</sup>Dnevni avaz, 11 February, page 8

treatment. These two were afterwards arrested and temporary suspended from work at the Clinical Centre in Banja Luka.<sup>689</sup>

Pero Basara died out of cerebral seizure in Lušci Palanka because doctors from Sanski Most refused to provide him help saying he was ensured at Pension-Invalid Insurance Fund of Republic of Srpska (PIO RS) and not Federation B&H.<sup>690</sup>

Ilija Anić and his daughter Ilijana from Zenica reported a surgeon Ibrahim Cero to police, Cantonal Prosecutor's Office and Management of Cantonal hospital in Zenica, charging him for recent death of wife and mother Anica who was operated three times in Zenica and then two times in Tuzla. Day after the first operation doctor Cero went to Hungary and no one of his colleagues did not come to visit operated Anica for six days, until her release from the hospital. When she came to hospital to renew bandage, three days after being released, large suppurate and complications were established. Only after the third operation it was established that doctor Cerić cut the woman's intestines causing her death.<sup>691</sup>

Parents of 31-year-old pregnant woman Jasmina Bratić from Mostar asked doctors of Regional medical centre "Dr. Safet Mujić" for the cause of her death. The doctors said she died of complications caused by high blood pressure that can be deadly for both mother and a child during the pregnancy. Parents and her husband, Anhos Bratić, believe that Jasmina fell into coma because she received three different pills through infusion – pill for blood pressure, aspirin and nitro-glycerine – and she was prescribed bromengon to stop the milk and iron – 10 milligrams ample.<sup>692</sup>

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<sup>689</sup>Glas Srpske, 27 March; Nezavisne novine, 27 March, page 3; 28 March, page 2

<sup>690</sup>Glas Srpske, 30 May 2008, front page

<sup>691</sup>Dnevni avaz, 16 September 2008, page 12

<sup>692</sup>Dnevni list, 10 September, page 7

### *5.5. Prohibition of Torture*

Focus was mainly on treatment of prisoners in institutions across Bosnia and Herzegovina, as well as threats of pressing charges for mistreatment and tortures in war prison camps in B&H.

According to Amnesty International, the police and prison guards in B&H torture prisoners and such practice remains unpunished for a longer period. The worst condition is in Zenica prison where prisoners were beaten in solitaries and violators of rights of prisoners remain unpunished.<sup>693</sup> Commission for Human Rights in B&H requested urgent allocation from Penitentiary in Zenica. Twenty-nine prisoners lived there in inhuman conditions and total number of prisoners was 200 over allowed number.<sup>694</sup> A prisoner from Banja Luka Penitentiary Tunjice claims that sergeants literally beaten rebellions and after that Ombudsman of Republic of Srpska, Nada Grahovac, visited the prison.<sup>695</sup>

European Commission donated 200.000 EUR for improvement of conditions in prisons in B&H. That money was mainly for training of prison officers.<sup>696</sup>

Movie titled “Martyrs” was promoted in Trebinje. The movie represents a testimonial on tortures over Serbs during the wars in B&H.<sup>697</sup>

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<sup>693</sup>Dnevni avaz, 3 February; Nezavisne novine, 7 February; Oslobođenje, 7 February; Glas Srpske, 7 February 2008

<sup>694</sup>Oslobođenje, 8 August 2008, pages 2 and 3

<sup>695</sup>Dnevni avaz, 29 March, page 10

<sup>696</sup>Dnevni avaz, 22 February, page 7

<sup>697</sup>Nezavisne novine, 18 February, page 9

### *5.6. Death Threats to Public Personalities*

Unknown person called on liquidation of Serbs in B&H through the internet site Bosnia. After the reaction of Association Front from Tuzla, the State Investigation and Protection Agency (SIPA) started investigation related to the content of this internet site.<sup>698</sup>

In article, dated 6 April, *Nezavisne novine* respond to alarming frequency of threatening notes and calls to public persons and citizens. Drago Kalabić, president of Club of SNSD in House of Representatives of Parliament of B&H, Branislav Dukić, president of Association of Camp Inmates of Republic of Srpska, bishop Grigorije etc. received such notes. According to Sead Žerić, Deputy Chief Prosecutor of District Prosecutor's Office in Banja Luka "they receive around 110 reports on criminal act of endangering security, and threats are regarded also as such".

Car belonging to Semin Borić, Minister of Finance of Herzegovina-Neretva Canton, was set on fire hundred metres from his house in Konjic. Borić claims that he was not in conflict and that there is not a doubt that any political motive stands behind attack on official of SDA.<sup>699</sup>

Lutvo Fazlagić, president of Meylis- Islamic Community in Gacko, received threats from a person representing himself as Duke Mile Blagojević saying that he will cut his throat in front of his children.<sup>700</sup>

Branko Todorović, president of Helsinki Committee for Human Rights in Republic of Srpska, received anonymous death threats at the beginning of August. He supposed that the reason was his noticeable public appearance where he criticizes non-

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<sup>698</sup>*Nezavisne novine*, 24 January, page 3

<sup>699</sup>*Dnevni list*, 6 March, page 3

<sup>700</sup>*Dnevni avaz*, 31 March, page 8

processing of war crimes. Todorović considers that the problem is existence of large number of war lobbies, being present also in government institutions that are bothered with his warnings on inefficiency of government and judiciary. “I believe that internal reforms within the police are necessary because it’s obvious that in police forces in B&H still work number of those who should stand before the law and answer for what was done during the war. Todorović points out that he is not the first receiving threats in RS and that, when threats were realized police did not found perpetrators. At the same time, according to Todorović, non-governmental organisations in RS have less and less working space and pressures, intimidations are visible... He cites example of Transparency International (hereinafter TI) that stopped its regular activities on 10 July this year “for security reasons”. After receiving support from numerous international organisations TI continued with its' work this week.

Dragomir Babić, president of non-governmental organization Narodni front, held a conference in Sarajevo, in mid July, for pressures and threats in Republic of Srpska saying that regime media in Republic of Srpska are protecting Prime Minister Milorad Dodik, and defame him and Slobodan Vasković. According to Babić everything began when SNSD came in power, when they published data on criminal regarding the selling of Oil Refinery in Bosanski Brod, construction of the building of Government of Republic of Srpska, highway, murder of Milan Vukelić, conflict between Dodik’s government and Transparency International.<sup>701</sup>

Mirsad Kebo, Vice President of Federation of B&H, received two threats in mid November – first when a young man tried to enter his building violently representing himself as employee of cable television, while on second occasion he was

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<sup>701</sup>Dnevni list, 19 July 2008, page 4

informed during a meeting “that large amount of money will be invested in his and Tihic’s destruction”. State Investigation and Protection Agency (SIPA) investigated this case.<sup>702</sup>

Irfan Mustafić, president of Steering Board of Association of mothers of Srebrenica and Podrinje and author of book “Planned Chaos” for which many Bosniaks resent him, was beaten in Srebrenica.<sup>703</sup>

### *5.7. Inadequate Living Conditions*

Milan Tesla, cousin of famous scientist, lives today in Teslić in Bosnia and Herzegovina in hard conditions and without electricity. Banished from Lika, Tesla accidentally found sanctuary in Teslić upon friend’s suggestion hoping to get a job and roof overhead easier in small environment. But unfortunately, his expectations weren’t met – he didn’t get apartment, or parcel and now he lives in old ruined and abandoned house in Teslić settlement Buletić.<sup>704</sup>

Nikola Jovanović (65), Serb, who escaped with his family from village Račinovci in Croatia, lives in a barn of Marijan Pavić, Croat, in Brčko settlement Gredice (Nezavisne novine, 19 March, page 4).

Dnevni avaz published, in nationalist tone, article about case of insecurity of returnees: “Chetniks threat to cut throats to returnees (title): Twenty days after receiving several phone messages of threats, president of Meylis- Islamic Community in Gacko, Bosniak returnee Lutvo Fazlagić from Fazlagića Kula, was again target of the attacks by “Ravnagora Chetniks Movement”.

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<sup>702</sup>Oslobođenje, 13 November 2008, page 5

<sup>703</sup>Dnevni avaz, 27 April, page 4

<sup>704</sup>Nezavisne novine, 9 March, page 5; Glas Srpske, 6 March, page15

Fazlagić received two letters this time in which they threat not only to him and his family but also to all Bosniak returnees to Fazlagića Kula. “Recent incidents will not endanger security (title): Director of RS police, Uroš Pena, stated yesterday in Banja Luka that the police in Trebinje identified juvenile person who recently sent threatening note to Bosniaks in Fazlagića Kula. Pena said this yesterday, after the meeting with Vice President of RS, Adil Osmanović, who is going to Trebinje and Gacko today. In Herzegovina region situation is satisfying and recent incidents will not and should not endanger the state of security.”<sup>705</sup>

### *5.8. Problem of Polluted Environment*

Out of all other printed media, Dnevni avaz and Nezavisne novine reported the most on problem of polluted environment in the past period.

“Ecological catastrophe threatening Tuzla: Public in Tuzla is worried by increased number of those affected by brucellosis as well as the fact that no landfill in Tuzla Canton has the working licence.”<sup>706</sup> Nezavisne novine published an article on endangered plant and animal species: “Thanks to inexistence of so called red book of endangered plant and animal species and the fact that B&H is the only country in the region allowing commercial hunting, local population in hunting areas started to learn foreign languages. Optimists would state such a thing, not knowing that by this our country loses part of its characteristic fauna every day. Additionally, a large number of endemic species is totally disappearing.”<sup>707</sup>

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<sup>705</sup>Dnevni avaz, 18 April 2008 and 23 april 2008

<sup>706</sup>Dnevni list, 07 July 2008, Dnevni list, 22 July 2007

<sup>707</sup>Nezavisne novine, 06 May 2008

“Gas could endanger environment: Cause of fire centres within mine Vihovići, near Mostar, that domestic and foreign experts are testing and trying to shut down for couple of months, is continuous gas leaking from interior of this mine, confirmed for Dnevni avaz Prof. dr. Abdulah Bašić, Dean of Faculty of Mining in Tuzla. Pouring of around 400 tons of water in holes as preparation of the system for cooling the area is in progress.”<sup>708</sup>

Apart from the above selected topics based on the number of reviewed articles, category of the right to life includes also car accidents. In this period, we monitored reports of MIA on death caused by car accidents presented in media. “In last five years, there were 173.260 car accidents in B&H that caused the death of 2.059 and injuries of 47.626 people. Having in mind these alarming data, the governments in FB&H made starting points for safety in traffic strategy aiming to improve the safety in traffic for 30 percent in next five years. “The main aim of the strategy is to decrease the number of dead in car accidents”, said Muhidin Alić, Minister of Federal Ministry of Interior, while presenting this document.”<sup>709</sup>

### *5.9. Brucellosis*

This category contains also articles on brucellosis on which media reported a lot during 2008. “Brucellosis could take a toll (title): In HNK there are currently 15 persons diseased of brucellosis. Among these, there are also, for the first time, some children. Last year the total number was 16. If the disease continues to spread in this dynamics we’ll have infamous record year, said Zarema Obradović, Chief of Epidemiological

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<sup>708</sup>Dnevni avaz, 26 June 2008

<sup>709</sup>Nezavisne novine, 01 March 2008



Department at Institute for Public Health of HNK, at the lecture yesterday.”<sup>710</sup>

“Cattle Diseased of Brucellosis Imported in Srpska: Ministry of Agriculture, Forestry and Water Management have information on evidences on cases of cattle diseased of brucellosis which was donated to large number of returnees’ areas like Srebrenica, Gacko, Nevesinje and other.”<sup>711</sup>

## 6. Prohibition of Slavery and Forced Labour

In the category dealing with prohibition of slavery and forced labour, topics relating to trafficking and smuggling of persons (84), prostitution (64), juvenile prostitution (21) and prohibition of torture (14) were the most present in the media. For the purposes of this analysis, 182 articles were reviewed.

### *6.1. Prostitution/Child Prostitution*

In their reporting, media violated the code of protection of juvenile persons when revealing the child’s identity. “Another Prostitution Chain Fell: Inspectors of Tuzla Canton MIA in cooperation with Special Police Forces arrested a woman, whose identity remains unpublished, yesterday in Slatina settlement in Tuzla. In past couple of years, this woman was organising prostitution. The woman is certain Sabina who rented an apartment on fourth floor in Albin Herljević Street no. 13 from Selveta K. two years ago. Beside pimp Sabina, unnamed prostitute was also found in the apartment and Sabina’s juvenile daughter

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<sup>710</sup>Dnevni avaz, 22 May 2008

<sup>711</sup>Glas Srpske, 29 July 2008

was also taken into custody (Journalists are obliged to protect the identity of a child in procedures in which the public is excluded – Article 11).”<sup>712</sup>

“Zvonko Kovačević (31), called Munja, one of four arrested for organising prostitution in Tuzla, is convicted to 13 months of imprisonment while indictment is charged against Slavica Dakić (50) from Tuzla in whose apartment the prostitution was organised. Kovačević made agreement on confessing the guilt with Cantonal Prosecutor Dijana Milić and agreed on 13 months of imprisonment without trial.”<sup>713</sup>

Members of ministries of internal affairs of Federation of B&H and Tuzla Canton searched motel Tuzla in Šićki Brod near Tuzla in July. On this occasion, they arrested the owner of the motel, Mustafa Krasnić and two other men suspected to organise prostitution in the facility. As Tuzla Canton MIA announced, four girls working there were found and three of them are citizens of Serbia and one is from our country. All of them were transferred to the Safe House.<sup>714</sup>

Discriminatory terminology calling drug addicts as junkies is noticed in *Dnevni avaz*: “*Recruited Junkies for Prostitution*”.<sup>715</sup> Media followed intensively case of revealing child prostitution. “Derventa, city in which mothers of victims of prostitution beg judiciary to do its job”, is the title of article describing event from October 2007 when three high school girls reported to Doboj police that they have been continuously victims of forced prostitution for three years. Of nine arrested, only Goran Jevtić and Slaviša Vuković are under custody. Mothers of victims are bitter because other organisers and

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<sup>712</sup>Press Code B&H, Sarajevo: BH Press Council, 2006; article was published in *Nezavisne novine*, 26 February 2008

<sup>713</sup>*Nezavisne novine*, 16 February 2008

<sup>714</sup>*Oslobođenje*, 20 July, *Dnevni avaz*, 20 July 2008

<sup>715</sup>*Dnevni avaz*, 13 January 2008

suspected macros, Milivoje Nović and Čedo Markelić, remain free.”<sup>716</sup> Six accused for juvenile prostitution in Derventa plead not guilty at the Court of B&H. Goran Jevtić (26), Slaviša Vuković (29), Davor Cvijanović (33), Milivoje Nović (55), Branislav Nović (290 and Čedo Markelić (51) are accused for sexual exploitation of juvenile girls as well as for organising sexual services of juvenile women.<sup>717</sup>

Cases of child prostitution were the most numerous in the past period media reporting. “Dinko Tanović (26) and Alma Čatibušić (21) from Tuzla, were arrested month ago after complaint of fifteen year old that she was forced to prostitution. They are accused for leading juvenile girls to prostitution, communicated yesterday from Cantonal Prosecutor’s Office from Tuzla. Together with his friend Alma, Tanović drove AB. (14) and E.B. (15) from Tuzla to Gradačac in mid of last year where they offered sexual services to unknown men.”<sup>718</sup>

## *6.2. Trafficking in Human Beings and Smuggling of Persons*

Twelve persons, suspected to be related with smuggling of persons and drug selling, were arrested in Trebinje after a warrant issued by Prosecutor’s Office of B&H. This was result of State Investigation and Protection Agency’ (SIPA) action. Boris Grubešić, port parole of Prosecutor’s Office of B&H, confirmed this information. According to information, coming from another source, ten persons were arrested in Trebinje.<sup>719</sup>

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<sup>716</sup>BH Dani, 18 January 2008; Glas Srpske, 18 March 2008; Nezavisne novine, 26 August 2008

<sup>717</sup>Nezavisne novine, 12 July 2008, Glas Srpske, 12 July 2008

<sup>718</sup>Nezavisne novine, 14 March 2008

<sup>719</sup>Dnevni avaz, 17 April 2008

*“In the beginning of May 2008, Banja Luka criminal police arrested five persons suspected of committing criminal act of trafficking in human beings for the purpose of prostitution and sexual violence over child. Arrested are D.T. (30) from Srbac, Ž.C. (54) and O.B. (53) from Laktaši, and N.V. (58) and G.R. (62) from Banja Luka. D.T. is charged of committing criminal act of trafficking in human beings for the purpose of prostitution”.*<sup>720</sup>

## 7. Right to Fair Trial and State of Judiciary

Judicial system in Bosnia and Herzegovina is complex administrative structure. Apart from the Court of B&H that processes trials of war crimes cases, organised crime and crime in general, there are also constitutional and supreme courts operating in entity levels in B&H, as well as cantonal (Bihać, Novi Travnik and Sarajevo) and District Courts (Banja Luka and Bijeljina). Municipal Court in Žepče acts on municipal level, and at the Brčko District there is Appellation Court of Brčko District and Basic Court of Brčko District.

Media reporting on court proceedings at municipal, cantonal, entity and state level is still not completely transparent. In court reporting, especially when reporting on war crimes cases, media still report in accordance with their editorial policy, that is mainly nationalistic or represent partial interests of one ethnic group. Court proceedings, whether murder cases, various forms of violence or war crimes cases, are present a lot in B&H printed media.

This category is at second place by representation, with 2.505 articles or 19 percent of total number of journal articles

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<sup>720</sup>Dnevni avaz, 29 May 2008

selected for analysis. Within this category, media reported the most on trials and judgments for different criminal acts (941 article), then war crimes trials (882), murder trials and judgments (376) and on work of courts and justice sector reform in general they wrote 306 times.

### *7.1. War Crimes Trials*

Results of media monitoring show that war crimes and trials to accused for war crimes are topics that still have strong influence in supporting nationalistic ideologies, entity polarisation and they are excellent tool in additional spreading of the same. This picture clearly shows inexistence of transparency and qualitative cooperation between courts and media. Media often create their own picture of what the war crimes cases represent and the manner they are processed at the court. This is particularly visible in reporting on the work of the Court of B&H. Dnevni list criticizes work of the court: “Court of B&H became political, with Haag as role model (title): President of Association of Camp Inmates of Republic of Srpska, Branislav Dukić, remarked that verdict of release of Šefik Alić, before the Court of B&H, is devastating and shameful for Serb victims. This confirms that this court became political one.”<sup>721</sup>

Branko Mitrović, district prosecutor for war crimes in Banja Luka, at the conference organised by Centre for Civic Initiatives (CCI) presenting the document “Processing War Crimes in B&H: conclusions and recommendations”, stated that we cannot be satisfied with present dynamics in processing war crimes cases in B&H.<sup>722</sup>

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<sup>721</sup>Dnevni list, 12 April 2008

<sup>722</sup>Nezavisne novine, 24 April 2008

Nationalistic discourse is quite visible in reporting of Glas Srpske with very dominant prefix on Serbian. “Investigations only against Serbs: We insist on change of attitude about processing war crimes in RS because governments in FB&H created a campaign aiming to show only Serbs as criminals and Bosniaks as victims and by that strengthen in intention to dissolve RS...”<sup>723</sup> or “Serb victims denied in B&H”.<sup>724</sup>

“Only Serbs and Croats Are Tried: Judiciary, courts and relevant prosecutor’s offices in B&H don’t function at all in one part, and in the other processes are selective by principle of ethnicity”, Association Croatia Libertas remarked. “Procedures are only against Croats and Serbs and not against Bosniaks. Even if Bosniaks are reported for war crimes, the prosecutor’s offices don’t start processes in accordance with the law and recommendation of International Criminal Tribunal for Former Yugoslavia (ICTY)”, as Association informed.<sup>725</sup> “Court of B&H has partial approach to war crimes and it only cares to ensure the public and international community that Republic of Srpska (RS) is conceived on war crimes and genocide”, stated Pantelija Ćurguz, president of Veterans’ Organization of RS, and Oslobođenje published.<sup>726</sup>

Prime Minister of Republic of Srpska, Milorad Dodik, stated in his visit to Gradiška that “the day of suffering of Serbs in Croatian Army action “Bljesak” should be marked in order to point out to the necessity of processing war crimes committed in this action, reported Fena.”<sup>727</sup>

Within reporting on individual court cases and war crimes trials, media also reported intensively on trials to Rasim Delić

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<sup>723</sup>Glas Srpske, 28 February 2008

<sup>724</sup>Glas Srpske, 25 February 2008

<sup>725</sup>Nezavisne novine, 04 April 2008

<sup>726</sup>Oslobođenje, 06 May 2008

<sup>727</sup>Oslobođenje, 02 May 2008

(Dnevni avaz: 07.04., 15.04., 16.04., 17.04., 23.04., 04.05., 08.05., Dnevni list: 05.03., Glas Srpske: 12-13.04., Oslobođenje: 09.04., 11.04., 18.04., 22.04., 26.04., 08.05., BH Dani: 18.04., 04.04.), accused of mujahedins war crimes in Central Bosnia. In addition, they reported on trial to Ilija Jurišić, for attack on soldiers of JNA (Yugoslavian National Army), the so-called Tuzla colon (BH Dani: 16.05., Dnevni avaz: 23, 27.02., 01.04., 06.04., 11.04., 12.04., 14.04., 22.05., Dnevni list: 11, 16, 18, 22, 23.01., 23.02., Nezavisne novine: 23.02., 01.04., Oslobođenje: 23, 26.02., 11.04., 17.05., 23.05., Glas Srpske: 26.02., 28.03., 11.04., 12-13.04.). They reacted on verdict of release for Ramush Haradinaj (Dnevni avaz, 12.04., Nezavisne novine, 05.04., Reporter 09.04., 16.04., Glas Srpske 04.04., 05-06.04.). “It is hard to even begin a story on verdict of release passed to Ramush Haradinaj on indictment of 37 points charging him for crimes against humanity and violation of war law and customs. Entire process was, in many aspects, a real mockery and it is stain on International Criminal Tribunal for Former Yugoslavia (ICTY). Direct result of the verdict is increase instead of decrease of enormous gap between the two ethnic groups involved.”<sup>728</sup>

“Pressures to which Ilija Jurišić is exposed in prison witness that Belgrade process against him has all characteristics of staged process. When he showed before court council of District Court in Belgrade, after nine months in prison, Ilija Jurišić started his defence like this: ‘I’m no criminal, especially not war criminal. Up to this day, I have never been before the court. Literally speaking, I have never been reprimanded from a school class principal in my life’.”<sup>729</sup>

Dnevni list and Glas Srpske reported a lot on accusation of camp inmates of Republic of Srpska for non-pecuniary damage

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<sup>728</sup>Glas Srpske, 05-06 April 2008

<sup>729</sup>BH Dani, 16 May 2008

and crimes committed in war camps in FB&H (Dnevni list, 09.01., 13.01., 21.01.; Glas Srpske, 26-27.01.).

*“...Croat camp inmates from Homeland war announced application against B&H for all sufferings during the time spent in imprisonment in war camps controlled by Army of B&H and Army of RS”.*<sup>730</sup>

“Biljana Plavišić, exits prison in August 2008 after incomplete six years of served sentence?!” this is a title of article saying that “Biljana Plavišić, the only woman sentenced for crimes against humanity before the Hague Tribunal, will probably come out of the prison”. Members of board for setting Biljana Plavišić free, Svetozar Mihajlović and Ostoja Knežević, visited former president of Republic of Srpska in Swedish prison Hinsberg in order to consult her regarding the request for premature release from prison.<sup>731</sup>

Magazine Novi reporter reported on passing the verdict of release for Naser Orić: “Amnesty: Simply said, Appellation Council ‘ripped the already ‘crippled’ indictment of Hague Prosecutor’s Office and seriously scolded the Trial Panel that didn’t even bother to clear out dubious issues presented by Prosecution during the trial. According to opinion of persons that monitored the trial, evidences and witnesses presented by Prosecution did not charge Orić convincingly enough. Situations when certain Prosecution’s witnesses spoke all the best on Orić were especially grotesque... Naser Orić returned to B&H from Hague Tribunal in afternoon on Fourth of July as free man. His co-fighters saluted him on Sarajevo Airport as a “hero”. They are now more convinced (some more, some less) that they have a reason to be satisfied after the verdict of release to Orić, passed by five members of Appellation Council of Hague Tribunal. Now

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<sup>730</sup>Dnevni list, 19 February 2008

<sup>731</sup>Slobodna Bosna, 15 May 2008



they have a stronger reason for this kind of thinking due to the fact that the Prosecutor's Office of B&H did not even show the slightest will to accuse any member of "Orić group".<sup>732</sup>

Glas Srpske reported with similar intensity: "Shame of the Hague Tribunal: Appellation Council of the Hague Tribunal set war commander of Bosniak forces in Srebrenica, Naser Orić, free of responsibility for war crimes committed over Serbs in 1992 and 1993... Port parole of War Crimes Prosecutor's Office in Serbia, Bruno Vekarić, stated that the decision of Appellation Council of the Hague Tribunal to set Orić free will not contribute to reconciliation process in the region,"<sup>733</sup>. Dnevni list: "Naser Orić Free of All Charges: ... Lawyer Miroslav Mikeš considers that verdict of release for Naser Orić is 'the fall of the sense of the Hague Tribunal as envisaged by UN when establishing it. Decisions of the court are usually not to be commented but it is evident that the largest number of Serbs is indicted in Hague, then Croats and the least Bosniaks'.<sup>734</sup>

Media equally monitored the work of courts in number of processed war crimes cases. Nezavisne novine reported that "since 1992 MIA RS filed 705 criminal charges to prosecutor's offices against 6.701 persons suspected for war crimes over 21.283 victims". On this occasion, Gojko Vasić, chief of Crime Investigation Police Department at MIA RS, stated his dissatisfaction with dynamics of certain investigations."<sup>735</sup>

"Prosecutor's Office of B&H has data on crimes against Serbs", reported *Oslobođenje* calling upon statement of Radovan Pejić, member of Team for Research and Documentation on War Crimes at Ministry of Internal Affairs of the Republic of Srpska.

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<sup>732</sup>Reporter, 09 July 2008

<sup>733</sup>Glas Srpske, 04 July 2008, Glas Srpske, 05 and 06 July 2008

<sup>734</sup>Dnevni list, 04 July 2008

<sup>735</sup>Nezavisne novine, 05 March 2008

He stated that “all evidences on crimes against Serbs in Čapljina and Stolac are familiar to Prosecutor’s Office of B&H and they are waiting for processing now.”<sup>736</sup>

Arrest of Radovan Karadžić, accused for war crimes committed during the war in B&H, was one of significant events. This event created a platform for expression of nationalistic, fascist and homophobic rhetoric in media and usage of unacceptable terminology. One of examples is reporting of *Dnevni avaz*. “Bloodthirsty Charged for Genocide and Crimes against Humanity: Karadžić is charged before Hague Tribunal for genocide, involvement in genocide, liquidations, murders, torture, deportation, inhuman acts and other crimes against Muslims”.<sup>737</sup>

Balkan Investigative Reporting Network (BIRN BiH) and Konrad Adenauer Stiftung, issued publication “History in Shadow of Sensation – Regional media on Radovan Karadžić arrest”. The publication is based on monitoring and analysis of media reporting on arrest of Radovan Karadžić for the period 24 – 31 July 2008. As Nidžara Ahmetašević, editor of this publication, pointed out at the promotion in Sarajevo: “general conclusion of the publication is that right after arrest of Karadžić, writing is moving away from the point of the story and turns to sensationalism”. “What we saw through monitoring is that political propoganda is still present in media in the region... It can also be stated that media, occupied by racing for exclusive news, forgot about the victims and partially rules of the profession”, said Ahmetašević. Work on publication already

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<sup>736</sup>Oslobođenje, 16 June 2008

<sup>737</sup>Dnevni avaz, 31 July 2008

started in September 2008, added Ahmetašević, and monitored over 1.000 articles from twenty weekly and daily newspapers.<sup>738</sup>

## *7.2. Murder Trials and Judgments*

Murder trials and judgments hold third place, right after the trials for violence, organized crime, corruption, as well as articles relating to war crimes trials. When it comes to media reporting, intensity and continuity of the reporting, two events marked the past year. Those are the **murder of Denis Mrnjavac** (Dnevni avaz, 09, 16, 21.02., Nezavisne novine, 18, 19, 20.02., BH Dani, 15.02 – nine articles, Oslobođenje, 16.02., Glas Srpske, 12, 16-17.02., Dnevni list 14.02. – three articles, 13.02. – two articles, 12.02., Dnevni avaz, 07, 09.02. – three articles, 11.02., 12 – four articles, 13.02, 16.02. – two articles, 20.02. – two articles, 26.02., Nezavisne novine, 09.02, 11 – two articles, 12-02 – two articles, 14.02. – three articles, 23.02. – two articles, 26.02., Oslobođenje, 09.02 – three articles, 12, 13, 14, 16.02. – two articles, 20.02. – two articles, 21.02 – two articles, 23.02 – three articles, 24.02., Start BiH, 19.02 – two articles, Glas Srpske, 07.02 – very small article, 13.02., BH Dani, 22-02 – three articles, Reporter, 20.02 – two articles, Start BiH, 19.02., Nezavisne novine, 15.02. – three articles, 15.02., Oslobođenje, 12.02., Slobodna Bosna, 14.02., Oslobođenje, 12.02., Dnevni list, 14.02. – four articles, 13.02. – three articles, 12.02., 11.02. – three articles, 22.02., Dnevni list, 24.02. – two articles, 28.02-two articles, 15.02., 20.02.) and **murder of Ljubica Spasojević-Đokić** (Nezavisne novine, 22.02., Dnevni avaz, 21.01., Glas Srpske, 22, 23, 28.01., Dnevni list, 22, 23, 24, 28.01., Nezavisne novine, 08.05., 09.05., 16.05.,

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<sup>738</sup>More about publication and the project at <http://www.bim.ba/bh/1/50/16608/>

Oslobodjenje, 06.05., 07.05 – two articles, 09.05., 16.05., Dnevni avaz, 06.05., 21.05.). Reporting was also about trials for these murders.

In the end of January 2008, in Sarajevo settlement Hrasno, two juveniles committed a murder by pouring gasoline and burning seventy-two-year old Sarajevo woman Ljubica Đokić-Spasojević. In the beginning of February, in tram in Sarajevo close centre, seventeen-year old Denis Mrnjavac was stabbed by knife. Murder committed by juvenile Nermin S. (17) with accomplishment of Ademir Lelović (18) and Berin Talić (18) rose entire city up. Two murders in the beginning of the year and each of them brutal in its own way, put citizens' (in)security and problem of juvenile delinquency at first place. Dissatisfaction of citizens with town authorities provoked the first mass protests of citizens requesting resignations of city and cantonal officials.

First interesting fact is that media reporting on these two events is characterised with sensationalism and ethno-national caricature. In case of old woman murder, most of media releases were in the same matrix: *“Two Roma juveniles attacked an old woman in Sarajevo settlement Hrasno and then poured her with gasoline and burned”*. Even though this was a case of juvenile crime, which appeared in several awful episodes during 2008, almost all media pointed out to the national identity of juvenile perpetrators in this case. (We are citing only some of the news in which the “juvenile Roma” term is mentioned and those are: Dnevni avaz, 21 January, page 14 and 22 January, page 17; Nezavisne novine, 22 January, page 13; SAN, 22 January, page 7; Euroblic, 22 January, page 15; Večernje novosti, 22 January, page 13; Oslobodjenje, 23. January, page 22 and Glas Srpske, 23 January, page 8). On the other hand, in case of murder of Denis Mrnjavac, certain Croatian media (especially Nova television and HINA agency) pointed out that Denis Mrnjavac was Croat and juveniles who killed him were Bosniaks.

Municipal court in Sarajevo passed a first-degree verdict in the process against perpetrators of murder of Denis Mrnjavac at the beginning of October. In the verdict stands that “seventeen-year old Nermin S. is found guilty for murder of Denis Mrnjavac and sentenced to 9,5 years of imprisonment”. His assistants are tried in separate processes. In the beginning of 2009, Cantonal court in Sarajevo passed a decision that: first-degree verdict sentencing Nermin Sikirić to nine years and six months of imprisonment, should be altered, and the penalty to the accused should be increased requesting full penalty of 10 years of imprisonment. Defence appealed to this decision asking repetition of the trial and smaller sentence.

### *7.3. Trials and Judgments for Other Criminal Acts*

Burglaries, stealing, endangering public safety, tax evasion, trafficking in human beings and other belong to the category of other criminal acts.

Media paid the most attention on trial to “organized criminal group” headed by Muhamed Ali Gaši. One of articles published in Sarajevo magazine BH Dani says that “the investigation ran by Cantonal Prosecutor’s Office in Sarajevo against Muhamed Ali Gaši based on reasonable suspicion for some of the heaviest criminal acts. At the same time, it reveals labyrinth of power, fear, corruption and crime, changing of town-planning schemes adopted long before and legalizes unbelievable audacity in illegal building. BH Dani brings chronology of inception of Gaši’s business building in the centre of Sarajevo for which city’s persons in power planned legalisation...”<sup>739</sup>

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<sup>739</sup>BH Dani, 25 May 2008

Trial panel of Cantonal court in Sarajevo, chaired by Judge Dalida Burzić, processed the case. Beside Muhamed Gaši, accused for joining in criminal organisation for committing several criminal acts are also: Aziz Gaši, Mirza Krasnić, Amir Kasumić, Engin Proha, Muharem Čaušević, Edin Hot and Sinan Ljuca. Since beginning of the year, this group has been in custody in Sarajevo Detention and Rehabilitation Centre. Indictment relates also to Adnan Alomerović and Ljirim Bitići who are on the run. Warrant is issued after them. Trial was under severe security of court police. Twelve points of indictment, issued on 30 July this year, charged Gaši brothers and others with large number of criminal acts. Those are: extortion, violent behaviour, illegal building, tax evasion and murder of Ramiz Delalić. Indictment covered more than hundred of witnesses and nearly 1.000 material evidences to be filed at the trial.

#### *7.4. Work of Courts*

Courts' work covered mainly topics on work of judges, mechanisms of their election, their changes for misuse of position and justice sector reform. In several times, media also reported on different strategies and innovations in the work of courts, especially in war crimes cases.

Media regularly reported on the work of courts relating to periodical and annual reports, processed court cases and solved cases. "Supreme Court of Federation of B&H solved 4.557 cases last year. I consider this as very good result having in mind that we decreased leftovers for 18 percent. In this period we received 3.407 new cases having 6.533 leftover cases from 2006, said Amir Jaganjac, president of Supreme Court of FB&H, at the press conference yesterday. Thirteen war crimes cases were solved last

year, 125 murder cases were on trial and total of 1.037 years of imprisonment were sentenced.”<sup>740</sup>

“105 Convicts Out of Jail (title): One hundred and five convicts from Zenica that suppose to serve their sentence in Detention and Rehabilitation Centre in Busovača, are at their homes. They did not go to serve their sentence because there is no place for them in that prison, said Dijana Ajanović, president of Municipal Court in Zenica. Only 11 convicts went there and we recorder return from the gate of DRC in Busovača for 230 times, said Ajanović.”<sup>741</sup>

Dnevni avaz paid much attention on criticizing work of the courts, manner of processing war crimes cases and justice sector reform. “Enough Guarantees that Innocents Won’t Be Convicted: High Judicial and Prosecutorial Council of B&H (HJPC B&H) calls on all politicians and officials to support building of independent, unbiased and professional judiciary and not to do opposite, said yesterday for ‘Dnevni avaz’ Zekerija Mujkanović, Vice-President of HJPC. This was a reaction to statement of Prime Minister of RS, Milorad Dodik who said that “the Court of B&H was established with the intention to discipline Serbs and Croats”.<sup>742</sup> “Prosecutor’s Office Should Not Protect Political Hypocrites: Wife of one member of ‘Algerian group’ Hadž Boudellaa, Nađa Dizdarević, found out about Order of Cantonal Prosecutor’s Office in Sarajevo from journalist of ‘Dnevni avaz’ yesterday. Last Monday I filed application against B&H, FB&H and Prosecutor’s Office of B&H to the Court of Human Rights in Strasbourg. They obstructed my criminal charges against Lagumdžija and other responsible for deportation for more than two years.”.<sup>743</sup> “It Is Shameful that Court of B&H is

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<sup>740</sup>Dnevni avaz, 09 February 2008

<sup>741</sup>Dnevni avaz, 23 February 2008, Nezavisne novine, 25 February 2008

<sup>742</sup>Dnevni avaz, 26 June 2008

<sup>743</sup>Dnevni avaz, 25 June 2008

Financed by Foreign Donations: President of Helsinki Committee in Republic of Srpska (RS), Branko Todorović, said for Justice Report agency that most common violations of human rights in B&H are systematic ethnic and religious discrimination, transfers Srna. He considers that processing war crimes is not going in expected tempo and that Council of Ministers of B&H should discuss this issue.”<sup>744</sup>.

*“Law and Justice: News on third in a row verdict of release in “Vranica” case against commander of Military Police of Croatian Defence Council in Mostar, Željko Džidić Džida and others shook the city on Neretva. People in Mostar knew that most of the accused group were masters of life and death in their city during the war in 1993. However, the judgment of Judge Slavko Pavlović states the opposite.”*<sup>745</sup>

*“Protests before the Court of B&H Next Week: Association “Truth Kalinovik 92” will organize protests before the Court of B&H in next week because of this yesterday’s court’s decision to allow Đorđoslav Aškraba and Neđo Zeljaja to defend themselves from liberty. Families of missing persons, survived victims and witnesses are bitter for such decision and we will request from all relevant institutions in B&H to return the accused in custody.”*<sup>746</sup>

*“Čorbo: Only Crime Perpetrators Can Be Peaceful in Bijeljina: Helsinki Committee for Human Rights in RS is not satisfied with work of judiciary on investigations and processing of crimes from 1992 in Bijeljina, said Sadik Pazarac, representative of Helsinki Committee, at the round table on ‘Significance and Conditions of Processing*

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<sup>744</sup>Dnevni avaz, 19 June 2008

<sup>745</sup>Dnevni avaz, 18 June 2008

<sup>746</sup>Dnevni avaz, 14 June 2008



*War Crimes' organized by OSCE Mission to B&H. Salem Čorbo, president of Association 'Return', stressed his dissatisfaction with the work of District Prosecutor's Office, saying that only perpetrators can be calm in Bijeljina.*<sup>747</sup>

“Algerian group” case charging B&H officials from the Alliance for Changes period (2000-2002) for extradition of six persons to American government covered a lot of media space. “Why the Prosecutor’s Office doesn’t start the process against Lagumdžija, Limov and others? Nađa Dizdarević, wife of one of B&H citizens imprisoned in American base Guantanamo in Cuba, submitted appellation against B&H and FB&H before the International Court of Human Rights in Strasbourg for obstruction of proceeding the responsible ones” for extradition of six persons to American authorities who were afterwards transferred to Cuba.”<sup>748</sup>

Representatives of Special War Crimes Department at Prosecutor’s Office of B&H presented in Mostar a new approach and new strategy in processing accused for war crimes. New strategy foresees selective approach giving the advantage to those cases related to the most severe crimes committed against each of three constituent peoples. In previous 16 years 250 persons were prosecuted in B&H for such crimes.<sup>749</sup>

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<sup>747</sup>Dnevni avaz, 13 June 2008, 15 June 2008

<sup>748</sup>Dnevni avaz, 11 and 26 June 2008; Slobodna Bosna, 26 June 2008, Nezavisne novine, 25 June 2008

<sup>749</sup>Dnevni list, 5 September, page 4

## 8. Right to Private Life, Family, Home and Correspondence

Media paid the least attention to this category. Most present topics were on introducing the new tapping system, search of apartments and one part of articles covering general topics related to privacy.

In the past year, media paid much attention to taking documents from Radovan Karadžić's family house and houses of persons under suspicion to hide Karadžić's associates. *Nezavisne novine* wrote that "special investigations unit of MIA Republic of Srpska, searched houses of Boriša Baričanin and Duško Mihajlović from Pale, war members of escort of Hague fugitive Radovan Karadžić". Calling upon sources from MIA Republic of Srpska, these newspapers reported that search is done according to warrant of Court of B&H aiming to discover eventual traces and evidences that could connect Baričanin and Mihajlović with Karadžić's help network. Search started in early morning hours in cooperation with Support Unit Istočno Sarajevo and lasted couple of hours.<sup>750</sup>

NATO forces, assisted by MIA RS, searched the house of Goran Marinković, businessman from Banja Luka, in the end of April. Five hours action was done with the warrant issued by Hague Tribunal. As announced, after five hours, action members of NATO forces found material "of great use in capturing the war crimes suspects".<sup>751</sup>

In the beginning of the year, Mirko Lujić, chief of SIPA, expressed his doubts on existence of passive tapping systems. Therefore, he could not guarantee citizens of Bosnia and Herzegovina full protection from tapping because even he does

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<sup>750</sup>*Nezavisne novine*, 09 May 2008

<sup>751</sup>*Nezavisne novine*, 23 April 2008

not know who can tap him.<sup>752</sup> Nezavisne novine also wrote on same topic pointing out that citizens of B&H are not protected from illegal tapping and that tapping can be organised even for 100 convertible marks (28 January, pages 4 and 5). Warning came on European day of private data protection saying that misuses of private data are often in B&H because CIPS system is not good. In Ilija Jurišić case, the Prosecutor's Office of B&H used CIPS base and sent personal data of people from Tuzla to Serbia.<sup>753</sup>

Mladen Bosić, president of SDS, opposition party in Republic of Srpska, claims that phone tapping of individuals exists in Republic of Srpska. It is misused for political purposes but security services in Republic of Srpska cannot admit that.<sup>754</sup>

Large number of media announced that the phone tapping system, intercepting SMS messages and electronic mail to be used by State Investigation and Protection Agency (SIPA) would be activated in the beginning of August 2008.<sup>755</sup>

Interest in safety of internet networks and data in Bosnia and Herzegovina is rowing every day. Therefore, training of first generation of so-called "ethical hackers" is already announced in Sarajevo. Their main mission is to fight against cyber crime. Agencies for internal affairs already showed interest for this profiles (Oslobođenje, 17 April, page 7).

Toše Proeski Foundation sues a Bosniak from Mostar for misuse of Proeski's personality and work because he published an album with pictures of tragic death and funeral of Macedonian singer (Dnevni list, 15 February, page 13).

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<sup>752</sup>Dnevni list, 22 January, page 5

<sup>753</sup>Dnevni list, 30 January, page 8; Dnevni avaz, 27 February, page 10

<sup>754</sup>Glas Srpske, 28 May 2008, page 3

<sup>755</sup>Oslobođenje, 26 August 2008; Nezavisne novine 07 August 2008; 08 August 2008; 20 August 2008; 26 August 2008; Dnevni avaz 06 August 2008; 26 August 2008; Slobodna Bosna 14 July 2008

Popular B&H television show “Lud, zbunjen, normalan” (Crazy, confused, normal) caused many troubles to seventy-two-year-old Hasan Fazlinović from Sarajevo because many compare him with main character from the show, Izet Fazlinović. People often stop him in the streets and insult him: “You Fazlinović are all sexual maniacs”. This is due to comparing him with the character from the show that Hasan considers as total trash. Real Fazlinović announced that he will request stopping of television show and that he would, for sure, stop paying television tax.<sup>756</sup>

## 9. Freedom of Thought, Conscious and Religion

Freedom of thought, conscious and religion was among mid represented categories with 689 texts. Most of the articles related to attacks on religious facilities and communities, spreading ethnic, national and religious hatred (249), then problems in construction of religious facilities (239), relation between the state and the church, and conflicts between religious communities (121), (mis-)use of religious service and symbols (53) and in the end attacks on religious officials (27).

If we pay attention to media and their national and interest focus, it is interesting that they mostly pointed out to vulnerability and problems in their religious community. Dnevni avaz wrote the most on attacks to mosques but also on case of Fata Orlović in Konjević polje. Glas Srpske mostly wrote on attacks on orthodox churches and vulnerability of Serb people.

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<sup>756</sup>Dnevni avaz, 9 November 2008, page 6

Dnevni list from Mostar pointed out jeopardize of Catholics and Croat people in general.<sup>757</sup>

### *9.1. Attacks on Religious Communities/Facilities and Spreading Religious Hatred*

Dnevni avaz and Oslobođenje, both with headquarters in Sarajevo, were leaders in reporting on attacks on Islamic religious facilities. The same is with attacks on facilities of Serbian Orthodox Church (leader is Glas Srpske) and Catholic facilities and cemeteries (Dnevni list reported the most on this).

Dnevni avaz wrote that the Raisu-l-ulama Mustafa Cerić called irregular session of Riyasat of Islamic Community of B&H because of “attack on legally recognized religious rights, continuous and more and more brutal satanization of Islamic values and Islamic community in B&H thought electronic and printed media by some political parties”. Reacting on press release of SDP B&H warning Rais not to “divide children”, Cerić said that “SDP is the one that has the need to satanize Islamic community”.<sup>758</sup> During the first eight days of Ramadan, numerous attacks and sacrilege of mosques, physical threats and provocations of Muslims were registered in Republic of Srpska. In Mufti Unit in Banja Luka several severe cases occurred. For example, attack to Sefer-bey Mosque or devastating the fence around Arnaudija.<sup>759</sup>

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<sup>757</sup>Research from 2007 published within “Media and Religion” publication confirms the thesis on pointing out partial jeopardize of religious communities in B&H, available at: [www.mediaplan.ba](http://www.mediaplan.ba)

<sup>758</sup>Dnevni avaz, 11 February 2008, page 4; and 13 February 2008, page 13

<sup>759</sup>Dnevni avaz, 10 September 2008, page 12

Dnevni avaz also wrote on attacks on church facilities and religious officials that are not part of Islamic Community in B&H. In the end of January, this newspaper wrote that vandals threat to Friar Mijo Džolan by gun after breaking in Franjevački provincial in Sarajevo. As friar Džolan stated himself, motive of this attack was not religious or national, it was a robbery.<sup>760</sup> Dnevni avaz published as well that Cantonal Prosecutor's Office in Una-Sana Canton raised charges against four young men for reasonable doubt that they executed criminal act of robbery of church facility in Bosanski Petrovac.<sup>761</sup>

Other media also reported on the attack on facilities of Islamic Community in B&H. Nezevisne novine from Banja Luka were the leader in this. Unknown thieves robbed Islamic Community Meylis in Zenica entering through the window, and made damage estimated at 10 to 15 thousands of convertible marks.<sup>762</sup> Insulting graffiti appeared on mosque at Babun in Mostar, renewed in 1969.<sup>763</sup> Press release of Islamic Community Meylis in Mostar says that

*“...Physical threat to Mostar Mufti Smajkić is threat to entire Bosniak nation”.*<sup>764</sup>

Bizarre event occurred in Srebrenica also, where seven convertible marks were stolen from the church.<sup>765</sup>

Dnevni list from Mostar paid the most attention to vandal act of sacrilege of statue of Mother Mary at the Hill of Appearance near Međugorje. As reported by media, in the end of

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<sup>760</sup>Dnevni avaz, 23 January 2008, page 3; and 24 January 2008, page 8

<sup>761</sup>Dnevni avaz, 9 February 2008, page 19

<sup>762</sup>Sources: Oslobođenje, 3 January, page 20; and Nezavisne novine, 3 January, page 13

<sup>763</sup>Oslobođenje, 4 January 2008, page 4

<sup>764</sup>Nezavisne novine, 29 February 2008, page 4

<sup>765</sup>Nezavisne novine, 20 March 2008, page 6

August, Italian priest who came to visit Međugorje found unusual scene – left hand was missing on statue of Mother Mary.

Association of Citizens Front from Tuzla invited citizens of orthodox religion to spend Christmas in peace and to boycott the miss if Bishop Vasilije Kačavenda, “war inspirer and proven hater of everything non-Serb” would perform.<sup>766</sup>

Vandals wrote on the wall of Synagogue built in far 1903, in the centre of Zenica.<sup>767</sup>

### *9.1.1. Spreading religious hatred*

According to media, religious intolerance, insulting people of different religious belief, and even spreading hatred, is part of B&H every day life. We are bringing only examples that were in media focus.

In Mostar, on the wall of devastated mosque, graffiti appeared saying: “*I eat musli for breakfast! I like muslims!*”. Islamic community in Mostar reacted on this.<sup>768</sup>

Fifteen years old girl from Tuzla received xenophobic SMS message on her cell phone. “*Little Turkish runs and I’m chasing him to cut his throat. Mother starts to cry so I must cut her throat too. I get bulla and take the knife to tell her what the Christmas was.*”. This was the content of SMS message sent from number starting with 065. Female voice answered upon call on that number responded to journalist that it was supposed to be Christmas joke and hanged the phone.<sup>769</sup>

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<sup>766</sup>Oslobođenje, 7 January 2008, page 7

<sup>767</sup>Dnevni avaz, 14 January 2008, page 8

<sup>768</sup>Dnevni avaz, 4 January 2008, page 6

<sup>769</sup>Dnevni avaz, 9 January 2008, page 7

Tarik Sadović pointed out that the story of Darko Trifunović, self-proclaimed expert from Belgrade, on Islamic terrorism is interesting to Europe and it creates false image on Bosnian Muslims.<sup>770</sup>

Driver of city trolley insulted traveller Sabaheta Dahar saying: “*Shut up you old piece of trash*”, cursing her God and saying “*that she is wearing her veil so she could steal*”.<sup>771</sup>

Bosniak pupils beaten fifteen-year old Croat pupil Josip M. on his way to bus station in Žepče. This caused numerous reactions and protests of some of his fellow citizens. Bullies were swiftly identified. Police of Zenica-Doboj Canton filed charges against Mersed D. (20), Edin M. (18), Edin M. (20) and Huso M. (26) for causing severe body injuries to Josip M. (16) at the bus station on 25 February around 19h. Predrag Zvijerac, journalist of Dnevni list, is author of article on protests in Žepče. Bosniak pupils replied on peaceful protests of Croats with parole “*There will be meat, we will slaughter Croats*”. This was at the same time the title of the article and one of the witnesses of protests confirmed to the journalist existence of this parole. Journalist of magazine BH Dani also reported from Žepče. He claimed that “*children are divided to ours and their*” in this place but that nobody saw the writing “*There will be meat, we will slaughter Croats*” and that it is product of imagination of Dnevni list’s journalist.<sup>772</sup>

Fascist graffiti showed up near Old Bridge, on buildings in close centre of Mostar under UNESCO protection. To make

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<sup>770</sup>Oslobođenje, 16 January 2008, page 10

<sup>771</sup>Oslobođenje, 27 January, page 9

<sup>772</sup>Sources: Glas Srpske, 29 February, page 4; 3 March 2008, page 4; Dnevni list, 4 March 2008, pages 2 and 3; and BH Dani, 14 March 2008, pages 32 – 34



things even worse it happened right in the moment when Koichiro Matsuura, director of UNESCO, came to visit Mostar.<sup>773</sup>

In the night between Sunday and Monday, unknown persons destroyed the fence around Arnaudija Mosque in Banja Luka. Kasim Mujičić, president of Islamic Community Meylis in Banja Luka, stated for Dnevni avaz that he believes that this deed was indirectly related to beginning of reconstruction of this mosque.<sup>774</sup>

### *9.2. Relations between the State and Church and Conflicts between Religious Communities*

Islamic Community Riyasat in B&H prepares Agreement between the State and Islamic Community of B&H similar to agreements between the State and Catholic and Orthodox Church, announced Dnevni avaz, dated 14 March 2008.

Glas Srpske in its issue, dated 14 April, wrote about unclearness of Law on Freedom of Religion and Legal Status of Churches and Religious Communities in B&H. There it states as problem the fact that only 300 signatures are necessary for registration of religious community and it allows large number of sects to register. The article appeals on conditions, built in legislation of western countries, where 10.000 signatures is necessary for registering religious community and thirty years of working and existence tradition.<sup>775</sup>

Media paid much attention on reporting on unsolved status of church property. "Property: Serbian Orthodox Church warned again actual government on Tuesday that they've been

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<sup>773</sup>Dnevni avaz, 27 March 2008, page 9

<sup>774</sup>Dnevni avaz, 15 April 2008, page 6

<sup>775</sup>Glas Srpske, 14 April 2008, page 4

ignoring its' requests for return of church property that was taken after the Second World War. Islamic Community ... individuals from whom the property was taken away and that politicians should be very careful in choosing the best solution for all.”<sup>776</sup>

“Serbian Orthodox Church Announced a Law Suit against Government in Sarajevo: His Excellence Metropolitan of Dabro-Bosnia Nikolaj stated that up to now almost nothing of property taken by communist government in Sarajevo from Serbian Orthodox Church is returned.”<sup>777</sup>

*Religious Teaching* – Large number of articles in media, with different variance and estimations of suggestions, focused on introduction of religious teaching in pre-school institutions in B&H, as well as dilemmas on conducting existing curricula for religious teaching in primary schools.

In beginning of January 2008, Public Institution Djeca Sarajeva (Sarajevo Children) conducted non-transparent survey among parents in Sarajevo if they would like to have their children study religious teaching in this pre-school institution. PI Djeca Sarajeva (Sarajevo Children) has 24 kindergartens in Canton Sarajevo with 2.000 children attending it. Public Institution is financed by payments of parents (140 convertible marks monthly), co-financed by Canton Sarajevo (from taxpayers) and other revenues (renting business space) and donations. PI Djeca Sarajeva (Sarajevo Children) covered by survey (oral or written) only parents of Islamic religion who are majority in Sarajevo Canton. Along with other numerous reactions to this survey, OSCE Mission to B&H reacted. In one of its' press releases it stressed out that “education in Bosnia and Herzegovina is supposed to be inclusive and not excluding” and that any kind of exclusivity “in one multinational country like

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<sup>776</sup>Nezavisne novine, 24 July 2008, Oslobođenje, 30 July 2008

<sup>777</sup>Glas Srpske, 23 July 2008; Oslobođenje, 23 August 2008

B&H threatens to endanger fundamental freedoms guaranteed in the Constitution. B&H has small chances to take a place in grand European family of democratic countries if it doesn't foster and create a sense of belonging among its citizens, no matter of their race, religion or culture.”<sup>778</sup> In its' press release, OSCE Mission to B&H stated that introducing religious teaching in kindergartens is threat to fundamental human freedoms.<sup>779</sup> Reis Cerić is surprised with position of OSCE Mission to B&H regarding the introduction of religious teaching in pre-school institutions and stated that it is product of “prejudices on Islam and misunderstanding”..<sup>780</sup> SDP B&H said to Reis Cerić that he is making brutal division and that “he should do promotion of spiritual unity of all BH citizens and people instead of dividing children on national and religious basis”.<sup>781</sup>

On introduction of religious teaching in kindergartens, magazine Start B&H published an interview with Adnan Silajdžić, professor at Faculty of Islamic Sciences. He pointed out that he “would be non-Muslim if he'd claim that atheists don't have moral” and that he is against introduction of religious teaching in pre-school institutions.<sup>782</sup>

Serbian Orthodox Church priest in Tuzla, Niko Tošić, stated that human rights related to religious teaching in educational institutions are violated in Tuzla Canton. He mentioned the case of primary school in Brčanska Malta where only one out of thirty Serb children attends religious teaching. The reason why parents do not allow other twenty-nine children

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<sup>778</sup>Taken from Southeast European Times, <http://www.setimes.com/cocoon/setimes/xhtml/bs/features/setimes/features/2008/05/19/feature-02>

<sup>779</sup>Oslobođenje, 13 February, page 11

<sup>780</sup>Glas Srpske, 14 February, page 3

<sup>781</sup>Oslobođenje, 14 February, page 6

<sup>782</sup>Start BiH, 19 February, pages 10 – 13, page 85

to religious teaching is not because they are against the church, but they do not want their children to separate from majority Bosniak children.<sup>783</sup>

The State Department report for 2008 states: “some minority religious communities claim that there is discrimination in selection of religious teachers. This is due to the fact that teachers from majority religious community in certain municipality are elected to positions where they receive salary and enjoy benefits while other religious teachers are less paid, only per hour”.

### *9.3. Attacks on Religious Officials*

Articles relating to attacks on religious officials were not that frequent or they related generally to vulnerability of one of religious communities. Attack on Franciscan Mijo Džolan was in such context and mentioned earlier in this category. We noted one more interesting case in Mostar, where attacker with mask on his head entered by mistake the house of first neighbours of Mostar Mufti Seid Smajkić, instead of his, and brutally beaten Rasema Pajević.<sup>784</sup>

### *9.4. (Mis-)Use of Religious Service and Symbols*

“A Believer Sued Nun from Međugorje” is title of article issued in Dnevni list saying that Ljubo Ivančić won case before the Municipal Court in Mostar. According to judgment, sister

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<sup>783</sup>Glas Srpske, 10 April, page 16

<sup>784</sup>Dnevni avaz, 27 February, page 3

Bogoljuba Pelivan is to return 50.000 convertible marks that he borrowed her to built a chapel in Dučići.<sup>785</sup>

Oslobođenje wrote on 8 January (page 6): Nun took 50.000 convertible marks: neither Bogoljuba nor Ljubo's Money.

Kruno and Kata Mucić accuse nun Bogoljuba Pelivan from Bijakovići for imposture. This couple claims that the Guardian of Franciscan Sisters Order owes them 50.000 convertible marks.<sup>786</sup>

A cross is illegally placed above the Old town in Srebrenica.<sup>787</sup>

Announcement of camp inmates of Republic of Srpska that there will be a cross on Trebević above Sarajevo in remembrance to victims of war caused much anger in Sarajevo. Mirjana Simanić, president of Organisation of Families of Deceased and Missing Persons from Eastern Sarajevo announced this also. Mayor Radomir Kezunović and Mayor of Sarajevo, Semiha Borovac, met in Istočno Sarajevo and condemned these announcements as well as statements of people intending to raise tensions.<sup>788</sup> According to Oslobođenje, at the place on Zlatište where Association of Camp Inmates of Republic of Srpska is planning to put the cross, Army of Republic of Srpska forces had Sarajevo in hand for four years (13 March). Citizens of Sarajevo protested at Suada Dilberović and Olga Sučić against building the cross on Zlatište with messages that Sarajevo has always been multi-religious and it will remain the same.<sup>789</sup>

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<sup>785</sup>Dnevni list, 5 January, page 8

<sup>786</sup>Dnevni list, 15 January, pages 8 and 9

<sup>787</sup>Dnevni avaz, 3 March, page 10

<sup>788</sup>Oslobođenje, 10 March, page 6; Dnevni avaz, 20 March, page 4

<sup>789</sup>Nezavisne novine, 6 April, page 5

Meylis of Islamic Community in Mostar rebelled considering Blagaj's wine producers move as provocation: Dervish Tekija is taken as symbol of wine from Kulina.<sup>790</sup>

Fadil Banjanović from municipal board of SDP B&H reacted on snow obstacle in shape of orthodox cross on approach highway to returnees' settlement Kula Grad near Zvornik. He said that those provocations are acts of individuals and not organised attack on Bosniaks.<sup>791</sup>

Misuses of religious greetings in public institutions are frequent in Bosnia and Herzegovina. Often cases are that, even beside the fact that B&H is secular state of citizens of different religious believes, employees of institutions instead of "Good Morning" greet with "Selam", "Merhaba", "Eselam alejkum", "Bog", "Praise Jesus" etc... Even though those greetings are positive in religious connotation, in secular context they are misused and that is why OSCE suggested that each municipality in B&H regulate this question with their own ethical code.<sup>792</sup>

### *9.5. Construction and Reconstruction of Religious Buildings*

Council of Ministers of B&H separated 600.000 convertible marks for reconstruction of Minster of Trinity in Mostar. The same amount of money is planned for reconstruction of Franciscan Monastery Plehan near Derventa and Ferhadija Mosque in Banja Luka.<sup>793</sup>

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<sup>790</sup>Oslobođenje, 10 January, page 6; Dnevni avaz, 10 January, page 9

<sup>791</sup>Oslobođenje, 7 and 11 January, page 10

<sup>792</sup>Nezavisne novine, 2 March, page 17

<sup>793</sup>Dnevni list, 30 March, page 11

Metropolitan of Dabar-Bosnia Nikolaj marked reconstruction and construction of orthodox temples in B&H as positive with note that inter-religious dialogue in our country is on high level. This proves that there was no religious war here (Oslobođenje, 5 January, page 7).

Renewal of Minster in Mostar, for which, among others, lawyer Faruk Ćupina gave 10.000 convertible marks, received much space in media.<sup>794</sup> Slobodna Bosna, dated May 1, published detailed article on this.

Catholic religious buildings were also reconstructed. Donor lunch for gathering means for reconstruction of devastated church St. Anto Padovanski was held in Banja Luka in mid June. Provincial of Bosnia Srebrena, fra Mijo Džočan, Banja Luka's Bishop Monsignor Franjo Komarica initiated this lunch and Prime Minister of Republic of Srpska, Milorad Dodik, was the host. Greatest donor is Government of Republic of Srpska with one million convertible marks; Government of Federation of B&H will donate half of that sum. Republic of Croatia will support reconstruction with 400.000 convertible marks while governments of West-Herzegovina and Posavina Canton, as well as Slobodan Stanković, businessman from Laktaši, gave per 20.000 convertible marks.<sup>795</sup>

Citizens of Martin Brod, near Drvar, are in fear that hydroelectric power plant will be built on river Uvac ,700 metres above medieval monastery Rmanj, threatening to plunge and completely destroy it.<sup>796</sup>

(Non-)construction of church of Christ's Resurrection with pastoral centre in close city centre was one of the topics on which Croatian political parties in Mostar shown great

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<sup>794</sup>Nezavisne novine, 15 March, page 2

<sup>795</sup>Slobodna Bosna, 26 June 2008, pages 28 - 32

<sup>796</sup>Glas Srpske, 20 March, front page

disagreement before local elections. Construction of the church begun in 1996 by project of architect Marijan Hržić, after which the crypt of St. Joan and pastoral centre up to second floor were built. After that, construction stopped and according to Dnevni list, public in Mostar were bombed with various (dis-)information on reasons for this. One of the problems cited is that Municipal Council of Mostar, even though it gave urban approval, it never adopted regulation plan nor construction permission was requested within period of one year as determined by the law. As problems firstly appeared the request of Islamic Community to build Islamic centre with a mosque near to the construction place of the church, then on the other hand the family of Mostar Jew, Altijas Salomon, sued Municipality of Mostar for giving the land that was taken away from them by nationalization process to Catholic Church.<sup>797</sup>

Problem of allocating churches in Konjević Polje on the property of Fata Orlović and Divič is solved. Bishop of Zvornik-Tuzla, Vasilije Kačavenda, and Mufti of Tuzla, Husein Kavazović, agreed new locations of temples.<sup>798</sup> Problem was solved, as afterwards shown, only on paper because allocation of the church did not even start, at least by the end of this analysis. But, similar case could be in Mostar: Serb from Mostar, Anđelko Lozo, claims that the largest mosque in Mostar was built on his property and he requests its removal.<sup>799</sup>

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<sup>797</sup>Dnevni list, 3 November, 2008 and 10 November 2008

<sup>798</sup>Glas Srpske, 5 February 2008, page 2

<sup>799</sup>Dnevni list, 6 February 2008, pages 2 and 3



## 10. Freedom of Expression

According to institutional / formal-legal protection, freedom of expression in Bosnia and Herzegovina is one of the best-protected rights. Entire set of laws guaranteeing this right is result of international community's influence. Freedom of expression, media freedoms, protection of slander, are only some of fundamental rights well protected in B&H. Protection of these rights lies on entity level, when it comes to Republic of Srpska, and on cantonal level when it comes to Federation. However, the problem is practical implementation of these laws.

Two independent media agencies exist at Bosnia and Herzegovina level – Press Council and Regulatory Communication Agency. Both supervise work of media and set principles and rules of media functioning. As much as the problem is in work of media and misuse of journalist position for transmitting, either partially correct or unchecked, information or spreading hatred (example cited in Chapter I on discrimination, especially on “media lynch” before announced Queer Festival) the problem is also in local government representatives who are not used to open critique. Due to this fact, some journalists who were critical towards government with attention to expose crime and corruption were attacked or received threats.

*General / media freedoms* – “According to data of Free Media Help Line, in past year, number of reported cases of pressures, threats and physical attacks on journalists in Bosnia and Herzegovina was doubled in comparison to previous years. Curses, throwing out of the offices with use of physical force, police escort for endangered security and public exposures are part of journalists' everyday life in B&H”. Free Media Help Line within Association B&H Journalists, registered 54 cases of violation of rights and freedoms of journalists and pressure from

government and law implementing bodies. There were 17 cases of making pressure on journalists and threats, 13 physical assaults and 1 case of denial of access to information. This served as a cause for Mediacentar Sarajevo to organise a panel on “Attacks on Journalists in B&H – Survival Strategies” in the end of January 2009. Bakir Hadžiomerović, editor of political magazine “60 minutes” on Federal Television, participated on this panel. He is reporting on crime and corruption in political milieu of Bosnia and Herzegovina and for this he had verbal and court encounter with Prime Minister of Republic of Srpska, Milorad Dodik.

On International Day of Freedom of Press, 3 May, Glas Srpske pointed out that one of the most drastic attacks on freedom of press in Republic of Srpska and B&H was attack on well known journalist, Željko Kopanja, owner of three enterprises of Glas Srpske and director of Nezavisne novine. The perpetrators are still not discovered. Article cites the press release of Government of Republic of Srpska saying that “freedom of journalist expression but also full responsibility for words published is crucial for promotion of democratic processes in this society”.<sup>800</sup>

Some Serb politicians condemned BHT1 for directly transmitting session of Kosovo Assembly for declaring independence and without commenting this event directly, they posed a question of the point of existence of this media.<sup>801</sup>

*Pressures on media, threats and attacks on journalists –* Already mentioned conflict between Dodik and Hadžiomerović was certainly the most exposed and the most used example in public. It illustrates pressure and threats journalists receive from politicians. In first eight months of 2008, Dodik filed 16 private reports against Federal Radio Television (further on FTV) and

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<sup>800</sup>Glas Srpske, 3-4 May 2008, page 6

<sup>801</sup>Oslobodjenje, 19 February, page 7

most of them against Hadžiomerović and his political magazine, as well as against FTV's correspondent from Banja Luka, Slobodan Vasković, for his reports published in "60 minutes" show accusing Dodik for crime and corruption. On 14 July Basic Court in Sarajevo dismissed one criminal denouncement because Dodik is high-rank public official who should be able to tolerate the higher level of public critique than common citizen. On 5 March, Regulatory Communication Agency (RAK) dismissed Dodik's accuses against FTV and "60 minutes" show related to alleged unprofessional and biased reporting.<sup>802</sup>

Collaborators of Milorad Dodik made a step further. Pero Simić, communication advisor of Prime Minister of Republic of Srpska announced that all legal instruments will be used in order to protect Milorad Dodik and his associates from offences and untrue coming from FTV and its journalists, announcing to press charges for slander.<sup>803</sup> Dnevni avaz reported, calling on Pero Simić, that "behind FTV's media campaign against President of Government of RS, Milorad Dodik, stand political principals who would like to slow down the Prime Minister and RS on successful way to fulfilling preconditions for B&H accession to EU".<sup>804</sup>

Dodik didn't save other media also and he sent a letter with sharp note accusing "BHRT to be media servant of SDP and therefore it is necessary to eliminate the existing service in accordance with the law and then create a media service that would serve the interest of all citizens of B&H".<sup>805</sup>

Milorad Dodik, Prime Minister of Republic of Srpska, is seriously interested in buying Alternative television (hereinafter: ATV) from Banja Luka. After he put almost all printed media in

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<sup>802</sup>State Department report on human rights in 2008: Bosnia and Herzegovina, Bureau for Democracy, Human Rights and Labor

<sup>803</sup>Nezavisne novine, 12 March, page 6

<sup>804</sup>Dnevni avaz, 10 March, page 9

<sup>805</sup>Dnevni avaz, 27 April, page 2

Republic of Srpska under his control, Dodik decided to have also most of electronic media under control until pre-election campaign. Nataša Tešanović is the owner of ATV and as Slobodna Bosna cites, price of ATV is around seven million Euros. Dodik did not talk in person with Tešanović but he sent his closest associates. In addition, through his emissaries actual Prime Minister offered to buy BN TV from Bijeljina, one of the most popular television houses in Republic of Srpska of whose editorial policy Dodik is not fond. However, Vladan Trišić, owner of BN TV, said to him that his television house is not for sale.<sup>806</sup>

Aforementioned letter from Milorad Dodik is one of entire set of pressures and attempts to destabilize state media targeting, apart from Radio-television of Bosnia and Herzegovina (BHRT), also the Regulatory Communication Agency (RAK). This was obvious also during the election of director when Dodik requested that it has to be someone of Serb nationality without going into professional capacities and experience of the candidates.

After the Steering Board of BHRT, upon suggestion of Serb member Nikola Deretić, deposed management of BHRT headed by Mehmed Agović, there was a press conference held in this media house. Beside Agović, directors of radio and television programmes, Milenko Vočkić and Senada Ćumurović, as well as member of Steering Board, Mehmed Žilić, also took part in this conference. Pointing out to irregularities in deposing the management, Žilić said that “rule of law has collapsed” and “that Deretić took out a long time ago written decision, with explanation, on deposing”. As Deretić explained, “SB has mistrust and insecurity regarding the management headed by Mr. Agović due to make-upped reports on business activities for last year”. Deretić pointed out that the audit report clearly stated that there

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<sup>806</sup>Slobodna Bosna, 10 July 2008, page 10

are hidden losses in business books of BHRT in amount of at least 9,13 millions of convertible marks.<sup>807</sup> In October, the Court of B&H annulled decision of Steering Board of BHRT for suspension of general director Mehmed Agović. The Court passed a decision on temporary measure for returning Agović to position of general director. In the meantime, Steering Board appointed officer in charge. Promoters of media freedoms expressed their concern claiming that the Steering Board decision was politically motivated and noticed controversies in procedure. Ombudsman for human rights stated that the Board has violated Agović's human rights and appealed to Ministry of Transport and Communications of B&H to estimate situation in BHRT. On 3 December 2008, the Court accepted appeal of Steering Board and returned entire case to beginning when Steering Board appointed new general director. However, the Court additionally passed decision on temporary measure on 26 December 2008. With this decision, it annulled appointment until the first-degree court passes the decision on the legitimacy of the new appointment. The case was not resolved by the end of the year.<sup>808</sup>

Slobodan Vasković, journalist of FTV, filed criminal charges against officials of Government of Republic of Srpska, Ministry of Internal Affairs, Stanislav Čađo and Miloš Čubrilović, security advisor to President of Government of Republic of Srpska, for illegal listing of its cell phone and pressures on persons with whom he communicated.<sup>809</sup>

Representative in State Parliament, Sadik Bahtić, member of Stranka za BiH (Party for B&H) prevented a journalist of Federal television, Avdo Avdić, and cameraman of this house, Refik Vejsilagić, using physical force, to be present on scheduled

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<sup>807</sup>Dnevni list, 14 September, page 4 and 5

<sup>808</sup>Report on Human Rights in 2008: Bosnia and Herzegovina, Bureau for Democracy, Human Rights and Labour

<sup>809</sup>Dnevni list, 7 April, page 4

press conference in Cantonal board of Party for B&H in Bihać. Camera recorded this physical attack. On the same day, Bahtić also restrained journalist of Slobodna Bosna, Mirsad Fazlić, in inappropriate manner, from party's facilities. Media have been exposed to pressures of representative Sadik Bahtić before, stated Federal television as well as majority of media in B&H. Presidency of Party for B&H accepted the resignation submitted by Sadik Bahtić on position of member of Presidency of this party at session in Sarajevo. By accepting his resignation, Presidency of this party sanctioned Bahtić's recent attack on journalists in Bihać. "We have accepted the resignation of Sadik Bahtić as his act of moral, and we consider that in this way, and on behalf of Party for B&H, we have fulfilled our obligation when we said that he will be sanctioned", stated Beriz Belkić, Vice-President of this party, to journalists. He announced that it would be additionally estimated if there is a need for further activities in the Party regarding this issue but he considers that there is no need of such.

Federal Minister of Energy, Mining and Industry, Vahid Hećo, attacked photographer of Dnevni avaz, Samir Jordanović, who tried to photograph him in front of Prosecutor's Office of Canton Sarajevo building. Day after the attack, photographer filed criminal charges against Hećo for physical assault in working place.<sup>810</sup>

On Thursday, 18 September 2008, certain Sarajevo media, Radio Sarajevo, magazine BH Dani, Students' eFM radio, received anonymous letter in which the main reason for threat was support to Queer Festival. "By supporting Queer Sarajevo Festival you've gone too far and spilled the glass of our tolerance..." as stands, among other, in this letter ending with threat – "From this

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<sup>810</sup>Dnevni avaz, 12 July 2008, page 9

moment you've judged yourself until the infinity you will not be still", signed by "angry Sarajevo war veterans".<sup>811</sup>

Danijela Dodoš, journalist of Radio-television of Republic of Srpska (RTRS) from Prijedor, received a death threat from an unknown man through telephone. He sent a message on 25 August 2008. Dodoš was in redaction when unknown man with tenor-like voice called around ten o'clock in the morning. He said that the two of them don't know each other and it is better that it never happens, threatening that, if she wants to stay alive, she should stay away from stories and sticking her nose around "Celpak" Prijedor.<sup>812</sup>

*Preventing Freedom of Public Word/Censorship* – Freedom of expression was denied to several eminent people from Republic of Srpska who are allegedly on "Dodik's black list" of inconvenient collocutors for the media there. Svetlana Cenić, ex-Minister of Finance in Government of Republic of Srpska; Boris Divjak, from Transparency International; Slobodan Vasković, journalist; Damir Miljević, from Association of Employers of Republic of Srpska; Tanja Topić, media analyst and many others are on that list.<sup>813</sup>

"After Humiliation in Berlin and Debacle in London, Somebody has to Stop Sadović in further Disgracing of B&H" – this is the title of article published in magazine *Slobodna Bosna* accusing Minister of Security of B&H for disgracing his country. "Fuzzy architect from Trebinje who, by false personnel policy of SDA, got the work on serious security issues was the only participant of 11<sup>th</sup> European Police Congress in Berlin where he was not allowed to hold a speech". After humiliation, Sadović was convinced that behind his public humiliation are "certain groups

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<sup>811</sup>Published at <http://www.radiosarajevo.ba/>, accessed on 18 September 2008

<sup>812</sup>Nezavisne novine, 26 August, page 5

<sup>813</sup>Dnevni avaz, 9 January, page 11

who planned everything beforehand in order to prevent one B&H minister of Islamic religion to speak on combating terrorism”.<sup>814</sup> Glas Srpske from Banja Luka in its dual issue from 2/3 February reported on the same topic in article titled “Unsuccessful Solo of Tarik Sadović”.

In decision of Ministry of Education and Culture, Anton Kasipović, the Government of Milorad Dodik prohibited on 6 May setting up of exhibition of documentary photographs “Survived Camp Inmates – Bratunac 1992”. Opening of exhibition was planned for Saturday, 10 May 2008, in gym of Primary School “Vuk S. Karadžić” in Bratunac. Exactly in this gym, between 17 April and 17 May 1992, 120 civilians were killed and another 150 in schoolyard. Setting up of memorial in gym was planned on the sixteenth annual of these crimes on which it would stand “There was a camp in this place where villains killed 300 civilians in 1992”. Although this text didn’t offend anyone, Minister Kasipović prohibited placing of memorial in the same document in which he prohibited setting up of exhibition with eighty photographs of survived camp inmates with crosses written on their foreheads, backs and mussels and heaviest injuries visible on entire body.<sup>815</sup>

*Information selling* – “It is scandalous that information on places where civilians, died in past war, are buried, are paid”, said Nedeljko Miković, president of Association of Families of Captured and Died Fighters and Missing Civilians in Republic of Srpska, for Glas Srpske commenting the Draft of Rulebook on Financing Information on Places of Individual and Mass Tombs, suggested by Institute for Missing Persons of B&H.

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<sup>814</sup>Slobodna Bosna, 31 January, page 23

<sup>815</sup>Slobodna Bosna, 1 May, pages 12 - 13



## 11. Right to Freedom of Peaceful Assembly

Right to freedom of peaceful assembly was one of the mostly used civil rights in Bosnia and Herzegovina in 2008, especially during the first couple of months. On one hand, citizens of Sarajevo used it trying to express their dissatisfaction with work of local authorities (canton and the city) who gathered every Saturday in city centre and protested. During the second gathering in Sarajevo, citizens demolished the building of Government of Canton Sarajevo. On the other hand, after Kosovo declared its' independence mass protests were organized by different associations in Banja Luka (SPONA, Izbor je naš...), supported by Government of Republic of Srpska. Protests resulted in riots and demolition of shops with American, Croatian, Slovenian and other products. Others socially endangered populations (workers, demobilized soldiers...) also used this right during the year to express their dissatisfaction with existential situation. Positive thing about these cases is that citizens recognized and used their legitimate and democratic right to express their opinion in public. What is dubious, especially in first two cases, is connotation and political background of protests. Negative thing is that there are examples of misuse of that right and undemocratic consequences in both cases. Those were demolition and uncontrolled rampage. At the protests in Banja Luka, younger participants, students, called to slaughter and magnified crimes singing Chetnik songs and scanning names of war criminal Ratko Mladić. Around 200 people gathered in Brčko wearing cockade, raising three fingers and shouting: "Slaughter Turks".<sup>816</sup> In case of Sarajevo, local officials used these events to call the citizens, who were protesting in undemocratic autocratic manner, a herd, savages, uncontrolled crowd... In the end, they even passed a decision to prohibit protests on 6 April

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<sup>816</sup>Sources: *Oslobođenje*, 19 February, page 4; *Dnevni avaz*, 21 February, page 9

for celebration of Day of Sarajevo. Non-governmental organisations in B&H reacted to Sarajevo protests against violence: “Government of Canton Sarajevo Manipulates Facts”.<sup>817</sup> Facts cited in Report of Ombudsman of FB&H also illustrate judgment of work of Sarajevo authorities:

*“...in 2007 authorities in Sarajevo Canton expressed the most non-cooperation with ombudsmen – in 74, 2% of cases they never provided any response! Therefore, we can give estimation that they have boycotted not only ombudsmen but also and primarily their citizens for which they exist”.*<sup>818</sup>

As result, Police Department of MIA Canton Sarajevo published that it is forbidden to have protest gathering, announced by informal group of citizens for Sunday, 6 April, at 19h in front of National Theatre in Sarajevo. Jusuf Zornić, PR of MIA Canton Sarajevo, stated for Dnevni avaz that the measure of prohibition was passed for holding Ceremonial Session of City Council scheduled for 20h on marking the Day of Sarajevo City.<sup>819</sup> Restrictive measures were introduced in other part of the state also. Set of limitation regarding the place where citizens are allowed to express dissatisfaction was introduced in Draft Law on Public Assembly set before representatives of National Assembly of Republic of Srpska in mid of the year. By this, protest gatherings are prohibited in front of National Assembly and Government of Republic of Srpska, main, regional and local roads, near hospitals, kindergartens and primary schools and other places if it could endanger movement and work of larger number of citizens.<sup>820</sup> Commenting the Law on public assembly

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<sup>817</sup>Nezavisne novine, 16 February, page 5

<sup>818</sup>Annual report of Ombudsman of Federation of B&H on status of human rights for 2007, page 6

<sup>819</sup>Dnevni avaz, 02 April 2008

<sup>820</sup>Oslobodjenje, 26 June 2008, pages 8 - 9

that entered in force in Republic of Srpska, analyst Damir Miljević wrote: “One of the reasons why the Law on public assembly is good is that we finally know how many people are necessary to gather in order to scare the government. That famous number is 21. If there are more than 20 of us, for Christ sake, irresponsible citizens gathering at highly expensive square near building of Government of RS, for example for sunbathing, the government will react and prohibit us to sunbath. Less than this number we are no longer interesting and we can sunbath before building of Government of RS as long as we want”.<sup>821</sup>

In the end of June, there was a large protest of workers in Sarajevo who were dissatisfied with living conditions and negligence of authorities. Their dissatisfaction culminated with gathering of 8.000 workers in front of the building of Government of FB&H requesting responsibility from its leaders. Workers requested connection of their past service, passing the law on revision of privatisation, determining simulative measures for enterprises and lowest salaries to be continuously harmonised with increasing living costs. Prime Minister of Federation of B&H, Nedžad Branković, addressed to them promising solutions in September. Average salary in FB&H in that moment was 735 convertible marks while salary of protesters was only 300 convertible marks, which is less, as they cited, than telephone bills in government institutions. Problem was that there is no correct evidence of workers, who were left without their jobs, necessary for connecting past service. According to data of Government of FB&H there are around 8.000 of those workers while the number of these cases, according to Federal Trade Union is between 20.000 and 30.000.<sup>822</sup>

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<sup>821</sup>Novi reporter, 16 July 2008, page 17

<sup>822</sup>Nezavisne novine, 26 June 2008, page 2

Media also reported on violent conflict of demonstrators and police in front of Football Union of B&H (NSBiH). “Union Out!”, “We want changes”, “We want resignations”, are some of paroles expressing dissatisfaction of football fans on work of NSBiH. Demonstrators requested change of entire management after recent turmoil in B&H football house, procedure before relevant bodies for illegal business of Union, recent failures of B&H representation. It all culminated in recent change of selector Meho Kodro.<sup>823</sup>

## 12. Right to Property

Right to property includes entire complexity of administration created in after-war society – from military property, restitution of nationalized property to illegal construction and other forms of corruption.

This problematic was relatively present in analysed media where we analysed 253 articles in 2008 for the purposes of this report.

*Apartments owned by military persons* – Property issue, especially regarding the apartments owned by military persons, still represents important political topic of reality and media discourse today. Articles on this issue are numerous in media reporting, but the quality and usefulness of majority of information is dubious because they are depending, more or less, on the source and orientation of particular media, “ripped out of the context”. In our analysis, we relied only on the most comprehensive and objective ones.

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<sup>823</sup>Oslobodjenje, 24 May 2008

House of Peoples of Parliament of FB&H, on session scheduled for 23 April, discussed on Suggestion of law on supplements and changes of Law on abandoned apartments, suggested by Jasmin Duvnjak, representative of House of Representatives FB&H. House of Representatives also adopted this act and it was in parliamentary procedure several times. Once adopted in House of Peoples, these changes will enable redemption and entry of more than 2.500 military apartments which redemption was blocked until now.<sup>824</sup>

Media also reported on the problem of freezing the property of Hague fugitives, actualised during last year in B&H public.<sup>825</sup> Media have again, in accordance with their national orientation, reported on these topics. “Will apartment of villain who arrested Izetbegović be returned?”, this is title of article published in *Dnevni avaz* saying that the wife of former commander of fourth Sarajevo-Romanija corpus, Vojislav Đurđevac, whose name will be remembered by all Sarajevo people that survived four-years siege of B&H capital, requested return of apartment in Sarajevo!?<sup>826</sup>

Case of Fata Orlović, which caused large media attention last year, was also occasionally mentioned in this period. “Church Allocation from Fata’s Yard to Bosniak’s Land (title): Even though Serbian Orthodox Church (SPC) and Islamic Community of Bosnia and Herzegovina (IZBiH) reached agreement in Bijeljina, twenty days ago, on allocation of illegally built church on Fata Orlović’s land in Konjević Polje, and even though Government of Republic of Srpska (RS) gave 180 thousands marks to Zvornik-Tuzla diocese to buy land to build new church

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<sup>824</sup>Dnevni avaz, 14 April 2008

<sup>825</sup>Dnevni avaz, 04 February 2008, 05 February 2008

<sup>826</sup>Dnevni avaz, 04 April 2008

in this settlement, realisation of the agreement will wait a long time to come.”<sup>827</sup>

*Dislodgement* – Sixty-five year old Dragiša Inić from village Deleuše near Bileća says that he is banished from the land that was his family property since Austro-Hungarian Monarchy. This unemployed truck driver blames cigarette smugglers for everything for they turned the field on which he used to feed cattle into smugglers route. Twenty metres away, on no-man’s land, near Bosnia and Herzegovina (B&H) and Montenegro border, stands ruined camping house.<sup>828</sup>

“It will work out in fourth attempt”, Club of SDP B&H representatives of House of Representatives of Parliamentary Assembly of B&H are convinced. Their suggestion, full titled as Law on Agency for control and security of forced deprivation of property gained by criminal deeds and managing the taken property, was directed to regular parliamentary procedure. “In 2004 the law failed twice with only one vote more and third time it fail at Constitutional-Legal Commission”.<sup>829</sup>

Media continuously monitored the process of adoption of Law on Illegally Gained Property (BH Dani: 18 April, Dnevni list, 02 March, Glas Srpske, 05 March, Nezavisne novine: 08 April, 14 April, Reporter: 02 April, Oslobođenje, 12 March, Dnevni avaz: 07 March, 08 March, 12 March).

### 13. Political Justice

During the monitoring, we separated 1.182 articles in printed media relating to “political justice” category. Most of the

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<sup>827</sup>Oslobođenje, 17 February 2008; Dnevni avaz, 24 and 25 June 2008

<sup>828</sup>Reporter, 19 March 2008

<sup>829</sup>Oslobođenje, 12 March 2008

articles related to political affairs (546) that everyday filled columns in newspapers, then corruption and abuse of position (374), elections and violation of election rights during the local elections in B&H (153), conflict of interest (93) and financing political parties (16).

### *13.1. Elections*

In first week of October 2008, local elections were held in Bosnia and Herzegovina. Calling on relevant sources (independent observers, reports of OSCE Mission to B&H, Report of State Department, Central Election Committee in B&H) municipal elections were properly conducted. Local election commissions and independent observers reported to State Election Commission only minor irregularities at election places. Number of voters who voted was generally smaller in larger cities and larger in smaller number of rural areas where fierce political fight was between candidates during the campaign.

Prohibition of candidature at elections this year will no longer be valid for individuals who were removed from position by decisions of previous High Representatives, confirmed Mario Brkić, PR of OHR, adding that this is not valid for persons who were punished for obstruction of cooperation with Hague Tribunal.<sup>830</sup>

Representative at House of Representatives in B&H, Šefik Džaferović, insisted on changes of Election Law in B&H that would enable proportional representation of constituent peoples in municipalities and city councils in relation to number of inhabitants who lived there before the war. Apart from this, it is requested that candidates of national minorities have guaranteed

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<sup>830</sup>Dnevni avaz, 15 January, page 2

place in bodies of local self-government.<sup>831</sup> Džaferović filed amendment to Election Law requesting that Srebrenica people get the right to vote at local elections no matter of their place of residence. “It is unacceptable to separate Srebrenica from constitutional-legal arrangement of B&H”, replied Drago Kalabić, head of Club of SNSD representatives, opposing such request.<sup>832</sup>

Dnevni avaz wrote on what sudden changes of Election Law and Law on Local Self-government in Republic of Srpska mean and notes that it would ensure that municipal parliaments, in which Dodik envisages that SNSD could have majority in almost all cities of Republic of Srpska, would elect municipal mayors. As consequence, Srebrenica could be without Bosniak as mayor.

Forty-one municipalities guaranteed revisions and supplements of the statute relating to guaranteed number of minorities representatives in parliamentary boards of local communities in both B&H entities until the end of May, a week before conclusion of electoral lists at Central Election Committee of B&H. As member of Central Election Commission of B&H, Branko Petrić, said, “All municipalities in B&H that have had more than 3 percent of all minorities representatives registered in relation to total number of inhabitants in accordance with the census from 1991, should respect provisions and change their statutes”. If they fail to do so, Ministry of Administration and Local Self-Government in Republic of Srpska and Ministry of Justice in FB&H can order them to do so.<sup>833</sup>

Central Election Commission of B&H decided on 28 August 2008 that 2.048 Croats banished from Posavina during the war that have no valid certificates on B&H citizenship will not be

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<sup>831</sup>Dnevni avaz, 26 January, page 5

<sup>832</sup>Glas Srpske, 10 March, page 5

<sup>833</sup>Oslobođenje, 13 May 2008, page 7



able to fulfil their right to vote by mail at local elections held on 5 October 2008. This did not deny their right to vote and they can fulfil it at regular electoral places if they submit requests for issuing CIPS identification card by the day of elections.<sup>834</sup>

### *13.2. Financing Political Parties*

SDP B&H was punished with 555.000 convertible marks for violation of the Law on Financing of Political Parties. This was decision of Central Election Commission of B&H (CIK B&H) and the reason was “crossing the limit of donations' rate for the party in money”. After couple of rounds of appeals and multi-month processes, Appellation Administrative Council of Court of B&H, with president Branko Morait and members Nedžad Popovac and Šid Jašarspahić, passed a decision, in the beginning of 2009, which annulled the decision of Central Election Commission on punishing SDP B&H with 555.000 convertible marks.

Government of Republic of Srpska suggested new way of financing political parties. According to this, political parties in Republic of Srpska could have 1,5 million convertible marks utmost for election campaign and double more money for covering regular costs.<sup>835</sup>

According to changes and supplements of the Law on Financing of Political Parties, previous limit of eight average salaries in B&H allowed as donations of legal and physical persons to parties would be magnified to 15 personal incomes, which makes it about 9.000 convertible marks.<sup>836</sup>

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<sup>834</sup>Dnevni avaz, 29 August 2008, page 4

<sup>835</sup>Nezavisne novine, 8 March, page 6

<sup>836</sup>Oslobođenje, 8 July 2008, pages 2 and 3

### *13.3. Political Affairs*

Today, war with political means in B&H is manifested in open effort to preserve wealth and material privileges of political elites in government as long as possible.

In Report of Ombudsman of FB&H for 2007 stands that “Each of three parties delay with beginning of reintegration of artificially divided peoples and delay in establishment of reconciliation process and trust building. They also delay in establishment of complete equality of constituent peoples”. This is suitable for parties because they are firming their power and have ease position to supervise and control: almost entire mobile and fixed property in B&H; all public resources ;especially public sector, together with public enterprises as monopolist, as well as any possibility of objective revision of doing business, on which information are non-accessible even to representatives of international community. Due to this the real incomes and their division, number of employees and their salaries, as well as national structure of employees etc. are unknown. This political situation points that the aim of national elites is to keep large monopolist enterprises under control and high prices without competition, wanting to prolong this status to undetermined time while benefits of small circle of people out of any control last. In such situation, laws and norms that would unblock these competences of national exclusivity in most important spheres of life are not being passed.<sup>837</sup>

Result are numerous affairs, like the one in energy sector in Federation of B&H in which numerous actual officials in power are involved – from Prime Minister of Federation, Nedžad Branković, to Minister Vahid Hećo who was often mentioned in

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<sup>837</sup>Annual report of Ombudsman of Federation of B&H on status of human rights for 2007, pages 2and 3

newspapers. In first four months there was actual a trial to former prime minister of Republic of Srpska, Mladen Ivanić, in case of “Srpske šume” (“Serbian Forests”), then to president of HDZ B&H, Dragan Čović, for abuse of position in “Sokol” (“Hawk”) case. Media announced involvement of Prime Minister of Republic of Srpska, Milorad Dodik, in various corruption affairs. FTV’s magazine “60 minuta” (“60 Minutes”) was leader in this and Dodik filed charges for slander against this magazine. Nezavisne novine wrote on how it became practice in B&H that criminally charges and judgments against politicians in B&H don’t be the reason for resignations giving examples of Hadžipašić, Šarović, Čović, Dokić etc, and that they still run their function without any problems.<sup>838</sup>

*Affair Elektroprivreda B&H / “Hećo” Affair* – In 2006, Government of Federation of B&H, with no bid procedure undertaken and without any kind of transparency on activities, elected a consortium headed with company Intrade Energija as strategic partner for building three large hydro-energy power plants in upper stream of Neretva. There was no tender for power plants on Neretva given to this company but the Government accepted, as they claim, a “self-initiated offer” due to the high approval of local community, participation of local companies and offered investment as well as ecological acceptability of the project. In June 2006, Ministry of Energy, Mining and Industry of FB&H published a call for investors for building eight new power plants in FB&H. Thirty-seven potential investors from the world applied to the contest for project worth of 3, 5 thousand millions of convertible marks. Company Intrade Energija is not local, its owner is Slovenian Istrabenz owned by OMV. Green party of B&H was the first to react announcing general Bosnian-Herzegovinian resistance “*to crazy ideas born in heads of energetic lobby of Vahid Hećo and Enver Kreso*”. In July 2007, House of

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<sup>838</sup>Issue dated 20 April 2008, pages 12 and 13

Representatives of Parliament of Federation of B&H supported ambitious plan of foreign investment in electro-energetic sector of Federation presented by Vahid Hećo, Federal Minister of Energy, Mining and Industry. It seemed that there are real chances that at least this, strategically important sector, brings needed money to this country. However, not everything ran smoothly and other players joined the energetic project. Energy affair culminated in beginning of 2008 when, according to some media, “shareholders assembly of Elektroprivreda B&H provoked first class scandal in Federation: small shareholders didn’t vote in accordance with agreement of Sulejman Tihić and Haris Silajdžić and didn’t elect agile president of Islamic Community Convention, Edhem Bičakčić, as president of Supervisory Board”. Then the general secretary requested replacement of Federal Minister of Energy, Mining and Industry, Vahid Hećo, through *Dnevni avaz*. Media that was on Hećo’s side in the beginning of affair in 2006 turned out to be his greatest executor.<sup>839</sup> Just in first three months of 2008 there were over a hundred of articles exposing “shameful deeds of Minister” relating him to numerous people with interest to take the position in energy sector. Among those people is Safet Oručević, former mayor of Mostar and representative of Austrian group Apet. After Zehrudin Sikira was elected for president of Supervising Board of Elektroprivreda, instead of party favourite Edhem Bičakčić, *Dnevni avaz* fiercely attacked competent minister, Vahid Hećo and Safet Oručević, accusing them, among other, for destroying party coalition of SDA and SB&H (Party for B&H) and different illegal activities. As *Slobodna Bosna* wrote, it can be noted that the start of media campaign against Minister Hećo complies with decision of Government of Federation of B&H that does not satisfies, at all, the owner of *Dnevni avaz*, Fahrudin Radončić. . It is about contestable claim of construction company Vranica that is main

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<sup>839</sup>See archive of *Dnevni avaz*, particularly issues in January and February 2008

constructor of new Dnevni avaz building. Company Vranica conducted some works in Iraq before the war and on that basis claims 1,3 million dollars. However, since in the meantime Vranica has been privatized, all rights and obligations from so-called passive sub-balance belong to the state and not to new owners of the company. Minister Hećo, who is responsible for this area, was exposed to constant pressures “not to be hair-splitter” and to “look through fingers a little bit”, but all interventions and pressures ended without success.<sup>840</sup>

“*Srpske šume*” (“*Serbian Forests*”) *Affair* – Court of B&H raised indictment against leader of PDP, Mladen Ivanić, and four officials of this party for crime committed in “*Srpske šume*” and illegal financing of pre-election campaign in 2002. Ivanić is charged of signing decision as Prime Minister of Republic of Srpska in 2001 approving the Trgokomerc Company, owned by Miro Jurišić, to cut the forest for alleged debt for construction of building of municipality Ribnik “even though he knew that such debt doesn’t exist”. His decision resulted with more than 500.000 convertible marks of damage to municipality. Furthermore, Ivanić is charged, beside abuse of position, for criminal association and inspiring to abuse of position, while Miro Jurišić is charged of criminal act of cutting forest. The indictment charges other crime suspects Perica Bundalo, Rodoljub Trkulja and Stojko Blagojević for criminal organizing and criminal act of inspiring to abuse of position. Zoran Šupeta, Dragiša Dragutinović, Zdenko Sakan, Milorad Marjaknović, Mirko Rokvić, Radenko Borojević and Novica Davidović are charged for criminal act of abuse of position. Court searches against the suspects were conducted in first four months of 2008.

In June, Court of B&H sentenced Mladen Ivanić to year and six months of prison for “negligent work in service, criminal

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<sup>840</sup>Slobodna Bosna, 17 July 2008, page 12

act committed as Prime Minister of RS causing a damage of 178.816 marks to Public Enterprise Srpske šume and Ribnik Municipality”.<sup>841</sup>

“Commodity Reserves” *Affair* – In the beginning of the year media introduced public with new affair in Federation of B&H: food and necessary life commodities reserves in stock at Commodity Reserves Directorate are not good to use. As *Oslobođenje* wrote, financial police expanded investigation on “state” oil. Inspection of commodity reserves was not done since 2002 (while analysis confirmed that wheat is not proper for human nutrition and seems it is also not proper for cattle).<sup>842</sup> As *Dnevni avaz* reported, all 250.000 cans of meat cutlet of BIM Galames Company from Brčko and Levita from Gradiška, that are at Commodity Reserves Directorate, will end up on “waste” because they are not good for human nutrition.<sup>843</sup>

*Dodik vs. Transparency International* – It all began with public warning from “Transparency International B&H” that agreement between Government of Republic of Srpska and ČEZ Company on investing in new power plants in Republic of Srpska violated laws and constitutional rights of citizens.<sup>844</sup> Then in beginning of summer, the problem was announced when executive director of Transparency International B&H (TI BiH), Srđan Blagovčanin, said to *Oslobođenje* that they are investigating Dodik’s parallel institutions. He pointed out that he and his colleagues are “victims of programmed and orchestrated propaganda against TI BiH” and that this is evidence of monopole existing in the entity dominated absolutely by Prime Minister of Republic of Srpska.<sup>845</sup> In that period, daily newspapers

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<sup>841</sup> *Oslobođenje*, 25 June 2008, front page, pages 2 and 3

<sup>842</sup> *Oslobođenje*, 4 January, page 2 and 19 January 2008, pages 2 and 3

<sup>843</sup> *Dnevni avaz*, 3 February, page 9

<sup>844</sup> *Oslobođenje*, 5 January, page 18

<sup>845</sup> *Oslobođenje*, 10 July 2008, page 5

Glas Srpske and Nezavisne novine published dozens of articles and short interviews with different businessmen and people from business working in Republic of Srpska who claimed to be blackmailed by TI BiH. According to “research teams” of Banja Luka newspapers, certain Ljubinko Leković, analyst in TI BiH, was regularly engaged in extortion. In these two newspapers, Miloš Lazović, deposed director of filial of Telekom Srpska in Foča, and former officials of Republic of Srpska, Nedeljko Đekanović and Momčilo Komljenović, accused Leković of requesting from them five to ten thousands of convertible marks (2500 to 5000 EUR) for mediation at international officials that would ensure removal of their names from the list of persons suspect for supporting war crimes perpetrators. Prosecutor’s Office of B&H denied existence of any criminal charges against TI BiH and its’ officials and Police of Republic of Srpska stated that it works on this case on inquiry level. Dodik promised protection to all who can testify on alleged blackmails from people related to Transparency International B&H. Public relations officer of TI BiH, Srđan Blagovičanin, determinantly rejected any similar charges calling them foolish and announcing at the same time that all those who disseminate such information will have the chance to prove it in court. Transparency International headquarters in Berlin published a special press release on the occasion asking for protection of members of this organisation working in B&H.

*Bankrupt of Federation of B&H* – In end of June last year, Canton Sarajevo Prosecutor’s Office sent a request to MIA of Federation of B&H requesting it to gather all necessary information from Prime Minister of FB&H, Nedžad Branković, and Federal Minister of Finance, Vjekoslav Bevanda, regarding the information on financial collapse threatening to Federation of B&H. One of unresolved issues and main problems was regulation of obligations towards socially vulnerable categories such as demobilized soldiers. At the time when there was

discussion on the laws for regulating remuneration payment to demobilized fighters there were only 20.000 potential users. In the meantime, that number increased to 100.000 and some of them receive remuneration on several bases.<sup>846</sup>

### *13.4. Corruption and Abuse of Position*

Judging by number of articles in media (374) corruption and abuse of position are present in B&H society a lot. Consulting different media sources and taking into account previous part of the report and large number of corruption related affairs, political, religious and other public officials in B&H, not involved in some of corruption related affair, are rare.

Financial police of FB&H raised criminal charges for abuse of position, violation of equality and fraud in doing business against Minister of Energy of FB&H, Vahid Hećo, former prime minister of FB&H, Ahmet Hadžipašić, and 18 other persons related. The basis is doubt that they didn't respect rules and criteria in giving concessions to "Intrejd energija" for building hydroelectric power plant.<sup>847</sup>

As Sarajevo weekly BH Dani wrote, Reis Mustafa Cerić abused his position while getting apartment of 237 square metres in very centre of Sarajevo.<sup>848</sup>

Ministry of Interior Affairs of Livanj Canton filed criminal report against Gordana Cikojević, Ministry of Education in Cantonal Government, for reasonable doubt of abuse of position

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<sup>846</sup>Glas Srpske, 27 June 2008, page 3

<sup>847</sup>Nezavisne novine, 8 March 2008, page 7

<sup>848</sup>BH Dani, 25 January 2008, pages 26 - 29



and authority while giving licences for lecturers and investigators in theory classes.<sup>849</sup>

Former director of Agrokomerc, Šemsudin Husić, is sentenced to three and a half years of prison with obligation to return 100.000 EUR to that company precisely as much as he made damage by abusing his position as director.<sup>850</sup>

Officials of state institutions do not pay VAT while eating in restaurants of state institutions while common citizens add 17 percent to price of every good.<sup>851</sup>

Unsuccessful attempt of bribing the police officer happened in Novi Travnik. E.D. from Bugojno offered money to police officer in charge in order to avoid paying the penalty for wrong parking.<sup>852</sup>

Cantonal Prosecutor's Office in Sarajevo requested detention of Nada Jelisavac for doubt that she concealed at least 300.000 convertible marks. In the period between 2005 to 2008 as founder and director of a fictive company, together with her accomplices, she deposited money of unknown origin to bank accounts of that company in two banks in B&H.<sup>853</sup>

Maritime Society of B&H filed criminal charge against Minister Božo Ljubić for abuse of position because Ljubić signed Protocol on merging in place called Bijača without previous approval from Parliament of B&H and B&H institutions in charge, in Zagreb 2007. By this, he set Bijača as southern contact point of Corridor 5c. He also signed the Agreement on making the main implementation project for rout of Corridor 5c "Mostar North – Počitelj – Bijače" without approval of any relevant B&H

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<sup>849</sup>Nezavisne novine, 5 February 2008, page 5

<sup>850</sup>Oslobođenje, 12 February 2008, page 5

<sup>851</sup>Oslobođenje, 16 February 2008

<sup>852</sup>Dnevni avaz, 19 February 2008, page 16

<sup>853</sup>Nezavisne novine, 8 March 2008, page 3

institutions causing damage to the state in which he is a minister.

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Mirko Stojić, Secretary General to President of Republic of Srpska, has been receiving two salaries per month for a year so his monthly income in 2007 was 9.000 convertible marks. In interview for *Nezavisne novine*, Stojić confirmed that he was receiving two salaries but the amount was much less than cited – as Secretary to President of Republic of Srpska he received 2.000 convertible marks while as Chief of Cabinet he was receiving 1.500 convertible marks. Under pressure of media writing on unclear business in renovation of presidential building and luxury wasting of budget money, Mirko Stojić resigned to place of Secretary General to President of Republic of Srpska in the end of March.<sup>855</sup>

Director of Social Work Centre in Banja Luka, Borka Vukajlović, abused her position when employing here son, his friend, cousin and his daughter-in-law, in this institution.<sup>856</sup>

Prosecutor's Office in B&H charged former leaders of Football Association of B&H for tax evasion, extended criminal act of tax evasion and abuse of position and authority. Indictment charged Munib Ušanović and Miodrag Kureš of concealing 2,3 million convertible marks in the period 2001 to 2006 and damaging budget of FB&H and B&H.<sup>857</sup>

*“Ognjen Šimić, cardiologist from Rijeka, sentenced to nine years of imprisonment for taking bribe by the judgment of District Court in Rijeka on 25 August 2008. He is the third known*

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<sup>854</sup>Oslobodenje, 6 March 2008, page 5

<sup>855</sup>Nezavisne novine, 13 March, page 3; 14 March, page 5; and 29 March 2008, page 3

<sup>856</sup>Nezavisne novine, 13 March 2008, page 27

<sup>857</sup>Sources: Oslobodenje, 18 March 2008, page 3; and Nezavisne novine, 18 March 2008, page 12

*fugitive in last year and a half who escaped from Croatia to B&H. Šimić came to Sarajevo on Sunday, day before passing of judgment, allegedly to visit his father, doctor Srećko Šimić, one of the most famous and acknowledged Bosnian gynaecologists. Although there is no doubt that his return to city of birth was planned before, as well as that Ognjen Šimić counted to be found guilty, he came to Sarajevo as any other free citizens of Croatia – with his personal documents. State Attorney's Office in Rijeka did not take travel documents away from Šimić holding that there is no danger of escape. Escape of doctor Šimić to Bosnia and Herzegovina after being sentenced (not yet in effect) to nine years of imprisonment, actualized again legal gaps in relation between B&H and Croatia. Among “fugitives” who used these gaps are also Ante Jelavić, Ivan Bender, Svjetlan Stanić and Jozo Ćurković”.*<sup>858</sup>

### 13.5. Conflict of Interest

Central Election Commission of B&H (CIK BiH) found that there is conflict of interest at Minister of Foreign Affairs of B&H, Sven Alkalaj, and Deputy Minister of Civil Affairs, Senad Šepić, and Deputy Minister of Defence of B&H, Igor Crnadak. The three of them got sanctions of prohibition of candidature to any function in next four years. CIK BiH established that Alkalaj has conflict of interest because he is a member of Supervisory Board of VGT insurance from Visoko who done business with government bodies in amount larger than 5.000 convertible marks. Senad Šepić had conflict of interest from February to December 2007 because his father-in-law was officer in charge as director of public communal company Bašbunar from Travnik. According to decision of CIK BiH, Crnadak will not be able to

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<sup>858</sup>Slobodna Bosna, 28 August 2008, pages 6 - 9

candidate for any function until April 2012 because his father was director of Incel Holding in Banja Luka in time of his state mandate.<sup>859</sup>

Transparency International B&H started procedure against Central Election Commission of B&H for non-establishing the conflict of interest of Federal Prime Minister Nedžad Branković. “The law prescribes that the conflict of interest exists in situations in which elected officials, carriers of executive functions and advisors have private interest that influence or may influence to legitimacy, openness, objectivity and unbiased in executing public functions. TI considers that conflict of interest exists in case of Branković because it is clear that position of Prime Minister and his private interest in ABDS fund can influence all these things mentioned by Law”.<sup>860</sup>

Association of citizens “Front” marked:

*...decision of Central Election Commission of B&H on putting out of effect Rulebook on Conflict of Interest as shameful and cynical as well as its interpretation of provisions of the Law on Conflict of Interest according to which only elected officials at state level are subject to it.*<sup>861</sup>

There is reasonable doubt that Minister of Finance and Budget of B&H, Fuad Kasumović, did not stated, when applying for Minister, that he owns shares of Zmajevac Company in value of 140.000 convertible marks.<sup>862</sup>

Municipal Board of Party of Democratic Action (SDA) Bihać sent report against mayor of Bihać, Hamdija Lipovača, to Central Election Commission of B&H (CIK BiH) claiming that he

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<sup>859</sup>Sources: Dnevni avaz, 7 January 2008, page 3; 7 February 2008, page 2; and 25 April 2008, page 2; and Nezavisne novine, 25 April 2008, page 3

<sup>860</sup>Dnevni avaz, 27 March 2008, page 8

<sup>861</sup>Oslobođenje, 15 March 2008, page 4

<sup>862</sup>Glas Srpske, 10 April 2008, page 3

violated provisions of the Law on Conflict of Interest. SDA claims that the conflict of interest relates to engagement of Hamdija Lipovača as lecturer at Faculty of Law in Bihać, then to execution of duty of president of Steering Board of Development Agency ARDA and function of president of Commission for provision of state owned construction land in Bihać Municipality for which he receives remuneration. Furthermore, they state that Lipovača received a land in Kulen Vakuf as counter-favour for approval of means for building of mosque there. In addition, he received a mobile phone valued 1.000 convertible marks from a mobile operator. He has conflict of interest also because his father is director of Elektroprivreda BiH Directorate in Bihać and his father-in-law is director of Mixed Electro-technical School in Bihać. Mayor's Lipovača Cabinet commented report of SDA to CIK BiH as one more "filthy attempt of SDA in Bihać to obstruct actual mayor in renewing his candidature at forthcoming elections

High Representative Miroslav Lajčak requested from Branković's Government, that is, Federal Parliament, urgent adoption of the Law on Conflict of Interest on entity level since, unlike their colleagues at state institutions, hundreds of federal, cantonal and municipal officials are relieved of any responsibility in that sense. As *Slobodna Bosna* wrote, there is no doubt that Lajčak, apart of reacting rather late, addressed the request for adoption of the Law on Conflict of Interest in Federation of B&H to completely wrong person. High Representative should have discussed the proper implementation of this law first with those whose job it is – heads of Central Election Commission of B&H and not with Nedžad Branković for whom, among others, the implementation of the Law on Conflict of Interest was suspended in Federation of B&H. In the end of last year, representatives of Transparency International have started a court procedure before the Court of B&H seeking responsibility from those in charge of implementation of the Law on Conflict of Interest and those who

violated it. Since they haven't found any argument in favour of Branković and didn't have political agreement to punish him, alleged independent members of Central Election Commission in the end reached "compromise solution" and simply decided that the Law on Conflict of Interest "is not relating to" Federal Prime Minister!<sup>863</sup>

Transparency International B&H (TI BiH) directed a letter to Parliament of B&H pointing out to continuous obstruction in implementation of the Law on Conflict of Interest done by Central Election Commission of B&H regarding the request for establishing conflict of interest in case of Federal Prime Minister, Nedžad Branković. Letter cites that CIK BiH passed no decision in requested deadline. Therefore, Transparency International started administrative procedure for silence of administration before the Court of B&H. The Court of B&H passed a judgment on 26 August 2008 ordering CIK BiH to reach a decision in 15 days on whether the Prime Minister of FB&H has conflict of interest. However, the Commission declared itself unauthorised in this case. "Such practice of CIK BiH violates the law in direct and flagrant manner and denies enforcement of judgment of Court of B&H sending message to public that there are individuals who are above the law", points Transparency International. The letter marks that such acts have long term consequences to rule of law as fundamental principle in democratic societies and that Parliamentary Assembly of B&H should state on those as well as on responsibility of members of CIK BiH. Letter addressed to OHR and OEBS, was signed by Helsinki Committee for Human Rights in B&H, Centre of Civic Initiatives, ALDI, Global Rights, Open Society Fund B&H, Centre for Promotion of Civil Society, Cepas, ACIPS and ICVA. Transparency International requested establishing whether Branković has conflict of interest for being Prime Minister and

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<sup>863</sup>Slobodna Bosna, 28 August 2008, page 29

shareholder at ABDS Association for Managing Funds at the same time.<sup>864</sup>

## 14. Women's Rights

Discrimination based on traditional-sexual and gender power is especially strengthened through media discourse. It enforces stereotype constructions and patriarchal perception of "role" of woman in society with primary given identities of mother, wife, homemaker and home keeper. Mediacentar Sarajevo published a book "Stereotyping: Representation of Women in Print Media in South East Europe" making observation that "What is paradoxical in media production and the use of stereotypes, explicit and/or implicit dissemination of prejudices is primarily the discourse of the news profession itself, which establishes its' authority, as is well known, by providing "objective" information and by a code that requires "equal treatment" of all persons by eliminating all forms of discrimination. Another paradox is that the news profession, especially in countries in transition, is feminized to a great degree, from which it follows that the stereotypical representation of women in media is often the fault of women themselves. Yet one should not forget that journalism is the oldest media profession and that the founding myths and skills that bring journalistic glory usually affirm a patriarchal culture of masculinity, and that, consequently, the socialization of women and their education can, by no means, be neglected. Women entered journalism in a hard way and made slow progress".<sup>865</sup>

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<sup>864</sup> Sources are SEEBiz.eu and Dnevni avaz, 16 September 2008, page 4

<sup>865</sup> Stereotyping: Representation of Women in Print Media in South East Europe, Sarajevo: Mediacentar Sarajevo, 2007, page 22

Results of research done by Mediacentar Sarajevo in 2007, by monitoring printed media for two months, showed that “Men dominate media while women and other gender groups are underrepresented. Additionally, women are given more space in entertainment and privacy and therefore marginalized. This is achieved by systematic positioning of women to “marginal” stories – pushing them from front pages to back pages and so-called “soft” topics (men are even 81,3% more present on front pages in compare to women who take only 17,6% of front pages). Regarding their positioning within news, women rarely play central part in article and are rarely main sources of information. Women voices are often quiet and rarely represent voice of authority and expertise).<sup>866</sup>

Result of monitoring of media for 2008 was no different from results of previous monitoring. Even though the number of analysed articles dealing with (endangered) women’s rights is small (320 or 2 percent), the general impression is that there is still great discriminatory practice and insensitivity of media, especially when it comes to reporting on cases of violence. Most represented topics were family violence and other forms of violence (physical assaults on women).

#### *14.1. Violence*

Nezavisne novine often reported on cases of family violence but unfortunately, insufficient sensitivity of journalist in reporting on these topics was visible. Women are often named as *victims* which additionally fortifies violence and creates picture of women as helpless beings exposed to various forms of violence and torture. “Women most often victims: ...in family are women,

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<sup>866</sup>Ibid. page 66



but also parents and children. Pointed out Azir Mrđanović, expert associate at Gender Centre of FB&H speaking on implementation of the Law on Protection against Family Violence in Canton... on implementation of this law. ‘Violence was always present in B&H families. We do not have relevant data on number of family violence so we cannot tell if it is growing. But increase is evident...’ said Zahiragić. Mrđanović added that in 2007 in FB&H there were 78 requests for protection measures for family violence, 17 were passed and 31 victim was protected”, stands in one of the articles in *Nezavisne novine*, published in the end of January 2008.<sup>867</sup>

Analysis showed problematic titles such as article in *Oslobodjenje* titled “Through Beating to Status of Boss in the House”. In further text of the article stands: “Stereotype in minds of some Bosnian-Herzegovinian men that ,by marrying, they’ve got ownership over wife and the right to raise her and children in violence, as professor and social psychologist Ismet Dizdarević says, came to light 15 times last weekend in Federation of B&H. Police Departments of Cantonal MIA, during Saturday and Sunday, reported 15 criminal acts of family violence, out of which most were registered in Una-Sana Canton (four) and three in Sarajevo Canton”.<sup>868</sup>

Dnevni avaz published an article on blood revenge of Albanians and “right” to kill a woman unless she enters the marriage as virgin. Except giving information on this type of “tradition”, article gave no critique of blood revenge present in some traditions. Article was written as full understanding of specific traditions and customs. Apart from naming the killed girl *unfortunate* the entire event of murder in the article was represented with no judgment or critique from “he returned

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<sup>867</sup>Nezavisne novine, 29 January 2008

<sup>868</sup>Oslobodjenje, 26 February 2008

unfortunate girl” to “he took a law in his hands”. The article says, “After first night of marriage 20-year-old Albanian from Kosovo, Hadžira Sahiti, was brutally murdered in accordance with traditional Albanian Cannon of Leka Dukadžini. Explaining that his chosen one was not a virgin, her husband Skender returned the unfortunate girl to her parents. Hadžira’s elder brother Ismet took a law in his hands, in order to save the honour of his family in accordance with Cannon of Leka Dukadžini, and fired seven bullets to his sister and then buried her in nearby forest”.<sup>869</sup>

In the past period, couple of reports on family violence were published. *Nezavisne novine* published part of the report with soft critique, which is step forward in comparison to the simple statement of statistical data. “Only one bully restrained from house” is the title of article saying “Even though the Law on Protection against Family Violence in Federation of B&H has the measure of restraining the bully from the house, only one such measure was passed in Federation in the last year. These are data from Gender Centre of FB&H. This, one, measure was passed by Municipal Court in Livno. Ana Vuković, director of Gender Centre of FB&H, says that 12 municipal courts in FB&H received 78 requests for passing protection measures provided by the Law on Protection against Family Violence”.<sup>870</sup>

“Women decide more and more to report violent husbands, brothers or parents. The best data illustrating this is that cantonal MIA registered 775 cases of family violence in 2007, which are 63 more than in 2006. According to police data, in three days only, at least 11 such cases were reported in B&H and among victims are minor from Sarajevo and woman from Modriča.”<sup>871</sup>

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<sup>869</sup>Dnevni avaz, 29 March 2008

<sup>870</sup>Nezavisne novine, 31 March 2008

<sup>871</sup>Oslobođenje, 19 March 2008

Most often victims of family violence are women, and children who, if not directly exposed to violence, are present to stress scenes of violence of fathers against mothers. As Dragana Miljević, from Banja Luka organisation Udružene žene (United Women), said most of the problems women are facing with and for which they come to safe house are related to physical violence. According to her, there were six women in safe house in the end of August and the same number of children, who suffered family violence. Women are 21 to 55 years old and children from 5 months to 17 years old.<sup>872</sup>

Insensitivity is present in most of the media that stimulate violence, or not judging it in great part, but understands it as existing fact of specific society. “*Beaten even for Women’s Day*”, is the title of article published in Glas Srpske. “*On Women’s Dilemma*” is title of article in Nezavisne novine published on the show “The Vagina Monologues” which is dedicated to fight against violence in entire world. Here, the violence is named as “women dilemma” or “women’s problem”!

Oslobođenje published an article on the case of reported family violence. “Beaten and Raped Ex-Wife? (title): H.I. (21) from Ljubovija reported to Tuzla police that her ex non-married husband B.M. (34) attacked her and raped her in several times, on Sunday evening in her house in settlement Mihatovići near Tuzla. H.I. told the police that B.M. intercepted her in front of the house, took fifty marks (BAM) from her and raped her several times. The girl was then transported to Emergency Service in Medical Centre Tuzla and then directed to Gynaecology Department of University Clinical Centre Tuzla.”<sup>873</sup> This is one of examples where the journalist took a role of a judge, encouraging to doubt in case of violence, that is yet reported to the police, and therefore

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<sup>872</sup>Glas Srpske, 23 – 24 August 2008, page 27

<sup>873</sup>Oslobođenje, 06 May 2008

breaching the codex of profession (newspapers and periodicals have obligation not to make early judgment on the guilt of accused person – Article 10).<sup>874</sup>

Another case that interested media much in past period was student attack on professor in Technical School in Banja Luka. “Another unjustified absence from class changed a life of Milka Kukolj, professor of Technical School in Banja Luka... For doing her job, giving unjustified absence from class to pupil who made no justification for absence, Kukolj was beaten, traumatized for good and humiliated. Her job, to which she was dedicated for years, now represents place of fear, awful pictures and memories to her. Furious fifteen-year-old, revolted for unjustified class, slapped fragile professor before all of his apathetic colleagues, and the tragic is that he passed”.<sup>875</sup> For sure, here one should underline *fragile professor* as continuous entitling women’s helplessness.

Media paid much attention to case of murder of a mother by thirty-one-year old son. Murder occurred on 14 June 2008. “Armin Isaković in Difficult Psychical Condition: Cantonal Prosecutor’s Office in Sarajevo gave an order for investigation against Armin Isaković (31) who killed his mother Fatima (61) by knife in their apartment in centre of Sarajevo on Saturday afternoon. Upon Prosecutor’s suggestion, Vladimir Špoljarić, judge for the procedure, decided on one month of imprisonment for Isaković. Cantonal Prosecutor, Milutin Koprivica, who is investigator in this case, didn’t want to provide any additional information.”<sup>876</sup>

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<sup>874</sup>Press Code B&H, Sarajevo: BH Press Council, 2006, Article 10

<sup>875</sup>Nezavisne novine, 23 May 2008, 25 May 2008

<sup>876</sup>Dnevni avaz, 17 June 2008; Dnevni avaz, 17 June, BH Dani, 27 June, Nezavisne novine, 17 June, 06 August, 13 August, 22 August, Oslobođenje, 17 June, 12 July, 31 July, 06 August 2008

Armin Isaković Transferred to Centre for Social Work (title): Council of Cantonal Court in Sarajevo determined that Armin Isaković killed his mother Fatima Isaković in condition of unsound mind and directed the case to Centre for Social Work of the Centre Municipality to further procedure (in accordance with provisions of Criminal Law from 2003).<sup>877</sup>

#### *14.2. Mobbing, Ageism, Health (Un-) Care and Political Participation*

Apart from violence as the most present topic in media, through revision of articles we discovered presence of topics on women victims of war, mobbing, age discrimination, health (un-)care and political and social participation in public life.

“Mobbing or systematic psychological abuse at work is becoming frequent in RS and B&H, said Jelena Milinović, public relations officer at Gender Centre of Government of RS. She cited economic uncertainty, low living standard, high unemployment rate, unfinished privatization, high crime and corruption rate, as causes for mobbing that place workers in difficult position.”<sup>878</sup>

Slobodna Bosna magazine published article on (non-) participation of women in politics with dominant mocking tone and complete discouraging of participation of women in politics. “Removed ladies of B&H diplomacy, Daria, Željana, Lidija, victims of Komšić’s sable: After, now already ex ambassador of B&H in Austria, Darija Krstičević and her colleague Lidija Topić, head of B&H Mission in European Union until mid September last year, Željana Zovko, third successful diplomat ended her diplomatic engagement in France ten days ago. Croat member of

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<sup>877</sup>Oslobođenje, 29 August 2008

<sup>878</sup>Nezavisne novine, 12 April 2008

state Presidency, Dragan Čović appointed her previously as an ambassador. By decision of members of Presidency of B&H agreed on session held on 17 January...<sup>879</sup>

Other stereotyped interpretations came through media space, such are: “*Woman Pick-Pocket Caught*” (Dnevni list, 31 January 2008); “*More and More Women Gamblers*” (Dnevni list, 25 February 2008); “*Women Prisoners More Problematic than Men*” (Nezavisne novine, 07 April 2008), as well as stereotyping of professions: “*Successfully Doing Men’s Jobs*” (Oslobođenje, 16 March 2008); “*Best Rakia Made by Woman*” (Nezavisne novine, 14 March 2008); “*Half-naked Singer Danced before District Officials*” (Nezavisne novine, 08 March 2008). Then discrimination related to eight of March: “From Oppressed to Emancipated... In time this holiday lost political connotation and became a day for celebrating woman beauty and motherhood”<sup>880</sup>, “Haris Silajdžić Open-Handed Treated Employees of Presidency of B&H with 200 BAM for Women’s Day”.<sup>881</sup>

“Missing Sheet from Bridge in Višegrad (title): Tin sheet illegally placed by members of Association ‘Women Victims of War’ from Sarajevo is missing from the bridge of Mehmedpaša Sokolović in Višegrad. This was confirmed yesterday by Višegrad police. ‘Police was not obliged to take care for this sheet removed yesterday by unknown perpetrators after being placed illegally’, said Zoran Uščumlić, commander of Police Station in Višegrad.”<sup>882</sup>

“Status of Social Category to Victims: Establishment of fund for remuneration and ensuring free legal aid to victims of trafficking in human beings is necessary, as well as stabile

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<sup>879</sup>Slobodna Bosna, 31 January 2008

<sup>880</sup>Glas Srpske, 08-09 March 2008

<sup>881</sup>Slobodna Bosna, 13 March 2008

<sup>882</sup>Nezavisne novine, 27 March 2008

financing from state budget to organisations providing legal aid to victims. This was conclusion of Fourth Regional Conference on Fight against Trafficking in Human Beings closed yesterday in Sarajevo. There is also need for starting initiative to give status of social category for victims of trafficking in human beings within the social protection laws in order to have the right to all benefits.”<sup>883</sup>

Media regularly follow up topics related to health (un-)care. “Only parturient women in HNK are not protected by the law (title): Twenty-nine-year old Medina, mother of three-year old girl is in fear of being without a job soon after she gives birth to another child. In SMS which this woman from Konjic sent to redaction of Dnevni avaz, among other stands that a thousand of employed pregnant women faces the same fear in Herzegovina-Neretva Canton today.”<sup>884</sup>

“Fathers Don’t Go on Paternity Leave” is title of article published in Nezavisne novine saying that “fathers in B&H, even though allowed by the law to take paternity leave, rarely use that right and employers unwillingly give approval for this to men. ‘Railways of RS’ denied a request of Drago Gačanović from Donja Snjegotina near Čelinac, who got triples and has five children now, to go on paternity leave.”<sup>885</sup>

Same newspaper wrote, “Even though doctors recommend pregnant women to go to Counselling Centre of Medical Centre in order to avoid contact with viruses, large number of them is forced to go to other gynaecologists in Medical Centre”.<sup>886</sup>

“Gender sensitive language in RS should be standardized and political, educational, linguistic and journalist elites should

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<sup>883</sup>Dnevni avaz, 27 March 2008

<sup>884</sup>Dnevni avaz, 10 April 2008

<sup>885</sup>Nezavisne novine, 14 April 2008

<sup>886</sup>Nezavisne novine, 15 April 2008

unite in that work considers Svenka Savić, professor of psycholinguistics at University of Novi Sad. She held a lecture on ‘Women hidden by media language: Codex of non-sexist language use’ at round table ‘Gender and Language’ held in Banja Luka yesterday. Savić said that since 1999, we are still waiting on implementation of UN Declaration on Gender Sensitive Language.”<sup>887</sup>

Stereotyped media interpretations are still present in naming certain “men” professions: “Girls in men’s sports: Football club ‘Leotar-tex’ from Trebinje is this year’s champion of Republic of Srpska in women football. Vice-champions of B&H and finalists of B&H Cup gained title of champions in Teslić after defeating ‘Borac’ from Banja Luka in better taking the penalties 7:6 (it was 3:3 in regular part of the play).”<sup>888</sup>

Dženana Zolota and Zlata Behram, journalists of FTV Information Programme, announced to file a complaint against management of this television because they were informed on transfer from television to Radio FB&H with no explanation while they were on sick leave. Zolota and Behram claim they had to prolong their sick leave for stress and mobbing, caused by constant telephone calls saying they will be transferred even illegally.<sup>889</sup>

## 15. Rights of the Child

With 939 media reports or 7 percent of total number of analysed articles, rights of the child were among most represented

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<sup>887</sup>Nezavisne novine, 22 April 2008

<sup>888</sup>Reporter, 18 June 2008

<sup>889</sup>Dnevni list, 5 November 2008



category in media. Monitoring of media for 2008 showed that a lot of media space is dedicated to children but qualitatively those articles mostly write on different criminal acts, once they occur. This is the case with problems in education (ethnic and national intolerance, divided schools) that are on first place with 334 articles and juvenile delinquency, on second place, with 223 articles. Cases of sexual abuse and other forms of violence such as paedophilia were treated 88 times and 294 articles related on general topics on children's rights.

For example, within articles we placed in category "general", we placed also the following two dealing with adoption of children in B&H.

Procedure of adoption of children without parental care in B&H is complicated and lasts even up to five years. The entire process is additionally made more difficult by the fact that there is large number of children who cannot be adopted for their biological parents will not give permission for adoption although they do not want to take care of them. According to data of Ministry of Health and Social Protection of Republic of Srpska, there are 577 children without parental care mainly situated in foster families.<sup>890</sup> People from Mostar also show low interest in adoption of children. Even though Centre for Social Work from Mostar began project of fostering two years ago, still none of children from Home for Abandoned Children was fostered through this. In the end of 2008, there were 14 abandoned children in the Centre.<sup>891</sup>

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<sup>890</sup>Nezavisne novine, 11 November 2008, page 5

<sup>891</sup>Dnevni list, 9 November 2008, page 13

### *15.1. Juvenile Delinquency*

Media reported the most on presence of juvenile delinquency actuated by murder of a boy Denis Mrnjavac, then state of education, presence of nationalism in schools and less on sexual abuse in family, that is, cases of incest.

Horrifying murder of seventeen-year old boy, Denis Mrnjavac, occurred in tram on 5 February 2008, caused great media attention and increased the interest for presence of juvenile delinquency like never before (Dnevni avaz, 07.02., 09.02 – three articles, 11.02., 12 – four articles, 13.02, 16.02 – two articles, 20.02 – two articles, 26.02; Nezavisne novine, 09.02, 11 – two articles, 14.02 – three articles, 23.02 – two articles, 26.02; Oslobođenje, 09.02 – three articles, 12, 13, 14, 16.02 – two articles, 20.02 – two articles, 21.02 – two articles, 23.02 – three articles, 24.02; Start BiH, 19.02 – two articles; Glas Srpske, 07.02 – very small text; 13.02; BH Dani, 22.02 – three articles; Reporter, 20.02 – two articles; Start BiH, 19.02; Nezavisne novine, 15.02 – three articles, Nezavisne novine, 15.02; Oslobođenje 12.02; Dnevni list, 14.02 – four articles, 13.02 – three articles, 12.02, 11.02 – three articles, 22.02; Dnevni list, 24.02 – two articles, 27.01, 28.02 – two articles, 15.02, 20.02; Dnevni avaz, 12, 15, 16, 17, 18, 23.02; Nezavisne novine, 13, 20, 23.02; Oslobođenje, 11, 12.02 – two articles, 13, 14, 15.02; Dnevni list, 14.02, 13.02, 12.02, 22.02, 24.02, 15.02).

Magazine Start BiH visited Zenica prison and interviewed three prisoners whose stories are like thousands of other juvenile delinquents stories whose play and demonstration end tragically taking them to prison. There, they are placed together with multiple murderers and with no qualitative programmes of re-socialization.<sup>892</sup>

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<sup>892</sup>Start BiH, 04 March 2008

Slobodna Bosna published an article titled “Children Who Place Terror over Sarajevo: Sixteen-year old Roberto Hrustić, arrested by Sarajevo police officers on 21 January, committed total of 128 heavy criminal deeds in 2007!!! But, this sixteen-year old was a problem only for Sarajevo police and another hundred of citizens who were victims to his crimes until 20 January when Hrustić lit a match and thrown it to Ljubica Đokić-Spasojević previously poured by gasoline by his two years younger friend Robert Mučič.”<sup>893</sup>

Similar are titles of articles published in Nezavisne novine: “*When Children Become Killers*”<sup>894</sup> and *Oslobođenje* – “*Criminal Children freely Wandering B&H Streets*”<sup>895</sup>.

Apart from murder of Denis Mrnjavac, media reported a lot on murder of old lady Ljubica Spasojević by three juveniles (Nezavisne novine, 22.01; Dnevni avaz, 21.01; Glas Srpske, 22, 23, 28.01; Dnevni list, 22, 23, 24.01). Both murders have been already mentioned and analysed within this report in the part relating to “Right to Life”.

As an answer to increasing threat of juvenile crime and delinquency, Government of Canton Sarajevo restrained movement of juveniles allowing them to move after 23.00 hours only with presence of older persons (Nezavisne novine, 21, 22, 23 February – two articles, 25, 29 February; Oslobođenje, 21, 23 February; Dnevni list, 26 February).

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<sup>893</sup>Slobodna Bosna, 14 February 2008

<sup>894</sup>Nezavisne novine, 25 May 2008

<sup>895</sup>Oslobođenje, 07 May 2008

## *15.2. Education*

Articles on education are mostly focusing on construction of new schools, equipping classrooms and similar forms of helping children. Media reported less on nationalism in schools (with exception of primary school case in Čapljina) as well as on violence and corruption present in schools.

In the context of topics dealing with nationalism in schools, media often wrote on case of abandoning high school by pupils because it was a prison camp of Croatian Defence Council (HVO) during the war. Almost all media wrote on that case (Dnevni avaz, 03.04, 04.04, 05.04, 08.04, 18.04, 21.04, 22.04; Nezavisne novine 01.04, 02.04 – two articles, 03.04, 08.04, 09.04 – two articles, 18.04; Oslobođenje, 03.04, 08.04; Nezavisne novine, 22.04, 23.04 – two articles, Nezavisne novine, 02, 03, 04, 05, 09, 10, 11.02 – three articles, 12, 13, 21, 23, 25.02 – two articles, 26, 27, 28, 29.02 – three articles; Oslobođenje, 04.02 – two articles, 16.02; Reporter, 27.02; Dnevni list, 13.02, 12.02, 22.02, 23.02, 24.02, 26.02, 27.02, 28.02, 15.02).

Problem of “two schools under same roof” also filled newspapers columns. “It already became trifling to speak about disinterested B&H politicians for problems of citizens, but ‘Čapljina’ case is one drop too much so Bosniaks from Čapljina took a matter in their hands. For apparent disinterestedness of HNZ authorities, Bosniak returnees in Čapljina first stopped sending their children to classes in Primary School “Čapljina” and then withdrew them from that school and now sending them to classes to 30 km distanced Mostar.”<sup>896</sup> Centre for Civic Initiatives (CCI) gave their support to efforts of parents of returnee children in Čapljina who fight against segregation of children in Primary School ‘Čapljina’. CCI states that it is outrageous that children in

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<sup>896</sup>Nezavisne novine, 23 April 2008

21<sup>st</sup> century are separated on national basis and in environment where finally people are getting closer.”<sup>897</sup>

Dnevni list wrote on reactions of Croatian ministers on publishing textbooks. “Croatian ministers of education in Federation want to protect the right to education in mother tongue and are unsatisfied with suggested agreement on procedure of preparation and approval of textbooks...”.<sup>898</sup> In another article the same newspaper published text titled: “Croat ministers don’t allow books to be printed in Sarajevo” quoting: “We will never accept that textbooks for Croatian children be printed in Sarajevo or that procurement of textbooks comes from one place, Federal ministry...”<sup>899</sup>

In one of its' articles *Oslobođenje* wrote on “most rigid form of punishing children of so-called Autonomists for political and war determination of their fathers who went on other way during the war”. In the article stands that “system institutions and the one in which it is requested in most rigid and radical manner from innocent children to, in their poor lives, put out ideological, political and war “guilt” of their fathers. This... in nowadays B&H reconciliation is obviously impossible in society of ultimate ideological exclusivities, as shown by example of these innocent children.”<sup>900</sup>

Nine schools in B&H did not change disputable titles and the most critical one, as *Dnevni list* from Mostar writes, is Sarajevo county, for there are eight schools named by participants of past war, as well as one in school in Herzegovina-Neretva county.<sup>901</sup>

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<sup>897</sup>Nezavisne novine, 26 March 2008

<sup>898</sup>Dnevni list, 22 January 2008, 25 January 2008

<sup>899</sup>Dnevni list, 11 February 2008

<sup>900</sup>Oslobođenje, 10 January 2008

<sup>901</sup>Dnevni list, 12 February 2008

Media reported a lot on protest of Croat pupils in Žepče after juvenile Josip M. was beaten by pupils of Bosniak nationality on its way to bus station.<sup>902</sup> After the decision that identified perpetrator in this incident, Sabahudin Tutnjić from Mixed High School, is to be punished by exclusion from classes, pupils of Bosniak nationality started a boycott of classes. They requested annulment of decision because they believe their colleague is innocent, but also punishment of other perpetrators of incident from last week. Sabahudin's father, Hazim, criticized school's management and requested respect of material evidences of police and the court.<sup>903</sup>

“Schools are not places for religious rituals” is the title of article in *Nezavisne novine*, saying “Management and School Board of Primary School ‘Branko Radičević’ in Bratunac consider as inappropriate to mark annuals of suffering in school premises with religious ritual. This is how director of this school, Jovan Nikolić, commented on attention of Bosniak Association of Camp Inmates and Association “Women of Podrinje” to mark the annual of Bosniak suffering on 11 May in school gym with religious ceremony, photo exhibition and placing memorial.”<sup>904</sup>

Although almost two kilometres away from the centre of Teslić, county school “Vuk Stefanović Karadžić” in settlement Stenjak, has no heating or sanitary junction. Pupils use outside WC. Interior of school building is dilapidated, roof leaks and rain and snow enter through broken windows. The worst is, as pupils say, during the winter when the north-wind “kills” even that little heat coming from the old furnace.<sup>905</sup>

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<sup>902</sup>Glas Srpske, 29 February 2008

<sup>903</sup>Dnevni avaz, 4 March 2008, *Nezavisne novine*, 4 March 2008

<sup>904</sup>*Nezavisne novine*, 15 April 2008

<sup>905</sup>*Nezavisne novine*, 13 April 2008

Out of 580 county schools in Republic of Srpska, some 46 schools have only 5 or even less pupils, confirmed at Ministry of Education and Culture of Republic of Srpska. Duška Golić, senior associate for strategic planning of primary education, said that, apart from economic justification of existence of these schools, there is also a question of expediency and quality of work.<sup>906</sup>

Latest data on conditions in education showed that B&H lags behind almost all countries, new members of European Union, in large scale when it comes to high school education. Centre for Civic Initiatives (CCI) warn that each third pupil in B&H do not finish his high school, and many end it by finishing first grade.<sup>907</sup>

In Tuzla Jasmin Mašić, driver at Government of Tuzla Canton, who was “link” between students and professors of Faculty of Law University of Tuzla, was arrested under suspicion that professors in exchange for good grades forced female students to sex. As media reported, Mašić was arrested after several years of investigation of MIA and Prosecutor’s Office of Tuzla Canton, and Mašić was arrested under suspicion of committing criminal act of leading to prostitution, giving gifts and other forms of benefit.<sup>908</sup>

When it comes to higher education, Oslobođenje wrote on alleged exclusion of human rights subject from the list of master subjects:

*...Senate of Sarajevo University passed a decision in the beginning of academic year based on which the subject Human Rights was excluded from the list of master subjects at faculties. Both Rector of University in Sarajevo, Faruk Čaklovica, and cantonal minister of education, Safet Kešo, didn’t respond to questions of Lada Sadiković, associate professor on subject Human*

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<sup>906</sup>Nezavisne novine, 8 April 2008

<sup>907</sup>Dnevni avaz, 22 June 2008

<sup>908</sup>Dnevni list, 15 September, page 7; 13 September, pages 2 and 3

*Rights at Faculty of Criminal Law Sciences. Only Ombudsman for Human Rights of B&H, Safet Pašić, reacted reminding the ones in charge that one of obligations that B&H has on its road to accession is also more active role in human rights protection.<sup>909</sup>*

### *15.3. Sexual Abuse and Other Forms of Violence*

Articles dealing with cases of sexual abuse and other forms of violence against juveniles are full of sensationalism.

Sensationalist title “Raped 13-year old Gave Birth to Uncle’s Child” published in *Dnevni avaz*, followed article that “father of a child, recently born in Cantonal hospital in Zenica by 13-year old girl from one Zenica village, is her uncle and according to data of MIA ZDK, child was conceived by rape when the girl just had 12 years”. MIA of Zenica-Doboj Canton received a DNA analysis report confirming that the rapist is her uncle who was arrested and taken into custody. Cantonal Court in Zenica determined a long term custody for him.<sup>910</sup>

Another example of sensationalism is from *Slobodna Bosna* writing on verdict for sexual violence over juvenile. “Josef Frizl in Zenica: How to Stop Carnal, Incestuous Beasts” is the title of article saying that “Monstrous rapist Ermin Skender was sentenced at Cantonal Court in Zenica to 22 years of prison for sexual violence over juvenile daughter of his own brother. This high penalty could seem unusual at first instance but judicial institutions in Zenica believe that only draconic penalties could

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<sup>909</sup>Oslobođenje, 4 November 2008, page 9

<sup>910</sup>Dnevni avaz, 11 April 2008



stop the increase of scary trend of sexual violence over children in this part of B&H.”<sup>911</sup>

Apart from incest cases, topic of juvenile prostitution was also present in analysed period. It was mentioned within part relating to “Prohibition of Slavery and Forced Labour”. This topic is for sure relating to rights of the child, abuse and crime committed over a child. The same is with topic of juvenile trafficking. But, mentioned articles were less in comparison with previously mentioned topics of juvenile delinquency and education.

“Seventeen juvenile persons from B&H were victims of trafficking in human beings in 2006 while the number of children victims of trafficking in last year was smaller”, stated Samir Rizvo, State coordinator for fight against trafficking in human beings and illegal immigration. This was on presenting the manual “Standardized procedure for different professions in protection and treatment of children victims and victims-witnesses of trafficking in human beings”.<sup>912</sup>

On International Day on Fight against Trafficking in Human Beings, 26 June, Caritas warned that victims registered in B&H in 2007 were juvenile citizens of B&H in 44% of cases. In 2007, 41 persons were identified as victims of trafficking in human beings for leading to prostitution. Out of that number, 24 were placed in “safe houses”. Among newly identified victims, 73 percent are B&H citizens.<sup>913</sup>

Apart from cases of juvenile prostitution, media published articles on cases of paedophilia. “21 Paedophile Discovered in a Year” stands in one of analysed articles in Mostar Dnevni list. Exploitation of a child for pornography, unlike paedophilia, is

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<sup>911</sup>Slobodna Bosna, 22 May 2008

<sup>912</sup>Nezavisne novine, 26 February 2008

<sup>913</sup>Dnevni avaz, 26 June 2008

relatively new in our country, said Edina Pirija, public relations officer of Prosecutor's Office in Sarajevo Canton for this newspaper. According to Federal Police Department statistics, there were 12 registered cases of sexual relation with a child in this entity.<sup>914</sup>

Case of murder of one-year old girl, Ajla Duraković, who passed away under consequence of injuries received by beating from her stepfather, was significantly present in media, which again took the role of "judge" by naming like "*monster stepfather*".<sup>915</sup> "Case of little Ajla Duraković is one of the most scary murders ever registered in Bosnia and Herzegovina. One-year old Ajla Duraković, victim of one of the most scary and monstrous crimes ever registered in B&H, was buried in Bratunac, hometown of her mother Jasna, yesterday. Miniature coffin holding her body looked even smaller in her cousins hands who took it to funeral car of Commemorative Centre Tuzla."<sup>916</sup>

Articles on children with disabilities were among less numerous in past period.

Nezavisne novine published an article on financial aid to children with disabilities. "165.000 BAM for Aid to Mentally Ill Children: Ministries at Government of Canton Sarajevo will finance Centre for Diagnostics and Observation of Children with Mental Retardation with 165.000 BAM and ensure doctors. This was defined yesterday in Protocol on Cooperation for support to raising and education of children with difficulties in development and studying in Canton Sarajevo."<sup>917</sup>

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<sup>914</sup>Dnevni list, 03 June 2008

<sup>915</sup>Oslobođenje, 09 February 2008, Nezavisne novine, 09 February, 20 August, Dnevni avaz 09 February, 20 August, 21 August, Oslobođenje, 09 February, Dnevni list, 13 February, Dnevni list, 15 February 2008

<sup>916</sup>Dnevni avaz, 09 February 2008

<sup>917</sup>Nezavisne novine, 21 February 2008

Centre for Social Work from Čeline, discovered seventeen children with problems in psychophysical development in that municipality. This was found during realisation of a project on “Early discovering children with special needs and their developmental problems” implemented by the Centre within the municipality.<sup>918</sup>

Problems of family violence are among most present topics. One of events, on which media reported, was assault of mother on a child. “Two-and-a-half year old son stabbed by kitchen knife (title): Branka Komnenić (46) from Trebinje injured her two-and-a-half year old son with several stabs by kitchen knife two nights ago. \_He was taken to Intensive Care Department at General Hospital in Trebinje and his health condition is so far stabile. Prosecutor Obrad Rajičević stated that the mother tried to kill her son by a kitchen knife after she took him from apartment to nearby grove in settlement Tini where they are living.”<sup>919</sup>

Similar situation was with suffering of a four-year old boy from stray bullet. “Expertise found that the boy was shot in head by rifle bullet (title): Four-year old E.S. from Sarajevo, who was shot in head by stray bullet on Saturday, is still in heavy condition and his life is endangered, confirmed Biljana Jandrić, spokesperson of Clinical Centre of University of Sarajevo. Boy was shot by a bullet in his grandfather’s house yard in Derviš Fevzi Mostarac Street to No. 48 in Sarajevo, when he was playing with children and sitting in car. He got to hospital in comma and bullet out of his head was removed by operation.”<sup>920</sup>

Among victims of prostitution, in past years, in B&H there are more and more juvenile girls. According to data of Office of

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<sup>918</sup>Nezavisne novine, 10 April 2008

<sup>919</sup>Dnevni avaz, 22 April 2008

<sup>920</sup>Dnevni avaz, 19 May 2008; Dnevni avaz, 19 May - two articles, 20 May, 21 May, 27 May, Nezavisne novine, 20 May, Oslobođenje 19 May, 21 May 2008 - two articles

State Coordinator for Fight against Trafficking in Human Beings and Illegal Immigration, out of 41 women who were exploited for prostitution in B&H, even 30 were citizens of B&H.<sup>921</sup>

## 16. Economic, Social and Cultural Rights

Category of economic, social and cultural rights was the most represented in the media in 2008 with total 2.535 published articles or 21 percent of total number of selected and analysed newspaper articles. This proves the claims on bad economic situation, lack of strategies and planning in employment, social care and ignorance for culture.

Within subcategories most of articles related to **socially vulnerable groups** (909). Among those groups, media wrote the most on veterans population and their families (379 times including demobilized fighters and war military invalids), then invalids, persons with disabilities (191), pensioners (69) and decertified policepersons (24). **Union work and strikes** are on second place with 549 articles, and categories that, according to media, had struck the most were: workers (248), police (border and decertified policemen) with 89 articles, educationalists (39), state officials (28), health care workers (22), miners (11) and firemen (8). Then there are subcategories relating to **working conditions** (300 articles), **allocations for culture** (198), **unemployment** (173), **health care** (143) and **black market labour** (36). Even 227 articles were analysed and placed in subcategory “**general**”.

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<sup>921</sup>Glas Srpske, 18 August, page 14

### *16.1. General Observations*

During the conference on social dialogue in FB&H in Sarajevo, representative of Association of Independent Unions, Edhem Biber, pointed out that “there is not enough of social justice”, but also there are steps forward like the one in reaching general collective agreement enabling fundamental rights to employees.<sup>922</sup>

Nezavisne novine published an article discovering how high salaries of union leaders are. Edhem Biber, president of Association of Independent Unions in B&H, receives 1.200 convertible marks monthly with delay of two months and 160 convertible marks for meal allowance. Dženana Tanović-Hadžić, president of Union of High School and Higher Education, Science and Culture B&H, has salary in amount of 1.350 convertible marks and meal allowance of 160 convertible marks. Salary of Ranka Mišić, president of Association of Unions of Republic of Srpska, with all benefits, is 1.500 convertible marks. When it comes to leaders of non-governmental organisations in B&H, Fadil Šero from Centre for Promotion of Civil Society earns between 1.700 to 2.200 convertible marks, depending on projects. President of Association for Protection of Old Savings, Amila Omersoftić, works as volunteer and Pantelija Ćurguz from Veterans Organisation receives 830 convertible marks.<sup>923</sup>

After doing monitoring on respecting of internationally recognized economic and social rights, Agency for Local Development Initiatives (ALDI) presented clear evidences that causes for violations of economic and social rights are not the consequence of lack of public resources but disrespect of

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<sup>922</sup>Dnevni list, 23 January 2008, page 8

<sup>923</sup>Nezavisne novine, 4 February 2008, page 6

international and national legislative by B&H governments at all levels.<sup>924</sup>

In accordance with the Constitution of B&H, labour and social rights in Bosnia and Herzegovina are exclusively under jurisdiction of entities. Therefore, there is no unique law on labour at state level to regulate fundamental principles in labour. Bosnia and Herzegovina faces extremely difficult problems disabling significant enjoyment of internationally recognized economic rights. Regarding the rating of economic activity, employment and unemployment rates in B&H are at the bottom of European and World ranking. According to data for 2006, out of 3,3 millions of population, only 1,1 million is economically active which is 13 percent less than European average. Women in Bosnia and Herzegovina are even less economically active and only one fourth of women population is economically active which is 16 percent less than European average.

According to various domestic researches, currently main problems in respect of labour rights are unclear, unfinished and inadequate legislative, non-harmonized domestic legislative with international conventions, disrespect and non-implementation of international conventions, different labour-legal frameworks in entities, abuse of labour law by employers in domestic legislative. By information of Agency for Work and Employment of Bosnia and Herzegovina, current condition in employment and especially unemployment is the cause and consequence of entire socio-economic state in Bosnia and Herzegovina.<sup>925</sup>

Interesting case is the one of pensioner Duško Karanović who won the case before European Court of Human Rights in

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<sup>924</sup>Oslobođenje, 4 April 2008, page 4

<sup>925</sup>Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives (ALDI), pages 109 – 113

Strasbourg. He retired in 1987, received the right to pension on territory of present Federation of B&H, which he abandoned in 1992, and he did not receive his pension for years. Claiming to be discriminated on ethnical basis, he transferred the case to Strasbourg and the court there passed a verdict in his favour. The Court ordered Federation of B&H to acknowledge the right to Karanović on pension from Institute of Pension-Invalid Insurance of FB&H. Not long after the judgment, in beginning of March, Institute of Pension-Invalid Insurance of FB&H began with implementation of court's judgment and paying pension to Duško Karanović after seven years. There is a fear in Federation of B&H that 38.000 of pension beneficiaries from Republic of Srpska will transfer to Federation based on judgment in favour of Duško Karanović.<sup>926</sup>

Bosnia and Herzegovina is being late in execution of general measures coming from first judgment of European Court of Human Rights in Strasbourg against B&H in case "Ruža Jeličić vs. B&H", warned Monika Mijić, Agent of Bosnia and Herzegovina before the Court. Even though judgment to pay Ruža Jeličić material and non-pecuniary damage in total amount of 167.460 EUR was reached two years ago, it is still not executed. As Mijić said, this judgment will not be executed until all cases of old-savings, that are in the same position as Jeličić, are solved in B&H.<sup>927</sup>

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<sup>926</sup>Sources: Glas Srpske, 11 January, front page; and 12 – 13 January, page 3; Dnevni avaz, 11 January, page 10; and Nezavisne novine, 2 March 2008, page 5

<sup>927</sup>Dnevni avaz, 27 October 2008, page 3

## *16.2. Unemployment*

When it comes to state of employment in Bosnia and Herzegovina, there were total of 811 thousand workers employed in 2006 and the employment rate was in minimum 35 percent, which is almost 30 percent less than European Union average. Employment rate of youth, aged 15 to 24, is at extremely low level, 12, 6 percent, which is three times smaller rate than European Union average. Total unemployment is 11, 1 percent, which is almost three percent larger rate comparing to European Union. Women unemployment rate is even larger with 31, 1 percent. Unemployment rate for younger than 25 is extremely high ,62,3 percent, while long term unemployment is extremely high because six out of five unemployed is unemployed for longer than a year.<sup>928</sup>

At Institute for Employment of Republic of Srpska, in first half of 2008, there were 135.000 unemployed persons registered, out of which 2.800 persons with university degree and 20 masters. In this year, the Institute plans to employ 30.000 workers and it prepared two programmes for employment and suggested it to Government of Republic of Srpska.<sup>929</sup>

Despite the fact that Canton Sarajevo is the richest and strongest in Federation of B&H, it was not successful in solving the problem of unemployment because it has no strategy or vision to arrange this area. Centre for Promotion of Civil Society, in cooperation with the Centre for Policy Research, found this in the analysis estimating public policy of Canton Sarajevo in employment sphere. According to register of Public Institution

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<sup>928</sup>Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives (ALDI), page 109

<sup>929</sup>Glas Srpske, 11 March 2008, page 5



Employment Service, in the end of March, there were 64.430 unemployed in Sarajevo Canton and employers expressed the need to employ only 170 persons. By simple calculation, one comes to catastrophic conclusion that 379 unemployed persons applied for one job.<sup>930</sup>

On International Youth Day, 12 August, worrying results were communicated in B&H – according to survey on labour force, youth unemployment in B&H in 2007 was 58 percent and it was one of the highest rates in the region.<sup>931</sup>

Unemployment of people, aged between 16 and 30, is four times higher in B&H than in countries of European Union and 58, 5 percent of youth is without a job. In most of cases, youth in B&H find a job as waiters, merchants, educationalists or craftsmen. Commission for Coordination of Youth Issues of Council of Ministers B&H published these data after the research “Analysis of position of youth and youth sector in B&H”. Research showed that every fourth young person is working a job that is completely different from the one for which it was educated and every fifth employed young person has no contract with employer. They also pointed out that usually almost a year passes between graduating school or studies and first employment. Ninety-five percent of youth stated that there is practice of bribery in B&H during employment and every second girl considers that there is a discrimination of women on labour market.<sup>932</sup>

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<sup>930</sup>Oslobođenje, 19 June 2008, page 7

<sup>931</sup>Glas Srpske, 12 August, page 6

<sup>932</sup>Nezavisne novine, 9 June 2008, page 4

### *16.3. Work of Unions and Strikes*

Regardless of the fact that employment rates are at extremely low level and that large number of Bosnia and Herzegovina population are not able to use their economic rights, position of employed workers is not the least encouraging. Although there are no precise statistical data, position of large number of employed workers is just slightly better from position of entire army of unemployed. This is due to the fact that large number of employees receives minimum or less than minimum salary, while the minimum wage determined as 308 BAM is insufficient for ensuring minimum living standard for members of workers' families in Federation of B&H and also in Republic of Srpska where minimum wage is guaranteed at even lower level of 205 BAM. This is the cause for large number of workers' strikes.

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Workers of Zrak Company returned to work because they expect that Agreement on jobs that cannot be interrupted is going to be reached soon in order to fulfil all preconditions for general strike. Here it was about warning strike of employees of Zrak Company who have not received salary since 2003. Employees of Zrak Company prevented director to enter the company due to the unpaid salaries. Prime Minister of FB&H, Nedžad Branković, visited unsatisfied workers of Zrak and promised solution in few days. Protests of workers of Zrak are stopped and discussion on eventual responsibility of management and supervisory board is expected in 60 days. Union of Zrak Company sent a request to

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<sup>933</sup>Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives, (ALDI), pages 110 - 111

Supervisory board asking for removal of director and fulfilling the obligations. <sup>934</sup>

Workers of Machine Factory Unis from Novo Goražde entered the strike due to the catastrophic working conditions – sometimes they had to work even at -10 degrees Celsius. Owner of Unis Factory announced that he would hire new workers to replace those in strike. After dramatic happenings, workers announced termination of strike because the owner promised salaries and better heating.<sup>935</sup>

In several occasions, Unions of Border Police and SIPA warned that they would enter the “white strike” in case that the Draft Law on Salaries introduces salary grades, because they believe it would lead them to catastrophic material position. <sup>936</sup>

Workers of Azot from Goražde announce hunger strike due to the difficult economic position in which they are now. They are in strike for five years but now they decided for more radical strike measures. Two workers of former Chemical Industry Azot, who took part in strike, requested medical help for getting sick.<sup>937</sup>

In mid March 2008, employees in higher education institutions of Republic of Srpska announced that they would enter the general strike, unless the procedure for changes and supplements of the Rulebook and Law on Salaries starts in a month, with request that coefficients of employees in higher

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<sup>934</sup>Sources: *Nezavisne novine*, 9 January, page 9; *Dnevni avaz*, 8 January, page 9; 12 January, page 11; *Oslobođenje*, 13 January, page 4; 19 January, page 3; *Nezavisne novine*, 28 January 2008, page 16.

<sup>935</sup>*Nezavisne novine*, 11 January, page 8; 12 January, page 7; and 22 January 2008, page 8

<sup>936</sup>*Dnevni list*, 17 January 2008, page 8

<sup>937</sup>Sources: *Dnevni avaz*, 9 February, page 17; 13 February 2008, page 11

education institutions are equal with other budget beneficiaries.

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In the first half of June, in front of the building of the Office of High Representative (OHR) in Sarajevo, group of decertified police officers from Republic of Srpska, Sarajevo, Zenica-Doboj, Tuzla and Central Bosnia Canton was on hunger strike protesting for non-resolving their multi-annual problem – return to work. Representative of decertified police officers of mentioned cantons, Kemal Kobilica, said to journalists that police officers gathered because the OHR does not allow full implementation of presidential statement of United Nations Security Council of 30 April 2007 according to which this group of people should be permitted to return to their work. Finally, on 21 June 2008, after ten days of hunger strike and numerous health problems, police officers stopped strike after the visit of Mirsad Kebo, Vice-President of Federation of B&H. He told them that there is a political support for passing by of a Government order with legal power, which would create possibility for retirement of 38 decertified police officers.<sup>939</sup>

Dževad Balta from Breza works in a mine for 35 years and his salary is 450 convertible marks. It is impossible to survive with this money and only he knows how difficult it is to educate children under such conditions. He was one of 8.000 workers who gathered in the end of June to protest in front of the building of Government of Federation of B&H in organization of Association of Independent Unions in B&H. According to incomplete information of this organisation, around 20.000 people in B&H are without connected past service. As president of Association of Independent Unions in B&H, Edhem Biber, stated for Novi reporter, at the time when Ahmet Hadžipašić was Federal Prime

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<sup>938</sup>Glas Srpske, 22 – 23 March 2008, page 6

<sup>939</sup>Oslobođenje, in period 9 to 21 June 2008

Minister, the Government passed by a programme for taking care of workers who were left without a job during privatization process. The Programme was cancelled in moment when means for workers were directed to fulfilling obligations towards demobilized soldiers.<sup>940</sup>

#### *16.4. Black Market Labour and Black Market*

Action of combating black market labour in Federation of B&H that took place from 02 to 31 July and from 5 November to 01 December 2007 was successful. In first part of the action, tax inspectors found unpaid obligations, based on tax on salaries and benefits for health and pension-invalid insurance, in amount of 27 million convertible marks, as well as million and a half convertible marks of other unpaid taxes. In second half of the year, more than 25 thousand people were registered working on black market.<sup>941</sup>

In Herzeg-Bosnia Canton between 1.700 and 2.000 workers are illegally employed, wrote Dnevni list from Mostar.<sup>942</sup>

Inspectors for labour and safety at work established that out of 13.417 workers in Republic of Srpska, controlled in first three months of 2008, 207 were not reported. Mira Bošnjak, Republic Inspector for labour and safety at work, pointed out that among unreported are mostly young people working in catering and do not want to be reported because they believe that they will work only temporary at private employers. Inspectors punish employer with minimum penalty of 2.000 convertible marks if

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<sup>940</sup>Novi reporter, 2 July 2008, pages 20 and 21

<sup>941</sup>Oslobođenje, 3 January 2008, page 6

<sup>942</sup>Dnevni list, 24 January 2008, page 7

they find unreported worker, and this penalty can be up to 15.000 convertible marks.<sup>943</sup>

According to unofficial data of Association of Unions in Republic of Srpska, in the end of the year, there were around 38.000 unregistered workers. As Radmila Puzić, Chief labour inspector at Inspectorate of Republic of Srpska, said 156.514 workers were controlled in past three years, out of which 8.913 were unreported and 6.318 workers were reported retrospectively. In first eight months of 2008, 29.685 workers were controlled out of which 800 were unreported and 575 workers were reported retrospectively.<sup>944</sup>

### *16.5. Working Conditions*

Bad working conditions causing serious and sometimes even deadly injuries of workers, especially those engaged at construction and similar jobs, were present in media reporting and were usually represented through individual cases of suffering or death of a worker. *Slobodna Bosna*, dated 31 January 2008, wrote on family of Emsad Husić, worker who died in plant of Arcelor Mittal Zenica Company in October last year. Management of company offered 40.000 convertible marks to the family so they would give up eventual charges, which they might press considering the circumstances of the accident. They offered for each of Emsad's two juvenile children 20.000 convertible marks and for 2 brothers and sister 7.000 convertible marks per each.<sup>945</sup>

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<sup>943</sup>Glas Srpske, 29 April 2008, page 6

<sup>944</sup>Nezavisne novine, 10 November 2008, page 7

<sup>945</sup>Slobodna Bosna, 31 January 2008

Ekrem Šahinović (46), high-qualified electrician, was found dead in facilities of Arcelor Mittal in Zenica. Doctors established that it was natural cause of death and announced further investigation on the real causes. Company stated that Šahinović probably fell asleep and that death came during the sleep and that there is no doubt of any connection between the death of this worker and his working activities.<sup>946</sup>

Miodrag Jokanović from Prijedor waited New Year's Eve at work for the seventeenth time working as a doorkeeper in building of Prijedor Municipality.<sup>947</sup>

General Director of Aluminij Company from Mostar, Mijo Brajković, announced that dismissals of workers and shutting down of a production part are possible due to the problems with energy procurement.<sup>948</sup>

Director of Metalno Company fired Emir Sokolović from Zenica because he did not want to receive salary. The real cause was report to Cantonal Labour Inspection because Metalno is not providing payment lists, which are obligatory according to Article 70 of the Law on Labour.<sup>949</sup>

In Sarajevo, attacks on citizens-employees of City's Traffic Company (GRAS) are more frequent. Only in January and first half of February, 18 attacks on drivers and controllers of city's transport in Sarajevo were registered. Perpetrators are mostly voyagers, younger persons who do not want to pay the ticket, but also drug users are causing incidents using knives, sticks and stones.<sup>950</sup>

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<sup>946</sup>Nezavisne novine, 14 May, page 5

<sup>947</sup>Nezavisne novine, 3 January 2008, page 6

<sup>948</sup>Dnevni avaz, 5 January 2008, page 9

<sup>949</sup>Dnevni avaz, 18 January 2008, page 10

<sup>950</sup>Sources: Oslobođenje, 18 January 2008, page 14; and Dnevni avaz, 19 February, page 15

Chinese merchants established a monopole on cheap goods trade in B&H. However, the price they are paying for is high and they are often targets of physical and psychical mistreatment by criminals and often tax officers' visits.<sup>951</sup>

In Brown Coal Mine Kakanj, miner Mugdin Spahić died of the gas explosion.<sup>952</sup>

In Brown Coal Mine Đurđević near Živinice explosion occurred at 300 metres depth and carbon-monoxide poisoned eight miners. Director of the mine near Živinice, Adnan Šabić, neglected that miners were poisoned by carbon monoxide. Šabić claims that they were injured by air strike occurred after diving.<sup>953</sup>

In Prijedor, 230 workers employed at Borac Company are without rights. They are receiving wages from 180 to 260 convertible marks, have no health or pension insurance, and work in inhuman conditions.<sup>954</sup>

The minimum price of work for employees in trade, tourism and catering increased from 100 to 120 convertible marks, reported from Union of Employers and Association of Employers.<sup>955</sup>

In research, done by Mediacentar Sarajevo, on violation of labour rights of journalists in B&H, most often violations are related to payment of salaries (low payments, irregular salaries, etc.), working conditions as well as inadequate position of journalists-associates.<sup>956</sup>

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<sup>951</sup>Dnevni list, 19 January 2008, pages 24 and 25 - annex Danas

<sup>952</sup>Oslobodjenje, 27 January 2008, page 2

<sup>953</sup>Sources: Nezavisne novine, 1 February 2008, page 5; and 2 February 2008, page 7; Dnevni list, 1 February 2008, page 3

<sup>954</sup>Nezavisne novine, 16 February 2008, page 7

<sup>955</sup>Glas Srpske, 26 – 27 January 2008, front page

<sup>956</sup>Start BiH, 22 January 2008, page 7



Driver of Sarajevo-Taxi Company, Mirza Š. (1957) got heavy injuries and was hospitalized after the fight with his colleague S.B. (1953) who stabbed him in stomach by knife.<sup>957</sup>

Young men from Tetovo working at the border of death: Amir earns five, ten and sometimes even 20 convertible marks per day. His job is to wait for the trucks going out of the circle of Arcelor Mittal Zenica Company, jump on them while they are in movement, pulls couple of pieces of berna, that is, iron left over in cinder and ashes of melting in the furnace. His colleague goes after him and collects those peaces. Then they sell them to local wastes for ten pfennig per kilogramme.<sup>958</sup>

New owners of privatized companies in B&H are not able to dismiss workers for legal limitations so they are using psychical abuse of workers as pressure so they would quit the job themselves. Representatives of unions from B&H warned to this phenomenon – the so-called *mobbing*.<sup>959</sup>

Centre for Humane Policy from Dobož called citizens of Republic of Srpska to protest for Dodik's salary of 5.000 convertible marks, which is "27 guaranteed salaries, 37 minimum pensions and 134 remunerations for socially vulnerable in RS".<sup>960</sup>

Forty workers from Ex-Yugoslavia of which ten from Kozarska Dubica, are preparing suit against Markus Feringer from German city of Obertojringen claiming that he psychically abused and exploited them at his strawberry plantation from 25 May to 7 June 2008. In the end of May, this group of workers went to Germany to season work on harvesting strawberries at plantation of 15 hectares. According to their words, they found

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<sup>957</sup>Oslobođenje, 9 March 2008, page 10

<sup>958</sup>Dnevni avaz, 24 March 2008, page 10

<sup>959</sup>Nezavisne novine, 6 April 2008, page 22

<sup>960</sup>Dnevni list, 27 January 2008, page 6

advertisement for going to Germany in adverts; agent and contact person who directed them to go there was, so they say, Vojislav Damjanović from Gradiška. “The adverts said that worker is offered a job at strawberries plantation and that one hour of work is paid with 5, 35 EUR. Apart from that, it said that four or five persons would sleep in one decent room, which foresees separate men and women’s rooms. However, we were fooled and nothing was like that”, workers claim. They pointed out that they suffered psychical abuse and exploitation at the plantation which reminds to slavery times and that they cannot sleep peacefully even today for the fear they had.<sup>961</sup>

For workers who spend entire day on sun, like construction workers, workers on asphaltting of roads and on markets, there is no legal measure of protection that would keep them from exposure to high temperatures, which reached up to 40-Celsius degrees in June and July 2008. As Ministry of Labour and Veteran-Invalid Protection of Republic of Srpska said, “there is no limit of high temperature that would lead to emergency protection” and “employers are recommended to take care of their workers, allocate working hours or protect their workers in some other way”.<sup>962</sup>

Workers in Factory of Soda Lukavac were endangered for nobody wanted to remove three sacks of war gas *chloracetofenon*, buried underground in circle of factory. This poison, which represents danger to workers’ health, is believed to belong to old defence industry production from fifteen years ago. Even though Cantonal Inspection Administration of Tuzla issued order for removing this poison, management of the factory headed with bankruptcy manager, Fehim Ugljanin, refused to do so explaining

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<sup>961</sup>Nezavisne novine, 24 June 2008, page 3

<sup>962</sup>Nezavisne novine, 26 June 2008, page 6

that there is no documentation on that waste and it is now on the land bought by Šišedžam Soda Lukavac.<sup>963</sup>

Republic Labour Inspectorate in Banja Luka had eight reports from workers complaining on mobbing, that is abuse and mistreatment at work. These cases were sent to competent courts.<sup>964</sup>

Worker of city library in Bosanski Šamac, Ankica Dervenić, was heavily injured when she fell through the rotten floor in the building where she works. While being in toilette of library, which is on the floor of Fire Department, floor collapsed and she fell to lower level of the building. Falling from four metres of height she fainted and got severe injuries of head, spine and other body-parts.<sup>965</sup>

For three cleaners, who rejected to sign the contract on transfer to Commodore Express Company upon arrival on work at Institute for Transfusion Medicine FB&H, doors of the Institute remained closed. Alija Fazlija, Kristina Stanković and Sandra Azinović were shocked when the director of the Institute, Hasija Hadžić, threaten them with dismissal because they did not want to sign the contract on transfer to company of which they know nothing.<sup>966</sup>

As Dnevni list from Mostar wrote, local merchants in Međugorje complain that Chinese goods takes their customers away. They said that souvenirs that Chinese are selling “are made of some weird material that literally stinks and are much cheaper than local ones”. Tourists are not interested much in quality of

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<sup>963</sup>Nezavisne novine, 26 June 2008, page 5

<sup>964</sup>Glas Srpske, 16 June 2008, page 6

<sup>965</sup>Glas Srpske, 20 June 2008, page 15

<sup>966</sup>Dnevni avaz, 2 September 2008, page 8

souvenirs and they want to pass as cheaper as possible, explain merchants.<sup>967</sup>

Media articles often related to mine accidents publishing both individual cases and reports with statistical data.

Dnevni avaz, dated 23 March, wrote, “Mines, placed during aggression on Bosnia and Herzegovina took three more lives”. Article cites that black statistics takes new contribution in blood almost everyday. Day before publishing of the article, two police officers and one employee of civil protection got hurt in a minefield. “By this, number of victims of this mean weapon, from 1996 to present, increased to 500. All alerts should have been ringing with the strongest bell by now! Our country is the most contaminated in mines in Europe”, stands in this article.<sup>968</sup>

### *16.6. Allocations for Culture*

Culture is neglected area in Bosnia and Herzegovina and the cause for this are still unfinished constitutional reforms, inexistence of adequate ministry at B&H level, as well as inexistence of clear state strategy for cultural policy. The result is numerous problems.

The fact that Council of Ministers of B&H allocated only three millions of convertible marks for culture in 2008 testifies on this.<sup>969</sup> Republic of Srpska planed to allocate 12 millions of convertible marks for culture from the budget in 2008, but it is still far away from European percentage.<sup>970</sup> One of cultural priorities is film festival in Banja Luka for which a million

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<sup>967</sup>Dnevni list, 30 July 2008, page 11

<sup>968</sup>Dnevni avaz, 23 March 2008

<sup>969</sup>Glas Srpske, 11 April 2008, page 3

<sup>970</sup>Glas Srpske, 24 January 2008, page 18

convertible marks were allocated from the budget.<sup>971</sup> Ministry of Culture in Canton Sarajevo donated 60.000 free tickets to students for different cultural happenings.<sup>972</sup>

Sarajevo café-bookstore “Karabit” was officially closed from New Year's Eve. This is the result of negligence of the state for culture, as Goran Samardžić, writer and one of the owners, claims.<sup>973</sup>

National Theatre in Mostar left without financial support from city and cantonal budget in 2008 and after 60 years threaten to be closed.<sup>974</sup> Mostar is one of rare cities in B&H that does not have cinema. Two pre-war cinemas, “Partizan” and “Zvijezda”, were ruined and according to Ljubo Bešlić, mayor, words plans have changed even though it was not the priority up to now and Mostar should soon have three cinemas. Mostar writer, Veselin Gatalo, is sceptic and said that Mostar people “*instead of multiplex cinema got multiplex sclerosis*”.<sup>975</sup>

Cultural treasure of Bosnia and Herzegovina decays for negligence, report Nezavisne novine from Banja Luka. The reasons for negligence are various, as cited Ljiljana Švero, Vice-president of Commission for Preservation of Cultural Heritage of B&H, in the interview – “*war devastations, insufficient care for memorials from previous system, present lack of financial means, illegal construction and the time that done its part*”.<sup>976</sup>

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<sup>971</sup>Nezavisne novine, 5 February 2008, pages 24 and 25

<sup>972</sup>Dnevni avaz, 20 February 2008, page 15

<sup>973</sup>Dnevni avaz, 8 January 2008, page 28

<sup>974</sup>Nezavisne novine, 11 January 2008, page 24

<sup>975</sup>Sources: Dnevni avaz, 25 February 2008, page 26; Oslobođenje, 11 April 2008, page 10

<sup>976</sup>Nezavisne novine, 3 February 2008, page 12

For bad equipment and low visit, cinema “Mrakovica” in Prijedor stopped movies’ exhibition until further notice.<sup>977</sup>

Bosnia and Herzegovina has none professional camera and all significant movies including the winners of greatest world film festivals were taken by rented cameras. Minister of Culture and Sports of Federation of B&H, Gavriilo Grahovac, says that the reason that 35-milimetre camera was not procured is lack of support of Association of movie workers of Bosnia and Herzegovina; Academy of Scene Art Sarajevo and one part of B&H movie-makers.<sup>978</sup>

As journalist of BH Dani marked, a “*disastrous*” Suggestion of the Law on Cultural Goods of B&H found itself before Council of Ministers of B&H. It violates the Dayton Agreement and numerous European Conventions signed by B&H because it *de fact* foresees disappearance of Commission for Protection of National Memorials at state leave and transfers all powers to one-national entity and cantonal institutes.<sup>979</sup>

Famous cultural worker and theatre director, Dino Mustafić, together with group of citizens started petition for salvation of Herzegovina’s jewel – Počitelj city. Mustafić pointed out that Počitelj has multiple meanings – in direct, symbolic and spiritual sense. Every artist has his/her relationship with it - it is inspiration, for travel writers – sensation, for historians – jewel and for tourists – intriguing. In one word, Počitelj has its aesthetic value that creates one special cosmos.<sup>980</sup>

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<sup>977</sup>Nezavisne novine, 27 February 2008, page 24

<sup>978</sup> Nezavisne novine, 10 March 2008, page 24

<sup>979</sup>BH Dani, 14 March 2008, pages 60 – 62

<sup>980</sup>Oslobođenje, 17 November 2008, page 5

### *16.7. Health Care*

Constitution of Bosnia and Herzegovina does not directly guarantee the right to health care. Entities took over the role to ensure respect of internationally recognized rights to health care. In Federation of B&H, jurisdiction for ensuring health care is divided between entity and cantons in a manner that entity brings health care policies and tries to encourage and develop healthy living habits of population and to conduct activities on prevention and fight against infectious diseases. At the same time, cantons ensure realization of the right to health insurance in accordance with the Law on Health Insurance and ensuring funds for establishment, construction and equipment of institutions of primary, secondary and tertiary protection. Right to health care in B&H have all insured persons, together with members of their family, and specific categories of population prescribed by special laws.

In post-war period, health condition of Bosnia and Herzegovina population is constantly getting worse. The main reasons are socio-economic situation, unemployment, migrations, large number of displaced persons, insufficient coverage of health insurance, unhealthy lifestyle etc. Due to the health difficulties, 22 percent of population in B&H above age 17, cites occasional limitations in activities in everyday life, 24 percent has chronically and 4 percent serious disorders. Apart from that, significant worsening of health condition of population is consequence of long-term stress that is post-traumatic stress disorder (PTSP). In 2006, Bosnia and Herzegovina allocated 6, 2 percent of gross national product (GNP) on health care excluding private expenses to health care system of insured and uninsured persons. Even though allocations for health care system are near European average, every tenth inhabitant of Bosnia and Herzegovina has no health insurance and by that no right to use

fundamental health rights, which is one of the largest health problems in Bosnia and Herzegovina.<sup>981</sup>

By 31 March 2008, hospital and clinical centres in Republic of Srpska have to procure everything necessary for their patients, from slippers and pyjamas to medicines and orthopaedic tools, , that was not the case before.<sup>982</sup>

Hospitals and clinical centres in B&H still lack important apparatus even though they significantly renewed medical equipment in past years. Some of the equipment they have is older than 30 years, like the case is at General hospital “Abdulah Nakaš” in Sarajevo.<sup>983</sup>

Magazine BH Dani brought review of health services and conditions in health care institutions in Canton Sarajevo in two-part reportage. It pointed out the main question, problem researched in its title:

*“Can doctors work in hospital by noon and in their private ordinations in the afternoon”.*<sup>984</sup>

In ambulance in Brezničani near Prijedor, a nurse Gina Desnica found a snake between health cards. This institution is on the list for renovation.<sup>985</sup>

In the interview for Nezavisne novine, Minister of Health in Government of Federation of B&H, Safet Omerović, points out that due to segmentation of Federation of B&H to cantons, state and conditions related to health care are not harmonized in

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<sup>981</sup>Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives (ALDI), pages 125 - 126

<sup>982</sup>Nezavisne novine, 12 March 2008, page 5

<sup>983</sup>Nezavisne novine, 31 March, pages 4 and 5

<sup>984</sup>BH Dani, 2 May 2008, pages 37 – 44

<sup>985</sup>Glas Srpske, 8 April 2008, front page



different cantons and some cantons have hospitals that do not even fulfil basic conditions.<sup>986</sup>

On the other hand, in Dobož due to the large coming of patients to Department of Acute and Chronically Psychiatric at General Hospital “Sveti apostol” the situation is that two patients sleep on one bed or two beds are put together so three patients could lay. “We are trying to meet the needs to disadvantage of quality of work. Instead of 21-day treatment we shorten it to 15 and sometimes even 10 days”, explains Siniša Đuričić, doctor at this health institution.<sup>987</sup>

Bosnia and Herzegovina still does not have the Law on Rights of the Patients that would regulate not only the rights of beneficiaries of health services but also doctors’ obligations. In the meantime, until this law is passed, citizens out of ignorance or indifference do not use their rights recognized by existing laws in health care system. According to present laws regulating the area of health care, patient has the right to remuneration of damage caused by provision of inadequate health care in case of proven professional mistake. Also, citizens have the right to chose family doctor, medical doctor and dental doctor, right to urgent medical help with no delay when needed, right to accurate informing or education on all issues concerning his health, as well as the right to refuse to be object of scientific research or any other examination or medical treatment without his/hers approval.<sup>988</sup>

In beginning of November, National Assembly of Republic of Srpska adopted the Law on Health Care defining obligations of the entity, local units and employers in providing

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<sup>986</sup>Nezavisne novine, 13 June 2008, page 9

<sup>987</sup>Nezavisne novine, 3 June 2008, page 7

<sup>988</sup>Nezavisne novine, 24 August 2008, pages 10 and 11

health care and the role of a person in preservation and improvement of his own health.<sup>989</sup>

### *16.8. Socially Vulnerable Groups*

The analysis showed that in 2008 media reported the most on demobilized soldiers and war military invalids and 379 articles focused on this population. Then follow articles on persons with disabilities, physical or mental nature, who were in most cases named in media as “invalids” (191 articles). Pensioners with 69 and decertified police officers with 24 articles are among most represented endangered categories.

*Demobilized soldiers* – Although laws in Bosnia and Herzegovina protect following categories on various grounds: demobilized soldiers/defenders, fighters-defenders and members of their families, rights of members of dead, killed or missing fighters, war military invalids, as well as carriers of highest medals and rewards, in practice, little is done on their implementations. Therefore, those categories are at the same time the most endangered ones in B&H. During 2008, this condition resulted with their dissatisfaction and frequent protests, strikes against the governments, mainly federal.

One of the problems for implementation of the law and taking care of members of cited categories, together with low budgets, is also unchecked and incomplete register of all that are really in state of social need and belong to one of legally defined categories. According to president of Association of demobilized members of Croatian Defence Council of FB&H (HVO FB&H), Ivan Jurčević, inspectors in Federation have discovered in 2008 even 25.000 false beneficiaries of financial benefits that are paid to

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<sup>989</sup>Nezavisne novine, 11 November 2008, page 4

unemployed members of former Army of B&H and HVO in amount of 150 convertible marks. He pointed out that for this problem demobilized members of Army of B&H and HVO, who got the right to financial benefit by Federal Law on Rights of Demobilized Soldiers and Members of their Families, suffered for months.

Many public personalities receive disability pay. On the list is also the name of Vlado Čuljak, Head of Office of Prime Minister of Herzegovina-Neretva Cantonal Government, who is receiving 234, 88 convertible marks per month as member of fifth category of disability. The most evident example of abuse of rights of war military invalids in all parts of B&H is the case of Anto Pranjić, former Deputy Minister of Internal Affairs of Tuzla Canton. Office for Veteran-Invalid protection of Tuzla Canton passed decision three times acknowledging Anto Pranjić as war military invalid with 80 percent for injuries gained in car accident during the war.<sup>990</sup>

Federal Minister for Veterans and Invalids, Zahid Crnkić, announced large-scale revision in sector of beneficiaries of different rights in FB&H, that is, revision of issued documentation based on which the rights are being realized. He said it would be necessary, through Institute for Medical Examination of FB&H, to do the revision of some 27.000 war military invalids who got the right to disability pays ten years after the war.<sup>991</sup> Couple of months later, Crnkić stated that the number of demobilized soldiers, who have the right to payment in July, decreased from 87.085 to 62.579 and the reason for decrease is that some of them got the right to remuneration only for one-year period.<sup>992</sup>

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<sup>990</sup>Dnevni avaz, 12 April, page 7, and 13 April, page 2

<sup>991</sup>Dnevni avaz, 26 June 2008, page 2

<sup>992</sup>Dnevni avaz, 3 September 2008, page 8

Organization of families of captured and killed soldiers and missing civilians in Istočno Sarajevo considers that it is “unacceptable that so far not one of High Representatives received representatives of organizations of families of suffered Serbs but, at the same time, they regularly talked with the same Bosniak organizations”, stated president of this organization, Mirjana Simanić.<sup>993</sup>

Association of war prisoners of Vijenac and Vozuća will again refer official request to Prosecutor’s Office of B&H and Court of B&H to start the procedure against civil and military authorities of FB&H for relocation of tombs and covering of crimes. Here it is about 11 tombs around Vozuća with 137 bodies of murdered Serbs.<sup>994</sup>

*Persons with Disabilities* – Same as health care, protection of persons with disabilities has different legal framework depending on entities and partially cantons in Federation of B&H. In Bosnia and Herzegovina, different laws protecting economic rights of persons with disabilities are in force and implemented differently depending on the cause of disability (war military invalids, civil victims of war and non-war invalids).

According to entity laws on social protection, rights of persons with disabilities are ensured through social protection of one or more categories of population recognized by the laws. Those categories are:

- Children without parental care;
- Children being neglected and unattended during their upbringing;
- Children whose development is disturbed by family conditions;

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<sup>993</sup>Glas Srpske, 13 February 2008, page 4

<sup>994</sup>Glas Srpske, 14 April 2008, page 3

- Persons with disabilities and persons prevented in physical and psychical development;
- Materially insecure persons and persons incapable for work;
- Older persons without family care;
- Persons with socially negative behaviour;
- Persons and families in social need, who need social protection under special circumstances.

Social protection system in both entities is in great trouble because it faces with increased needs for various forms of social help that are still growing. Functioning of the system is made more difficult by inadequate laws that provide much wider scope of social protection than budget is able to cover. Problem is additionally complicated by division of jurisdiction between levels of authority, especially in FB&H where entity prescribes level of social protection and lower levels of authority are obliged to secure the means for its' realization. Non-existence of up-to-date and complete databases on beneficiaries of social protection also represents a difficulty. According to Progress report for B&H on respect and development of economic and social rights in 2007, done by Agency for Local Development Initiatives

*“...Social protection in both entities characterizes material vulnerability of majority of population and constant worsening of social conditions. This produces constant growth of number of people seeking social help (refugees, civil victims of war, returnees, demobilized soldiers et al.), non-realization of legally provided social rights as well as weak network of carriers of social protection at municipal and entity level in RS, financing forms of social and child care at cantonal level in FB&H is*

*followed by serious difficulties for insufficient means in cantonal budgets”.*<sup>995</sup>

Bosnia and Herzegovina still has not signed the United Nations Convention on Rights of Persons with Disabilities. B&H is the only one in the region that has not done it so far, allegedly, due to the necessity to translate it to three languages. For this, invalids in both Banja Luka and Sarajevo went out on streets requesting their rights and better position in society through protests.<sup>996</sup>

International conference “From Cause to Consequences – New Approach to Disability” was held in Sarajevo where authorities and society were called to re-examine their relation towards this group of people and ensure them equal social rights.<sup>997</sup>

Certain media were especially critical towards inactivity and negligence of authorities in solving problems of socially vulnerable categories. Sarajevo government decreased rights of persons with damaged sense of hearing: “Bath in Riviera for themselves and for Invalids- Used Apparatus”.<sup>998</sup>

In Mustafa Kamberić Street, in Sarajevo settlement Dobrinja, cross for invalids is marked with yellow, but vehicles are most often parked on those places so persons in wheel chairs have difficulties to move around.<sup>999</sup>

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<sup>995</sup>Progress report for Bosnia and Herzegovina on respect and development of economic and social rights in 2007 within the process of European integrations with recommendations, Agency for Local Development Initiatives (ALDI), pages 96 - 98

<sup>996</sup>Sources: Oslobođenje, 27 March, page 3; Glas Srpske, 3 April 2008, page 7

<sup>997</sup>Dnevni list, 5 February 2008, page 5

<sup>998</sup>Oslobođenje, 29 February 2008, page 10

<sup>999</sup>Dnevni avaz, 3 February 2008, page 13

More than 15.000 citizens in Federation of B&H will not get invalid pension until the Institute for Pension and Invalid Insurance of FB&H pays out debt of around 6 millions convertible marks to Institute for Medical Examination of Health Condition in Federation of B&H.<sup>1000</sup>

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<sup>1000</sup>Nezavisne novine, 12 September, page 5





### III

## CITIZENS' AWARENESS ON HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA

### 1. Introduction

The Belgrade Centre for Human Rights has been monitoring the legal awareness of citizens on human rights since 1998. Lead by this practice, the Human Rights Centre of the University of Sarajevo has decided to introduce, for the first time, this practice in Bosnia and Herzegovina. If the conditions for monitoring the legal awareness on human rights every year or at least every second year are met, the presumption is that we'll collect valuable data on the citizens' awareness of human rights in Bosnia and Herzegovina. This would, among other things, be significant indicator of (un)successfulness of numerous initiatives and projects coming from government sector, civil society or as an outcome of international community support. Research was done by Partner Marketing Consulting Agency (Partner MCA) from Banja Luka.

### *1.1. Methodology*

Fieldwork was conducted via questionnaire, by face-to-face method on a sample of 1.101 adult citizens of Bosnia and Herzegovina, from 01 to 09 December, 2008. The respondents answered the questions posed by trained interviewers. This type of research appeared most efficient in great part of questions. Additionally, respondents answered the questions in their homes, a familiar environment, meaning they were more relaxed and in the mood for honest discussion.

Fieldwork was conducted by controllers and interviewers of **PARTNER Marketing Agency** from Banja Luka.

There were 500 respondents in 27 municipalities in Republic of Srpska; 601 respondent in 25 municipalities in Federation of B&H. While setting the sample frame following was considered:

- Number of population in entities;
- Number of population in specific regions/cantons;
- Size of municipalities in specific regions/cantons;
- Relation of urban and rural population in entities;
- Equal representation of men and women;
- Equal representation of all three ethnic groups depending, of course, on geographic territory where the research was done.

Research was conducted in following municipalities:

#### **Republic of Srpska**

- **Region Banja Luka:** Banja Luka, Srbac, Laktaši, Kneževo, Mrkonjić Grad, Šipovo, Prnjavor, Kotor Varoš;
- **Region Prijedor:** Prijedor, Novi Grad, Kozarska Dubica;
- **Region Doboј:** Doboј, Modriča, Teslić, Petrovo;
- **Region Bijeljina:** Bijeljina, Brčko, Ugljevik;

- **Region Zvornik:** Zvornik, Vlasenica, Srebrenica;
- **Region Eastern Republic of Srpska:** Istočno Sarajevo, Pale, Višegrad;
- **Region Herzegovina:** Trebinje, Ljubinje, Bileća.

#### Federation B&H

- **Una-Sana Canton:** Bihać, Cazin, Kladuša;
- **Tulza Canton:** Tuzla, Banovići, Lukavac, Kalesija;
- **Zenica-Doboj Canton:** Zenica, Kakanj, Vitez, Maglaj;
- **Central Bosnia Canton:** Jajce, Travnik, Novi Travnik;
- **Herzegovina-Neretva Canton:** Mostar, Čitluk, Jablanica;
- **West-Herzegovina Canton:** Široki Brijeg;
- **Canton Sarajevo:** Centar, Ilidža, Novi Grad, Novo Sarajevo, Stari Grad, Vogošća;
- **Herzeg-Bosnia Canton:** Tomislavgrad.

All questionnaires are subject to logic control, while 20 percent of questionnaires are checked by Agency. Additional 15 percent is checked by supervisor-controller either by direct fieldwork together with interviewer or by phone.

### 1.2. Demographic Data

Table 1. Sex

	<i>Frequencies</i>	<i>%</i>
<i>Male</i>	566	51.4
<i>Female</i>	535	48.6
<b>Total</b>	1101	100.0

Table 2. Age

	<i>Frequencies</i>	<i>%</i>
<i>From 18 to 29 years</i>	270	24.5
<i>From 30 to 44 years</i>	374	34.0
<i>From 45 to 59 years</i>	281	25.5
<i>Over 60 years</i>	171	15.5
<i>Refuses</i>	5	0.45
<b>Total</b>	1101	100.0

Table 3. Education

	<i>Frequencies</i>	<i>%</i>
<i>Primary school</i>	119	11.8
<i>Craft</i>	212	19.2
<i>High school (IV level)</i>	504	45.7
<i>Junior college and university</i>	249	22.6
<i>Refuses</i>	17	1.5
<b>Total</b>	1101	100.0

Table 4. Region

	<i>Frequencies</i>	<i>%</i>
<i>Republic of Srpska</i>	500	45.4
<i>Federation of B&amp;H</i>	601	54.6
<b>Total</b>	1101	100.0

Table 5. Type of settlement

	<i>Frequencies</i>	<i>%</i>
<i>City</i>	607	55.1
<i>Village</i>	494	44.9
<b>Total</b>	1101	100.0

Table 6. Total monthly income of the family

	<i>Frequencies</i>	<i>%</i>
<i>Up to 250 BAM</i>	194	17.6
<i>From 251 BAM to BAM</i>	207	18.8
<i>From 501 to 1000 BAM</i>	413	37.5
<i>Over 1000 BAM</i>	286	26.0
<i>Refuses</i>	1	.1
<b>Total</b>	1101	100.0

Table 7. Your religion

	<i>Frequencies</i>	<i>%</i>
<i>Islamic</i>	413	37.5
<i>Catholic</i>	212	19.3
<i>Orthodox</i>	467	42.4
<i>Other</i>	9	.8
<b>Total</b>	1101	100.0

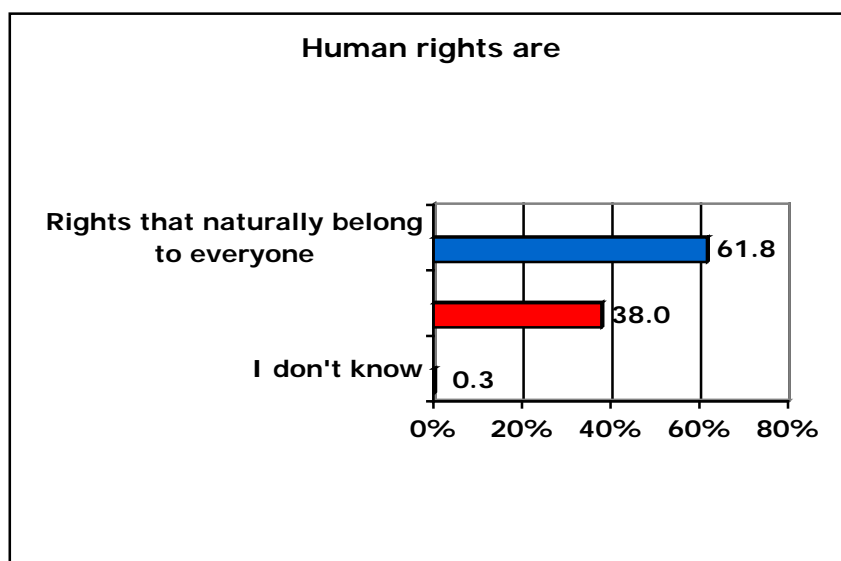
Table 8. Nationality

	<i>Frequencies</i>	<i>%</i>
<i>Croat</i>	201	18.3
<i>Bosniak</i>	422	38.3
<i>Serb</i>	460	41.8
<i>Bosnian</i>	11	1.0
<i>Refuses</i>	7	.6
<b>Total</b>	1101	100.0

## 2. Understanding of Human Rights

### 2.1. Understanding of Human Rights

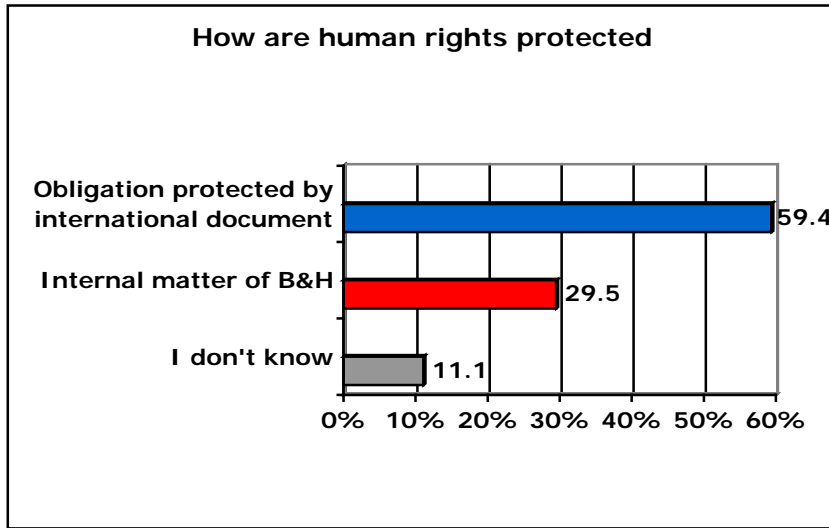
Citizens of Bosnia and Herzegovina (62 percent of respondents) interpret human rights in a naturalist way as the rights naturally belonging to everyone. At the same time, 38 percent of respondents interpret human rights in positivist way as the rights provided by international documents.



Graph 1

### 2.2. Protection of Human Rights in B&H

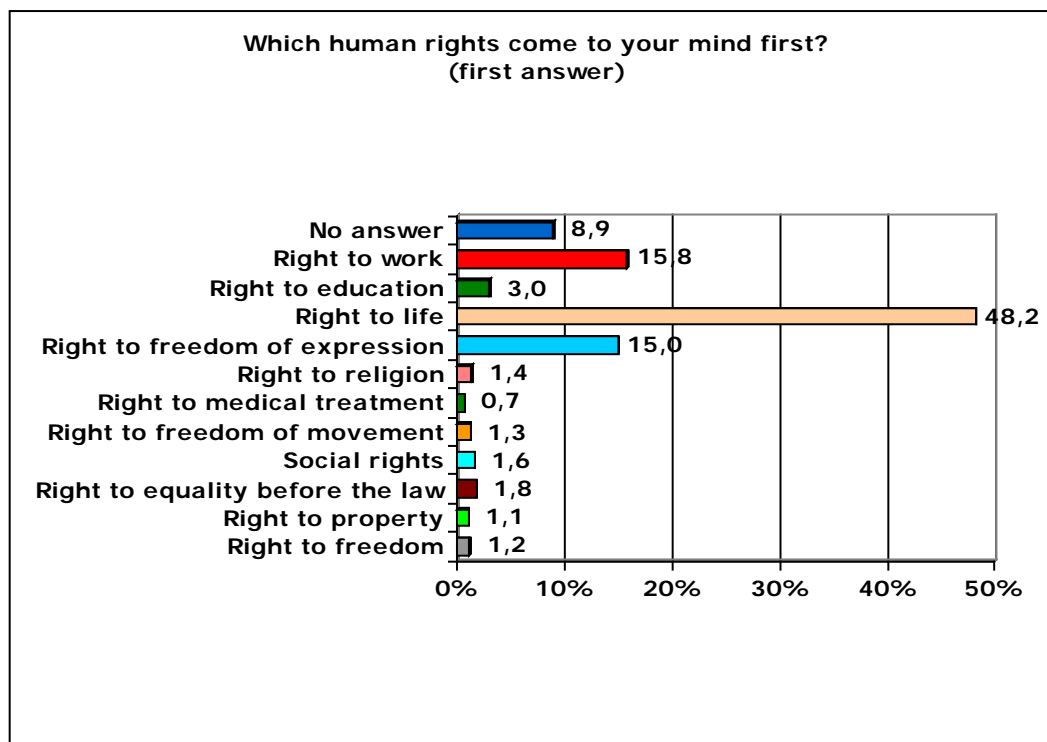
59, 4 percent of citizens considers that human rights are an obligation, protected by international documents while 29, 5 percent is convinced that it is internal matter of Bosnia and Herzegovina. Significant percent of 11, 1 answered that they don't know how human rights are protected.



Graph 2

### 2.3. Importance of Particular Human Rights and Their Respect in B&H

*Right to life* (48, 2 %), *right to work* (15, 8 %) and *right to freedom of expression* (15 %) are the most common answers of B&H citizens to the question: «Which human rights come to your mind first? ». This extraordinary distinction in percentages tells about high valorization of the right to life. For example, while answering this question in 2005 citizens of Serbia and Montenegro stated, in almost same percentage, *right to work* (50%) and *right to life* (48%).



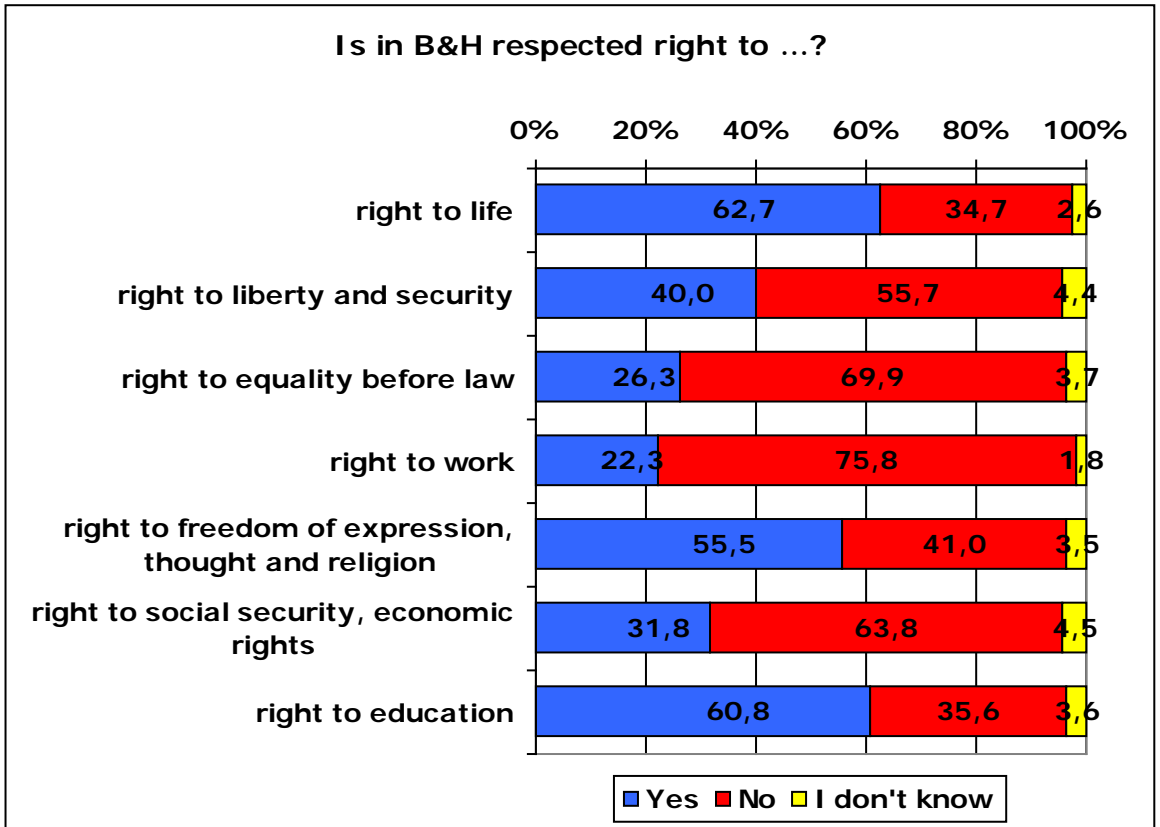
Graph 3

Out of seven listed human rights, citizens of B&H consider the three most important to be: *the right to life, right to freedom and security and right to equality before the law*. The right to life is inviolable, because 90 percent of citizens ranks it as first by importance, while 59 percent decided the right to freedom and security is in second place and 35,2 percent have right to equality before the law in third place.

Data on citizens' opinion on respect of human rights in Bosnia and Herzegovina are quite worrying. 75, 8 percent of citizens consider that the right to work and right to chose employment in B&H are not respected, while 69, 9 percent considers the same for the right to equality before the law. This is followed by 63, 8 percent of citizens claiming that the right to social security and economic rights are not respected. It is necessary to point out that even though majority of citizens (62,



7%) the right to life as the most important human right, a significant percent of citizens (34, 7%) considers it to be disrespected in Bosnia and Herzegovina.



Graph 4

### 3. Special Rights

#### 3.1. Prohibition of Discrimination

In significant percent (majority -over 50%) citizens of B&H are convinced that discrimination in our country exists.

More than half of citizens of B&H (52, 2%) believe that discrimination of homosexuals exists in Bosnia and Herzegovina. At the same time, 51% of respondents believe that women in Bosnia and Herzegovina are in disadvantaged position comparing to men in regard to employment and career advancement. 60, 2 percent of interviewed women and 42, 2 percent of men believe that women are in disadvantaged position. There is a stabile tendency of men having more positive impression on position of women in comparison to women who have more negative perspective on the same.

**Are women in B&H in disadvantaged position comparing to men in regard to employment and career advancement?**

	Sex:		Total
	Male	Female	
Yes	42.2%	60.2%	51.0%
No	49.8%	34.6%	42.4%
I don't know	6.2%	5.0%	5.6%
Refuses	1.8%	.2%	1.0%
Total	100.0%	100.0%	100.0%

*Table 1*

Smaller percent of respondents (48, 6%) believe that national minorities are generally in disadvantaged position comparing to majority population. At the same time, the majority of citizens of Serb nationality (49,1%) believe that national minorities aren't in disadvantaged position while the majority of

those expressed as Croats and Bosniaks consider that minorities are in disadvantaged position (58,7% of Croats and 52,1% of Bosniaks).

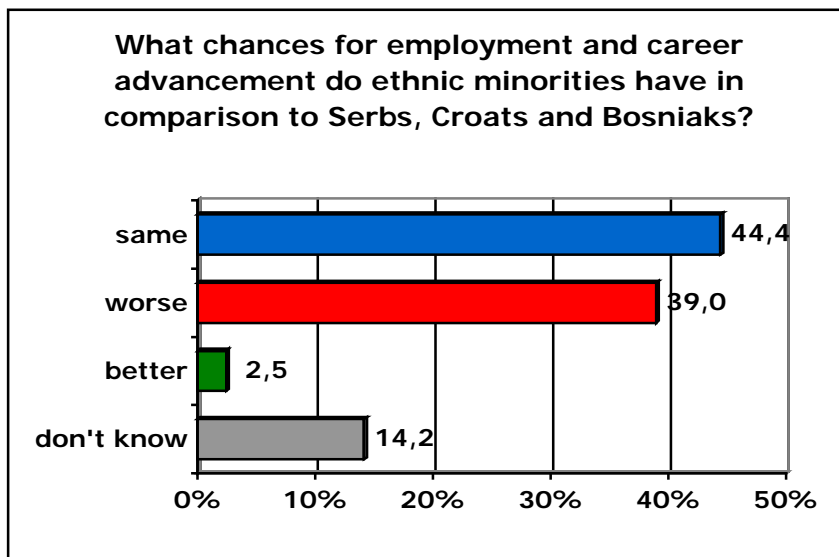
**Are ethnic minorities in B&H in disadvantaged position comparing to majority population?**

	Which nationality are you? Estimate			Total
	Croat	Bosniak	Serb	
Yes	58.7%	52.1%	40.2%	48.3%
No	32.8%	33.9%	49.1%	40.2%
I don't know	8.5%	10.9%	10.7%	10.3%
Refuses		3.1%		1.2%
Total	100.0%	100.0%	100.0%	100.0%

*Table 2*

Even 57, 9 percent of citizens consider women insufficiently present in politics in Bosnia and Herzegovina. In opposite, 29, 9 percent believe women are sufficiently present and 5, 2 percent (mainly men) consider women are over represented. Regarding the chances of employment 45, 5 percent of citizens (55, 3% men and 35, 1% women) believe that men and women have equal chances, while 44, 2 percent of citizens considers that chances of women are significantly worse in comparison to men.

When it comes to national minorities, 44,4 percent of citizens believe that minorities have the same chances for employment and career advancement, and 39 percent believe that their chances are smaller with significant percent (14,2%) of those answered that they don't know.

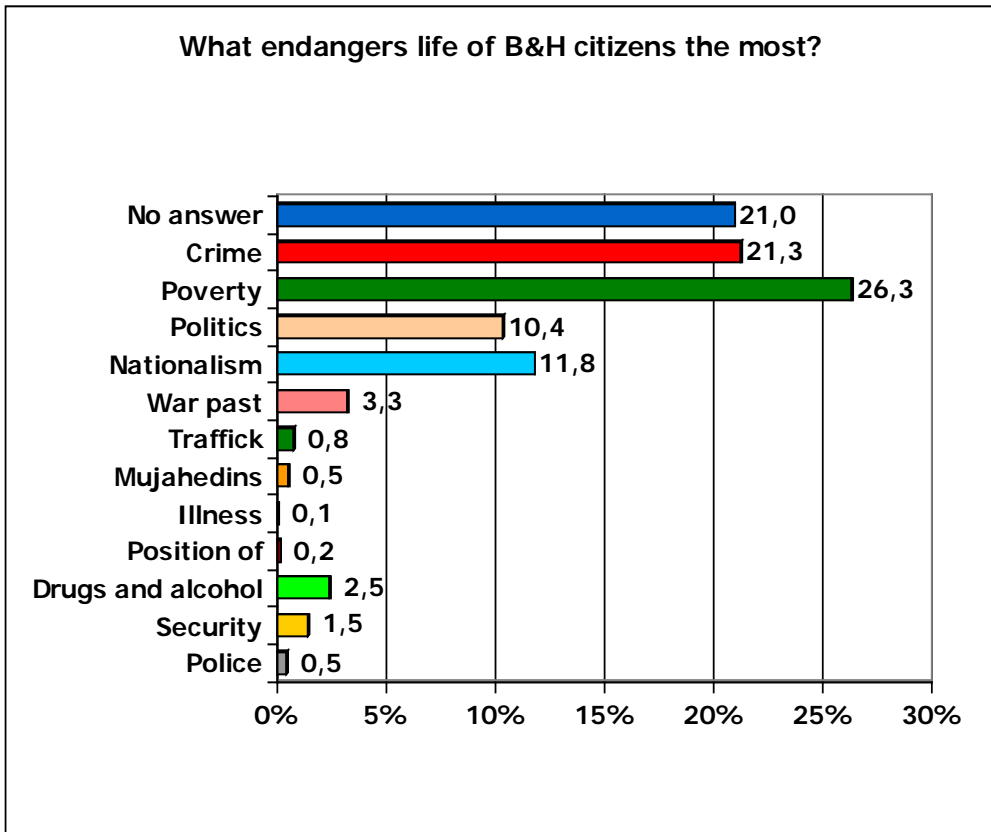


Graph 5

### 3.2. Right to Life

Majority of population (68%) consider life of citizens in Bosnia and Herzegovina is endangered, mostly by poverty, crime, nationalism and politics.

Poverty, as life endangering factor, is seen as such by largest percent of respondents (26, 3 percent) followed by crime (21, 3%), nationalism and politics (11, 8% and 10, 4%).



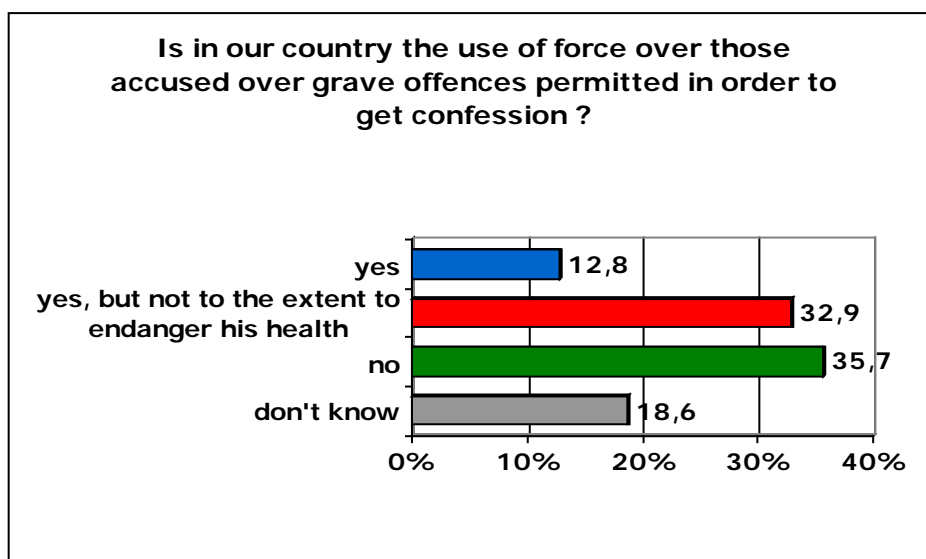
Graph 6

Majority (88% of respondents) is aware that death penalty doesn't exist in Bosnia and Herzegovina.

### *3.3. Prohibition of Torture, Inhuman or Degrading Treatment or Punishment*

12, 8 percent of citizens answered positively to the question: "Is in our country the use of force over those accused for grave offences permitted in order to get confession?" 32, 9 percent of them believe that the use of force for these purposes is permitted but not to the extent to endanger the health of the

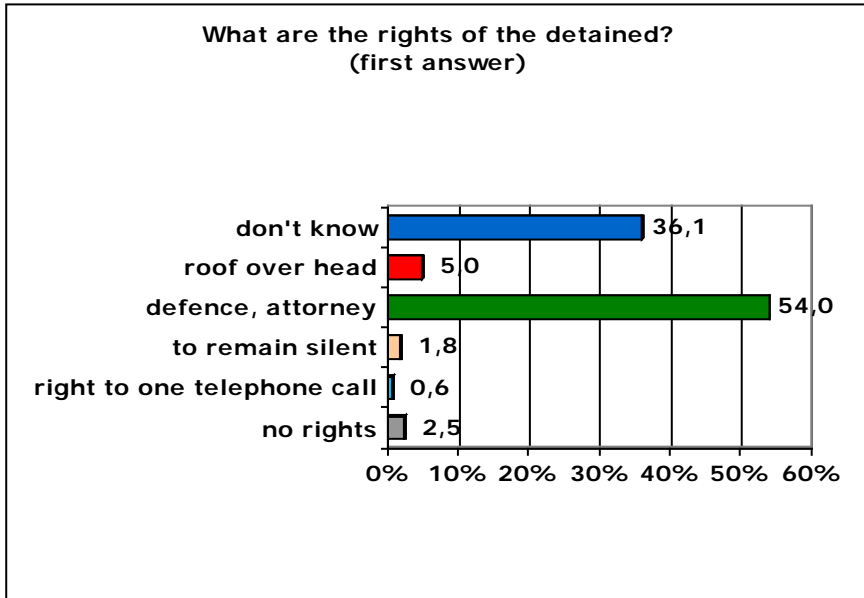
suspect. There is also worrying 18,6 percent of those not knowing if such use of force is permitted or not, and only 35,7 percent of citizens knowing that the use of force in order to get confession is not permitted. For example, in Serbia and Montenegro in 2005, 62 percent of citizens expressed their belief that such use of force is not permitted.



*Graph 7*

### *3.4. Right to Liberty and Security of the Person and Treatment of Prisoners*

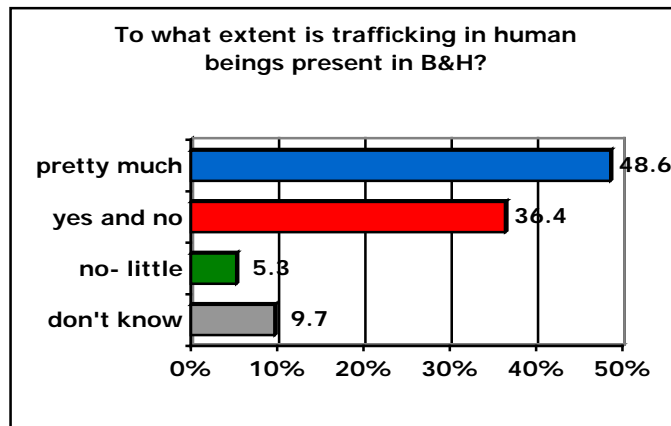
More than half of population (54 percent) has, already in the first answer, cited right to defence and attorney as the right of detained person, but also a large percent (36,1%) didn't offer any answer to this question.



Graph 8

### 3.5. Prohibition of Slavery and Forced Labour

Less than half of population in Bosnia and Herzegovina (48, 6%) consider problem of human beings trafficking significantly present in our country.

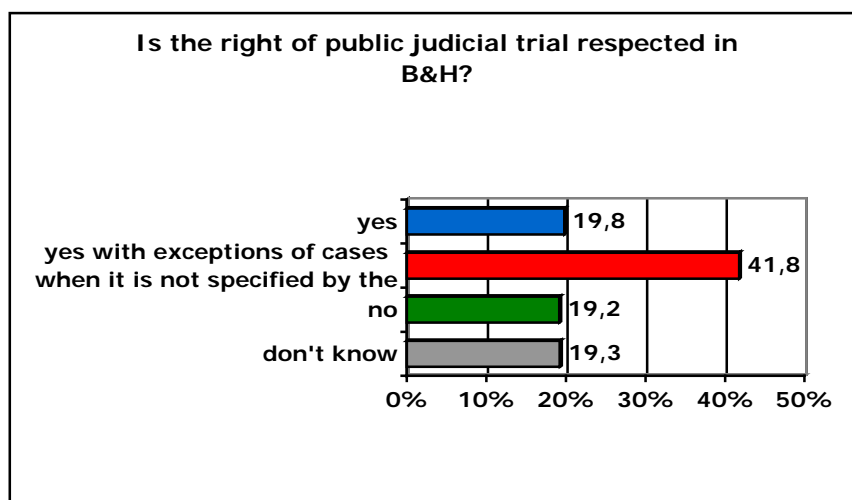


Graph 9

Also, 73, 5 percent of citizens is convinced that relevant institutions are not dealing with this issue too much.

### *3.6. Right to a Fair Trial*

Citizens mostly (total of 61, 6 percent; 19, 8 percent with no exceptions; 41, 8 with exceptions of cases specified by the law) believe that the right of public judicial trial is respected in Bosnia and Herzegovina.



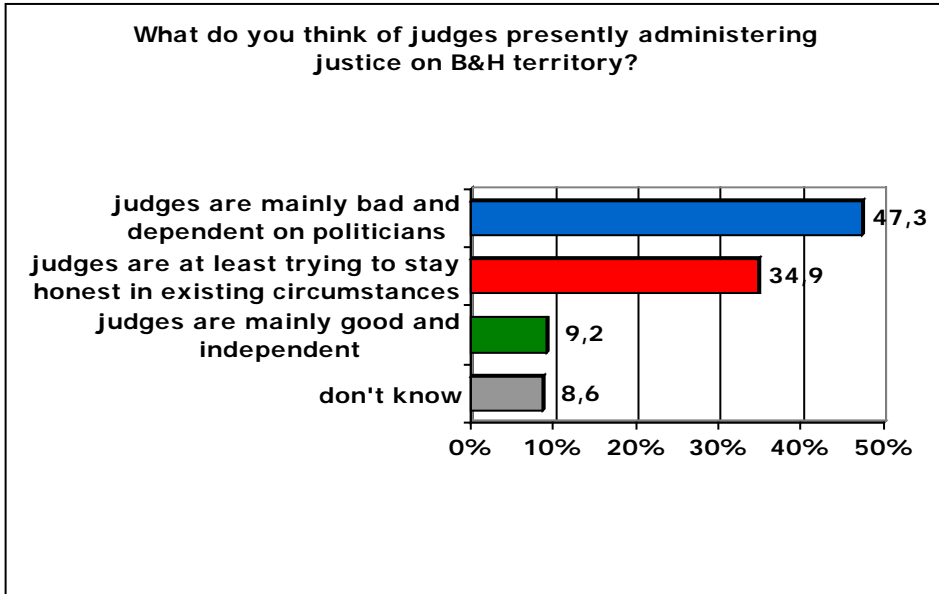
*Graph 10*

At the same time, majority of citizens (70, 3%) believe that the rule of being innocent until proven otherwise is applied in Bosnia and Herzegovina.

Even though it can be said that citizens are aware of existence and application of specific legal institutes like fair trial, what is worrying, although expected, is mistrust in judges. 47, 3 percent of citizens consider that judges are mostly doing their job badly and they're dependent on politicians, while 34, 9 percent



believe that judges are trying to stay honest in existing circumstances. Only 9, 2 percent of respondents consider that judges are mostly doing their job well and that they're independent.

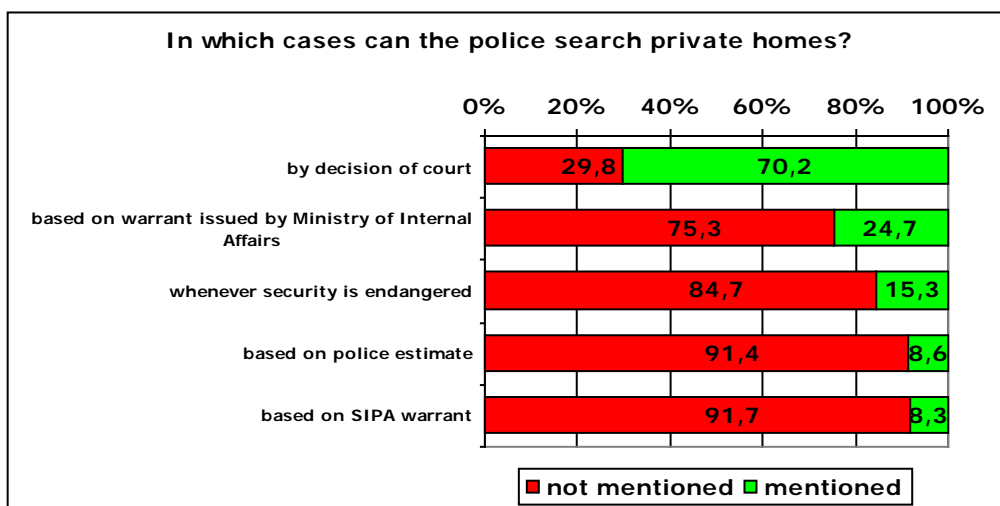


Graph 11

### 3.7. Right to Protection of Privacy, Family, Home and Correspondence

Regarding the right to protection of privacy, family, home and correspondence most citizens believe that the police can search private homes if there is a court order (70,2%) and in less percent if there is a warrant issued by Ministry of Internal Affairs or SIPA (State Investigation and Protection Agency). 15,3 percent of citizens believe that search can occur whenever security is

endangered, but also there is 8,6 percent of those believing that it can be done based on police estimate<sup>1001</sup>.



Graph 12

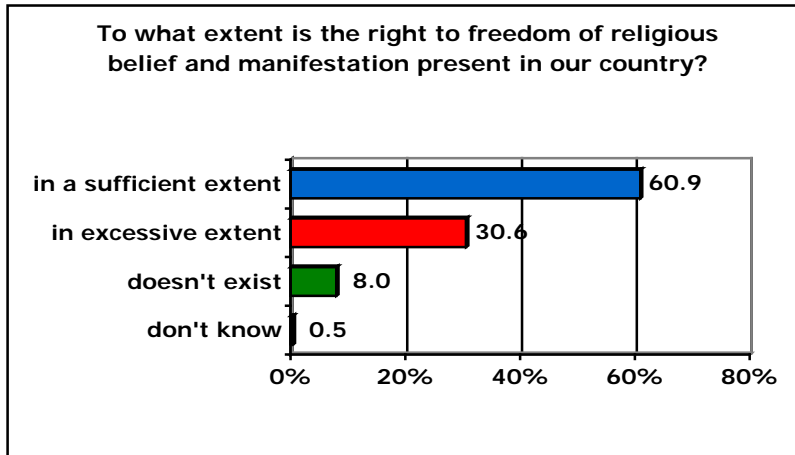
According to opinion of 52,8 percent of citizens, opening letters and phone tapping is permitted under various circumstances, while 30,1 percent consider this practice to be prohibited in any circumstances.

### *3.8. Right to Freedom of Thought, Conscious and Religion*

Extreme majority of citizens (91, 5%) consider that there is a freedom of religious belief and manifestation in Bosnia and Herzegovina, while 60, 9 percent consider that this freedom exists in sufficient extent and 30, 6 percent believe it exists in excessive extent. On the opposite there are 8 percent of those believing that this freedom doesn't exist.

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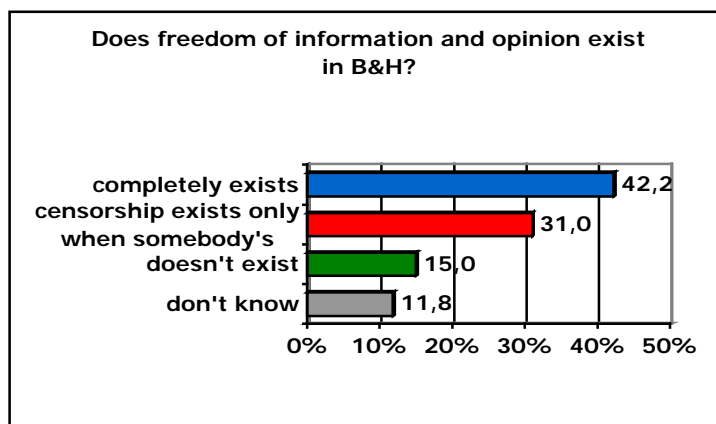
<sup>1001</sup> It is necessary to note that all respondents gave their opinion on all options listed.



Graph 13

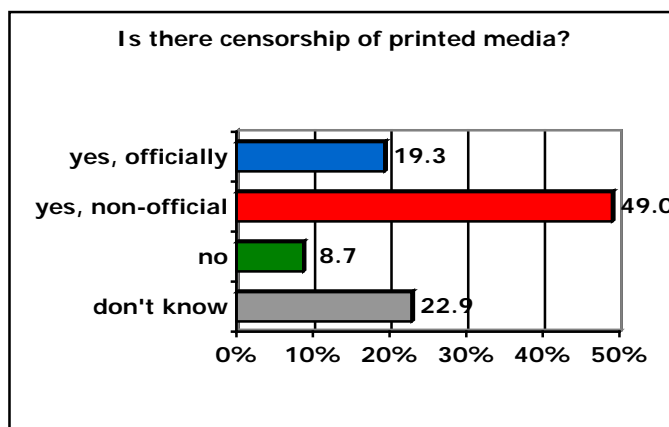
### 3.9. Freedom of Expression

In 2005 report in Serbia and Montenegro, in part relating to freedom of expression there was a contradiction in opinions of citizens where 72 percent expressed their belief that there is a freedom of information and opinion in the country and, at the same, time they considered, in high percent (66%), that there is press censorship either official or non-official one. The same contradiction is cited also in opinions of citizens of B&H regarding the freedom of expression. So, 73,2 percent of citizens consider that there is freedom of information and opinion in Bosnia and Herzegovina - 42,2 percent believe that there is complete freedom and 31 percent consider that there is a sanction solely when somebody's reputation is at stake.



Graph 14

At the same time, most of the citizens (68, 3 percent) believe that censorship of printed media exists in our country with 19, 3 percent of those believing in existence of official censorship and 49 percent in non-official censorship of printed media. There is also a significant percent (29, 9 percent) of those that don't know whether there is a censorship of printed media in Bosnia and Herzegovina or not.



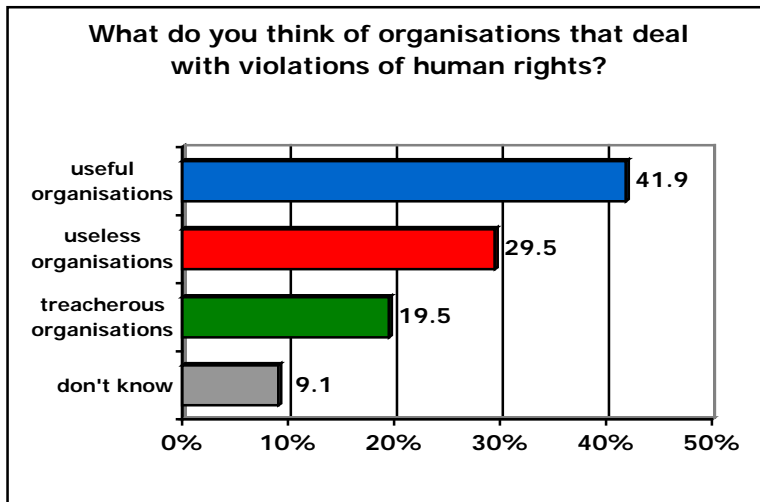
Graph 15

According to 27, 8 percent of our citizens, independent media are those that publish everybody's opinion and 26, 4 percent of citizens consider independent media those that weren't

founded by the state or state institutions. The independent media for 24, 2 percent are media in private ownership.

Most of the citizens consider that independent media in Bosnia and Herzegovina aren't dominating media space. 36, 7 percent think that independent media are in minority and 34, 9 percent believe that there is equally as much of independent media as those not independent. 20, 6 percent of citizens of B&H consider that independent media are in majority.

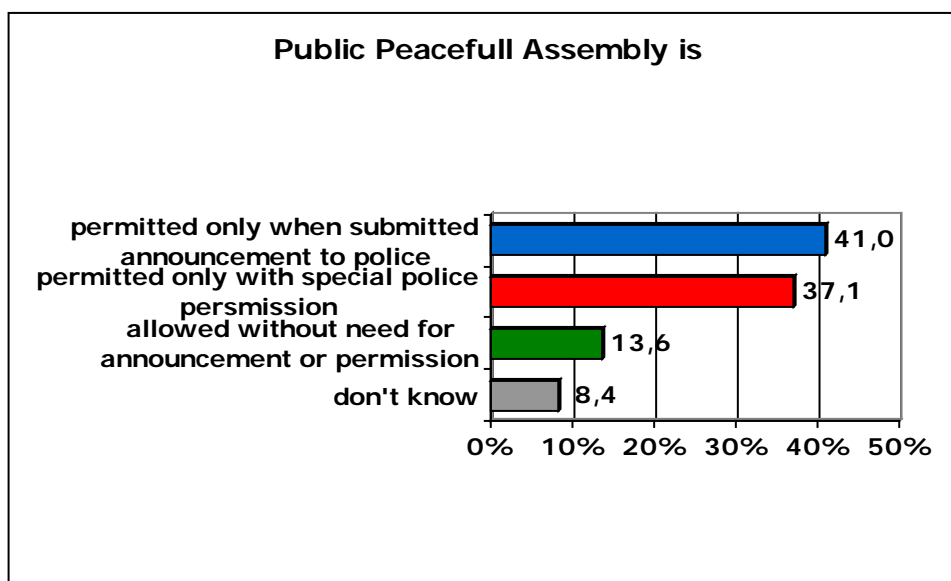
More citizens in Bosnia and Herzegovina have sort of negative perception of organizations dealing with human rights (29, 5 percent consider them to be useless organizations and 19, 5 percent is convinced that they're treacherous organizations) in compare to 41, 9 percent of citizens considering that they're useful organizations.



Graph 16

### *3.10. Right to Freedom of Peaceful Assembly*

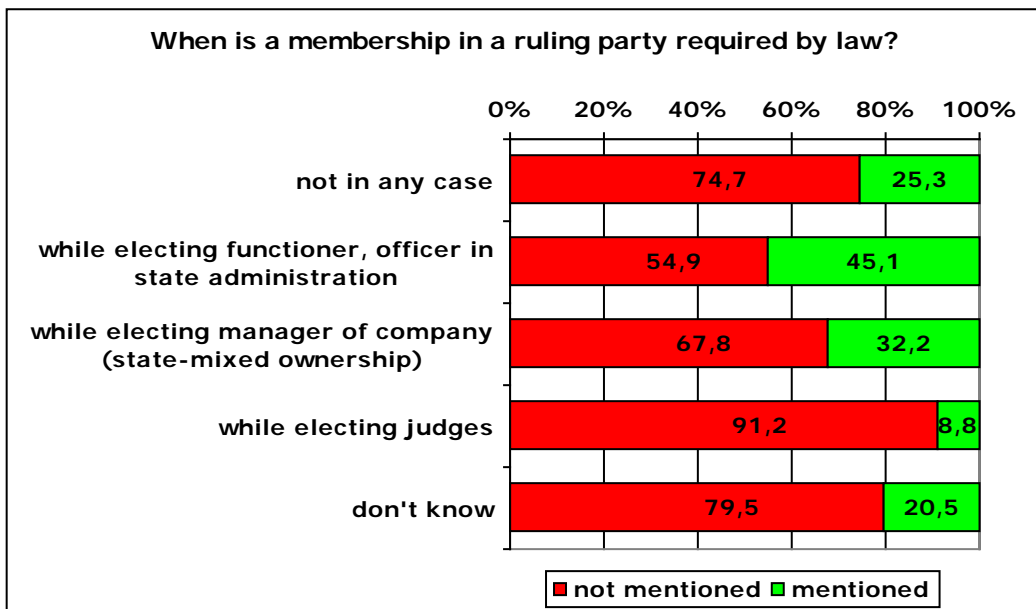
41 percent of citizens know that public assembly is allowed by law only with announcement to police, while 37, 1 percent consider that assembly can be organized only with special police permission. On the other hand, significant percent of citizens (48, 6%) don't know the reasons for which the right to peaceful assembly could be denied. This can be considered very problematic having in mind that in a situation like this, the most banal explanations can prevent citizens in realization of the right to peaceful assembly. Citizens that provided answer to this question mostly consider that the reasons for denial of right to peaceful assembly are riots (26,8%) and perturbation (13,8%).



*Graph 17*

### 3.11. Freedom of Association

Only 25, 3 percent of citizens believe that laws don't require that a potential candidate should be a member of the ruling party when running for any public position. But 45,1 percent of citizens consider that the law requires membership in some of the ruling parties as condition for position in state administration with 32,2 percent of those believing that the same is required for position of state companies' manager. Certain percent of citizens, 20, 5 percent, don't know when the law requires membership in a ruling party.



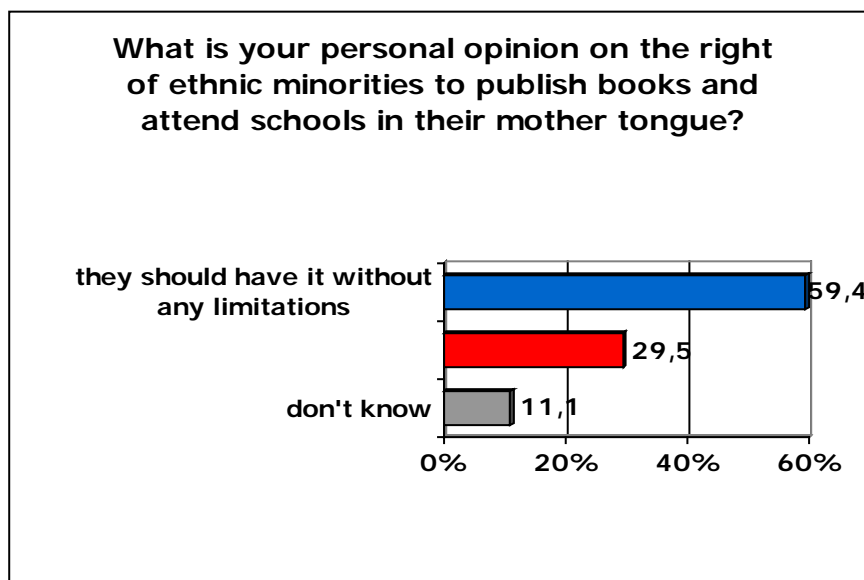
Graph 18

Most of the citizens, 83, 7 percent, have negative opinion on the way trade unions function: 47 percent consider that unions are unorganized and weakly represent interests of workers; 22, 5 percent see unions as cover for manipulations of directors and politicians; and 14, 2 percent of citizens think that unions exist only on paper. However, it should be noted that there is 16, 2

percent of citizens considering that unions are organized well and that they represent interests of workers.

### *3.12. Minority Rights*

73, 6 percent of respondents consider that the ethnic minorities have the right to publish books and attend schools in their mother tongue. Out of that number, 49, 8 percent consider this right is available without any limitations and 23, 8 percent of citizens consider that realization of this right is subject to approval of relevant state body. Even personal opinion of citizens regarding the realization of this minority right is positive. So, 59, 4 percent consider that the right to publish books and attend school in mother tongue should be without any limitations and 29, 5 percent is for enabling this right but with certain limitations.

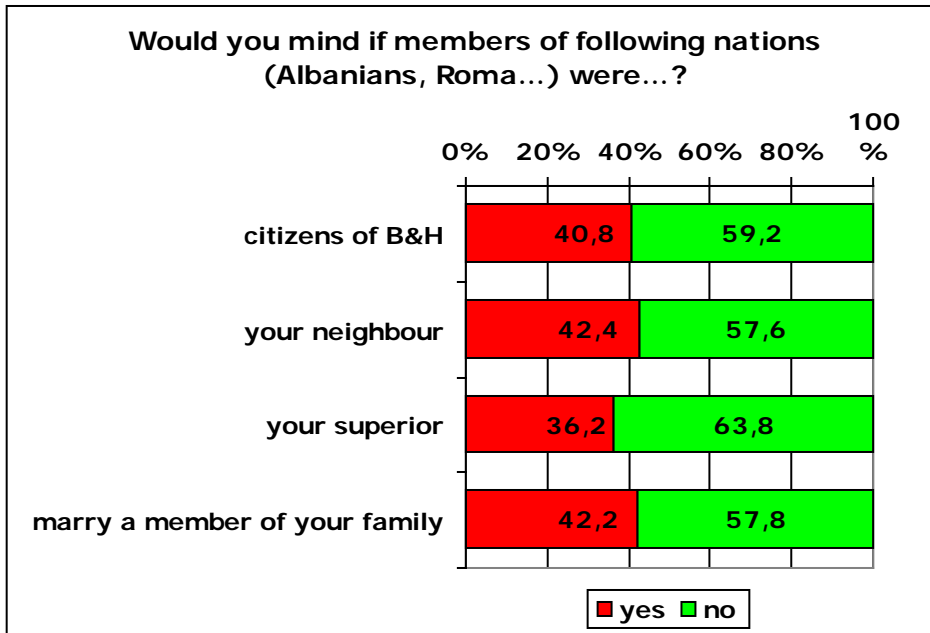


*Graph 19*

Citizens of B&H couldn't say they're highly tolerant. Large percent of citizens (40,8%) would mind if members of other nations (like Albanians, Roma) be citizens of B&H, 42,4 percent



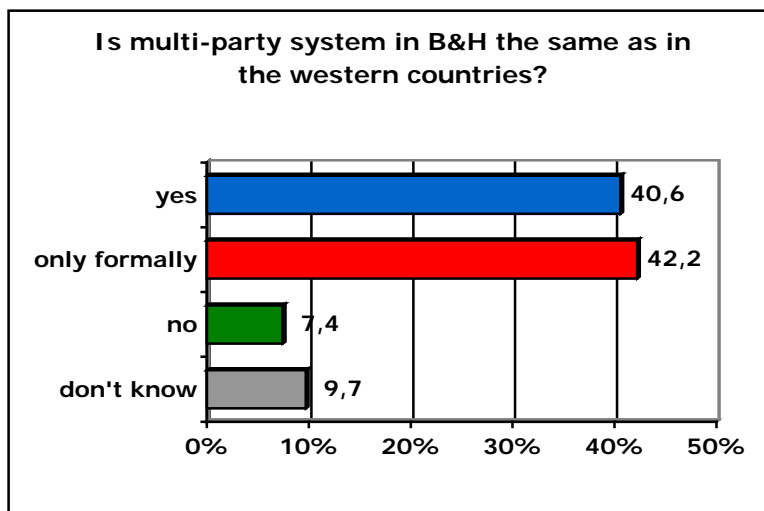
don't won't them as neighbours, 36 percent would be against if member of these nations is their superior, and 42,2 percent of respondents would have a problem if a member of their family were to marry a member of mentioned nations.



Graph 20

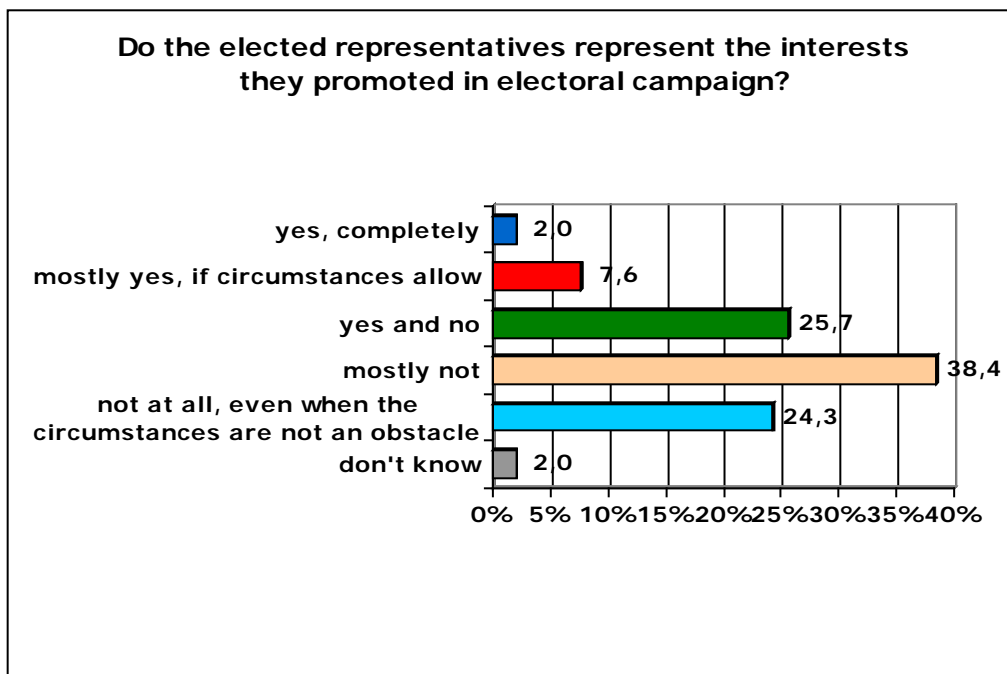
### 3.13. Political Rights

The question of respect of political rights in Bosnia and Herzegovina has negative answer of 51, 6 percent of citizens, and 47, 6 percent believe those rights are respected. In largest percent (42, 2%) citizens consider that the same multi-party system as in western countries exists in Bosnia and Herzegovina formally and 7, 4 percent think that such system doesn't exist in our country. There is also worrying high percent (9, 7%) of those that don't know whether Bosnia and Herzegovina has multi-party system or not.



*Graph 21*

Even with extremely negative perception of respect of political rights and existence of multi-party system, most of citizens (86, 6%) are convinced that they have the right to elect their representatives in governmental bodies. However, 62, 7 percent of citizens answered negatively to the question if the elected representative represent the interests they promoted in electoral campaign (38, 4 percent – mostly not and 24, 3 percent – not at all, even when the circumstances are not an obstacle).



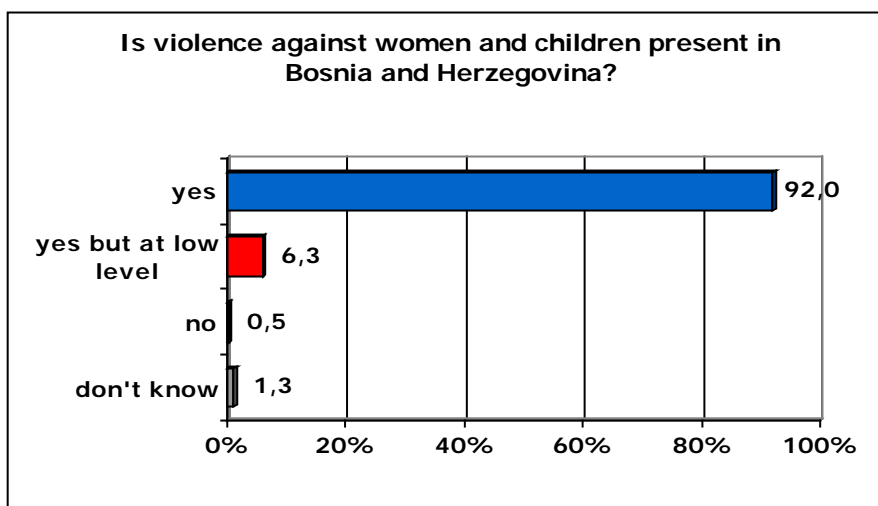
Graph 22

These indicators probably hide one part of the answer to the question of the actual cause of present political apathy in Bosnia and Herzegovina. It seems that situation can be no different in a society in which citizens know that they have the possibility to elect their political representatives, but at the same time they're aware that their elected political representatives will not put efforts to fulfill pre-election promises.

### *3.14. Special Protection of the Family and the Child*

Quite high awareness on right to special protection of the family and the child exist in Bosnia and Herzegovina. Even 92, 4 percent of citizens are aware that violence against women and children is punishable by law in Bosnia and Herzegovina. Also, 92 percent of citizens believe that cases of violence against women

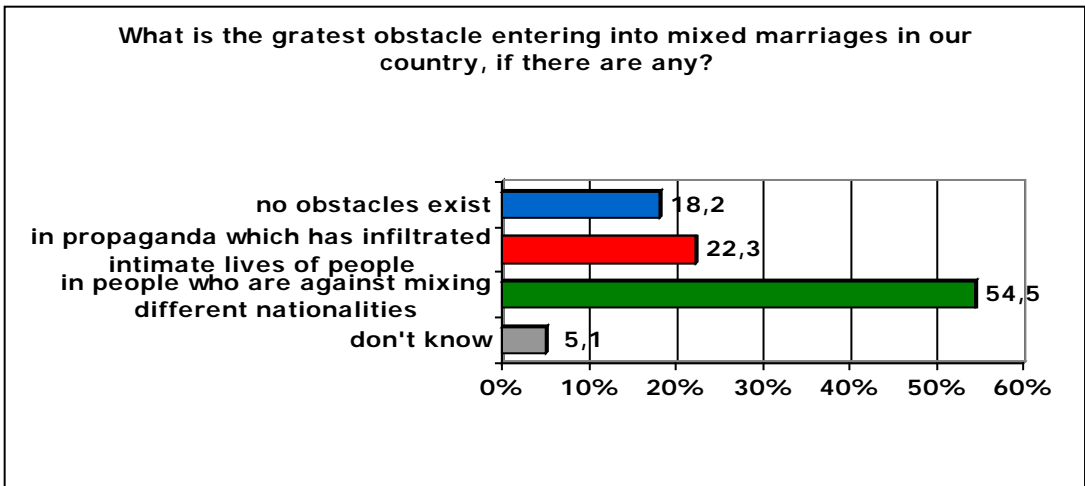
exist in Bosnia and Herzegovina. Only 6, 3 percent of citizens think that such cases are present, but at low level.



*Graph 23*

Even 86, 3 percent of citizens have negative perception on the extent in which the state and its institutions are dealing this problem: 41 percent believe they don't deal enough, 31 percent think that they deal but inefficiently, and 14, 3 percent consider that the state and its' institutions don't deal this problem at all. Only 10, 9 percent of respondents consider that the state and its' institutions deal with this problem.

Only 18, 2 percent of our fellow citizens consider that there are no obstacles to enter into mixed marriages in our community. On the opposite, 22, 3 percent find obstacles in propaganda which has infiltrated intimate lives of people. The largest percent (54, 5) believe that obstacles to enter into mixed marriages lie primarily in the people who are against mixing different nationalities.

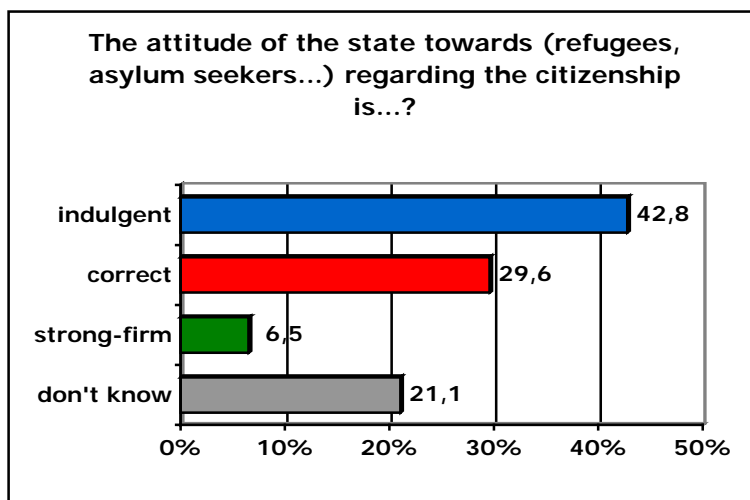


Graph 24

### 3.15. Right to Citizenship

Together with 17, 6 percent of those that don't know anything on conditions to become a national of Bosnia and Herzegovina, the largest part of citizens (30, 2 percent) consider that conditions aren't clear enough and that the situation is chaotic. There are also 23 percent of respondents believing that there is a lot of discrimination regarding the conditions to become a national of our country. On the opposite, 29, 2 percent of citizens consider that conditions are fair.

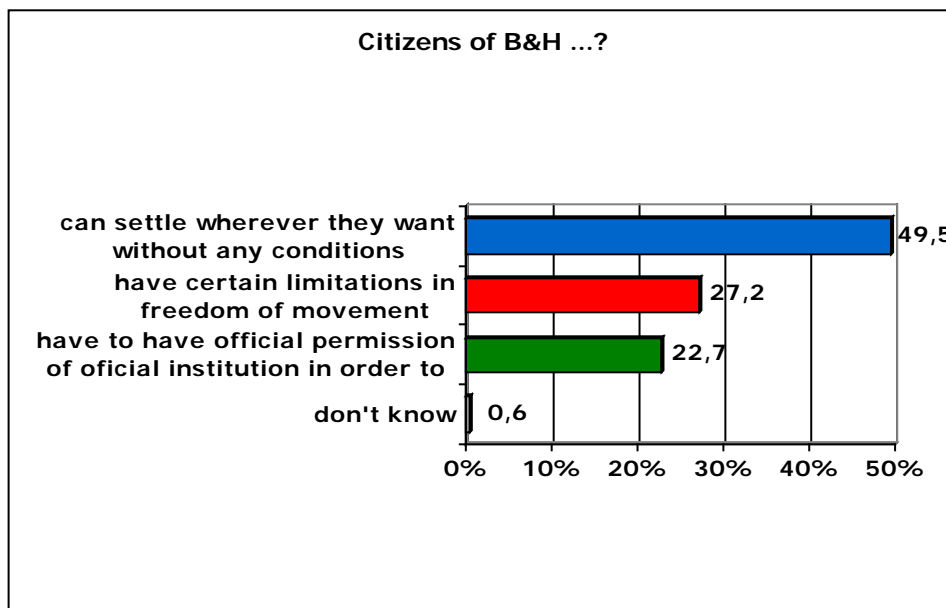
Citizens mostly (42, 8%) consider that the attitude of the state towards different groups of persons, having unclear status regarding the citizenship, is indulgent. Some 29, 6 percent think that the attitude is correct. Only 6, 5 percent of respondents believe that the state has strong-firm attitude towards this population. There is a significant percent (21,1%) of those unable to assess the attitude of the state towards the asylum seekers and refugees.



*Graph 25*

### *3.16. Freedom of Movement*

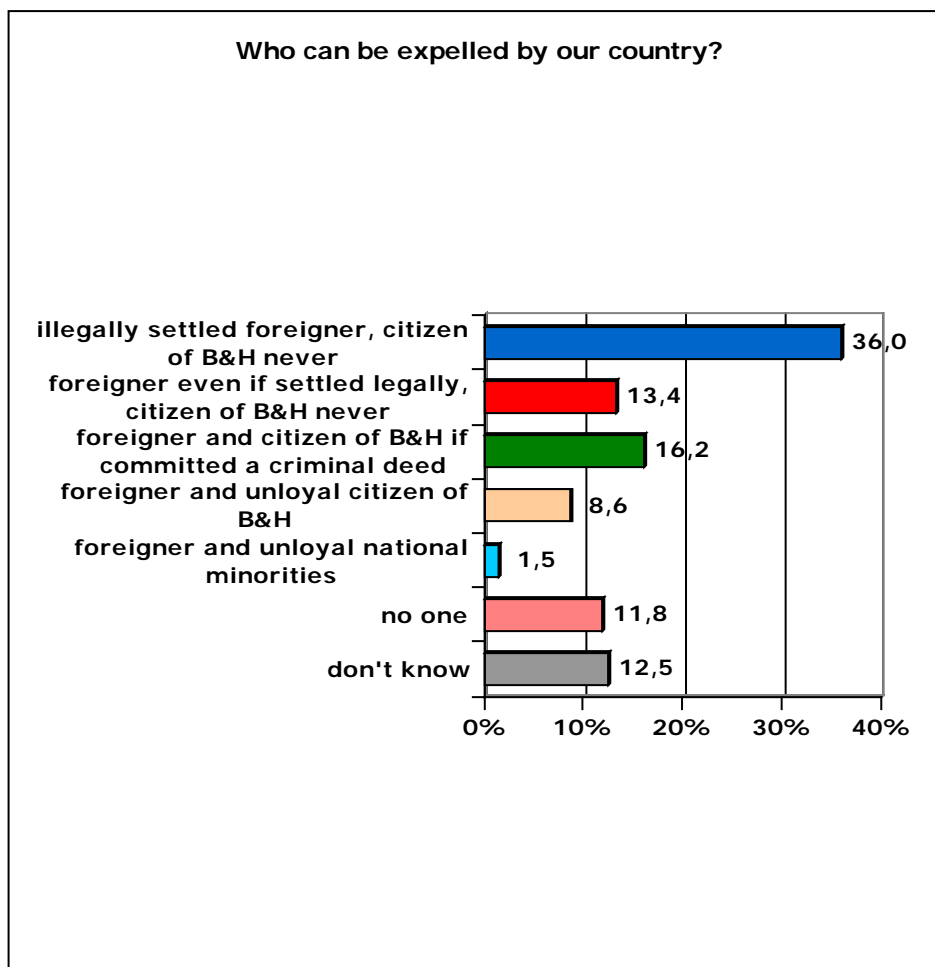
It is certain that the awareness on freedom of movement in our country is one of topics that should be in focus of both governmental and non-governmental sector while planning their future activities. Only 49, 5 percent of respondents believe that citizens of Bosnia and Herzegovina can settle anywhere they want, without any conditions. Also, 27, 2 percent of citizens consider that citizens of Bosnia and Herzegovina have limitations in freedom of movement with 22, 7 percent, for example, believe that official permission of an official institution is required.



Graph 26

A bit over half of respondents, 51, 4 percent, is convinced that every citizen can leave country freely while, on the other hand, 47, 5 percent of citizens believe that official permission of an official institution is required.

Most of citizens believe that citizens of B&H can't be expelled from the country, but still there is certain percent of those that consider it is possible in specific circumstances. So, 16,2 percent of citizens consider that the citizens of B&H can be expelled if committed criminal deed and 8,6 percent of respondents believe it is possible in case that he/she is disloyal citizen of B&H.



*Graph 27*

### *3.17. Economic and Social Rights*

Majority of citizens are familiar that employing persons less than 16 years of age is punishable in Bosnia and Herzegovina contrary to 13 percent of those considering such kind of employment is not punishable.

Citizens of B&H think that in order to be employed it are required to have following documents: labour card (87, 6%),



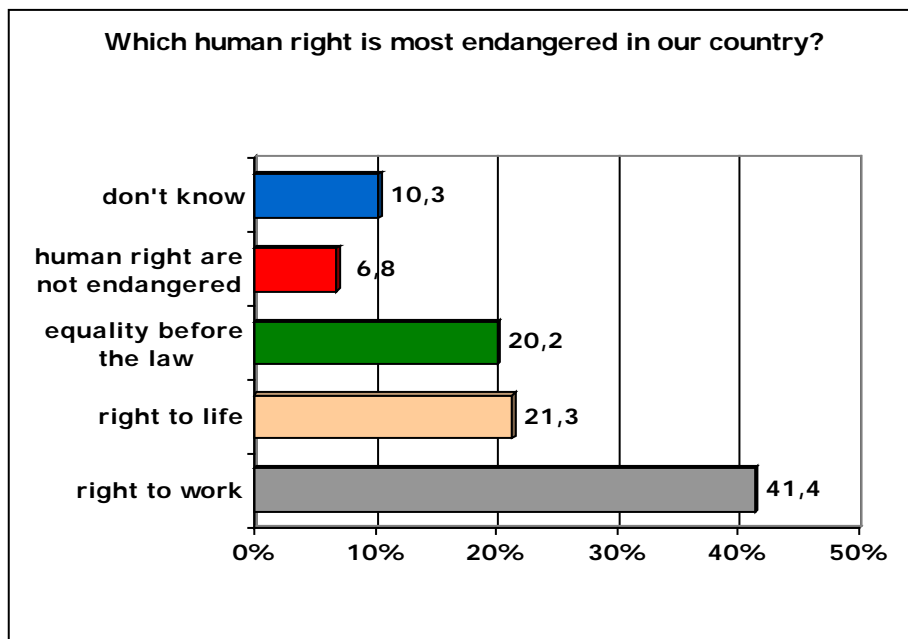
medical certificate (75, 8%), school certificate (71, 7%), while 29, 4 percent consider birth certificate is also required.



Graph 28

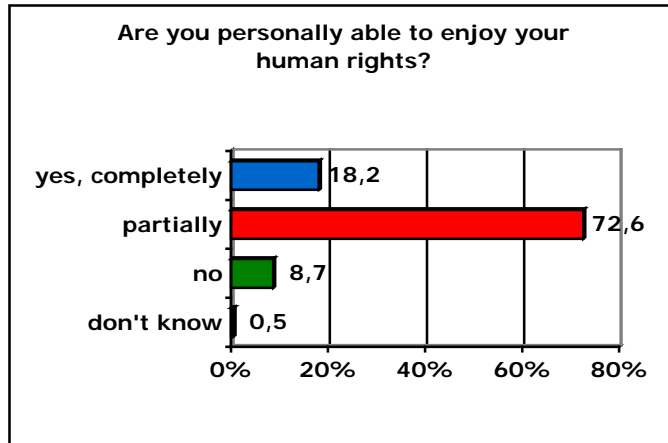
#### 4. Enjoyment of Human Rights

When similar research was done in Serbia and Montenegro, in 2005, 30 percent of citizens considered human rights in Serbia and Montenegro weren't endangered. In 2008, only 6, 8 percent of citizens in Bosnia and Herzegovina thought that their human rights weren't endangered. Along with 10,3 percent of citizens that don't know which human right is endangered the most in our country, there is majority of our fellow citizens, 82,9 percent, that consider right to work (41,4%), right to life (21,3%) and equality before the law (29,2%) as the most endangered human rights.



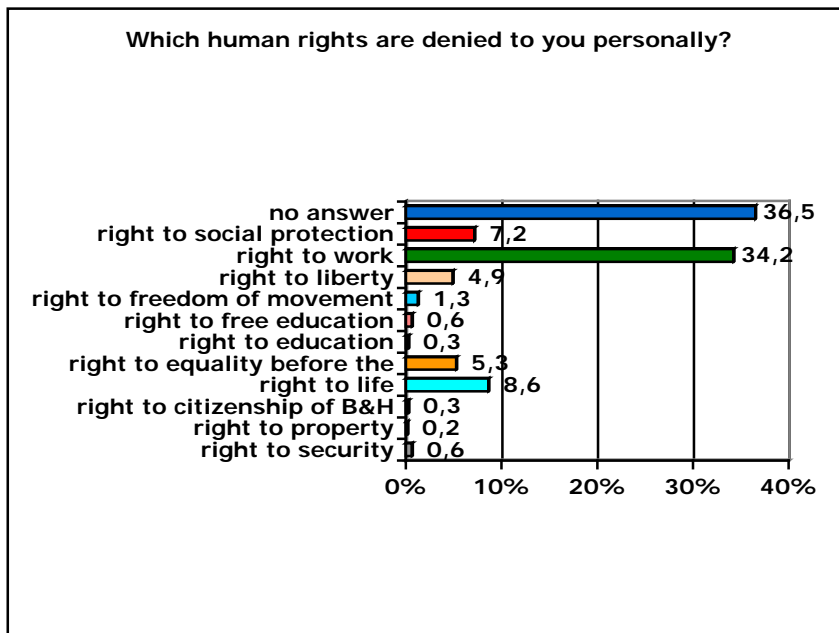
*Graph 29*

Even though only 6,8 percent of citizens believe that human rights in B&H are not endangered, there is a significant percent of 18,2 percent of citizens that consider that they manage to fully enjoy their human rights. This means that perception of enjoyment of human rights is more positive when seen from personal perspective than in general. This trend is also evident in researches conducted by Belgrade Centre for Human Rights. Nevertheless, majority of 72, 6 percent of citizens believe that they enjoy their human rights partially and 8, 7 percent consider they don't enjoy their human rights at all.



Graph 30

As the rights, considered to be in largest extent denied to them personally, citizens cite right to work (34,2%), then right to life (8,6 percent), right to social protection (7,2%), right to equality before the law (5,3%), right to liberty (4,9%) etc.



Graph 31



# IV

## HUMAN RIGHTS IN PRACTICE

### - SELECTED THEMES

#### 1. War Crime Trials in Bosnia and Herzegovina

##### *1.1. Introduction*

War conflicts (1992-1995) in Bosnia and Herzegovina, that happened not so long ago, are considered to be the worst of a kind since World War II in Europe. In the sense of human victims, consequences of the war are significant. However, not even thirteen years after the signing of Peace Agreement in Dayton there is any precise data about it.

It is being predicted that out of 4,5 million of inhabitants, that lived in B&H in 1991.,200.000 were killed. . But, according to the data of Research and Documentation Centre from Sarajevo, the number is half smaller and out of 100.000 persons 16.000 victims were children. United Nations High Commissariat for Refugees (UNHCR) has registered around 1.250 returnees of internally displaced persons and 300 refugees during the first half of 2007. This is nearly half of number for the same period in 2006. Most of the refugees that returned during 2007 are Bosniaks while

most of internally displaced persons that returned are Bosniaks and Bosnian Serbs.

Precisely because of the cited black statistics of B&H, at war crime trials Bosnia and Herzegovina has passed important test of readiness to face the events that happened within its' borders in the period 1992 to 1995. As marked by experts of International Centre for Transitional Justice (ICTJ) the experience of Court of Bosnia and Herzegovina will be valuable in other states.

### *1.2. Short History*

Idea on establishment of War Crimes Chamber at Court of B&H comes from joint conclusions reached by Office of High Representative (OHR) and International Criminal Tribunal for Former Yugoslavia (ICTY) in February 2003. This section also represents key component of ICTY's working strategy.

In the beginning of 2005 a set of laws was adopted formally establishing War Crimes Chamber of Court of B&H (known as Section I) and two months later it started with its' work.

International community plays main role in financing this judicial institution, but the role of B&H authorities in financing those two institutions is increasing. The aim is that from 2010 the War Crimes Chamber and Prosecutors Office should be financed from the state budget.

### *1.3. Statistics and Monitoring*

It's important to point out that at territory of Bosnia and Herzegovina processing of war crimes, committed in period 1992 to 1995, was conducted at so called lower courts in the country (in this case: cantonal and district courts in Federation B&H and Republic of Srpska) even before establishment of War Crimes Chamber of Court of B&H.

According to OSCE Mission to Bosnia and Herzegovina data<sup>1002</sup>, in the period from June 1996 to March 2005 there were 114 war crime cases, related to 184 perpetrators, running before courts in Bosnia and Herzegovina.

According to the recently published study of International Centre for Transitional Justice<sup>1003</sup>, "The ICTY screened 3.489 cases and classified them in different categories. Category A cases were deemed ready for indictment. In 2005 the State Prosecutor's Office completed its' own review of 877 cases. Due to the high sensitivity of the cases, the Office decided to try 202; the remaining cases would be transferred to local courts. The ICTY had also identified 2.379 Category B cases where evidence was deemed "insufficient" to issue an indictment. Category C cases would require further investigation. In all, the ICTY identified 702 cases in Category C; they also were to be processed by the War Crimes Chamber." The same source cites that number of cases should be bellow 6.000.

International Centre for Transitional Justice (ICTJ) has managed to interview set of actors involved in this process – judges, prosecutors, observers, representatives of non-

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<sup>1002</sup> „Seeking Justice“, BIRN, March 2006 page 6.

<sup>1003</sup> Bogdan Ivanišević: War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, International Center for Transitional Justice, October 2008, page 15.

governmental sector... Their opinion on Section I is mainly positive. It's stated that since March 2005 processes against 84 accused have been tried in 48 cases before the Section I. "The trial panels rendered 32 trial judgments (including 27 convictions and five acquittals). Fifteen convictions have become final until the report was published in October, 2008".<sup>1004</sup>

According to another source, draft of State's War Crimes Processing Strategy ("Justice Report" of Balkan Investigative Reporting Network published its' parts recently), a total of 2,098 war crimes involving 16,152 persons have been reported to various prosecutors' offices in Bosnia and Herzegovina. The largest number of reports, 1,037, had been filed with prosecutors' offices in the Federation of BiH. The Bosnian Prosecutor's Office had received 608 reports, and the Republika Srpska, 418. Another 35 reports involving 714 individuals have been forwarded to the Prosecutor's Office in the District of Brcko.

Specifically, in three years of its' existence, 78 cases were at the War Crimes Chamber of Court of B&H and 60 convictions were passed.<sup>1005</sup>

Apart from the state court, cantonal courts have also processed 21 war crimes cases in Sarajevo, 17 in Mostar, 7 in Novi Travnik, 7 in Bihać, 6 in Zenica, 4 in Tuzla and 2 in Livno. Before district courts 7 in Trebinje, 11 in Banja Luka and 1 case in Prijedor were processed.

Number of closed war crimes processes at the state level is 19; 46 in FB&H; 12 in Republic of Srpska and two in Brcko District.

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<sup>1004</sup>www.ictj.org

<sup>1005</sup>Data available at: www.sudbih.ba. While gathering data for this part of the report, public relations officers at Court of B&H refused to provide data on number of on going processes, giving direction that it is possible to acquire at official web site.



According to the third source, web site of OSCE Mission to B&H,<sup>1006</sup> around 550 cases were directed to authorities by “Rules of the Road” procedure for processing before domestic courts in accordance to the, so called , Category A relating to cases with enough evidence existing for indictment.

Here it is also pointed out that, beside these cases, prosecutors in B&H should deal with thousands of other criminal charges for war crimes submitted by authorised for law implementation as well as prosecutor’s offices.

“With the aim of processing such a large number of investigations, State Prosecutor’s Office is working on National War Crimes Prosecution Strategy. In order to support the Chief Prosecutor of B&H in realization of this activity, OSCE Mission to B&H provided expert and technical assistance,” it is stated at official web site of OSCE in B&H.

It’s pointed out that, however, monitoring of processes for committed war crimes before domestic courts at entity level, as well as contributing to reform of legislative sector and regional cooperation, remain as priorities to OSCE Mission to B&H.<sup>1007</sup>

#### *1.4. Legislation*

War crimes cases in Bosnia and Herzegovina are tried under three criminal codes: Criminal Code of Bosnia and Herzegovina (which entered the force in March 2003), Criminal

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<sup>1006</sup>[http://www.oscebih.org/human\\_rights/bos/warcrimes.asp?d=1](http://www.oscebih.org/human_rights/bos/warcrimes.asp?d=1)

<sup>1007</sup>OSCE Mission to Bosnia and Herzegovina works on promotion and protection of human rights of all B&H citizens. In article XIII Annex 6 General Framework Peace Agreement, familiar as Dayton Peace Agreement, OSCE Mission to B&H is “to closely monitor status of human rights” in B&H, in accordance with article XIII Annex 6.

Code of Socialist Federal Republic of Yugoslavia (SFRJ) - taken over, and 1998 Criminal Code of Federation of Bosnia and Herzegovina. First one is being applied at Court of B&H. Second one is being applied in Republic of Srpska and Brcko District as well as in majority of processes before courts in Federation B&H where the third one (entity's code from 1998) is also partially applied. It's important to point out that only the state Code has complete definition of war crimes but also the only one containing provisions on crimes against humanity. This Code is also the only one defining command responsibility and excludes "superior orders" as defence.<sup>1008</sup>

Judges at the War Crimes Chamber of Court of B&H are partly from Bosnia and Herzegovina and partly foreigners. However, at lower instances processes are run by local judges.

### *1.5. Media and Public Opinion*

In order to have complete picture on treatment of war crimes trials it's important to point out here the fact that reports from these processes are very rare and reduced. It's partially considered to be a consequence of saturation of B&H public with news on war events. But also there's a fact that domestic media pay small attention to this segment.

"No television programs focus on the trials and the print media rarely analyse a case in detail. If public statements of political leaders and representatives of victims' groups can be

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<sup>1008</sup>"Moving towards a Harmonized Application of the Law Applicable in War Crimes Cases before Courts in Bosnia and Herzegovina", OSCE Mission to B&H, October 2008, page 2

considered as indicative ones, then Bosnian Serbs have been least supportive of the BWCC.”<sup>1009</sup>

In the analysis of International Center for Transitional Justice (ICTJ)<sup>1010</sup> stands that War Crimes Chamber of Court of B&H hasn't made close relationship with media. Court of B&H does not hold press conferences. Media have requested that the Court should supply them with weekly index of court documents that would help journalists in locating certain decision, order or a motion and then request a copy. Although Public Information and Outreach Section (PIOS) create an index of documents, it is being used only internally.

The only media that continuously reports on war crimes trials and even specialised for this part of the law is Balkan Investigative Reporting Network (BIRN) “Justice Report”. Through objective reports, this agency provides support network to media, wider public in the country, as well as displaced citizens of Bosnia and Herzegovina throughout the world. This is the only agency of a kind, beside reports from trials, that publishes analyses and monitors reforms in judicial system and alternative mechanisms for establishing truth on past events in B&H. All these documents are available free of charge to all interested (<http://www.bim.ba/>).

“Even though judiciary's primary task is to end an evasion of punishment through establishment of individual criminal responsibility for committed war crimes, judicial bodies should also contribute to establishment of truth on events happened in B&H in not so distance past. Doing that, they could contribute to

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<sup>1009</sup>Bogdan Ivanišević: War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court, International Center for Transitional Justice, October, page 36.

<sup>1010</sup>ibid

process of real reconciliation and decreasing chances for another conflict in B&H,” stands OSCE Mission to B&H.<sup>1011</sup>

At the official site OSCE Mission to B&H cites that “at this moment, judicial bodies in B&H at entity level don’t have reliable programme of public information and provision of basic information is by media.” It’s pointed out that through mentioned practice preconditions are made for those information to be used in political purposes leading to manipulation of public. OSCE Mission to B&H believes that development of Information Programme at prosecutor’s offices in B&H is of great importance.

### *1.6. Problems*

Although war crimes trials in B&H already have history there is no strategy for war crimes trials. High Representative induced adoption of such strategy in September 2007 reminding that victims’ families can’t wait forever to justice at courts.<sup>1012</sup>

In September 2008 information reached the public that teams of B&H Prosecutor’s Office and Court of B&H, in separate working groups, are working on elaboration of a document by which courts should be governed in processing of war crimes cases. The time when teams were gathered, according to the poor given information, was the same time when High Representative, Miroslav Lajčak announced his aforementioned recommendation. . The mentioned document was Draft of State’s War Crimes Processing Strategy, because of which slow elaboration, President of state court, Medžida Kreso, left the team. Another document opening many polemics is actually instruction for document elaboration (so claim experts informed

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<sup>1011</sup>[http://www.oscebih.org/human\\_rights/bos/warcrimes.asp?d=1](http://www.oscebih.org/human_rights/bos/warcrimes.asp?d=1)

<sup>1012</sup>[www.ohr.int/ohr\\_dept/presso/](http://www.ohr.int/ohr_dept/presso/).

who had mentioned document in sight though it is not publicly available) officially called “A new way – a new beginning” and signed by main people from Special War Crimes Section of B&H Prosecutor’s Office. This document is known in public as “Yellow pages” suggesting catalogue approach to war crimes trials which should, according to people from B&H Prosecutor’s Office opinion, provide better insight to what really happened in the field – mass murders, ethnic cleansing, sex crimes, forceful displacement, kidnappings, and destruction of cultural goods... As David Schwendiman, Head of War Crimes Section and Deputy Chief of B&H Prosecutor’s Office stated for BIRN’s “Justice Report” all these crimes are crimes against humanity.

In the strategy, i.e. draft, it is necessary to have “general indicator on number of unresolved cases” before adoption. “Limited personnel and material-technical capacities of judicial system and police structures” for processing war crimes are established. Also it is stated that “most of courts don’t have adequate courtrooms, prosecutor’s offices don’t have adequate facilities for parallel hearings, as well as insufficient room for detention... Prison system is constantly overcrowded and has security problems.”

Human Rights Watch organisation dealt with mentioned issues in its study “Still Waiting: Bringing Justice for War Crimes, Crimes against Humanity, and Genocide in Bosnia and Herzegovina’s Cantonal and District Courts” issued in August 2008. Abovementioned problems are stated but also difficulties with war period evidences, evidence exchange between courts, lack of criteria in determining the sensitivity of the case and whole set of evidences relating to witnesses...

More specific, Joshua Franco, Human Rights Watch researcher provides four main recommendations in the report: to improve witness protection and support programmes; to harmonise laws and judicial procedures applied in two entities

and Brcko District; to expand prosecutor's offices and their resources; and to strengthen programmes of active outreach towards community with the aim of public informing.

In this report it is pointed out, as previously already mentioned, that large number of war crimes cases committed during the 1992 to 1995 war is before domestic district or cantonal courts even though there are disagreements on exact number of such cases, stated in the report. In the report stands that state prosecutor's office estimates this number to be between 13.000 and 16.000 such cases.

Human Rights Watch organisation appealed on government to speed up those trials.

“Many witnesses emigrated; others are getting older or are dead. Apart from that, it is often happening that witnesses give statements or are questioned at other district and cantonal courts, leading to witness fatigue expressed in changes of their statements in time. Lack of material evidence makes witnesses crucial evidence at war crimes trials”, stands in the report. “Evidences are often at the other side of state and entity borders”, said Franco, “and justice must be comparable at all levels”. Regional cooperation and employing special investigators and war crimes experts at prosecutor's offices (anyway having lack of staff) would enable evidence collection, stands in the report.

Prosecutor's offices very often have most complete information related to individual war crimes, crimes against humanity and genocide cases, claims Wanda Troszczyńska Van Genderen, Human Rights Watch investigator.

It's crucial to create and expand programmes of public outreach in order to inform victims and other citizens of Bosnia and Herzegovina on court processes, as well as results and other court decisions made in case we wish “to ensure that trials produce significant influence”, and that “members of different

communities absolve common understanding of war period events”, stands in the report.

Franco and Troszczyńska Van Genderen agree that this is actually critical moment for government in Bosnia and Herzegovina.

One of the main problems B&H courts and prosecutor’s offices face with in war crimes processes is inequality of criminal codes and this is pointed out in reports of non-governmental organisations dealing with this issue. All studies are mainly published in 2008. It’s interesting that there are rare traces of detail analysis from previous period.

It’s also interesting to point out that up to February 2008 at War Crimes Chamber there hasn’t been any agreement on confessing guilt although possibility for such exists according to the Law on Criminal Procedure of B&H. Also, several cases before court panels of Organised Crime Chamber were concluded through agreement on confessing guilt.

According to “War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court” study prosecutors in war crimes cases were generally unprepared to initiate such agreements. Reasons of their unwillingness were of different nature. Prosecutors were, for example, worried that softer penalties, often result of such agreements, could provoke negative reactions in public and that represents the risk they’re not willing to take.

“When such agreements were reached before International Criminal Tribunal for Former Yugoslavia some in B&H had negative impressions considering it as insult to victims,” stands in the study.

It’s also pointed out that those potential advantages of agreement on confessing guilt – including solving of piled number of cases against lower rank perpetrators and evidence

collection necessary for criminal persecution of higher rank perpetrators – mainly haven't been debated in B&H.

However, from February to May 2008 prosecutors made agreement on confessing guilt with four persons indicted for war crimes. That change reflects change of strategy at Special department and is coinciding with greater readiness to risk of negative reactions.

United Nations Development Programme (UNDP) report on B&H courts and prosecutor's offices capacities for investigation, criminal persecution and war crimes processing<sup>1013</sup> aims at having detected problems, but also facts, generally being taken into consideration during elaboration of strategy for war crimes cases processing.

The study is important because for its purposes judges and prosecutors at all district, cantonal, entity and state courts and prosecutor's offices, and District court and prosecutor's offices, were interviewed.

There are significant differences at courts and prosecutor's offices in different cantons or regions covered by district prosecutor's offices or courts, but not even the Public Prosecutor's Office or District Brcko Court, having additional support of large amounts, couldn't efficiently and rightfully process large number of additional war crimes cases in this moment.

The study identifies a number of problems preventing cantonal or district prosecutor's offices in processing mentioned cases:

- Judicial reform and unification of prosecutor's offices significantly reduced number of prosecutors allocated to each of

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<sup>1013</sup>"Solving War Crime Cases in Bosnia and Herzegovina", UNDP, September 2008



prosecutor's offices in relation to the number before reforms. High Judicial and Prosecutorial Council B&H also considers that in case that significant number of cases are categorised as "sensitive" and directed to suitable local and real authority, cantonal and district prosecutor's offices, would need additional prosecutors, legal associates and other staff;

- Prosecutors in district and cantonal prosecutor's offices have to investigate cases by themselves. Neither of prosecutor's offices have the staff solely in charge for investigations.

- Although some of prosecutor's offices have departments in charge of war crimes, prosecutors working in those departments also get cases of other criminal deeds;

- Evaluation of prosecutors is mainly based on fulfilment of norm, that is, number of indictments raised. Many prosecutors cited this as one of the reasons for decision not to concentrate on such war crimes cases;

- Numerous prosecutors cited that they spent a large amount of time for exhumations. Prosecutors are often present at exhumations related to cases that won't be processed at their jurisdiction courts;

- Prosecutors cite law provisions demanding that the suspect is interrogated before pressing charges, as a reason for which many cases can't be ended;

- Prosecutors state that their job was to convince the witness to testify without protection because otherwise they simply couldn't present evidences, necessary for passing adequate judgement, to the court;

- Couple of prosecutors cited that in certain cases state prosecutors categorised two or three actors of specific criminal act as "very sensitive" cases, while 25-30 of others they categorised as "sensitive". Prosecutors then point out that witnesses interrogated and that have or haven't testified at the Court of

B&H had to be questioned again and then testify again in later processes;

- Prosecutors are worried for inequality in interpretations of the law. This especially relates to different interpretation of supreme courts of entities and Court of B&H which law to apply in processing these cases. As many prosecutors stated, accused for certain criminal act can face with penalty of 40 years of prison at Court of B&H while for the same criminal act at entity court is provided penalty of 15 years of prison;

- In this moment, in case domestic/local prosecutor is aware of existence of evidences related to investigation ran by this prosecutor, that are in possession of International Criminal Tribunal for Former Yugoslavia (ICTY), request for cession of those evidences can be directed through B&H Prosecutor's Office. Any possibility of direct access to those evidences as well as possibility of data search in seeking relevant information is lacking. Most of prosecutors have no information which evidences, such as military or police services data, taken by EUFOR could be at their disposal at ICTY. Therefore they conduct their own investigations without seeking such materials;

- With exception of Brcko District, not one of courts we visited has adequate mechanisms to ensure at least minimum of what is demanded by this Law. In most of the courts, courtrooms are not built in a way to provide separate entrance and exit. In some courts the disposition in courtroom requests of witness to sit next to the accused. Most of the courts haven't got separate waiting rooms for witnesses and other audience in courtroom. In most of the courtrooms entrance is joint one.

Different laws applied in processing war crimes provide different penalties for perpetrators.

OSCE Mission to B&H report "Moving towards a Harmonised Application of the Law Applicable in War Crimes Cases before Courts in BiH" presented on 29 October 2008 in

Sarajevo, while illustrating different law application cites example that in cantonal courts accused is getting off charges for “missing to punish guards for physically abusing war prisoners. He’s setting free because in law applicable there is no definition of command responsibility.”

So, the report states, Court of B&H gives double higher sentences than those given at entities’ courts. Courts in Federation B&H and Republic of Srpska, according to laws they apply, give sentence of seven years for war crime against civilians. Often the penalty is even smaller and could be compared with penalty for heavy robbery or criminal acts against property.

Impression is, states the report, “that crimes committed in armed conflict are smaller in relation to those committed in peace”<sup>1014</sup>.

In its latest resolution (September 2008), Council of Europe's Parliamentary Assembly mentioned that in B&H “progress is made in judicial reform” but that there are still problems like “bad material working conditions in courts and lack of consistency in court practices in two B&H entities”.

Specifically, Assembly greeted the work of War Crimes Chamber “expressing regret for the fact that there are still inconsistencies in application of criminal code at different courts on state and entity level when it comes to processing war crimes leading to unequal treatment of citizens and related to European Convention on Human Rights”<sup>1015</sup>.

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<sup>1014</sup>Moving towards a Harmonised Application of the Law Applicable in War Crimes Cases before Courts in BiH”, OSCE Mission to B&H, October 2008 page 4.

<sup>1015</sup> Ibid

### *1.7. Suggested Solutions*

In first place, what is recommended in all studies, it is necessary to unite data base on war crimes cases and precise criteria of case sensitivity. It is necessary to find out capacities at local courts. Only then it is recommended to adopt war crimes cases processing strategy. Different practice in entities' courts procedure, according to OSCE Mission to B&H report, is "probably consequence of non-existence of courts at state level which could work on harmonisation of judicial practice of all courts in B&H".

"Without such a court, differences in interpretation of laws applicable to war crimes cases could further endanger the principle of legal security and equality before law", stand in cited report.

Along with this, OSCE Mission to B&H recommends to ensure comprehensive education on international law and case law of International Criminal Tribunal for Former Yugoslavia, Court of B&H and other states, for courts and prosecutor's offices in entities processing war crimes.

Assembly invites the state to "ensure equal application of Criminal Code of Bosnia and Herzegovina at entity and state level especially in processes related to war crimes and to, with no further delay, finishes strategy for remaining war crimes cases".

UNDP, however, recommends that "before national/state strategy relating to investigation and processing of war crimes is agreed, it is necessary to examine realisation of its implementation in real light of existing and potential resources."

Considering that Bosnia and Herzegovina is just in the process of elaboration of national strategy which will ensure just and efficient investigations, criminal persecution and processing of war crimes, that strategy – as mentioned by HJPC B&H – has

to be based on facts, feasibility and cost analysis. Time necessary for its' realisation also has to be taken into account. Any suggestion taken into consideration has to contain limitations with which prosecutor's offices and courts are currently facing. Those limitations will influence on feasibility of certain proposal in different scope. Realisation of suggestion on establishment of department of Court of B&H outside Court's headquarters would resolve the issue of equal law application but it would require significant increase of staff number (either permanently employed or engaged as needed). It would also require finding location, or locations, for those departments of Court of B&H as well as reconstruction and restructuring of court buildings and courtrooms in several areas. Beside that, it would be necessary to ensure possibility of engaging additional judges, prosecutors and staff.

Such an engagement would lead to loss of judges, prosecutors and other staff at entity courts. Therefore this process should be realised through phases. If certain experts would be engaged only for specific period, in order to solve certain problem, then it is necessary to ensure them stimulations.

## 2. Problems of Functioning of Human Rights Protection System

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If looking from perspective of the European Convention for the Protection of Human Rights and Fundamental Freedoms, incorporated in the Constitution of Bosnia and Herzegovina (Annex IV of Dayton Peace Agreement), Bosnia and Herzegovina could be presented as the country of human rights.

In the Preamble of the Constitution of B&H stands “Based on respect for human dignity, liberty, and equality; Dedicated to peace, justice, tolerance, and reconciliation; Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society; Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy...”<sup>1016</sup>

These guarantees are confirmed in Article II of Constitution of B&H (Human Rights and Fundamental Freedoms), where in paragraph 2 are incorporated rights and freedoms provided by European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and are directly applied in B&H. Indeed, human rights and insisting on general protection and application of provisions from European Convention are elements at first sight corresponding to similar principles and values stated in constitution of European countries.

“Human rights and their protection are crucial part of new constitutional arrangement in Bosnia and Herzegovina but also the foundation of the future direction of this system’s development”, writes Faris Vehabović.<sup>1017</sup>

However, in the same Constitution of B&H in which human rights hold central part and represent one of the basic directives (probably because of war circumstances in which it evolved) it can be noticed at first sight that some provisions of the Constitution of B&H represent typical example of discrimination. The most visible examples are provisions determining manner of

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<sup>1016</sup>Constitution of B&H, Annex IV of Dayton Peace Agreement signed in USA in 1995

<sup>1017</sup>Faris Vehabović, “The Constitution of Bosnia and Herzegovina in Relation to the European Convention on Human Rights” Sarajevo, 2006., page 13.

election of members of Presidency of B&H and delegates for House of Peoples of Parliamentary Assembly of B&H. Because of all this, a question arises on relation of the constitution, as the supreme legal and political act of a state, and European Convention, as act containing minimum of joint will of member states in terms of material human rights it's protecting but also mechanisms of protection of those rights, and within that obligations member states have to fulfil in order for material rights to be implemented not only at supreme national level but also within each individual legal system.<sup>1018</sup>

In any case, Bosnia and Herzegovina is example of a country in which, unfortunately, human rights are empty words in daily political rhetoric, and in fact, one doesn't get impression of understanding of the real meaning of this concept and consciousness on effective mechanisms protecting them.

One of examples actual in Bosnia and Herzegovina in past seven years reached its epilogue in the end of 2008. The case is so called "Algerian group" quite picturesquely showing conditions in the field and different interpretation of what human rights are and what European Convention provides.

Namely, in January 2002 by deporting six Algerians upon request of United States of America (USA) actual authorities in Bosnia and Herzegovina violated European Convention for the Protection of Human Rights and Fundamental Freedoms and Constitution of B&H, and ignored the Decision of Human Rights Chamber in B&H.

"Nothing less than kidnapping", commented for Los Angeles Times M. Cherif Bassiouni, law professor at University DePaul in Chicago, former president of United Nations Security Council for War Crimes in Former Yugoslavia commission, day after American taking off so called Algerian six from Bosnia.

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<sup>1018</sup>Ibid

“This is Wild West comeback and it will certainly reflect on reliability of United States as country devoted to rule of law. And what’s even worse is that it will give support to terrorists claiming that United States lack legitimacy for what it’s doing.”<sup>1019</sup>

Roughly said, this group of naturalised B&H citizens couldn’t be extradited to the country which has legal sanction of death penalty. Helsinki Committee in B&H had then actually warned at violation of European Convention for the Protection of Human Rights and Fundamental Freedoms as supreme law in B&H. Judges of Human Rights Chamber in B&H stated for media that they weren’t familiar with the decision on extradition despite of their Decision.<sup>1020</sup>

However, European Court of Human Rights in Strasbourg to which mentioned six submitted separate applications united afterwards (in the period from 2006 till the end of 2007), estimated situation differently: 18 November 2008 Court reached decision that applications are ineligible. In explanation it cited that the Court is “aware of decision of domestic Human Rights Commission in this case (see point 46). However, having in mind later events, especially guarantees that authorities of B&H received that the applicants won’t be subdued to death penalty, torture, violence or other forms of inhuman or degrading treatment and punishment (see points 49 and 50) the Court therefore concludes that it can be considered that Bosnia and Herzegovina has undertaken, up to today, all possible measures to protect fundamental rights of the applicants as provided by mentioned decisions of domestic bodies.”

In the beginning of 2008, fifteen days after mentioned Decision was published, three Algerians were returned to B&H because American courts ended procedure against them and

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<sup>1019</sup>Maja Lovrenović, “Human Horror”, BH Dani no. 241, Sarajevo, 2002

<sup>1020</sup>Ibid



determined their innocence. According to their claims other three are soon to be joining them too.

In any case, it is important to point out that human rights without mechanisms for their protection represent just empty proclamation which in real life has no or almost no meaning.

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What's the protection of human rights and functioning of its mechanisms like in Bosnia and Herzegovina?

As already mentioned, human rights are part of the Constitution of B&H, and considering the fact that European Convention for the Protection of Human Rights and Fundamental Freedoms is incorporated in it, additional international dimension to their protection is given. Bosnia and Herzegovina has also obliged itself to respect set of additional international documents on human rights cited in Annex VII of Dayton Agreement: European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Framework Convention for the Protection of National Minorities; International Convention on the Elimination of All Forms of Racial Discrimination.<sup>1021</sup>

Domestic mechanisms for human rights protection are: Ombudsman for Human Rights, Constitutional Court of B&H and Ministry for Human Rights and Refugees of B&H.

However, it is evident that attempts of putting mechanisms for protection of human rights in B&H in function are far away from successful for the several years now.

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<sup>1021</sup>[http://www.oscebih.org/human\\_rights/?d=1](http://www.oscebih.org/human_rights/?d=1)

“Main impression got by looking at this new, reformed structure in light of international standards and comparative experiences is that in Bosnia and Herzegovina the word is only about formal, administrative unification and that actually domination of ethnical approach to protection of human rights is confirmed. Also application of parity principle, consensus and internal balancing of decisions between three representatives of constituent peoples in that institution is kept.”<sup>1022</sup>

According to the same source, Constitution of Bosnia and Herzegovina (Article 2, paragraph 1) and Annex VI of Dayton Agreement established quite unusual state institution for the protection of human rights – Human Rights Commission consisted of Ombudsman for Human Rights in B&H and Human Rights Chamber. Main decision between them is that the Chamber is established as judicial body reaching final and obligatory decisions in cases of violations of human rights of B&H citizens and Ombudsman is institution whose decisions have character of authoritative, but legally not binding recommendations for government bodies at B&H level.

Beside Ombudsman for Human Rights in B&H, such institution exists also at level of Federation of B&H since 1995, and Republic of Srpska since 2000. Upon the end of Human Rights Chamber' mandate on 31 December 2003, Ombudsman of B&H remained only state institution for the protection of human rights at B&H level, while Ombudsman of FB&H and Ombudsman of Republic of Srpska continued working on resolving cases of inadequate work of public administration and violation of human rights of citizens at entity level.

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<sup>1022</sup><http://www.pulsdemokratije.net/index.php?a=detail&l=bs&id=199>

## *2.1. Ombudsman for Human Rights*

Establishment of institution of Ombudsman for Human Rights is provided by Law on Ombudsman for Human Rights imposed in 2000 by the Office of High Representative for Bosnia and Herzegovina. The Law was adopted by Parliamentary Assembly of Bosnia and Herzegovina in 2002, arranging the concept, jurisdiction and everything characterising institution of ombudsman whose aim is implementation of rule of law and protection of human rights and fundamental freedoms as guaranteed by Constitution of Bosnia and Herzegovina and international agreements supplement to Constitution.

Since the beginning of 2004 till today, institution of Ombudsman for Human Rights in B&H is run by three ombudsmen named by Parliamentary Assembly of B&H for period of five years. Jurisdiction of ombudsman is defined by Article 1 and 2 of the Law on Ombudsman for Human Rights in Bosnia and Herzegovina<sup>1023</sup>.

According to the Law, “every physical and legal person can complain to ombudsman with no limitations. Work of ombudsman is free of charge and doesn’t request assistance of advisor or a lawyer.”

Special significance of institution of Ombudsman is in possibility of ombudsman to comment certain laws and estimates their harmonisation with international human rights standards.

Having in mind the necessity of fulfilling the conditions from the Feasibility Study for Negotiations between Bosnia and Herzegovina and European Union on Stabilisation and Association Agreement in the part relating to merging of institutions of ombudsmen in B&H, relevant institutions started

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<sup>1023</sup>Official Gazette of B&H no. 32/00, 19/02 and 35/04

in 2005 work on bringing the Law on Changes and Supplement of the Law on Ombudsman for Human Rights of Bosnia and Herzegovina. This resulted with the adoption of the Law on Changes and Supplement of the Law on Ombudsman for Human Rights of Bosnia and Herzegovina by the Parliamentary Assembly of B&H at House of Representatives session held on 7 March 2006 and House of Peoples session held on 27 March 2006. The Law entered into force on 3 May 2006.

This Law précised the term “government bodies” in a manner providing that government bodies in B&H are all institutions, bodies, and all other government institutions in Bosnia and Herzegovina (state, entity, Brčko District, cantonal, municipalities) as well as institutions having public function (Article 1, point d) of the Law on Changes and Supplement of the Law on Ombudsman for Human Rights of Bosnia and Herzegovina).

According to Article 6 of the Law, Ombudsman can direct cases of alleged violations of human rights to highest judicial authorities of Bosnia and Herzegovina in charge for human rights issues and in accordance with the rules regulating submission of application to those bodies whenever necessary for efficient implementation of its duties. Also, Ombudsman has authority to conduct investigations on appeals related to violations of human rights and freedoms conducted by military authorities<sup>1024</sup>.

Jurisdiction of institution of ombudsman contains also authorisation to conduct in cases relating to weak functioning of judicial system or irregular processing of individual cases and to recommend suitable general or individual measures<sup>1025</sup>.

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<sup>1024</sup>See Article 3 of the Law on Ombudsman for Human Rights of B&H, Official Gazette of B&H, 32/00, 19/02.

<sup>1025</sup>See Article 4 paragraph 1 of the Law on Ombudsman for Human Rights of B&H, Official Gazette of B&H, 32/00, 19/02.

Paragraph 2 of this article explicitly prescribes that ombudsman will not interfere in the process of court decisions meaning it's not authorised to enter the merit of court decisions nor it can question the same in function of higher instance.

Institution of Ombudsman doesn't take in consideration cases relating to decisions, facts or events occurred prior to 15 December 1995<sup>1026</sup>.

In December 2003, Dragan Čović<sup>1027</sup>, at that time Chairman of Presidency of Bosnia and Herzegovina, requested opinion from Venice Commission related to reform of institutions of ombudsman in Bosnia and Herzegovina. In parallel, Council of Ministers of Bosnia and Herzegovina established a working group for preparation of this reform.

Venice Commission stated that "there is a need for 'restructuring' of institutions of ombudsman in Bosnia and Herzegovina in considerable time period". It pointed out also that "existing level of protection of human rights must remain" and that final merging of institutions will be through period of transition in which three institutions will coexist... It is said that the principle of multiethnic institution will be preserved through naming deputy ombudsmen with the possibility of his/her rotation to ombudsman position.

In Venice Commission opinion stands that in the transition period there will be three institutions existing, each with one ombudsman and two deputies. It's pointed out that the institution, counting also the period of transition, has to be reduced.

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<sup>1026</sup>See Article 2 of the Law on Ombudsman for Human Rights of B&H, Official Gazette of B&H, 32/00, 19/02.

<sup>1027</sup>[http://www.venice.coe.int/docs/2004/CDL\(2004\)028-cro.asp](http://www.venice.coe.int/docs/2004/CDL(2004)028-cro.asp)

It is recommended that existing infrastructures, including infrastructures of entity institutions, must be preserved until rationalised. Coordination and non-hierarchical relations among existing institutions of ombudsman are of crucial importance and must be secured in the transition period.

Transition of institution of ombudsman is still on since 2004.

First Public competition for election of ombudsmen of Bosnia and Herzegovina was issued on 17 April 2007.<sup>1028</sup> After the procedure, commission has, in accordance with the Law, established a list of candidates fulfilling conditions requested in the competition and passed on to House of Representatives and House of Peoples for further procedure. In its Conclusion, while submitting the names of candidates, the Commission concluded and explicitly pointed out that it is the list of candidates fulfilling conditions and that according to the Law on Changes and Supplements of the Law on Ombudsman for Human Rights it is not a rank list. After the voting procedure in House of Representatives, majority of votes brought decision on election of Mariofil Ljubić while candidates Vitomir Popović and Emina Halilović didn't receive sufficient entity majority in the same House.

At one of the following sessions, the chairman of House of Representatives informs the House that election of ombudsmen failed and that procedure should be repeated.

House of the Peoples starts no procedure even though it is its' right and obligation. After that, with no valid explanation and without cancelling this competition, Parliamentary Assembly (House of Peoples and House of Representatives) passes decision on election of new commission consisted of representatives of

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<sup>1028</sup>Data of Office of Ombudsman B&H

both Houses. It is interesting that it comes to the change of one Croat member.

Decision on election of members of the commission was never published even though it is obliged to be

Public competition for naming ombudsman was published on 23 February 2008. After expiration of deadline for applications, Commission began with work. Commission determined its internal rules apart from Law and tried to make ranking list of candidates. Ranking list is not mentioned as possibility anywhere in the Law.

It is interesting that the commission, at previous public competition, took a stand that according to the Law it has a mandate only to establish a list of those fulfilling conditions prescribed by the Law and not to make a ranking list.

The procedure then continued further on based on established ranking list at House of Representatives.

At 32<sup>nd</sup> session of House of Representatives of Parliamentary Assembly of Bosnia and Herzegovina, held on 9 and 14 July 2008, among other, a Decision on naming Ljubomir Sandić, Mariofil Ljubić and Emina Halilović at position of ombudsman was passed by.

Legal and parliamentary procedure ordered that in continuation of the procedure chairman of House of Representatives, through its secretariat, delivers Decision of House of Representatives to House of Peoples on further procedure. Decision was delivered on 15 July but the House of Peoples didn't read on it at the session of 23 July 2008.

At the session of House of Peoples, held on 23 July 2008 when this issue was also considered, certain parliamentarians warned and requested that the House reads on decision of House of Representatives. However, that didn't happen.

In continuation of the procedure, House of Peoples, differently than decision of House of Representatives, appointed Ljubomir Sandić, Ivo Bradvica and Jasminka Džumhur. Application of double standards occurs where in the first public competition House of Peoples doesn't consider this issue at all, and in second competition calls upon its independency and bringing independent decisions.

After that, trying to get out of obvious dead-end in which parliamentarians came by not respecting legal procedure, attempt was made in order to reach agreement on candidates as if it's about the law and not appointment. Commission for harmonisation consisted of representatives of two Houses was established.

Commission didn't considered legal procedure or legal possibilities of reaching consensus but started straight with discussion on names and surnames.

In this case, Commission didn't even reach consensus because not all members voted for Conclusion. In case of Mariofil Ljubić, one member of the commission was opposing.

Afterwards the Report of Joint Commission for Harmonisation of suggestions for appointment of ombudsman for human rights of B&H was considered at session of House of Representatives. Conclusion of this commission is to provide opinion from Ministry of Justice of B&H in regard to validity of procedure of Joint Commission for Harmonisation of suggestions for appointment of ombudsman for human rights of B&H.

Final outcome of situation on election of ombudsman B&H was on 4 December 2008 when Parliamentary Assembly of Bosnia and Herzegovina in its' decision number PSBIH 275/08 appointed Ombudsmen B&H – Ivo Bradvica, Jasminka Džumhur and Ljubomir Sandić). Ombudsmen B&H entered the duty on 15 December 2008.



On 22 December 2008 newly elected Ombudsmen B&H took over 1003 unresolved cases and in period from 05 January 2009 concluding with the end of third month, the Institution of Ombudsmen B&H received 327 new cases.

Consequence of this slow, inconsistent and complicated, politically manipulated situation on appointment of the ombudsmen B&H is maximum difficult functioning of the institution. One example is the fact that in beginning of December 2008 statistics in the Office of Ombudsmen B&H almost didn't exist because there was no administrator to unite them – it's about data from Sarajevo and Banja Luka. Web site, also, did not function for the same reason.

In the meantime, Office of Ombudsman for Consumers in Mostar was established and, in mid of 2008, National Assembly of the Republic of Srpska adopted Draft Law on Ombudsman for Children proposed by President of Republic of Srpska, Rajko Kuzmanović. FB&H passed the Law on manner of cease of functioning of institution of ombudsman FB&H in transition period and transferred of its' jurisdiction to institution of Ombudsmen for Human Rights B&H. However, it wasn't consistently applied in practice.

But, in Republic of Srpska such law was never adopted. More precisely, Government of Republic of Srpska, at its' 113<sup>th</sup> session held on 26 February this year, established Draft Law on Cease of Functioning of Institution of Ombudsman of Republic of Srrpska – Protector of Human Rights and passed it to consideration to National Assembly of Republic of Srpska. However, Assembly rejected it by beginning of May 2009.

On 17 March, Ombudsmen B&H directed public note to entity authorities because “even with consistent application of law, in their activities they met with set of obstacles and behaviours in both entities and first of all in Federation of B&H. According to Ombudsmen B&H estimation, it is in contradiction

with ruling regulations and especially with principles of justice and morality.”

Having in mind the aforementioned it can be concluded, as it can be seen from abovementioned attempts of putting state ombudsman in function, that, in essence, those attempts do not suit anyone.

## *2.2. Constitutional Court of Bosnia and Herzegovina*

Constitutional Court of Bosnia and Herzegovina is the highest judicial institution in the state. Main task of the court is to ensure harmonisation of the laws with Constitution of B&H brought in 1995 within Dayton Peace Agreement. According to the definition, Constitutional Court of Bosnia and Herzegovina is also due to protect freedom and human rights of citizens as provided by Constitution.<sup>1029</sup>

In average, around 3.500 applications per year are directed to Constitutional Court of B&H in comparison to only twenty “purely constitutional” cases. The court resolves disputes in which suggested decision of Parliamentary Assembly is destructive for vital national interest by opinion of majority of delegates of one of constituent peoples and all “parliamentary means” for solving this issue are exhausted at House of Peoples.

After dozens of interviews, journalists of Centre for Investigative Journalism (CIN) came to data on efficiency of court’s work. According to this source, till the end of 2005, applicants waited for decision up to a year in average. Since then, number of applications directed to Constitutional Court of Bosnia and Herzegovina suddenly started to increase exceeding

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<sup>1029</sup><http://reportingproject.net/court/index.php?lang=ba>

the abilities of judges. Average time necessary for reaching decision has so grown from one to year and a half up to two years.

And beside larger number of sessions held, Constitutional Court of Bosnia and Herzegovina statistics show that in 2007 lesser percent of cases was solved than in previous years. Judges of Constitutional Court of B&H have met 50 times in total in 2007, compared to 36 times in 2006. However, they solved almost nine percent less cases than in 2006.

Centre for Investigative Journalism stated in its' comprehensive research that "the court which brings decisions that no one obeys doesn't serve this state". During the estimation of the Constitutional Court of B&H work, journalists of CIN have checked what's happening after the judges reach the decision.

According to Constitutional Court of B&H data, 20 out of 6.269 decisions brought by the Court in past three years haven't been obeyed. In most of these cases Constitutional Court of B&H directed officials at state institutions to stop violating human rights. A concrete example was made according to which the Court has in 2005 ordered to Council of Ministers of B&H, entities and Brčko District governments to implement provisions of the 2004 Law on Missing Persons in B&H. In the Decision of Constitutional Court of B&H stands that these bodies have to deliver all available information urgently and with no further delay to families of missing persons on members of their families missed during the war, and that they should provide necessary resources for functioning of the Missing Persons Institute, Fund for Help to Missing Persons Families in B&H and Central Registry of Missing Persons in B&H.

Fund was suppose to give financial aid to missing persons' families while Central Registry should've unite entities registries on missing persons in order to continue with work on finding out their destiny.

The Decision of the court wasn't obeyed and Prosecutor's Office of B&H didn't press charges against responsible officials even though the Law obliges them to.

### *2.3. Ministry for Human Rights and Refugees of Bosnia and Herzegovina*

Ministry for Human Rights and Refugees of Bosnia and Herzegovina was established in April 2000 by the Law on Council of Ministers of B&H<sup>1030</sup>, where it stands that Ministry for Human Rights and Refugees undertakes actions for realisation and protection of human and refugees' rights, emigration, immigration and asylum, in accordance with Constitution of Bosnia and Herzegovina and General Framework Peace Agreement in B&H, international conventions and laws and other acts of relevant institutions in B&H, coordinates in affairs of refugees' rights and cooperates with entities.

At homepage of web site of the Ministry (<http://www.mhrr.gov.ba>) stands that for the first time after the signing of Dayton Peace Agreement happened that one Ministry at the B&H level received task to deal with issues of refugees and protection of human rights. Ministry began with work two months after establishment and coordinates its work with related ministries in Federation B&H and Republic of Srpska.

But the real function of the ministry is only coordination with no real authorities in the field.

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<sup>1030</sup>Law on Ministries and Other Administration Bodies of Bosnia and Herzegovina ("Official Gazette of B&H", no. 5/03, 42/03, 26/04, 42/04, 45/06 and 88/07)

However, at this ministry functions Office of Agent of Council of Ministers of Bosnia and Herzegovina before European Court of Human Rights. Office of Agent of Council of Ministers follows domestic and international provisions relating to protection of human rights and monitors and analyses practice of European Court of Human Rights. The Office began working in July 2006.

Around 1.400 applications against B&H are currently before European Court of Human Rights in Strasbourg. According to agents of Bosnia and Herzegovina evidence number of applications against B&H significantly increases each year and it doubled during 2008.

Most of applications against B&H are related to issues of “old” foreign currency savings, non-execution of domestic courts judgements prescribing “war damage” or “war debts”, return of military apartments in FB&H and missing persons during the war.

Total amount of claims from B&H based on charges in procedure before European Court of Human Rights and delivered to Office of Agent of Council of Ministers for representation is around nine millions convertible marks (KM).

Up to now, six judgments against B&H were passed upon which applicants, for determined breach of rights, received total of 1,8 million of convertible marks. European Court of Human Rights passed also ten decisions related to B&H of which six, conditionally said, are in favour of B&H.

## *2.4. Supplement: Judgements of the European Court of Human Rights in Strasbourg*

**Case Karanović v. Bosnia and Herzegovina**, ended on 10 November 2007. Duško Karanović requested compensation because he couldn't realise his right to pension from the FB&H Pension Fund, but he received it from Republic of Srpska.

In the judgement stands that there was a breach of Article 6 of European Convention for the Protection of Human Rights and Fundamental Freedoms and ordered that the respondent State, within three months of the date on which the judgement becomes final, according to Article 44 § 2 of the Convention, is to secure the enforcement of the impugned decision of the Human Rights Chamber by way of: (i) transferring the applicant to the Federation of Bosnia and Herzegovina Pension Fund; and (ii) paying the applicant EUR 2,000 (two thousand euros) which should be converted into Bosnian marks at the rate applicable at the date of settlement; (b) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, is to pay the applicant EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, which should also be converted into Bosnian marks at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount; (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

**Case Tokić and others v. Bosnia and Herzegovina**, ended on 8 July 2008.

The case originated in four applications (nos. 12455/04, 14140/05, 12906/06 and 26028/06) against Bosnia and Herzegovina lodged with the Court under Article 34 of the

Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four citizens of Bosnia and Herzegovina, Mr Mehmed Tokić, Mr Jusuf Alibašić, Mr Danijel Marinić and Mr Adis Hadžić (“the applicants”), in 2004, 2005, and 2006.

The applicants complained of the unlawfulness of their detention in Zenica Prison Forensic Psychiatric, Annex under Article 5 § 1 (e) of the Convention. They further invoked Article 5 § 4 of the Convention, but did not develop this aspect of their case.

The Court holds that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) to Mr Tokić, EUR 15,000 (fifteen thousand euros) to Mr Alibašić, EUR 25,000 (twenty five thousand euros) to Mr Marinić and EUR 20,000 (twenty thousand euros) to Mr Hadžić, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into convertible marks at the rate applicable at the date of settlement; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

**Case Rodić and Three Others v. Bosnia and Herzegovina**, ended on 6 May 2008.

Mr Milorad Rodić, Mr Vlastimir Pušara and Mr Zoran Knežević, and a citizen of Bosnia and Herzegovina and Croatia, Mr Ivan Baković (“the applicants”) under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, relying in this connection on Articles 2 and 3 of the Convention, that they had been persecuted by their

fellow prisoners from the time of their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit. They further alleged that the conditions of their detention in the hospital unit had violated Article 3 of the Convention. Lastly, they alleged that there had been no “effective remedy before a national authority” for their complaints under Articles 2 and 3 as required by Article 13 of the Convention.

The applicants claimed 5,000 euros (EUR) each in respect of pecuniary damage (travel expenses allegedly incurred by their family members in order to visit the applicants in Zenica Prison) and EUR 20,000 each in respect of non-pecuniary damage. The Government considered the amounts claimed to be excessive.

The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicants suffered considerable distress in connection with the violations found. Having regard to the amounts awarded in comparable cases (see *Mayzit v. Russia*, no. 63378/00, §§ 42 and 88, 20 January 2005; *Labzov v. Russia*, no. 62208/00, § 59, 16 June 2005; the judgment in *Cenbauer*, cited above, §§ 52 and 57; and *Benediktov v. Russia*, no. 106/02, § 50, 10 May 2007) and to the length of time between each applicant’s arrival in Zenica Prison and their being provided with separate accommodation in the hospital unit, the Court awards Mr Rodić EUR 4,000, Mr Pušara EUR 2,000, Mr Knežević EUR 2,000 and Mr Baković EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

The applicants also claimed EUR 17,170 for the costs and expenses incurred in the proceedings before the Court. They submitted a relatively detailed bill of costs. The Government considered the amount claimed to be excessive.



According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

Notwithstanding the number of applicants and the complexity of the issues examined (the Court had to examine, among other things, the effectiveness of the domestic legal system with regard to complaints about prison conditions, which entailed repeated observations), the Court agrees with the Government that the amount claimed by the applicants is excessive. Having regard to the tariff fixed by the local bar associations, which the Court considers reasonable in the circumstances of this case, the applicants' representative is entitled to approximately EUR 8,000 in total, given that he submitted an initial application in one of the official languages of Bosnia and Herzegovina and, at the request of the Court, five written pleadings in English (see, *mutatis mutandis*, *Šobota-Gajić v. Bosnia and Herzegovina*, no. 27966/06, § 70, 6 November 2007). In addition, the Court awards the sum of EUR 200 for secretarial and other expenses. The amount granted under the Council of Europe's legal aid scheme (EUR 1,700) is to be deducted from the total amount.

The applicants should therefore receive, under this head, EUR 6,500, plus any tax that may be chargeable to the applicants. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**Case Pejaković and Others v. Bosnia and Herzegovina**,  
ended on 27 November 2007.

Mr Čedomir Pejaković, Mr Dragomir Kusić and Ms Ružica Pejić (“the applicants”), between 8 December 2003 and 16 November 2004, under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms („the Convention“) complained about non-enforcement of final and enforceable judgments in their favour.

Prior to the dissolution of the former Socialist Federal Republic of Yugoslavia (“SFRY”) the applicants deposited foreign currency in their bank accounts at the then Privredna banka Sarajevo Filijala Banja Luka (Mr Pejaković), Jugobanka Sarajevo Ekspozitura Gradiška (Mr Kusić) and Jugobanka Sarajevo Ekspozitura Brčko (Ms Pejić). In Bosnia and Herzegovina, as well as in other successor States of the former SFRY, such savings are commonly referred to as “old” foreign-currency savings (for the relevant background information see *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-...).

The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicants as far as possible are put in the position in which they would have been had the requirements of Article 6 not been disregarded (see *Jeličić*, cited above, § 53). The Court finds that in the present case this principle applies as well, having regard to the violation found. It therefore considers that the Government should pay the awards made by the domestic courts.

In respect of Mr Pejaković this award consists of a principal debt (in the amount of EUR 9,691), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 1,602), legal costs (EUR 128) and default interest on the last-mentioned amount at the statutory rate for the period specified by the domestic courts (EUR 128). Mr Pejaković should therefore receive EUR 10,739 in all under this head plus any tax that may be chargeable.

In respect of Mr Kusić this award consists of a principal debt (in the amount of EUR 189,748), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 246,745) and legal costs (EUR 3,323). As for the amount to be deducted, the Court notes that the applicant has converted a part of his savings (in total EUR 21,213) into privatisation coupons which he has then sold for an unknown price on the secondary market. Accordingly, the amount of EUR 12,728 should be deducted (see *Jeličić*, cited above, § 54).

In respect of Ms Pejić this award consists of a principal debt (in the amount of EUR 123,798), default interest on the above amount at the rate and for the period specified by the domestic courts (EUR 130,753), legal costs (EUR 2,229) and default interest on the last-mentioned amount at the statutory rate for the period specified by the domestic courts (EUR 2,229). It would appear that the applicant has not converted any of her savings into privatisation coupons. Ms Pejić should therefore receive EUR 259,009 in all under this head plus any tax that may be chargeable.

As for non-pecuniary damage, the Court accepts that the applicants suffered distress, anxiety and frustration because of the State's failure to enforce judgments in their favour. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards EUR 4,000 to each applicant under this head plus any tax that may be chargeable.

Ms Pejić also claimed the equivalent of EUR 2,550 for the costs and expenses incurred before the Court.

The Government disagreed with the amount claimed by the applicant.

The Court notes that Ms Pejić was granted legal aid under the Court's legal-aid scheme in the amount of EUR 850. She failed to submit evidence, such as itemised bills and invoices, that any

additional expenses had been actually incurred. Accordingly, the Court rejects her claim.

**Case Jeličić v. Bosnia and Herzegovina**, ended 31 October 2006. Ruža Jeličić complained that a final and enforceable judgment ordering the release of her “old” foreign-currency savings had not been enforced.

Between 7 January 1977 and 31 January 1983 the applicant deposited in total 70,140 German marks (DEM) in her savings account at the then State-owned Privredna banka Sarajevo Filijala Banja Luka.

On 31 December 1991 the balance in the applicant's account, which included accrued interest, was DEM 235,924 (in the former SFRY, foreign-currency deposits earned high interest). On several occasions in 1992 and 1993 the applicant managed to withdraw in total DEM 9,352, regardless of statutory restrictions which had been introduced in the late 1980s.

On 26 November 1998 the Banja Luka Court of First Instance established that the balance in the applicant's account indicated above was DEM 295,274, including accrued interest. The court also found that the applicant had DEM 4,896 in another account at the same bank.

The Court notes that the judgment of 26 November 1998, although final and enforceable, has not yet been executed. The impugned situation has thus already lasted more than four years since the ratification of the Convention by Bosnia and Herzegovina on 12 July 2002 (the period which falls within the Court's jurisdiction *ratione temporis*). The Court also notes that the judgment debt is the liability of the State.

The Court furthermore considers that the Government should pay the award made by the domestic courts. This award consists of a principal debt (in the amount of EUR 153,475), default interest on the above amount at the rate and for the period

specified by the domestic courts (EUR 22,660), legal costs (EUR 290) and default interest on the last-mentioned amount at the statutory rate for the period specified by the domestic courts (EUR 430). The amount of EUR 13,395 which the applicant has already received should be deducted (see paragraph 51 above). The applicant should therefore receive EUR 163,460 in all under this head.

The Court holds that there has been a violation of Article 6 of the Convention; holds that there has been a violation of Article 1 of Protocol No. 1 to the Convention; that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which should be converted into Bosnian markas at the rate applicable on the date of settlement: (i) EUR 163,460 (one hundred and sixty-three thousand four hundred and sixty euros) in respect of pecuniary damage; (ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage; and (iii) any tax that may be chargeable on the above amounts.

**Case Šobota-Gajić v. Bosnia and Herzegovina,**  
judgement reached on 6 November 2007.

The applicant alleged that the national authorities failed to discharge their positive obligations to secure her rights under Article 8 of the Convention.

The applicant Verica Šobota-Gajić married Z.G. in 1992. The couple had two children, a daughter born in 1992 (“A”) and a son born in 1994 (“B”). In the beginning of 2001 the applicant left her husband. She succeeded in taking A whereas Z.G. kept B. Since 15 May 2001 till judgement of the Court Šobota-Gajić failed to gain custody over her children even though domestic courts forcefully decided so.

The Court in Strasbourg found that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,800 (eight thousand eight hundred euros) in respect of non-pecuniary damage and EUR 4,700 (four thousand seven hundred euros) in respect of costs and expenses, plus any tax that may be chargeable.



